

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Annual Compliance Report, 2007)

Docket No. ACR2007

PUBLIC REPRESENTATIVE REPLY COMMENTS
ON FY 2007 ANNUAL COMPLIANCE REPORT
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Pursuant to the Commission's Notice of Filing Annual Compliance Report ("ACR"), the Public Representative hereby files reply comments. The filing on February 11, 2008, of a notice of rate adjustments brings into focus several issues raised in initial comments on the ACR. Not only did some products fail to cover attributable costs in FY 2007, but the Postal Service has maintained below-cost pricing in its new rates. Not only were some workshare passthroughs over 100 percent in FY 2007, but the Postal Service set passthroughs above 100 percent for FY 2008 as well. It is no longer of abstract philosophical interest whether the Postal Service was in compliance with the PAEA in FY 2007. The violations in FY 2007 are being carried forward into FY 2008. The Commission must issue a determination of noncompliance pursuant to section 3653(b)(1) of the PAEA.

ATTRIBUTABLE COSTS

Several parties noted in their initial comments that Periodicals did not cover attributable costs in FY 2007. This is a factual instance of noncompliance, since section 3622(c)(2) states that classes are required to cover attributable costs. The Commission should institute a complaint proceeding to address this problem. It is unfortunate that the Postal Service has chosen to exacerbate this problem in R2008-1.¹

WORKSHARE DISCOUNTS

Many parties have addressed workshare discounts. A common theme is that the discounts must have been compliant in FY2007 because they were designed to be legal

¹ The revenue increase for Periodicals is less than the cap. See United States Postal Service Notice of Market-Dominant Price Adjustment, February 11, 2008, at 17.

in FY 2008.² The problem with this argument is that the standards used by the Commission in R2006-1 to evaluate the acceptability of workshare discounts are not the same standards that the PAEA directs the Commission to use for compliance determination. And the implications of this argument are that (1) the Commission does not need to make a compliance determination for FY 2007³ and (2) the Postal Service cannot adjust discounts until the end of FY 2008.⁴ Both of these implications contradict the reality of what the Postal Service and the Commission are currently engaged in—adjusting discounts and conducting a compliance review.

Actually, this legal argument is only intended to put a floor under existing discounts. While simultaneously arguing that discounts cannot be changed until R2006-1 is “completed” (at the end of FY 2008),⁵ some parties argue that FY 2007 cost differences must be inflated.⁶ These arguments are contradictory. If current discounts are legal (and not subject to adjustment before the end of FY 2008) because they are based on R2006-1, then the FY 2008 cost projections from R2006-1 are also not

² Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc., January 30, 2008, at 2-3 (ANM/MPA); Initial Comments of Major Mailers Association, January 30, 2008, at 8; Comments of National Postal Policy Council, January 30, 2008, at 2-5 (NPPC); Initial Comments of Pitney Bowes Inc. in Response to Notice of Filing of Annual Compliance Report by the Postal Service and Solicitation of Public Comment, January 30, 2008, at 2 (Pitney Bowes Inc.); Initial Comments of Time Warner Inc. of FY 2007 Annual Compliance Report, January 30, 2008, at 5.

³ ANM/MPA at 3; NPPC at 3; Pitney Bowes Inc. at 2.

⁴ See Comments of Alliance of Nonprofit Mailers, National Association of Presort Mailers and National Postal Policy Council on Advance Notice of Proposed Rulemaking, RM2007-1, April 6, 2007, at 13; Initial Comments of American Business Media, RM2007-1, April 6, 2007, at 2-3; Direct Marketing Association, Inc. Reply Comments Pursuant to PRC Order No. 2, RM2007-1, May 7, 2007, at 4-5; Reply Comments of the McGraw-Hill Companies, Inc. Pursuant to Order No.2, RM2007-1, May 7, 2007, at 2; Initial Comments of Time Warner Inc. in Response to Commission Order No. 2, RM2007-1, April 6, 2007, at 16-17.

⁵ NPPC at 2-3.

⁶ Comments of Direct Marketing Association, Inc. and Parcel Shippers Association, Inc. Pursuant to PRC Notice of Filing of Annual Compliance Report, January 1, 2008, at 4 (DMA); Pitney Bowes Inc. at 5.

subject to adjustment. In any event, the word “completed” in section 3622(f) refers to “proceedings,” not rates.

Selective updating

The estimates of avoided cost are derived from models, not direct observation. The parameters of the models *are* derived from direct observation. For its ACR, the Postal Service updated some, but not all, model parameters. Some parties complain that the parameters updated are those that reduce cost avoidance.⁷ There is a hint that these parties believe the partial updating to be deliberate. In other words, the Postal Service actually has data that could be used to update other parameters—but chose not to use it—in order to keep discounts down.

There are also explicit complaints from some parties that updating has “degraded” cost avoidance estimates. This complaint is mathematically impossible. The use of more current data can only improve an estimate, even if some data is left unchanged. In any event, updating every parameter of a cost model simultaneously is not practical. A demand for simultaneous updating of all model parameters is really a demand for no upgrading, ever.

Passthroughs

In its price-adjustment notice the Postal Service has been careful never to exceed the price cap for any class of mail—not even by a thousandth of a percent. The PAEA prohibits class increases greater than the rate of inflation. The PAEA also requires the Commission to “ensure that [workshare] discounts do not exceed the cost that the Postal Service avoids as a result of worksharing activity unless . . . the discount

⁷ Pitney Bowes Inc. at 6-7.

is . . . necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service . . . or reduction or elimination of the discount would impede the efficient operation of the Postal Service.”⁸ The Postal Service makes frequent references to these exemptions in its price adjustment notice,⁹ but it offers no explanation whatsoever in the ACR itself. For future ACRs, the Commission should require detailed explanations of the causes for passthroughs in excess of 100 percent along with descriptions of how the passthroughs will be corrected in the next rate adjustments. The alternative is annual determinations of noncompliance followed by complaint proceedings.

⁸ 39 U.S.C. §§ 3622(e)(2)(B), (D). Section 3622(e)(2) contains other exemptions, but the “further or impede efficient operations” exemptions are the only ones relied on by the Postal Service in its price-adjustment notice.

⁹ See United States Postal Service Notice of Market-Dominant Price Adjustment, February 11, 2008, at 26-29, 33