

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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Regulations Establishing System  
Of Ratemaking

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Docket No. RM2007-1

**INITIAL COMMENTS OF THE AMERICAN POSTAL WORKERS  
UNION, AFL-CIO, IN RESPONSE TO ADVANCE NOTICE OF  
PROPOSED RULEMAKING ON REGULATIONS ESTABLISHING  
A SYSTEM OF RATEMAKING  
(April 6, 2007)**

Pursuant to Commission Order No. 2, issued on January 30, 2007, the American Postal Workers Union, AFL-CIO (APWU) respectfully submits these comments on the Commission's Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.

**I. INTRODUCTION AND PUBLIC POLICY**

The Postal Enhancement and Accountability Act (hereinafter "PAEA" or "the Act"), enacted December 20, 2006, directs the Postal Regulatory Commission (hereinafter "PRC" or "the Commission") to establish, by regulation, "a modern system for regulating rates and classes for market-dominant products"<sup>1</sup> and to promulgate regulations relating to rate setting for competitive products.<sup>2</sup> In so doing it is vital that the Commission ensure that these regulations further the policies of the Act.

Section 101 of the Act expresses the fundamental policy that

...The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational,

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<sup>1</sup> 39 U.S.C. § 3622(a).

<sup>2</sup> 39 U.S.C. § 3633(a).

literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

39 U.S.C. § 101(a); and

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining...

39 U.S.C. § 101(b).

In the Postal Reorganization Act of 1970, Congress confirmed our national commitment to provide our citizens with universal postal service at uniform rates. This fundamental policy has now been reconfirmed by the Postal Accountability and Enhancement Act.<sup>3</sup> Postmaster General John E. Potter recently acknowledged the preeminence of this policy when on March 1, 2007 he stated in remarks given at American University

My overriding goal – based on my reading of the law – is universal service at affordable rates for the American public; and

I believe the basic premise – again – is that the Postal Service deliver universal service at affordable rates. I can't say that enough.

We submit that it would be impossible for the Commission to promulgate meaningful and effective regulations for market dominant and competitive products without addressing the need for robust and transparent data sources to support ratemaking. Likewise, the timing and process to be used in addressing issues of

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<sup>3</sup> Thus, Congress has recently reiterated and reconfirmed the requirement of universal service at uniform rates as articulated by the Commission in its decisions. *See Lorillard v. Pons*, 434 U.S. 575, 580-581 (1978) (“...where, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute”).

compliance with the regulations must be addressed as the regulations are promulgated. Although Commission Order No. 2 seeks only comments on regulating rates and classes for market dominant products and rate setting for competitive products, the data, transparency, and complaint processes are so closely tied to the ratemaking process that it will not be possible to structure the regulations pertaining to rates and classes without also developing rules on data availability, transparency and compliance procedures.<sup>4</sup>

Accordingly, we respectfully submit the following broad recommendations for consideration by the Commission. We appreciate the opportunity to provide these preliminary observations as the Commission develops its regulations.

## **II. MARKET DOMINANT PRODUCTS**

### **A. Transparency and Data Production**

Calls for greater transparency in the Postal Service have come from many quarters. These calls have now been made mandatory by Congress in Section 3622 of the PAEA which requires that the Postal Regulatory Commission establish regulations for market dominant products “designed to achieve” numerous objectives including “reduc[ing] the administrative burden and increas[ing] the transparency of the ratemaking process.”<sup>5</sup> Postmaster General Potter, too, indicated his support for transparency in his recent remarks at American University:

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<sup>4</sup> We observe that the issues that may be taken up in the complaint process under the PAEA are broad and numerous. The PAEA permits interested parties to lodge complaints over a violation of any part of Chapter 36 of the Act. This includes violations of the rate and classification laws and regulations for both the market dominant and competitive products.

<sup>5</sup> 39 U.S.C. 3622(b)(6).

Our goal is to work with the Postal Regulatory Commission and stakeholders to provide a high degree of financial transparency. Nobody should be sitting there questioning our motives, and I am glad we are going to have a partner with the Postal Regulatory Commission to show folks that there's no skullduggery. Everything is going to be out in the open.

We submit that it should not be necessary for the Postal Service to continue to produce a large amount of specially-generated data as if it were filing a rate case. Instead, we urge the Commission to require that the Postal Service make available data it already produces as part of its normal operating procedure. As the Postal Rate Commission observed in RM2003-3:

The Commission finds that complying with the updated Rule should not add significantly to the Postal Service's regulatory burden, since the Postal Service annually prepares almost all of this material for its own purposes.<sup>6</sup>

An example is provided in the area of financial reports. It appears that the Postal Service has presently decided to discontinue its monthly financial and operating report because it is now only required to report its quarterly results. While it is understandable that providing a separate compilation of data into this specialized report may be taxing, it would not be difficult for the Postal Service to continue to provide the Commission its data file for its monthly Trial Balance and Revenue Operating Expenses. These data files are presumably files that the Postal Service produces as a standard part of doing business. Thus, requiring this type of information would provide some transparency to the operations of the Postal Service without imposing upon the Service the requirement of specialized reports.

In addition, the regulations should require that the quarterly financial reports include volume data. This data must be collected by the Postal Service on an ongoing

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<sup>6</sup> Docket No. RM2003-3, Order No. 1386, Final Rule on Periodic Reporting Requirements p. 3-4.

basis and reported at least annually in the reports required under Section 3652 of the Act. Requiring that volume data also be reported quarterly will assist the Commission in making its own annual reports to the President and Congress under Section 3651 of the Act, and will make the annual reports by the Postal Service under 3652 more accessible and useable to the mailing community.

The advantage of routine data recording and transparency is also exemplified by the reporting requirements in connection with workshare discounts. Whenever the Postal Service sets a workshare discount rate, it is required by Section 3622(e)(4)(B) of the Act to report the “data, economic analyses, and other information relied on by the Postal Service to justify the rate...” To meet these requirements, the Postal Service must collect, maintain and report operational cost and volume data necessary to determine attributable costs and to justify discounts. This will require sufficient data to determine and attribute costs by operations.

Initially, the data sets maintained and reported by the Postal Service to meet its reporting and transparency requirements under the Act may resemble the data and reports it has provided in the past in connection with rate cases. We are optimistic, however, that Postal Service data systems are going to improve in both substance and accessibility and the Postal Service will provide real operational data and rely less on small samplings, special studies and elaborate models. As Postmaster General Potter stated:

We are also going to improve our postal data systems through warranted and cost effective enhancements. Again for one simple purpose, and I can't repeat it enough; to provide reliable universal service with affordable rates for the American public; and

I see the Postal Service having the responsibility to aggregate data from intelligent barcodes and share that data in a global fashion. “We can use it as the basis for aggregating data and building a service performance system like no one has ever seen.”<sup>7</sup>

The movement toward more automation and an intelligent mail stream provide a wealth of operational data down to the machine level and the 4-state barcode system has the potential to provide a lot of data about the movement and processing of the mail and thus the cost of it. Those systems should be looked at for their potential to provide needed information without adding additional collection burden to the Postal Service.

The Commission’s regulations should ensure that the newly available operational data is not used only for the important purpose of service enhancement, but is also used for operational and cost analysis.

In light of these developments, the Commission’s regulations should make provision for the transition to new data systems. For a time necessary to insure the clarity and usability of the new data, it will be necessary for the Postal Service to maintain overlapping systems, and the Commission’s regulations should so provide.<sup>8</sup>

Any data relied upon by the Postal Service in support of any rate increase should be made available to the public. An important objective of Section 3622 is “to allow the Postal Service pricing flexibility”<sup>9</sup> in setting rates for market dominant products. However, allowing Postal Service flexibility should not come at the expense

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<sup>7</sup> American University, March 1, 2007.

<sup>8</sup> It is a common practice with data sources of import to the public to publish “old method” and “new method” data during an overlap period. It allows people to measure the impact of any changes in data collection sources, methods or weighting. For example, the Bureau of Labor Statistics typically publishes “old method indices” for six months after beginning “new method” indices.

<sup>9</sup> 39 U.S.C. § 3622(b)(4).

of an open and transparent system. Transparency will be more important in a time of increased flexibility. The PAEA requires that “postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.”<sup>10</sup> With more flexibility there may come a tendency to increase cost coverage by those users of the mail who have the fewest options for moving to another method of communication (the low elasticity group). To guard against this tendency, and to ensure fairness, mailers must be able to analyze the information relied on by the Postal Service in making its rate determinations.

## **B. Notice Period**

The Act requires that the Postal Service provide public notice of its intent to implement an adjustment of rates “not later than 45 days before implementation.”<sup>11</sup> During this notice period the Commission is to review the rate increase to ensure that the Postal Service is in compliance with the annual adjustment limitation.<sup>12</sup> The PAEA also requires that the Commission consider “the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters” when “establishing or revising” the ratemaking system.<sup>13</sup> Even with the elimination of the formal “rate proceedings” required under the PRA and the increased flexibility given to the Postal Service in rate setting, we observe that the minimum of 45 days is not likely to provide sufficient time for mailers to adjust to new rates or for the Commission to perform its analysis.

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<sup>10</sup> 39 U.S.C. § 101(d).

<sup>11</sup> 39 U.S.C. § 3622(d)(1)(C).

<sup>12</sup> 39 U.S.C. § 3622(d)(C)(iii).

<sup>13</sup> 39 U.S.C. § 3622(c)(3).

We recommend that the Commission make provision for the receipt of comments on the question whether pending rate increases comply with the Act. Although interested parties are invited under Section 3662 of the Act to lodge a complaint with the Commission, if, *inter alia*, the party believes that the rates proposed by the Postal Service do not conform to the Act,<sup>14</sup> to avoid unnecessary complaint proceedings, the Commission should allow for public comment on the rate proposals during this notice period.

The Commission should take into account all of the logistics involved with a rate change and chose a time period, likely more than the 45 day minimum required by the Act, to allow for input from users of the mail and to allow mailers adequate time to adjust to the rate change thereby minimizing any disruption to the system. The regulatory system for ratemaking is to be designed to “create predictability and stability in rates.” This is a laudable objective, but one that is not likely to be attained for some time. However, once achieved the notice period could be reevaluated and reduced. It is also possible that the 45-day notice period could be adequate if the Postal Service is required to submit quality data at periodic intervals throughout the year, in addition to the quarterly reporting necessary for Sarbanes-Oxley compliance. This will enable interested parties to predict likely rate increases and therefore more rapidly determine whether proposed rates comply with the Act.

### **C. CPI-U Requirement**

Section 3622 of the Act requires that the system created to regulate rates and classes for market-dominant products

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<sup>14</sup> 39 U.S.C. § 3662(a).

include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates.<sup>15</sup>

The Act specifies that this limitation applies to a class of mail, as defined in the Domestic Mail Classification Schedule.<sup>16</sup> The Act further provides that the Postal Service is entitled to “bank” any “unused rate adjustment authority” for a period of five years<sup>17</sup> and can use this banked rate adjustment amount to exceed the CPI-U cap detailed above.<sup>18</sup> Under Section 3622(d)(1)(A), the banking provision provides an exception to the application of the CPI-U limitation within each class of mail separately. This exception is very important to ensure the continuing viability of the Postal Service as the mail mix changes in response to external factors. The Commission’s regulations should address the question of how CPI-U percentages should be weighted in order to be banked and used across mail classes.

Preliminarily, we recommend consideration of weighting by revenue as a means of making cross-class application of banked CPI savings fair and effective. This will further the objectives of Postal Service pricing flexibility<sup>19</sup> and ensure adequate revenues in a time of relatively rapid change in the postal system.<sup>20</sup> Rate increases for any class would, of course, still be limited by the requirement that even

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<sup>15</sup> 39 U.S.C. § 3622(d)(1)(A).

<sup>16</sup> 39 U.S.C. § 3622(d)(2)(A).

<sup>17</sup> 39 U.S.C. § 3622(d)(2)(C).

<sup>18</sup> *Id.*

<sup>19</sup> 39 U.S.C. § 3622(b)(4).

<sup>20</sup> 39 U.S.C. § 3622(b)(5).

with the application of the banked adjustment authority rate increases within a class may not exceed the 12-month CPI-U increase by more than 2 percentage points.<sup>21</sup>

#### **D. Negotiated Service Agreements**

In establishing the regulatory scheme the PAEA requires the Commission to consider as a factor

the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including agreements between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that –

(A) either –

- (i) improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; or
- (ii) enhance the performance of mail preparation, processing, transportation, or other functions; and

(B) do not cause unreasonable harm to the marketplace.<sup>22</sup>

This factor clearly pertains to Negotiated Service Agreements (NSAs). Under the PRA these agreements are permissible but the Postal Service and the other party to the agreement must submit data and accompanying testimony in support of the agreement. Interested parties are invited to comment on the agreement, conduct discovery and to participate in hearings, when necessary. These requirements and processes provide an invaluable check on the agreement, helping to ensure that it complies with the policies and other provisions of the PRA and serves the best interest of the Postal Service.

The PAEA requires that NSAs “improve the net financial position” or “enhance the performance” of the Postal Service while not causing “unreasonable harm to the marketplace.” Further, these agreements must be available on “public and reasonable

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<sup>21</sup> 39 U.S.C. § 3622(d)(2)(C)(iii)(IV).

<sup>22</sup> 39 U.S.C. § 3622(c)(10).

terms to similarly situated mailers.” As a minimum, therefore, the regulations enacted by the Commission should require that each negotiated agreement and the data supporting it is made available to the public. This will allow the agreement to be evaluated in context to determine if the agreement will improve the financial position or enhance the performance of the Postal Service. This information should accompany the filing of the agreement and should be submitted a reasonable time in advance of the agreements effective date. We recommend that the Commission make provision for public comment to the Commission, including the possibility of requests that the Commission require the Postal Service to submit additional or different data to support the agreement.

#### **E. Classifications for market dominant products**

The PAEA tasks the Commission with establishing regulations pertaining to classes of market-dominant products. The Commissions regulations create a process whereby the Postal Service submits its proposed classification to the Commission for review before the classification is implemented. Section 403 of the PAEA prohibits the Postal Service from unduly or unreasonably discriminating against, or giving special preference to users of the mail when it establishes classifications.<sup>23</sup> A review process is necessary to ensure compliance with this provision.

As part of this process the public must be informed of the proposed classification and given an opportunity to comment. When the Postal Service considers significant new or changed classifications it often conducts studies, holds focus groups, and establishes MTAC workgroups all to assess the desirability and

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<sup>23</sup> 39 U.S.C. § 403(c).

practicality of the classification. The Commission's regulations should require the timely submission of the documents and recommendations produced during these studies and meetings. Disclosing this information furthers the transparency objective and provides a basis by which to assess compliance with the Act.

### **III. REGULATING COMPETITIVE PRODUCTS**

The regulations promulgated by the Commission regarding the rate setting procedures for competitive products should be minimal. Section 3632 of the PAEA vests the Postal Service Governors with the primary responsibility for establishing rates and classes for competitive products. The Commission is tasked with enacting regulations to address only three things: 1) prohibit subsidization of competitive products by market dominant products; 2) ensure these products cover their attributable costs; and 3) ensure these products cover their appropriate share of the institutional costs.<sup>24</sup> In so doing the Commission should use a light hand and give the Postal Service a maximum amount of flexibility.

### **IV. COMPLIANCE PROCEEDINGS**

The complaint proceeding under the Act is broadly available. Under Section 3662

Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601 or [Chapter 36] (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.<sup>25</sup>

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<sup>24</sup> 39 U.S.C. 3633(a).

<sup>25</sup> 39 U.S.C. § 3662.

If parties who are accustomed to participating in rate proceedings do not have data to satisfy concerns that they are being treated fairly, the complaint process may be used actively, resulting in an unnecessary and time-consuming burden on the Commission. We therefore urge that the Commission's regulations require thorough and accurate postal data collection, provide for ongoing data availability to the public, and make available the opportunity for public comment on proposed rates and public input into Commission deliberations.

The Commission's subpoena power will be critically important to the effectiveness of any complaint proceeding. By regulation, the Commission should make subpoenas available to complainants or intervenors upon request, subject only to a procedure by which the Postal Service or other interested parties could seek a protective order or withdrawal of the subpoena by the Commission.

## **V. CONCLUSION**

The Commission's regulations should address the issues of data collection, transparency and compliance reviews in addition to establishing rules for the ratemaking process. Data presentation and transparency will be important to assure statutory compliance and fairness, and to minimize complaint proceedings.

Respectfully submitted,

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