

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

Regulations Establishing System of Ratemaking

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Docket RM2007-1

Comments of DFS Services LLC
In Response to Order No. 26
(September 24, 2007)

DFS Services LLC (“DFS”) hereby submits these Comments in response to Order No. 26, Order Proposing Regulations to Establish a System of Ratemaking, released by the Postal Regulatory Commission (“Commission”) on August 15, 2007 and in response to Order No. 30 extending the comment period to September 24, 2007.

At the outset, DFS would like to compliment the Commission and its staff for a job well done. The Commission has sorted through thousands of pages of comments and promulgated proposed rules that create a new ratemaking system that looks to be not only reasonable and well-balanced, but also very efficient and fair. Moreover, the Commission has done so in record time.

DFS finds that the Commission has, in accordance with the dictates of the Postal Accountability and Enhancement Act (“PAEA”), created a system that appropriately places the responsibility for pricing upon the Postal Service while simultaneously creating procedural safeguards that will protect the American public and mailers from potential abuse. Such a system will allow the Postal Service to price without having to justify and litigate its every pricing decision.

In its proposed rules, the Commission proposes two rules that set forth what the Postal Service must do to create a Negotiated Service Agreement (“NSA”) in the market dominant and competitive areas.¹ Both rules require that public notice be given, and specify the particulars of the information and explanations that must be filed by the Postal Service at the Commission. DFS believes that both rules are appropriately drafted, and would encourage the further development of NSAs, which DFS believes to be a positive development. DFS supports both rules.

However, the Commission has said that all NSAs must be considered separate products. That appears to mean that all new NSAs will be considered new products. Accordingly, *in addition* to the NSA requirements of proposed Sections 3100.40-3100.43 and 3110.5, all NSA filings must meet *the additional procedural requirements* of proposed rules 3200.30-3200.35, which contains the rules for modifying the specifics of the product list under Section 3642 of the PAEA. Such additional procedures call for a specific (and one assumes additional) *Federal Register* Notice. The procedures also encourage appearances by other parties, more litigation, and possible lengthy discovery and on-the-record adjudications. They also would seem to require the filing of additional information and justification not contemplated by either rules 3100.40-3100.43 or 3110.5. Moreover, there is no time limit set for the process, despite the fact that the law provides for 45 or 30 day time frames for the rate change process. It is important for the Commission to realize that the fear of such indeterminate pre-

¹ See proposed rules 3100.40-3100.43 (market dominant) and proposed rule 3110.5 (competitive). In a Notice published on August 27, 2007 the Commission announced that it has made certain stylistic changes in the numbering of the rules as published in the Federal Register text as compared to the numbering in the text of the proposed rules in Order 26 as released by the Commission on its website. The Commission stated that parties submitting comments could use either numbering system for purposes of their Comments. For simplicity sake, DFS has chosen to use the system in the original text of Order 26.

implementation NSA review procedures has been one of the primary factors that has scared off mailers from entering into NSA negotiations over the last several years. The overlay of rule 3642 procedures on top of the NSA procedures of 3100.40-3100.43 or 3110.5 confuses and unnecessarily complicates the NSA process and has the potential to continue that chilling effect. It also creates a procedural loophole that opponents of pricing flexibility could use to impede the development of the new system and the development of NSAs.

Admittedly, the Commission has said that there is a presumption that a Section 3642 hearing under proposed rules 3200.30-3200.35 will not be provided unless a need is demonstrated. See Order 26 at 91. Also, the Commission has said that review of operational parameters and the financial basis of the product will be minimal in Section 3642 proceedings. *Id.* Nevertheless, DFS does not see a need to automatically pull each and every NSA into the Section 3642 procedural scheme. While a determination of whether a new NSA is an agreement for a market dominant service or for a competitive service is obviously a critical initial question, the Postal Service will have to file each NSA under either Sections 3100.40-3100.43 or 3110.5. At the time of filing, the Commission can deal with the issue *sui sponte* if it has any doubt about the appropriateness of the classification by the Postal Service. Moreover, if any interested mailer or competitor has a concern about the appropriateness of the classification, they can file a complaint under the PRC's complaint procedures.

If the Commission's reason for determining that all NSAs are automatically separate products is to ensure that competitive NSAs cover their costs, DFS urges the

Commission to insert an appropriate provision into the regulations that states that competitive NSAs must cover their attributable costs.

Since the Commission has already promulgated specific rules (3100.40-3100.43 and 3110.5) that deal with NSAs and what must be filed at the Commission, DFS urges the Commission to exclude NSA filings from the procedures listed in rules 3200.30-3200.35, and deal with all NSA matters in 3100.40-3100.43 or 3110.5 as appropriate.

Thank you for considering our views.

Respectfully submitted,

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