

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

REGULATIONS ESTABLISHING SYSTEM
OF RATEMAKING

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Docket No. RM2007-1

**REPLY COMMENTS OF THE MCGRAW-HILL COMPANIES, INC.
PURSUANT TO ORDER NO. 26, PROPOSING REGULATIONS
TO ESTABLISH A SYSTEM OF RATEMAKING**

The McGraw-Hill Companies, Inc. ("McGraw-Hill"), through its undersigned counsel, respectfully submits these reply comments pursuant to the Commission's Order No. 26 (as amended by Order No. 30), proposing regulations to establish a system of ratemaking in accord with the Postal Accountability and Enhancement Act ("PAEA").

1. The Rules Should Provide for Public Comment and Commission Review Before Major Classification Changes Are Implemented.

In its initial comments in this regard, McGraw-Hill urged that the Commission's forthcoming rules should expressly provide a reasonable opportunity for public comment, and mandate prior substantive review by the Commission, before major classification changes are implemented by the Postal Service. Initial Comments of McGraw-Hill, filed September 24, 2007, at 2-5. As an example of a major classification change that the Postal Service should not have discretion to implement unilaterally, McGraw-Hill cited a hypothetical proposal for full zoning of the editorial pound charge

for Outside-County Periodicals. See *id.* at 5 n.3. The importance of a flat editorial pound charge to many smaller-circulation/higher-editorial publications was also emphasized in comments filed by Free Press and *The Nation* on September 25, 2007.

McGraw-Hill's position that major classification changes should not be implemented without reasonable opportunity for public comment, and prior substantive review by the Commission applying the applicable standards and policies of PAEA, is supported as well by the initial comments of other parties. See, e.g., Initial Comments of Medco Health Solutions, Inc., filed September 24, 2007, at 9-10: the Administrative Procedure Act "requires notice and opportunity for public comment in the exercise of the Commission's rulemaking process, which would include modification of the Mail Classification Schedule," but "[o]nce the Commission adopts the initial Mail Classification Schedule, ... there appears to be very little, if any, assurance of any opportunity for public comment with respect to changes in the Mail Classification Schedule (other than adding a product to a list, removing a product from a list, or moving a product from one list to the other)".

The Office of the Consumer Advocate ("OCA") states in this regard:

The Commission's rules, as proposed, may contain a gap that will enable the Postal Service to change substantively its market-dominant and competitive product descriptions with a shortened notice period of 15 days and without provision for public comment.

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There is no specific provision for the Postal Service to make changes to the list of product descriptions that have substantial substantive impact. What may appear as a seemingly small insignificant change may have major

impacts on mailers and their mailing behavior. ... Unless more specific guidance is provided by the Commission, the Postal Service may be able to make substantive changes to price categories or entry levels of products simply by changing product descriptions in ways that are neither corrections nor additions or subtractions of products from the product list.

Initial Comments of OCA, filed September 24, 2007, at 15-17 (footnote omitted). See also Initial Comments of Valpak parties, filed September 24, 2007, at 12-16 (“Valpak also believes that comments should be allowed to address classification change[s] ... and that the Commission’s review of the classification changes with those comments could be of great benefit”) (id. at 15).

McGraw-Hill agrees with the Valpak parties that pre-implementation review by the Commission of proposed major classification changes is far more meaningful than post-implementation review of such changes (whether pursuant to an annual compliance review or a complaint proceeding), both because post-implementation review cannot remedy any harm done in the meantime and because implementation of classification changes could effectively present the Commission with a *fait accompli* going forward. See McGraw-Hill initial comments at 4; Valpak initial comments at 16. Precluding pre-implementation review of major classification changes would not appear to “balance[] the Postal Service’s business needs for pricing flexibility with the public’s need for accountability” – “a bedrock principle under the PAEA.” Order No. 26, ¶¶ 3070, 3074. McGraw-Hill accordingly reiterates its position that the Commission should expressly provide in its forthcoming rules both for public comment on proposed major classification changes and for prior substantive review of such changes by the

Commission in light of public comment and the standards and policies of PAEA.

2. The Rules Should Provide for Prior Commission Review of Proposed Rate Changes, Beyond Price Cap Issues, at Least at the Commission's Discretion in Appropriate Cases.

In its initial comments, at p. 6, McGraw-Hill pointed out that while the proposed rules provide for public comment on whether proposed rate adjustments comply with both price cap requirements *and* other policies reflected in 39 U.S.C. § 3622, the proposed rules provide for Commission review only of whether proposed rate adjustments comply with price cap requirements.¹ McGraw-Hill suggested in this regard, at pp. 7-8, that the Commission should at least reserve discretion to determine during the initial review period, where feasible and otherwise warranted, whether proposed rate adjustments also comply with other policies reflected in 39 U.S.C. § 3622. This may have been the Commission's intent; proposed § 3010.14(b) provides that a notice of rate adjustment shall be accompanied by "(7) [a] discussion of how the proposed rates will help achieve the objectives listed in § 3622(b) and properly take into account the factors listed in § 3622(c)" as well as "(8) [s]uch other information as the Postal Service believes will *assist the Commission to issue a timely determination of whether the requested increases are consistent with applicable statutory policies.*" (Emphasis added).²

¹ This would arguably preclude the Commission from resolving any substantive classification issues prior to implementation of classification changes incident to proposed rate adjustments.

² McGraw-Hill agrees with the Newspaper Association of America ("NAA") that those "applicable statutory policies" should include the prohibition in 36 U.S.C. § 403(c) of unreasonable rate discrimination and preferences. Initial comments of NAA, filed September 24, 2007, at 13-14.

Contrary to the suggestion of Time Warner,³ there is no apparent reason why the Commission should necessarily be precluded from making any such determination prior to implementation of a proposed rate adjustment if it is feasible to do so within a reasonable period. McGraw-Hill's position in this regard is consistent with proposed § 3020.34(b) (Commission to institute further proceedings to consider request to modify product lists "if it finds that there is a substantial likelihood that the modification is inconsistent with statutory policies") and with initial comments of other parties. See Initial Comments of NAA, filed September 24, 2007, at 9-12 (advocating flexible discretionary review by Commission of proposed rate agreements presenting a serious question of compliance with 39 U.S.C. § 3622); Initial Comments of Valpak parties, filed September 24, 2007, at 3-4 (advocating broad potential scope of Commission's initial ratemaking review).⁴

3. The Rules Should Provide for Potential Downward Adjustment of Allowable Rate Increases in the Event of a Significant Service Shortfall or Significant Cost-Shifting to Mailers.

In its initial comments, at pp. 8-9, McGraw-Hill suggested that the Commission should confirm in its forthcoming rules, in general terms at least, that its remedial authority does extend to adjusting downward the allowable annual rate increase for a class of mail in the event of a significant failure to maintain acceptable service for that class, or significant cost-shifting to mailers of that class, as determined in an annual

³ See Initial Comments of Time Warner, filed September 24, 2007, at 4-5.

⁴ McGraw-Hill agrees with comments by the National Newspaper Association ("NNA") that in appropriate cases (e.g., involving major proposed classification changes), the Commission should extend the review period beyond 45 days. See Initial Comments of NNA, filed September 24, 2007, at 3-5; Initial Comments of McGraw-Hill, filed September 24, 2007, at 5, 7 n.4.

compliance review or complaint proceeding. This suggestion is supported as well by the initial comments of several other parties. See Initial Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America (“ANM/MPA”), filed September 24, 2007, at 4-6 (“[t]he general principle ... is straightforward,” and failure to include it in the forthcoming rules “would leave a major gap in the regulatory safeguards”); Initial Comments of Direct Marketing Association, filed September 24, 2007, at 8 (the Commission “should ... include a clear ... albeit general ... statement” in this regard); Initial Comments of the National Postal Policy Council, filed September 24, 2007, at 7-8 (similar to comments of ANM/MPA); Initial Comments of Pitney Bowes, filed September 24, 2007, at 11 (“proposed rules ... fail to address the possibility that the Postal Service may evade the strictures of the cap by reducing costs through service degradation ... [or] by imposing additional preparation or operational requirements on mailers”).⁵

4. Other Issues raised by Other parties

In its September 24, 2007 comments, at pp. 18-20, OCA in effect questions the recognition by the Commission, as well as by the Postal Service and most other parties,⁶ that “price cap regulation supersedes [cost] attribution.” Order No. 26, ¶ 3066. Price cap regulation largely relieves the Postal Service of the burden of correlating rates with costs, but places a greater burden on the Postal Service to control costs. The failure of the Postal Service to control costs for processing Periodicals mail has led to

⁵ While Time Warner states that the Commission “should reject all suggestions for ‘after-the-fact’ reviews to assess compliance with the cap”, Initial Comments of Time Warner at 6, this statement is apparently made solely in the context of opposing use of after-rates billing determinants, and does not address after-the-fact review of service performance or cost-shifting.

⁶ See Reply Comments of McGraw-Hill Pursuant to Order No. 2, filed May 7, 2007, at 1 n.1.

the low cost coverage for Periodicals mail in recent years. A continuing failure by the Postal Service to control such costs in the future would not justify an exigent (Type 3) rate increase under PAEA. See Initial Comments of ANM/MPA at 6-8 & n.4. This is particularly so given the “educational, cultural, scientific and informational [‘ECSI’] value” of Periodicals mail, 39 U.S.C. § 3622(c)(11), which has long justified a preferential low cost coverage for such mail.

Respectfully submitted,

/s/

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