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BEFORE THE
POSTAL REGULATORY COMMISSION

ANNUAL COMPLIANCE REPORT	**DOCKET NO. ACR2007**

REPLY COMMENTS OF UNITED PARCEL SERVICE
ON THE UNITED STATES POSTAL SERVICE'S
FY 2007 ANNUAL COMPLIANCE REPORT
(February 13, 2008)

Pursuant to the Commission's Notice dated December 31, 2007, United Parcel Service ("UPS") replies to comments filed on the United States Postal Service's FY 2007 Annual Compliance Report. Specifically, UPS replies to the argument made by the Direct Marketing Association, Inc. ("DMA") and the Parcel Shippers Association, Inc. ("PSA") apparently suggesting that the Commission reconsider its newly-enacted Rule 3015.7(c) to reduce competitive products' share of the Postal Service's institutional costs. See Comments of Direct Marketing Association, Inc. and Parcel Shippers Association, Inc. Pursuant to PRC Notice of Filing of Annual Compliance Report (January 30, 2008) ("DMA and PSA Comments") at 5-8.

The Commission should reject PSA and DMA's suggestion. Nothing in the recent Federal Trade Commission Report entitled "Accounting for Laws that Apply Differently to the United States Postal Service and Its Private Competitors" (December 2007) ("FTC Report") alters the Commission's prior conclusion. Moreover, it would be premature for the Commission to reconsider this recently-enacted regulation at this point.

1. The Federal Trade Commission Report does not warrant reducing competitive products' required contribution to institutional costs.

The Federal Trade Commission Report does not support a reduction of competitive products' share of institutional costs. See DMA and PSA Comments at 6. UPS reserves its discussion of the FTC Report to a forum more appropriate than the Commission's annual compliance review. However, it is important to point out here that PSA and DMA have misconstrued the FTC Report's conclusions and recommendations.

Rather than suggesting that the Commission use the approximated figures in the FTC Report to "make up" for a Postal Service disadvantage, the FTC recognizes the imprecise nature of its estimates. Emphasizing that it used only "approximations of [the amounts of burdens and advantages] under various cost-allocation assumptions, utilizing the limited data [it] received" (FTC Report at 1), the FTC concludes that the Postal Service realizes both competitive disadvantages and competitive advantages vis-à-vis private competitors as a result of differential application of Federal and state laws. Id. at 64. It concludes that "[w]hether the USPS enjoys a net economic advantage or disadvantage by virtue of its unique status ultimately is irrelevant to the issue of efficient allocation of resources in the economy as a whole. . . . [T]he USPS must consider both actual costs and the value of its implicit subsidies for pricing and production decisions to be based on the actual costs society incurs when the USPS provides competitive products." Id. at 70-71.

The FTC recommends that the Commission address the Postal Service's advantages. Id. at 1 ("Ultimately, the PRC will need to determine the appropriate approach under its regulatory authority to require the USPS to account for the economic benefits it derives from different legal treatment.") It states that "[p]ricing and production decisions should be based on true, not subsidized, costs" and notes that "the current practice of not requiring the USPS to account for [the] implicit subsidies [that it 'receives due to its status as a federal government entity and its postal and mailbox monopolies'] is likely leading the USPS to charge artificially low prices for its competitive products." Id. at 85.

On the other hand, the FTC recognized that ". . . only Congressional action can eliminate the legal constraints that negatively impact the USPS's competitive products operations." Id. at 1-2. Moreover, the FTC Report notes that the Postal Service realizes other benefits that are not included in the estimated figures. Id. at 64. The FTC actually suggests that the Commission's 5.5 percent minimum contribution requirement does not go far enough to account for the Postal Service's network advantages. Id. at n. 286 ("The requirement that competitive products cover 5.5 percent of institutional costs . . . *may* compensate for *part* of the cost of access to the postal network") (emphasis added).

2. The Commission should not reconsider the newly-enacted regulations governing competitive products at this early juncture.

Reconsideration of the Commission's new competitive products contribution requirement would be premature. The Commission established this regulation less than four months ago after extensive proceedings with input from interested parties, including PSA and DMA. DMA and PSA advance the same arguments in support of reducing competitive products' share of institutional costs that PSA made then -- arguments the Commission rejected. See Docket No. RM2007-1, Order No. 43 (October 29, 2007) at ¶ 3041. As the Postal Service recognized when it endorsed the Commission's (then-proposed) Rule 3015.7(c), a competitive products minimum contribution of 5.5 percent is a "challenging, though attainable, requirement" that is "appropriately grounded in current reality." Docket No. RM2007-1, Postal Service Reply Comments (October 9, 2007) at 56, 58.

The Postal Service has not yet exercised its authority to make rate changes under the new regulations, and both the Postal Service's actual FY 2007 rates and the Commission's pre-PAEA TY 2008 rates each satisfy the Commission's contribution requirement. See DMA and PSA Comments at 6 (competitive products contributed 5.65 percent of total institutional costs in FY 2007) and Docket No. RM2007-1, Commission Order No. 26 (August 15, 2007) at ¶ 3051 (TY 2008 rates projected to contribute 6.9 percent of total institutional costs). Moreover, when proposing the 5.5 percent contribution floor, the Commission noted its "[]expectation[] . . . that competitive products will generate contributions in excess of the [5.5 percent] floor." Docket No. RM2007-1, Commission Order No. 26 at ¶ 3056.

In sum, there is no reason for the Commission to second-guess its very recent decision to require competitive products to contribute at least 5.5 percent of the Postal Service's institutional costs.

Respectfully submitted,

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