

Before the
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Regulations Establishing a : Docket No. RM2007-1
System of Ratemaking :

REPLY COMMENTS OF THE GREETING CARD ASSOCIATION

In these Reply Comments, the Greeting Card Association (GCA) responds to certain points presented by other commenters which we believe raise serious concerns. GCA has advanced its own suggestions in previous comments in this Docket¹, and we respectfully ask the Commission to bear those comments in mind in reviewing this document as well.

I. Issues concerning the complaint process

The Association for Postal Commerce (PostCom) makes two proposals that would curtail the effectiveness of the § 3662 complaint process: (a) that the Commission prohibit the filing of complaints against new rates during the 45-day review prescribed by § 3622(d)(1)(C), and (b) that the Commission also “limit[]

¹ Comments of the Greeting Card Association in Response to Advance Notice of Proposed Rulemaking (April 6, 2007); Reply Comments of the Greeting Card Association (May 7, 2007); Comments of the Greeting Card Association in Response to Second Advance Notice of Proposed Rulemaking (June 18, 2007); Reply Comments of the Greeting Card Association in Response to Second Advance Notice of Proposed Rulemaking (July 3, 2007); Comments of the Greeting Card Association in Response to Notice of Proposed Rulemaking (September 24, 2007); also, with respect to the complaint process, Joint Comments of American Business Media, Greeting Card Association, and Newspaper Association of America with Respect to the Complaint Process (April 6, 2007); Joint Reply Comments of American Business Media, Greeting Card Association, Newspaper Association of America, and National Newspaper Association with Respect to the Complaint Process (May 7, 2007).

the hearing of complaints under Section 205 of the PAEA to the time of the annual compliance review.”² Neither should be adopted.

a. PostCom’s first reason for suggesting that the Commission bar such complaints during the § 3622(d)(1)(C) review period is that “[t]he Commission simply cannot resolve a complaint before the expiration of the 45-day notice period while at the same time evaluating the Postal Service’s compliance with the CPI limitation.”³ PostCom also argues that “complaints against the Postal Service’s proposed rate increases are incompatible with the streamlined process envisioned by the PAEA.”⁴

The Commission’s proposed rules⁵ have already made clear that the only issue to be decided in the 45-day review is whether the new rates comply with the cap. It should be quite unnecessary to make a rule against entertaining a complaint alleging *only* that the new rates violate the cap.⁶ That issue would be decided in any case under § 3622(d).

But PostCom’s proposal is much broader. It would have the Commission ban *any* complaint against the new rates, including one raising *no* issues of price-cap compliance. For example, if a complainant perceived in the new rates (all of which, let us assume, unambiguously comply with the cap) a material issue of unreasonable discrimination prohibited by § 403(c), the rule advocated by PostCom would require it to wait up to 45 days even to file its complaint – despite

² See Initial Comments of the Association for Postal Commerce, pp. 2-5.

³ *Id.*, pp. 2-3.

⁴ *Id.*, pp. 3-4.

⁵ Proposed 39 CFR § 3010.13(c).

⁶ Proposed 39 CFR § 3010.13(b)(1) invites public comment on the issue of compliance with the cap, as part of the 45-day review process itself.

the fact that the allegations in that complaint could have no effect on the Commission's cap-compliance decision.⁷ Such a delay would merely prejudice the complainant without conferring any countervailing benefits.⁸

b. PostCom also proposes that complaints – apparently regardless of their basis – be considered only during the annual compliance review period.⁹ It offers two justifications for this proposal: (i) that “only at that point is there sufficient information necessary to reach meaningful conclusions,” and (ii) that the limitation “will not prejudice any parties, as the Commission will be empowered to prescribe legal rates going forward from the time the complaint is adjudicated.” Neither of these arguments is valid .

First, it is not the case that all the information needed to decide a complaint will be found (only) in the materials presented for the annual compliance review. For example, a complaint may very well be founded on a continuing pattern of discrimination or unreasonableness in the rate schedule, in which case data from earlier years will be both relevant and available. Moreover, the Commission is not wholly dependent on the Postal Service's reports to obtain data needed to decide a complaint. Section 504(f)(2) of title 39, as enacted by PAEA, allows the Commission to issue subpoenas “with respect to any proceeding conducted by the Commission under this title.”

PostCom's assertion that the proposed limitation “will not prejudice any parties” is also unsupportable. From the date a complaint is received, the

⁷ For this reason, PostCom's argument that the Commission cannot practicably resolve a complaint during the 45-day review is – except for a hypothetical complaint raising cap compliance issues – something of a red herring.

⁸ Because relief on a complaint can be prospective only (39 U.S.C. § 3681), delay in beginning proceedings on a complaint that turns out to be justified increases the damage to the complainant.

⁹ PostCom Initial Comments, pp. 4-5.

Commission has 90 days to decide whether to proceed with it.¹⁰ Further time, clearly, will be required to conduct whatever proceedings are needed and issue a decision. To require a complainant already incurring damage by reason of unlawful rates also to wait until the next following compliance review period clearly carries the risk of substantial prejudice.¹¹

It is also worth pointing out that § 3653(b) requires the Commission to act within 90 days of receiving the Postal Service's annual reports. PostCom itself points out that "Congress understood that 90 days would likely be the *minimum* period required by the Commission to determine whether a complaint has merit."¹² If "consideration"¹³ of complaints is to be limited to the annual review season, then many complaints could be short-circuited by the compliance decision. It is not yet clear how the process for public input on compliance review issues – public comment on the Postal Service's reports – will compare, as regards adequacy for factfinding, to that which will be provided for adjudicating complaints. First, we do not yet know how far comment will be literally restricted to "comment on such [Postal Service] reports."¹⁴ If it is so limited, then matters falling within the scope of chapter 36 of title 39¹⁵ but not covered, or not covered in significant detail, in the reports may not even be

¹⁰ 39 U.S.C. § 3662(b)(1).

¹¹ PostCom itself states, correctly, that relief under a successful complaint is prospective only ("legal rates going forward from the time the complaint is adjudicated").

¹² *Id.*, p. 3 (italics in original)

¹³ PostCom's term. PostCom does not make clear whether its proposal would bar the filing of complaints outside the annual review period, or would permit filing but defer proceedings and a decision.

¹⁴ 39 U.S.C. § 3653(a).

¹⁵ The Commission is to decide "(1) whether any rates or fees in effect during such year were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or (2) whether any service standards in effect during such year were not met." 39 U.S.C. § 3653(b).

raised; and yet the rates and fees concerned will be found lawful. Nor does the scope of the compliance review match that of § 3662(a): compliance review is conterminous with chapter 36, while the complaint mechanism also encompasses such rate-related provisions as §§ 101(d) and 403(c).

In summary: PostCom's proposals to limit the complaint process lack adequate supporting reasons and would inflict needless prejudice on mail users having justified grievances against the structure, level, or historical pattern of Postal Service rates. The Commission should not adopt them.

II. Issues concerning worksharing rates

a. National Postal Policy Council (NPPC) argues for changes in the proposed rules concerning workshare discounts. One in particular of its proposals could be needlessly harmful to non-worksharing mail users. In GCA's view, it should be rejected.

At pp. 4-5 of its comments,¹⁶ NPPC asks the Commission to delete the following paragraph from proposed 39 CFR § 3010.14(c), which defines the filing requirements applicable when the Postal Service establishes a new workshare discount:

(3) A certification, based on competent, comprehensive analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

The core of NPPC's argument seems to be that "rate increases for mailers that previously benefited from an internal cross-subsidy within the existing rate structure are a typical, if not inevitable, consequence of movement toward more efficient price signals."

¹⁶ Comments of National Postal Policy Council on Order No. 26, pp. 4-5.

The phrase “workshare discount,” properly understood¹⁷, refers to a price concession reflecting (ideally at 100 percent passthrough) cost savings to the Postal Service generated by substitution of mailer activity for work *that the Postal Service would otherwise have had to perform*. If the discount is properly designed, and does pass through 100 percent of the savings, then a mailer who does not¹⁸ take advantage of it is not enjoying an “internal cross-subsidy.” So far as the workshared mail is concerned, the Postal Service is shedding costs precisely equal to the revenue it gives up by reason of the discount. In other words, the Service is (as it should be under efficient component pricing) indifferent as to whether it or the mailer performs the function on which the discount is based. If the Service is indifferent as to who performs this work, it follows that the workshared and non-workshared mail are providing the same per-piece contribution to its institutional costs. And if this is so, the notion of “internal cross-subsidy” is simply irrelevant.

Later in the same discussion, NPPC invokes the Commission’s recommendation of deeper letter-vs.-flat differentials in Docket R2006-1 to support its contention. But this shape-based differential is not a workshare discount. The choice of letter as against flat shape for a mailpiece does not do away with the need to have that piece sorted, barcoded, handled, or transported (to use the specific functions listed in 39 U.S.C. § 3622(e)(1)). It may make those functions less costly (whether the mailer or the Service performs them), but it does not eliminate them. The introduction of shape-based rates represents not worksharing but de-averaging. It may well, as it did in Docket R2006-1, result in price increases for those continuing to use the more costly shape. But the rule

¹⁷ As in ¶ 2038 of Order No. 26.

¹⁸ That is, most commonly, *cannot*.

language NPPC asks the Commission to drop concerns only workshare discounts. NPPC's example, therefore, is irrelevant to the question it raises.¹⁹

NPPC's argument may be read as suggesting that recognition of worksharing by a new discount *necessarily* results in higher rates for non-discount mail. It is true that in the case of substantial de-averaging (as in the introduction of shape-based rates), this will occur. It would be strange if it did not: the process entails establishing two different rates based on two newly-

¹⁹ A related confusion appears in connection with NPPC's first proposal (NPPC Comments, p. 4), which appears to aim at relieving rates which recognize mailer activities not specified in § 3622(e)(1) of the statutory 100-percent passthrough limit. NPPC asks the Commission to

. . . make clear that the term "workshare discounts" covers only a subset of the potential competitive alternatives to services to services provided by the Postal Service. The PAEA defines "workshare discounts" as rate discounts for presorting, prebarcoding, handling, or transportation of mail, as further defined by the . . . Commission" in its rules. 39 U.S.C. § 3622(e)(1). By negative implication, other activities by mailers or third-party vendors that substitute for services offered by the Postal Service do not constitute "worksharing" within the meaning of § 3622(e)(1). These include

More efficient methods of purchasing and applying postage and evidencing postage.

More efficient methods of mail acceptance.

Use of more efficient mailpiece shapes (e.g., letters vs. flats).

Here NPPC correctly states the test for worksharing in the economic sense: whether the activity "substitute[s] for services offered by the Postal Service." But its examples are inconsistent with that definition. We showed above that shape-specific rates are not worksharing. NPPC's first example – methods of postage purchase and evidencing – also does not represent substitution of mailer for Postal Service activity, but, at most, a form of cost reduction. (The Commission has previously rejected a proposed discount for mail paid by meter strip, because that activity did not generate true worksharing savings. PRC Op. R2000-1, ¶¶ 5218 et seq.) There are indeed differences in acceptance methods, in some classes, but it is debatable how far these represent worksharing and how far they merely reflect fundamental differences in the products concerned.

distinguished cost levels, in lieu of a single rate reflecting these two sets of costs averaged together. But as we saw just above, recognizing worksharing is a very different exercise from constructing de-averaged rates. There is nothing “inevitable” about increases for non-users of a new workshare discount.²⁰ It is, therefore, quite in order for the Commission to require the Service to show, if it can, that the new discount will not cause them.

It is also worth noting that under NPPC’s proposal the Service also would not have to certify that the service levels of non-discount-using mailers would not suffer from the new discount. NPPC does not even attempt to justify this deletion from the proposed rule.

The Commission’s proposed § 3010.14(c)(3) represents fair and efficient rate policy, and should be retained as drafted.

b. Pitney Bowes does recognize the difference between cost avoidance through worksharing and cost reduction caused by inherent piece characteristics. But it asks the Commission to “clarify that Efficient Component Pricing is a ‘guiding principle’ not just with respect to workshare discounts, but also to ensure cost differences are reflected in rates.”²¹ This position presents problems of its own.

²⁰ It is even possible for a new discount set at more than 100 percent of avoided cost not to require increases elsewhere in the category. If the newly-discounted subcategory is relatively small in volume and revenue terms, or if the new discount elicits new (as opposed to converted) volume making an additional contribution to institutional costs, such increases could be avoided. This possibility is recognized in 39 U.S.C. § 3622(e)(3)(B) – which NPPC itself cites (NPPC Comments, p. 5).

²¹ Comments of Pitney Bowes Inc. in Response to Order Proposing Regulations to Establish a System of Ratemaking, pp. 3-4. Pitney Bowes specifies that shape, weight, distance, payment evidencing, and address hygiene are among the “cost-causative characteristics” it has in mind.

GCA has no doubt that the Service, and the Commission, as appropriate, will see to it that substantial cost differences between and within products are suitably recognized in rates. That is one, though by no means the only, potential benefit from the increased rate flexibility which PAEA confers on the Service. But to do this it is not invariably necessary to invoke ECP (and to risk distorting its meaning in the process). ECP should indeed govern where the alternatives are mailer or Postal Service provision of a particular input function, such as sorting or transportation. Where the particular set of activities required of the Service by a type of mail is defined, not by a comparison of relative mailer and Postal Service costs to perform a given function, but by the intrinsic characteristics of the mail type, there may be substantial cost differences – but they can be recognized without conceptually assimilating them to worksharing.

This distinction may sound theoretical but it is in fact highly practical. The price of a product should reflect all the factors that well-managed enterprises consider when setting prices (regulated or unregulated). The state of the market, and in particular the likelihood that some pricing decisions may send customers in search of alternatives, may be at least as important as the unit cost of each phase of production.²²

²² For example, suppose there were a material (transportation) cost difference between a First-Class Letter sent from Washington to Arlington and one sent from Washington to Los Angeles. A narrow, ECP-based approach would simply compare the cost of transportation furnished by the Postal Service against that privately available to mailers, and under some possible outcomes the indicated result could be zoned First-Class rates (ignoring, for purposes of the example, the requirements of 39 U.S.C. § 404(c)). But all categories of First-Class Letters are known to be subject to diversion into electronic media (e-mail, electronic bill presentment and payment, and the like). These e-media would exhibit substantially *no* cost difference between the Washington-Arlington and Washington-Los Angeles messages. By considering First-Class Letters holistically as a product, this fact of the marketplace – and its consequence, that zoned rates could increase the diversion of at least long-haul Letters, and do so at a time when the largely fixed costs of the delivery network continue to grow – would be taken into account.

In short, the recognition of cost differences can proceed in more than one way. The question, in each case, would seem to be whether the issue before the price-maker is *solely* one of relative cost of a function – in that usage or demand for the product will not be materially affected by a localized rate adjustment based only on that cost information. If that is so, then ECP should indeed be the guiding principle. If the consequences are likely to be broader, then ECP cannot be *the* guiding principle – though its general effect of fitting rates more closely to cost will still be one of the most important goals.

GCA thus urges the Commission not to adopt policies, or rule language, which would tend to reduce all cost-related rate questions to the pure cost-comparison issues that ECP is best fitted to resolve.²³

III. The product lists

PostCom asks the Commission to rule that “changes otherwise covered by Section 3642 of the Act enacted as part of a CPI increase are not prospectively reviewable except as to their compliance with the annual CPI limitation.”²⁴ Such changes would be reviewable, under PostCom’s proposal, only after the fact, by complaint or in the annual compliance review. Its reason is that “[a]llowing such classification changes to be reviewed in two separate proceedings would delay the process for approving [sic] rates and limit the Postal

²³ In this connection, GCA must disagree with Pitney Bowes’ apparent conviction that the cost-reduction/efficiency objective of PAEA (39 U.S.C. § 3622(b)(1)) is “paramount.” Pitney Bowes Comments, p. 3. The statutory language does not support this conclusion. It contains nothing like the word “requirement” which led interpreters to accord a degree of primacy to the attributable cost recovery criterion of former § 3622(b)(3). And § 3622(b) requires that “each of [the objectives] shall be applied in conjunction with the others[.]”

²⁴ PostCom Initial Comments, p. 6.

Service's ability to set rates and modify its offerings."²⁵ GCA submits that this proposal should be rejected.

First, it dilutes § 3642 needlessly. By its terms, the proposal would apply only to proposed changes initiated by the Postal Service and conjoined with a proposal for new rates. If, as may well be the case, the Postal Service wishes to avoid complicating and perhaps delaying a CPI-based increase by attaching classification issues, it can time its classification requests with that objective in mind. There is thus no good reason to immunize from before-the-fact review a subset of classification changes proposed by the Service when the Service itself can avoid the delay PostCom hypothesizes.

In addition, it is not clear that the proposal itself, as PostCom presents it, is entirely coherent. PostCom states: "Changes in the product lists enacted as part of a CPI increase should be evaluated solely for their compliance with the CPI limitation on annual rate increases."²⁶ But since, as the Commission has already pointed out,²⁷ the price cap applies to classes and not to products, it is difficult to see how a product list change – by definition, affecting a product and not a class – could comply (or fail to comply) with the price cap. It is perhaps logically possible for a newly added product to carry such a high price that the entire class in which it falls is raised above the cap. But this would seem precisely the kind of case in which the Postal Service would seek to *avoid* delaying or endangering its new rates, and so would present the new product (with its problematic price level) in a separate § 3642 request.

Finally, creation of a new product with a significantly *lower* price than the most nearly comparable existing product could well raise issues of competitive

²⁵ Id., p. 7.

²⁶ Id., p. 6.

²⁷ Order No. 26, ¶ 3075.

fairness or undue impact on users of other products.²⁸ But it is not easy to see how such a cut-price addition to the classification schedule could raise a significant price-cap issue. It would seem that the practical effect of the PostCom proposal would be to exempt most, if not all, product list changes coupled with new rates from any review whatsoever. That is clearly not what the statute contemplates. The notice and publication requirements of § 3642(d), for example, apply “*whenever* it [i.e., the Service] requests to add a product or transfer a product to a different category” (italics added).

IV. Rate change process issues

a. Comments submitted by the Alliance of Nonprofit Mailers and Magazine Publishers of America and others²⁹ include a useful suggestion with respect to the effect of seasonal or temporary rates on subsequent CPI-based increases. Proposed 39 CFR § 3010.23(b) designates “the most recently applied rate” as the current rate. As ANM/MPA point out, this – if applied in such a way as to count a higher “temporary” rate as the only rate for the cell in question – could permit inflation of the basis for the CPI-governed increase. Additional language clarifying that the seasonal or temporary rates must continue to be kept separate from the regular rates (as already required by subsection (a) of the rule) would be helpful; we urge the Commission to include it.

b. With respect to the exigency increase provision, ANM/MPA argue³⁰ that exigency increases must – by rule – be across the board, suggesting that

²⁸ This situation may be particularly troublesome when substantial migration of existing volumes to the new product can be anticipated.

²⁹ Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc., on Order No. 26, pp. 3-4. The same point is made by NPPC, Direct Marketing Association, and Pitney Bowes.

³⁰ ANM/MPA Comments, pp 7-8.

allowing non-uniform increases could “trigger a return to cost-of-service regulation.” Two observations are in order.

First, under 39 U.S.C. § 3622(d)(1)(E) the Commission must be satisfied that an exigency increase is “reasonable and equitable.” As GCA has pointed out in earlier comments³¹, this statutory standard may well require the rate consequences of an exigent situation arising from one mail class to be confined to that class. Obviously there can be financial exigencies not identifiable with any one class: a major natural disaster, or a completely exogenous imposition like the escrow obligation of Public Law 108-18, may call for across-the-board treatment. But the Commission should in each case consider the nature and origin of the emergency, and not enact, in advance, a blanket rule as suggested by ANM/MPA.

Second, it is not really an objection to non-uniform exigency increases that they carry a (rather faint) suggestion of “cost-of-service regulation.” In one sense, the exigency provision of PAEA *is* a cost-of-service mechanism, in that it carries forward a slightly modified version of the breakeven standard of the 1970 Act.³² It is not the only such provision in PAEA: § 3622(c)(2), for example, requires at least consideration of the “requirement” that each market-dominant class cover its attributable cost and contribute to institutional costs, and § 3633(a)(2) imposes a product-by-product attributable-cost recovery standard in the competitive sector. That PAEA replaced the 1970 Act’s pervasive cost-of-service rate philosophy with something generally more flexible does not make cost irrelevant for all purposes.

³¹ Comments of the Greeting Card Association in Response to Advance Notice of Proposed Rulemaking (April 6, 2007), pp. 12-13.

³² An exigency increase must be “reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.”

Respectfully submitted,

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