

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Annual Compliance Report, 2007)

Docket No. ACR2007

PUBLIC REPRESENTATIVE INITIAL COMMENTS
ON FY 2007 ANNUAL COMPLIANCE REPORT
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Section 3652(a)(1) of the Postal Accountability and Enhancement Act (“PAEA”) requires the Postal Service to “prepare and submit to the Postal Regulatory Commission a report . . . which shall analyze costs, revenues, rates, and quality of service . . . in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of [the PAEA]”¹ In the introduction to its report, the Postal Service notes the “transitional nature” of FY 2007 and states that the “applicable requirements” are those of former title 39—*i.e.*, of the Postal Reorganization Act (“PRA”).² Nevertheless, the Postal Service attempts to respond to the requirements of some sections of the PAEA, using existing data systems.³ As a practical matter, the existing systems are the only sources for FY 2007 data.

Section 3653(b) of the PAEA requires the Commission to conduct a review of, and make a determination on, the Postal Service’s compliance with the ratemaking and service performance provisions of chapter 36 of the PAEA. One provision of chapter 36 directs the Commission to take account of the policies of title 39.⁴ Prior to making its determination, the Commission must provide an opportunity for public comment on the Postal Service’s compliance with title 39.⁵ The Commission, periodicals mailers, and the Public Representative have posed questions to the Postal Service concerning the

¹ Section 3652 also requires the Postal Service to “analyze costs, revenues, rates, and quality of service, using such methodologies as the Commission shall by regulation prescribe” The Postal Regulatory Commission has yet to issue regulations establishing reporting requirements and the methodologies to be utilized by the Postal Service. The Postal Service explains in the annual compliance report’s Roadmap and supporting materials the calculation methodologies it utilized.

² United States Postal Service FY 2007 Annual Compliance Report, December 28, 2007, at 1 [hereinafter “Compliance Report”].

³ *Id.* at 2-3.

⁴ 39 U.S.C. § 3622(c)(14).

⁵ *Id.* at § 3653(a).

data that was filed with the Compliance Report.⁶ Problems with data reporting and manipulation are hardly surprising, given the short time for preparation of the Compliance Report.

There are, however, more fundamental shortcomings in this first Compliance Report. Basically, the Postal Service has filed a large amount of data and left it to others to perform the analysis and demonstration required by section 3652(a)(1). The Postal Service may believe that a lack of regulations concerning “methodologies” excuses it from performing its obligations under section 3652. On the other hand, the Postal Service may believe that its *only* obligation under section 3652 is to submit data.⁷ The latter interpretation is inconsistent with both the words of section 3652 and the basic structure of regulation created by the PAEA.

Section 3653(b) of the PAEA requires the Commission to make a determination of compliance with the provisions of chapter 36 within 90 days of receiving the Postal Service’s Compliance Report. There is a clear connection between the Commission’s determination and the Postal Service’s Compliance Report. There is a time progression in the statute from Compliance Report to compliance determination: first, the Postal Service’s Report; second, public comment on that Report; third, determination of compliance. The Commission’s determination that “rates or fees” comply “with applicable provisions of this chapter” depends on the Postal Service’s demonstration

⁶ Commission Information Request No. 1, January 24, 2008; Questions of Magazine Publishers of America, Inc., For Discussion at January 23, 2008 Technical Conference, January 18, 2008; Public Representative Questions to the United States Postal Service, January 29, 2008.

⁷ In the paragraph beginning on page 2 and in the paragraph at the top of page 3 of the Compliance Report, the Postal Service refers only to “information” and “data”—as if these are the only types of material it expects to include in future reports.

that “all products . . . comply with all applicable requirements of this title.”⁸ The Postal Service must demonstrate that all *products* comply with all applicable requirements of *this title*. The Commission must determine that all *rates and fees* comply with the provisions of *this chapter*, including section 3622(c)(14) (policies of the PAEA). The Postal Service has not fulfilled its obligations under section 3652. As a result, the Commission faces a more difficult task in fulfilling its responsibilities under section 3653.

One way to identify policy requirements of title 39 (in addition to looking for the words “policy” and “requirement”) is to look for the word “shall.”⁹ One can find “shall” from section 101(a) forward. At least two requirements in section 101 are applicable to products. Both of these requirements relate to apportioning costs.¹⁰ However, there is no discussion in the Compliance Report of how the costs attributed and assigned to products comply with section 101. Section 404(b) states, “Postal rates and fees shall be reasonable and equitable” Yet, there is no discussion in the Compliance Report showing how rates or fees within products are reasonable or equitable. Given the words of section 3622(c)(14), the Commission will need to address these requirements in its determination.

The Postal Service points out that the rates and fees in effect during FY 2007 were established under the PRA.¹¹ As such, the rates and fees were designed to be consistent with the policies and provisions of the PRA. Many of those policies and

⁸ 39 U.S.C. §§ 3652(a)(1), 3653(b)(1).

⁹ “Use of “shall” and “may” in statutes also mirrors common usage; ordinarily “shall” is mandatory and “may” is permissive.” Congressional Research Service, Statutory Interpretation: General Principles and Recent Trends, Updated March 30, 2006, at CSR-9 (footnote omitted) [as viewed January 29, 2008, at <http://ftp.fas.org/sgp/crs/misc/97-589.pdf>].

¹⁰ 39 U.S.C. §§ 101(a) (last sentence), 101(d).

¹¹ Compliance Statement at 1.

provisions also appear in the PAEA.¹² Given the short time since establishment of rates under the PRA, one would expect that rates and fees in FY 2007 would have complied with the PRA, and that such compliance could be carried over to the PAEA.

Unfortunately, it is now known that Periodicals and Media Mail rates did not cover attributable cost.¹³ Other market dominant products subsidized Periodicals and Media

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Provision	PRA - § 3622	PAEA - § 3622
PRA - The establishment and maintenance of a fair and equitable table schedule. PAEA - To establish and maintain a just and reasonable schedule for rates and classifications	(b)(1)	(b)(8)
The value of mail service actually provided each class or type of mail service to both sender and recipient, including but not limited to the collection, mode of transportation, and priority of delivery.	(b)(2)	(c)(1)
The requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that (each) class or type (of mail service through reliably identified causal relationships) plus that portion of all other costs of the Postal Service reasonably assignable to such class or type.	(b)(3)	(c)(2) (Language in parenthesis is unique to PAEA.)
The effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters.	(b)(4)	(c)(3)
The available alternative means of sending and receiving letters and other mail matter at reasonable costs.	(b)(5)	(c)(4)
The degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service.	(b)(6)	(c)(5)
Simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services.	(b)(7)	(c)(6)
The educational, cultural, scientific, and informational value to the recipient of mail matter.	(b)(8)	(c)(11)

¹³ FY 2007 Cost and Revenue Analysis, USPS-LR-FY07-1, file FY07CRA.xls, sheet CostStats, cells R29, R48.

Mail during FY 2007. Such cross-subsidization raises questions of compliance with a number of policies and provisions of the PAEA.¹⁴

The Postal Service should provide a narrative explanation (similar to rate design and pricing testimony filed in rate cases under the PRA) describing how market dominant products comply with the policies and provisions of the PAEA. In cases where products fail to comply, the Postal Service should describe the steps it is taking to ensure future compliance. This will reduce the burden on the Commission in preparing its determination of compliance and assist stakeholders in preparing useful comments on the Compliance Report.

¹⁴ Cross-subsidization implicates the following sections of the PAEA

101(a)

The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

101(d)

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

403(a)

The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees.

403(c)

In providing services and establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preference to any such user.

404(b)

Except as otherwise provided, the Governors are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services in accordance with the provisions of chapter 36. Postal rates and fees shall be reasonable and equitable and sufficient 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.

3622(c)(2)

The requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the USPS reasonably assignable to such class or type.

3622(c)(5)

The degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service.

3622(c)(12)

The need for the USPS to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable services.