

the exception to the rate cap for “extraordinary or exceptional circumstances” (39 U.S.C. § 3622(d)(1)(E)) should be very narrowly construed;²

the ability of the Postal Service to raise rates for a market-dominant class of mail should be reduced to the extent that the Postal Service fails to meet the service standards for that mail class, or imposes worksharing costson that class of mailers;³

the Commission should invite public comment on whether the Commission should permit rate increases proposed by the Postal Service to take effect under 39 U.S.C. § 3622(d);⁴

in order to prevent double recovery, the Commission should not permit any rate increases pursuant to 39 U.S.C. § 3622(d) until after the close of the test year for the final rate case under the Postal Reorganization Act;⁵ and

the Commission should require substantially more than 45 days of advance public notice before permitting the Postal Service to implement rate increases pursuant to 39 U.S.C. § 3622 (d).⁶

² See, e.g., Comments of Alliance of Nonprofit Mailers, National Association of Presort Mailers and National Postal Policy Council on Advance Notice of Proposed Rulemaking, at 11; Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc. on Advance Notice of Proposed Rulemaking, at 11; Direct Marketing Association, Inc. Initial Comments Pursuant to PRC Order No. 2, at 8.

³ See Comments of Alliance of Nonprofit Mailers, National Association of Presort Mailers and National Postal Policy Council on Advance Notice of Proposed Rulemaking, at 2, 7-9; Direct Marketing Association Initial Comments Pursuant to PRC Order No. 2, at 4, 6; Comments of the National Newspaper Association, at 10, 12; OCA Comments in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, at 2, 18, 24, 44-50; Intial Comments of Pitney Bowes, Inc., at 9..

⁴ See Initial Comments of American Business Media, at 4; 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, at 7-8; Direct Marketing Association, Inc. Initial Comments Pursuant to PRC Order No. 2, at 7; Comments of the Newspaper Association of America, at 2, 7-8, 19.

⁵ See Comments of the Alliance of Nonprofit Mailers, National Association of Presort Mailers and National Postal Policy Council on Advance Notice of Proposed Rulemaking, at 13; Initial Comments of American Business Media, at 2-3.

⁶ See 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, at 7-8; Initial Comments of Postcom in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, at 3, 12; Initial Comments of Time Warner Inc. in Response to Commission Order No. 2, at 14-15; Initial Comments of the United States Postal Service, at 14; Valpak Comments, at 10, 35..

In the latter regard, McGraw-Hill supports the proposals by Time Warner and by Postcom that the Postal Service be required to file by mid-April of each year, for implementation no earlier than mid-July of each year,⁷ any and all proposed rate increases for that year for market-dominant mail classes.⁸

It may be that in the normal course, in responding to such filings under 39 U.S.C. § 3622 (d), the Commission would decide simply whether proposed rate increases complied with the rate cap. However, it may be appropriate for the Commission to reserve latitude to decide less than that or more than that if the circumstances so warranted. On the one hand, the Commission might wish to allow a proposed rate increase to take effect under 39 U.S.C. § 3622 (d) subject to the Commission's subsequent annual review under 39 U.S.C. § 3653 as to whether rate increases complied with the rate cap and other statutory standards, and subject to any pending (or subsequent) complaints by other parties asserting noncompliance under 39 U.S.C. § 3662. For example, there may not be sufficient time under § 3622(d) for the Commission to resolve all service issues that may affect the operation of the rate cap, issues that are also expressly relevant under § 3653(b)(2), as well as § 3662.

On the other hand, McGraw-Hill agrees with other commentors that to the extent feasible, the Commission should resolve under § 3622(d) as many statutory compliance issues as are presented, whether relating to the rate cap or otherwise, rather than allowing rates to take

⁷ See Initial Comments of Time Warner Inc. in Response to Commission Order No. 2, at 14-15; Initial Comments of Postcom in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, at 3, 12. See also Valpak Comments, at 35.

⁸ See *id.* See also Direct Marketing Association, Inc. Initial Comments Pursuant to PRC Order No. 2, at 5. While the Postal Service seeks latitude (Initial Comments at 24 n.40) to introduce relatively small "off-cycle" price changes for market-dominant classes, pursuing separate price increases at different times during a year would seemingly complicate application of the rate cap, inasmuch as two different historical periods would be involved.

effect that the Commission may later find to be unlawful.⁹ Statutory compliance issues may involve any of the statutory objectives and factors set forth in § 3622(b) & (c), which expressly govern mail classifications as well as postal ratemaking.¹⁰ In this regard, McGraw-Hill agrees with comments that the Postal Service should be required to report and justify any rate increases for rate categories or rate cells that exceed the CPI-U by a specified amount.¹¹ To the extent that it may not be feasible to resolve all such issues during the limited review period under § 3622(d), the proposed rate changes should be permitted to take effect subject to the Commission's annual compliance review under § 3653 and any complaints under § 3662.¹²

Contrary to the suggestion of Time Warner,¹³ there appears no sound reason to defer § 3662 complaint proceedings until after the Commission's annual compliance review under § 3653. To defer complaint proceedings could prolong the duration of potentially unlawful rates, and would risk mooted complaint proceedings altogether if they could not be completed before the challenged rates were superseded. Deferral of complaint proceedings could also increase the possibility of conflict between the Commission's annual compliance determinations under

⁹ See Initial Comments of American Business Media, at 5 n.2; Direct Marketing Association, Inc. Initial Comments Pursuant to PRC Order No. 2, at 2-3, 7; Comments of the Newspaper Association of America, at 9; Valpak Comments, at 34-35.

¹⁰ See 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, at 11-12; Direct Marketing Association, Inc. Initial Comments Pursuant to PRC Order No. 2, at 4; Initial Comments of Pitney Bowes, Inc., at 17; Initial Comments of Postcom in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, at 11; Valpak Comments, at 7-9, 11-13, 29-31, 33-35; 39 U.S.C. § 3622(b)(8), (c)(8)-(10).

¹¹ See Initial Comments of American Business Media, at 5-6; Comments of the Newspaper Association of America, at 9, 19.

¹² There appears to be no basis for Time Warner's passing suggestion that the "Objectives" and "Factors" set forth in § 3622(c) & (d) are supposedly not applicable to "rates, postal services, or actions of the Postal Service as such," at least for purposes of the Commission's annual compliance review under § 3653. Initial Comments of Time Warner Inc. in Response to Commission Order No. 2, at 24. Time Warner does acknowledge that the "range of potential 'violations' within the Commission's complaint jurisdiction is vast." *Id.* at 19.

¹³ See Initial Comments of Time Warner, Inc. in Response to Commission Order No. 2, at 20, 25.

§ 3653 and its resolution of overlapping complaints, or create the appearance that complaint proceedings were in effect preempted by annual compliance determinations.¹⁴

It therefore appears that the better course is to permit complaint proceedings as soon as rates take effect under § 3622(d). There appears no reason why determination of the lawfulness of such rates should necessarily be postponed for most of a year, pending the Commission's annual compliance review under § 3653. Earlier complaint proceedings could at least inform the Commission's annual compliance review, and could possibly resolve in more timely fashion the compliance issues as to the rates in question.¹⁵ McGraw-Hill agrees with other commentators that under PAEA, complaint proceedings are intended to play an important role in the Commission's continuing regulation of postal ratemaking and classifications for mail classes subject to monopoly power of the Postal Service.

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¹⁴ See Joint Comments of American Business Media, Greeting Card Association, and Newspaper Association of America with Respect to the Complaint Process, at 6; Comments of Newspaper Association of America, at 18; Initial Comments of Pitney Bowes, Inc., at 15-16; Initial Comments of Postcom in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, at 14.

¹⁵ The Commission's annual compliance findings would otherwise be subject to resolution of pending complaint proceedings. See PAEA, 39 U.S.C. § 3653(e) (findings amount to rebuttable presumption).