

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

**Regulations Establishing System
Of Ratemaking**

Docket No. RM2007-1

**REPLY COMMENTS OF THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO
ON PROPOSED RULES
(October 9, 2007)**

Pursuant to Orders Nos. 26 and 30, the American Postal Workers Union, AFL-CIO ("APWU") respectfully submits these Reply Comments on the Commission's Proposed Regulations to Establish a System of Ratemaking.

On August 15, 2007 the Postal Regulatory Commission ("PRC" or "the Commission") issued its proposed regulations designed to implement a new system of ratemaking under the Postal Accountability and Enhancement Act ("PAEA" or "the Act"). Over 20 parties provided comments on these proposed rules. Generally the parties agree that the Commission has made great progress toward establishing a new system of ratemaking and only a few modifications to the proposed regulations are necessary.

Several parties provided helpful suggestions to ensure that the final regulations are in compliance with the PAEA and other statutory requirements. For example, Medco Health Solutions, Inc. ("Medco") posits that the Administrative Procedures Act

applies to all ratemaking and mail classification procedures under the PAEA.¹ Medco urges the Commission to reconsider its proposed limitations on public comments during rate adjustment and mail classification proceedings.² Similarly, Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (collectively "Valpak") argue that the proposed regulations improperly limit public comment on rate and mail classification adjustments.³ Valpak recommends that the Commission clarify its regulations to ensure that mailers be afforded due process protection, which, "at minimum, includes a meaningful opportunity for interested mailers to review compliance of a rate adjustment and mail classification changes with PAEA and the opportunity to provide input to the Commission on any violations of PAEA identified prior to implementation of the adjustment."⁴ APWU fully supports these suggestions and respectfully requests that the Commission incorporate them in its final rules.

While the Initial Comments of Valpak and Medco, among others,⁵ provide useful guidance and constructive modifications to assist the Commission in its rulemaking, the comments of a few parties do not. Instead these parties take positions that are contrary to postal public policy and that previously have been rejected by the Commission. Specifically, some parties argue that the Commission's proposed regulations regarding negotiated service agreements ("NSAs") should be

¹ Medco Health Solutions, Inc. Initial Comments on Regulations Establishing a System of Ratemaking, pp. 2-5 (September 24, 2007).

² Id. at pp. 6-10.

³ Valpak Comments on Regulations Establishing a System of Ratemaking, pp. 3-7 (September 24, 2007).

⁴ Id. at p. 3.

⁵ See also Comments of the Newspaper Association of America on Notice of Proposed Rulemaking (September 24, 2007); Comments of the McGraw-Hill Companies, Inc. in Response to Order No. 26 (September 24, 2007); Office of the Consumer Advocate Comments in Response to Order No. 26 (September 24, 2007).

revised to reduce the Commission's statutory compliance review. For example, Advo, Inc., the National Postal Policy Council ("NPPC") and Time Warner, Inc. argue that the requirement that the Postal Service provide analysis of the effect of the NSA on mailers not party to the agreement be deleted in the final regulations.⁶ This position is inconsistent with the requirements of the PAEA and should be disregarded. The PAEA requires that the agreements "either improve the net financial position of the Postal Service...or enhance the performance of mail preparation, processing, transportation, or other functions; *and* do not cause unreasonable harm to the marketplace."⁷ The requirement that NSA not cause unreasonable harm to the marketplace applies to every NSA. In their comments, Advo, Inc., NPPC and Time Warner overlook the fact that individual mailers may be adversely affected by Postal Service agreements with other mailers and that any harm to an individual mailer can adversely impact the overall marketplace. The Commission, in its proposed regulations, properly considered this; regulations should not be modified as suggested.

The suggestions by Pitney Bowes must be rejected by the Commission. In its comments on the proposed rules, Pitney Bowes asks the Commission to adopt "to the maximum extent practicable, cost-reflective pricing through the application and extension of the principles underlying efficient component pricing (ECP)."⁸ Pitney Bowes argues that the extension of ECP application furthers the "paramount statutory

⁶ Comments of Advo, Inc. in Response to Order No. 26, pp 3-4; Comments of NPPC on Order No. 26, pp. 4-5; Comments of Time Warner in Response to Commission Order No. 26, pp 11-13.

⁷ 39 U.S.C. § 3622(c)(10) (*emphasis added*)

⁸ Comments of Pitney Bowes at p. 2.

objective” of the PAEA “to maximize incentives to reduce costs and increase efficiency.”⁹ This, Pitney Bowes posits, can be achieved by amending the proposed regulations to require the Postal Service to justify any discount below costs avoided, not just those “substantially below” as proposed by the Commission, and by applying ECP to non-workshare related cost differences. Pitney Bowes’ proposals should not be incorporated in the Commission’s final regulations for several reasons.

First, Pitney Bowes’ suggestion that the objective of the PAEA “to maximize incentives to reduce costs and increase efficiency” is a “paramount statutory objective” superseding the eight other statutory objectives and fourteen factors is without merit. Neither the PAEA nor Congressional intent behind the Act indicate that any one factor or objective is more important and should be given more weight than any other. The Commission was tasked with designing a modern system of ratemaking that will achieve *all* nine statutory objectives while taking into consideration *all* fourteen statutory factors. There is no mandated ranking of these statutory mandates. Pitney Bowes’ proposal to elevate one objective to the detriment of achieving the others, must be rejected.

Also, Pitney Bowes’ proposal that the Postal Service justify *any* discounts below costs avoided should likewise be rejected as inconsistent with the PAEA. Section 3622(e)(2) of the PAEA states that “[t]he Postal Regulatory Commission shall ensure that [workshare] discounts do not *exceed* the cost that the Postal Service avoids as a result of the workshare activity” (*emphasis added*) and provides exceptions to this general rule. Pitney Bowes has provided no support for the

⁹ Id.

proposition that the PAEA requires justification of workshare discounts that passthrough less than 100 percent of costs avoided. Nowhere in the workshare discounts section or in any other section of the PAEA is it required that the Commission examine workshare discounts *below* the costs avoided by the Postal Service. Therefore, the requirement of proposed rule 3100.14(b) that “[t]he Postal Service shall also identify and explain discounts that are set substantially below avoided costs” could be deleted from the regulations in its entirety without violating the PAEA. APWU believes this would better adhere to the statutory mandates of the PAEA. However, if the Commission decides to require justification of discounts below costs avoided, the Commission should not alter its proposed rule in accordance with Pitney Bowes’ comments. The Commission’s proposed rule does not prohibit the Postal Service from exercising pricing flexibility, and it reduces the administrative burden of ratemaking. In contrast, requiring the Postal Service to justify all discounts below the cost avoided, as suggested by Pitney Bowes, would decrease Postal Service pricing flexibility and increase the administrative burden of ratemaking without statutory justification. For these reasons, Pitney Bowes’ suggested revision should be discarded.

Pitney Bowes also advocates an expansion of the principles of ECP to non-worksharing cost savings.¹⁰ This too should be rejected by the Commission in its final regulations. Pitney Bowes argues that ECP should be applied “to all cost-causative characteristics of mail including shape, weight, distance, payment evidencing, address

¹⁰ Comments of Pitney Bowes at pp. 3-4.

hygiene and others.”¹¹ What Pitney Bowes suggests is basically a de-averaging of rates. Pitney Bowes advanced this same position in the last omnibus rate case, Docket No. R2006-1. The Commission declined to adopt this position noting

not all cost-causative characteristics can, or should be, reflected in rates. Public policy factors such as the importance of a widely available, affordable postal network that provides a variety of services to bind the nation together may militate against de-averaging in certain instances.¹²

The passage of the PAEA did not remove the important public policy considerations relied on by the Commission in R2006-1. In fact, in the PAEA Congress reconfirmed the importance of the principles that

[t]he United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people; and

Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on fair and equitable basis.¹³

Given Congress’s clear intent to retain these essential principles under the PAEA, the Commission should once again reject Pitney Bowes’ call for de-averaged postal rates.

Finally, the Commission should likewise reject the position advanced by the National Postal Policy Council (“NPPC”) urging the Commission to “make clear that the term ‘workshare discounts’ covers only a subset of potential competitive alternatives to services provided by the Postal Service.”¹⁴ NPPC suggests that “the proper pricing of these and similar activities should be governed by the judgment of the Postal Service and the Commission under ECPR principles, rather than the

¹¹ Id. at p. 4.

¹² Docket No. R2006-1 Opinion and Recommended Decision ¶ 4025.

¹³ 39 U.S.C. §101.

¹⁴ Comments of NPPC on Order No. 26 at pp. 2-3.

Section 3622(e)(2) statutory cap.”¹⁵ While not entirely clear, NPPC seems to suggest that activities like methods of mail acceptance and postage purchasing that may reduce Postal costs should be credited without being subjected to the statutory rate adjustment cap. Were the Commission to give effect to NPPC’s proposal both the Postal Service and other users of the mail could be subjected to detrimental consequences. First, NPPC’s proposal to credit non-worksharing cost saving activities is akin to the de-averaging position advocated by Pitney Bowes. For the same reasons discussed above, NPPC proposal should be rejected as inconsistent with fundamental postal policies.

In addition, if these discounts were permitted the Postal Service would have no means to recover these costs. Such an outcome would violate the requirement that the new system of ratemaking created by the Commission “assure adequate revenues ... to maintain financial stability” of the Postal Service.¹⁶ If the Postal Service cannot be assured of adequate revenue it may be forced to reduce service, adversely impacting numerous mailers. For these reasons, the Commission should reject NPPC’s suggested alteration of the rules.

Respectfully submitted,

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¹⁵ Id. at p. 3.

¹⁶ 39 U.S.C. § 3622(b)(5).