

Before the
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Regulations Establishing :
System of Rulemaking : Docket No. RM2007-1

REPLY COMMENTS OF THE
GREETING CARD ASSOCIATION
IN RESPONSE TO SECOND ADVANCE NOTICE
OF PROPOSED RULEMAKING

The Greeting Card Association (GCA) herein replies to certain positions presented in initial comments responding to the Second Advance Notice of Proposed Rulemaking (Order No. 15). Our reply comments address issues concerning the design of the price cap (Question 1 in Order No. 15) and the costing treatment of Postal Service retiree health benefit contributions required by 5 U.S.C. § 8909a(d)(3) (Question 8(c)).

I. DESIGN OF THE PRICE CAP

GCA's initial comments argued for the averaging method of constructing the price cap rather than the point-to-point method proposed by the Postal Service.¹ The Postal Service's comments raised the question whether the averaging method is consistent with the terms of 39 U.S.C. § 3622(d)(1)(A); specifically, with the requirement of –

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

¹ Comments of the Greeting Card Association in Response to Second Advance Notice of Proposed Rulemaking, pp. 1-5.

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[.]

The Postal Service suggests that the averaging method may amount to “calculating the price cap by reference to CPI-U data over a 24-month period” and that doing so might contravene the requirement that the permissible increase be equal to the change in the CPI-U “over the most recent available 12-month period.”²

The averaging method does not entail simply calculating the price cap on the basis of a 24-month period.³ It is a two-stage process in which the Commission would (1) calculate the average change over 12 months of data (ending, for example, on August 31, 2008) and (2) compare this value with the corresponding average for the 12 months ending August 31, 2007. The price cap thus would be derived by comparing two values which are 12 months apart. That is what § 3622(d)(1)(A) literally requires. The issue the Postal Service’s question really presents, in GCA’s view, is the proper interpretation of “over the most recent available 12-month period.” Must this phrase be read so as to prevent the cap from reflecting any data other than those from the most recent available single month and the corresponding single month a year earlier? For reasons expressed in its initial comments⁴, GCA believes that it need not – and, in the interest of the predictable and stable rates required by 39 U.S.C. § 3622(b)(2), should not – be read so restrictively. The Commission should employ the averaging method in constructing the price cap.

² Initial Comments of the United States Postal Service on the Second Advance Notice of Proposed Rulemaking, pp. 3-4. The Service seems to agree that there could be policy reasons favoring the averaging method. *Id.*, p. 4.

³ That would be the result if, for example, the Commission were to compare a single-month CPI-U value for, say, August 2008 with the single-month value for August 2006. We of course agree that such a procedure would not square with the language of § 3622(d)(1)(A).

⁴ GCA Comments, pp. 1-3; see particularly fn. 3 on p. 2.

II. ATTRIBUTION OF RETIREE HEALTH BENEFIT CONTRIBUTIONS

In response to Question 8(c) of Order No. 15, GCA suggested the propriety of attributing an appropriate portion of the contributions the Service must make to the Postal Service Retiree Health Benefits Fund (PSRHBF). Several commenters argue that these sums should be treated as entirely institutional. The basis of this argument, broadly speaking, appears to be that the payments will not fund any services the Postal Service will now provide to mail users, but instead reflect past obligations, incurred when the relevant employees performed work in past years. The amount of the payments will not depend on mail volume in any future year. They are, accordingly, characterized as “costs that are not only fixed but sunk.”⁵

The argument against attribution, therefore, rests largely on generalized accounting concepts. It does not come to grips the nature of the costs at issue. In particular, it neglects the fact that had these future retirement benefit costs been examined at the time the obligation was incurred, they would have been attributed in the same fashion as current retirement expenditures. They exhibit the same causal linkage to mail classes and volumes as those current payments. And this causal linkage, which would have caused them to be attributed under the 1970 Act, is now of primary importance under 39 U.S.C. § 3633(a)(2).

⁵ See Initial Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc. on Further Advance Notice of Proposed Rulemaking, p. 4. ANM/MPA there incorporate by reference their Reply Brief in Docket R2006-1, from which the quotation comes (at pp. 31-32). With respect to their “fixed” character, it may be noted that the payments do not vary with mail volume simply because their dollar amount was prescribed by legislation. See 5 U.S.C. § 8909a(3)(A), as enacted in § 803(a)(1)(B) of PAEA. This does not change the underlying character of the costs as deferred compensation for postal employees.

That these costs were not attributed is due, most obviously, to the fact that the Postal Service then accounted for retirement payments on a cash basis.⁶ Future retirement obligations, that is, *were not accrued as costs at all*. And since they were not reflected on the Service's books, and thus not reflected in rate case revenue requirements, they clearly could not have been candidates for attribution.⁷ None of these circumstances changes the nature of the costs themselves: they remain employee compensation expenses, of a kind the Commission has regularly attributed. The belatedness of the recognition that these costs should be accrued does not abolish their causal relationships with mail and mail volume.⁸ Given the importance of recognizing causal relationships and using them in ratemaking under the new statute, the Commission should not allow generalized accounting concepts to obscure the causal tie between the retiree health benefit payments and the mail classes for whose benefit the underlying obligations were incurred.

Useful insights can be found in Docket R2005-1, where the Commission found the Pub. L. 108-18 escrow payment to be an institutional cost *for purposes of that case*, but pointed out that if Congress legislatively mandated a future use

⁶ The relevant history is well summarized in the ANM/MPA Brief cited in the previous footnote, at pp. 27 et seq.

⁷ The Commission has explained (in a somewhat different context) why non-booked costs could not be attributed in a rate proceeding. PRC Op. R90-1, ¶¶ 3257 et seq. For similar reasons, the example at pp. 32-33 of the ANM/MPA Brief is distinguishable from the present situation. The termination-for-convenience payments to air contractors which were at issue there *were* current, booked costs being considered for possible attribution. That they purchased no productive assets, however, was a persuasive reason to treat them as institutional. Their relationship to mail classes and volumes was, accordingly, very different from that of the retirement benefit costs involved here.

⁸ This point is also made by Valpak. Valpak Direct Marketing Systems, Inc., and Valpak Dealers Association, Inc., Comments on Regulations Establishing a System of Ratemaking in Response to Order No. 15, p. 17.

for it, it would become attributable.⁹ If the Commission could envision future attribution of a cost which Congress had legislatively insured would – for the time being – have to be treated as institutional, it is surely reasonable to expect similar treatment for past retiree health benefit costs which clearly would have been deemed attributable had Postal Service accounting policy not excluded them from the books altogether.

Accordingly, GCA urges the Commission to reject the contention that PSRHBF contributions are institutional costs, and to undertake to determine the proper methods of attributing those contributions.

Respectfully submitted,

GREETING CARD ASSOCIATION

David F. Stover
2970 South Columbus Street, No. 1B
Arlington, VA 22206-1450
703-998-2568
703-998-2987 fax
postamp@crosslink.net

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⁹ See PRC Op. R2005-1, ¶ 4027:

The escrow is unique in that it is an operating expense that is not currently related to the operations of the Postal Service. Therefore, it cannot be causally related to any functional cost of the Postal Service. At some future time, Congress could specify that the escrow funds be used to fund Retiree Health Premium costs. In that case, the cost would be attributable to all mail according to the weighted average attributable cost of all labor. . . .