

As stated by DMA and NAA, public comment on proposed rate changes would provide information and insight to the Commission and the Postal Service that can help ensure the implementation of lawful rates. See DMA Comments at 7; NAA Comments at 7. While PAEA does not explicitly provide for pre-implementation review of competitive rates, it also does not give the Postal Service wholly unfettered pricing authority over competitive products. For example, Section 3632(b)(1) requires the Postal Service to provide the Commission with a “statement of explanation and justification” in writing when filing a notice of rate changes for competitive products. Moreover, Section 3633(a) requires the Commission to “(1) prohibit the subsidization of competitive products by market-dominant products; (2) ensure that each competitive product covers its costs attributable; and (3) ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.” One of the Commission’s duties is “set[ting] a price floor for competitive products at a level that promotes fair competition.” Initial Comments of the United States Postal Service (“Postal Service Comments”) at 32. And PAEA does not restrict the Commission’s role to that task, as Section 3632(b)(1) makes clear.

Allowing public comment on all proposed rate changes would also help achieve some of PAEA’s explicit ratemaking objectives, and would be an ideal means for the Commission to “take into account” some of PAEA’s ratemaking factors. 39 U.S.C. § 3622(b) and (c). For example, public comment would “increase the transparency of the ratemaking process,” and would also help the Commission “take into account . . . 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.” 39 U.S.C. § 3622(b)(6) and (c)(3).

Thus, UPS proposes that the Commission give interested parties an opportunity to comment on all proposed rates *before* they are implemented, rather than relegating public input to complaint and compliance proceedings -- which will undoubtedly be more complex and which will not be completed until rates have been in effect for some time. Early public comment will encourage the revision of rates that parties believe are unlawful and discourage meritless complaints by providing an additional forum for interested parties’ views.¹

2. The Commission Should Commence a Separate Proceeding to Resolve Costing Issues.

NAA has also urged the Commission to commence a separate proceeding to establish costing methodologies. NAA Comments at 16-17. Since the use of accurate costing methods is critical “to the enforcement structure, the prevention of cross-subsidies, and their role in determining the ultimate lawfulness of rates” (NAA Comments at 14), UPS supports NAA’s suggestion.

The Senate Committee recognized that there has been substantial progress in developing and refining costing methodologies over the last 30 years. However, it also recognized that costing improvements can and should continue to improve under PAEA. See S. Rep. No. 108-318, 108th Cong., 2d. Sess. (August 25, 2004), at 9, 29-30. Many costing issues remain unresolved. In the last omnibus rate case, the Commission and

1. Experience has shown that public input has resulted in a more accurate understanding of postal data. See, e.g., U.S. General Accounting Office, *U.S. Postal Service: Key Elements of Comprehensive Postal Reform*, GAO-04-397T (January 28, 2004), at 4, n. 5.

the Postal Service continued to use different cost attribution methodologies for certain costs, and, as NAA points out (NAA Comments at 15), city carrier costing remains unsettled.

The Commission should build upon its current attributable costing methods and attribute all costs “associated with” a product or group of products. 39 U.S.C. § 3633(b). Moreover, because PAEA explicitly prohibits the subsidization of competitive products by market-dominant products, 39 U.S.C. § 3633(a)(1), UPS urges the Commission to require each competitive product to cover not only its attributable costs but also an appropriate share of institutional costs. Otherwise, PAEA’s specific requirement that the Commission prohibit subsidy could be rendered meaningless.

These issues are critical to the implementation of lawful rates and, as NAA suggests, the Commission should promptly initiate a separate rulemaking proceeding.

3. Competitive Products Should Make the Largest Possible Contribution to Institutional Costs.

As stated in our initial comments, UPS encourages the Commission to adopt a policy that requires the Postal Service’s competitive products to gain the greatest net revenue possible in order to reduce the amount of overhead paid by customers of market-dominant products who have no alternative to the Postal Service. In fact, achieving contribution from competitive products to ease the burden on users of market-dominant products is one of the primary reasons why the Postal Service provides competitive products.

In its initial substantive comments, the Parcel Shippers Association (“PSA”) contends that the Postal Service now “has an incentive to increase rates for competitive products (not reduce them),” and that “the Commission need not be concerned that the

Postal Service will try to increase profits by charging ‘unfairly low’ prices.” Initial Comments of the Parcel Shippers Association (“PSA Comments”) at 12. As a result, PSA states, “the more pressing concern should be preventing the Postal Service from charging inappropriately high rates for competitive products, not preventing it from charging too little.” PSA Comments at 12, n. 13. PSA’s argument goes against the grain of both the logic and the language of PAEA.

PAEA explicitly recognizes that competitive product pricing requires few, if any, regulatory safeguards against rates that are too high. Instead, the competitive market acts as the most effective safeguard against unduly elevated competitive prices: if the Postal Service’s competitive product rates are too high, customers will turn to the private sector to fulfill their needs. The danger is that competitive rates will be too low. That is why Congress required a rate *floor* to competitive product prices, as opposed to the rate cap applied to market-dominant. Indeed, Section 3633 explicitly mandates that the Commission “prohibit the subsidization of competitive products by market-dominant products,” and tellingly omits any mention of the reverse.

PSA attempts to justify its position by arguing that “the Postal Service remains the only provider of universal parcel delivery service.” PSA Comments at 19.² As a result, PSA argues, “[t]he impact of an unreasonably high minimum markup requirement would be felt most by users of USPS who are not effectively served by alternative providers.” *Id.* at 20.

2. The Postal Service also incorrectly asserts that it “serves a unique niche within the competitive product arena, providing package delivery for small business and household customers, as well as rural destinations.” Postal Service Comments at 33.

The concerns raised by PSA ring hollow: to the extent these concerns existed before PAEA, Congress addressed them by separating single-piece and bulk Parcel Post under the new scheme. See S. Rep. No. 108-318, 108th Cong., 2d. Sess. (August 25, 2004) at 7 (stating that “the Committee decided to make single-piece Parcel Post a market-dominant product because of the negative impact we feared a competitive classification would have on those postal customers who live in parts of the country with fewer package delivery options.”) Customers of single-piece Parcel Post are protected by PAEA’s market-dominant product price cap. Thus, increased competitive product markups would result in raising the contribution made by bulk mailers who have competitive alternatives, not that made by single-piece consumers who allegedly are “not effectively served by alternative providers.”

Moreover, even as to single-piece mailers or small business and household customers, the Postal Service is NOT “the only provider of universal parcel delivery service” serving a “unique niche.” UPS provides door-to-door parcel pickup and delivery service throughout the 50 states,³ including virtually all of Alaska. In fact, UPS provides pickup service at addresses where the Postal Service does not.

PSA is attempting to draw the Commission’s attention away from the issue that PAEA’s market-dominant rate cap and subsidy prohibition were crafted to address: the Postal Service’s incentive to overcharge the vast majority of its customers who utilize market-dominant products and undercharge customers with competitive alternatives.

3. For example, the Grand Canyon is often cited as a very difficult location to service. However, UPS and the Postal Service provide equal service to the Grand Canyon.

4. The Commission Should Adopt a Strong Complaint Procedure.

UPS agrees with the suggestion made by many parties that the Commission should adopt a strong and meaningful complaint procedure under Section 3662. See, e.g., Joint Comments of American Business Media, Greeting Card Association, and Newspaper Association of America with Respect to the Complaint Process. In light of the Commission's enhanced responsibilities under PAEA, Congress has given the Commission the power to issue subpoenas, take deposition testimony, and obtain other discovery. See 39 U.S.C. § 504(f). UPS encourages the Commission to use this new authority to the fullest extent reasonable.

UPS encourages the Commission to begin collecting such relevant information as soon as a complaint is filed, rather than waiting until it determines whether the complaint has raised a material issue of law or fact. This would assist the Commission in determining the complaint's merit as soon as possible, allowing it to make a more informed decision about whether or not to proceed. It would also help to remove the Postal Service's home field advantage⁴ and level the playing field between the Postal Service, which generally possess all necessary information, and the complainant, who

4. See Docket No. R2006-1, Opinion and Recommended Decision at ¶ 5852.

will have access only to information provided by the Postal Service either voluntarily or as required by the Commission.

Respectfully submitted,

John E. McKeever
Laura A. Biancke
Attorneys for United Parcel Service

DLA Piper US LLP
One Liberty Place
1650 Market Street
Suite 4900
Philadelphia, PA 19103
(215) 656-3310