

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

Notice of Price Adjustment

)

Docket No. R2008-1

**COMMENTS ON COD PRICE ADJUSTMENT
BY
GROWING FAMILY, INC.
(February 29, 2008)**

Pursuant to Order No. 59, issued in this docket on February 14, 2008, Growing Family, Inc¹, the Postal Service's largest COD customer, hereby submits comments on the COD rates contained in the Postal Service's February 11, 2008 Notice. Although Growing Family acknowledges the relative autonomy of the Postal Service in rate matters pursuant to the Postal Accountability and Enhancement Act of 2006, its discretion is not unfettered. As we will show, the above-average, above-CPI increases in COD fees that the Postal Service intends to implement in May are unlawful.

The Postal Service did not provide the percentage increase proposed for COD fees, and without the billing determinants, Growing Family cannot do so either. We can demonstrate, however, that absent action by this Commission, the fees will as a mathematical certainty increase by more than 3%, and in some cases by substantially more. The present and proposed fees are shown on the following table:

¹ Since Docket No. R2006-1, Growing Family's photo business has been operating under the name "Our365," but the corporate name has not changed. We will stick with Growing Family here, since that is the name with which the Commission and the Postal Service are familiar.

COD FEES

| Amount to be collected or insurance coverage desired, whichever is higher | Present Fee | Proposed Fee | Percentage Increase |
|--|--------------------|---------------------|----------------------------|
| \$0.01 to \$50 | \$5.10 | \$5.25 | 2.9% |
| 50.01 to 100 | 6.25 | 6.45 | 3.2% |
| 100.01 to 200 | 7.40 | 7.65 | 3.4% |
| 200.01 to 300 | 8.55 | 8.85 | 3.5% |
| 300.01 to 400 | 9.70 | 10.05 | 3.6% |
| 400.01 to 500 | 10.85 | 11.25 | 3.7% |
| 500.01 to 600 | 12.00 | 12.45 | 3.8% |
| 600.01 to 700 | 13.15 | 13.65 | 3.8% |
| 700.01 to 800 | 14.30 | 14.85 | 3.8% |
| 800.01 to 900 | 15.45 | 16.05 | 3.9% |
| 900.01 to 1,000 | 16.60 | 17.25 | 3.9% |

Additional COD Services

| | | | |
|------------------------------|--------|------|------|
| Restricted delivery | \$4.10 | | |
| Notice of nondelivery | 3.40 | 3.70 | 8.8% |
| Alteration of COD charges | 3.40 | 3.70 | 8.8% |
| Designation of new addressee | 3.40 | 3.70 | 8.8% |
| Registered COD | 4.55 | 4.65 | 2.2% |

As shown above a single rate cell is set to increase by 2.9%, the limit of the price cap. All remaining rate cells are to increase by a greater percentage.

The Postal Service makes no effort to provide the rationale for these increases, apart from the brief statement (Notice at 23) that the large increases for COD Notice of Delivery and Alteration of Charges “reflect their high value of service.”

Surely, value of service cannot possibly justify any increase in the basic COD fees themselves, much less an above-average increase. In its decision in Docket No. R2006-1, the Commission (at ¶¶ 6104-07) briefly summarized the myriad problems that Growing Family was experiencing with both the level of its COD service and the Postal

Service's constantly changing but never truly implemented policy for paying COD claims, ranging from slow payment (or no payment) to the USPS's refusal even to pay claims when it had admittedly lost the customer's payments in the form of a check. Yet there, like here, the Postal Service had claimed that COD reflected a high value of service (id. at ¶ 6111).

To its credit, the Commission was not fooled. It found (id. at ¶ 6114) that there were serious performance problems with COD service, including a failure by the Postal Service to account for product, payments and claims properly; the Postal Service's inability to determine the basis for a claim (which was necessary to make appropriate payments under its most recent "policy")²; and the Postal Service's mishandling of payments by recipients.

The Commission further found that Postal Service management should assure the agency's compliance with its COD responsibilities to its customers (id. at ¶ 6115) and that there was a lack of accountability (id. at ¶ 6116). On this basis, the Commission reduced the proposed rate increase, finding the Postal Service's "performance so severely lacking" (id. at ¶ 6117) as to require a lower cost coverage than that sought.

Unfortunately, matters since have only deteriorated even further, despite the Postal Service's pledge (Reply Brief in Docket No. R2006-1 at 282) to do better. Since the issuance of the rate decision more than one year ago, the Postal Service has not

² As explained fully in Docket No R2006-1, the customer is in no position to determine whether the package was lost or destroyed on the way to the recipient, was left by the carrier without payment, was paid for but the payment was lost by the Postal Service, or the package was refused and lost before return to the sender. Apparently, neither can the Postal Service, as we showed in Docket No. R2006-1 and shall discuss briefly below

yet accomplished the impossible: implementation of its new, four-tier reimbursement policy (apparently applicable only to a single customer), a policy that depends upon information that the Postal Service does not possess. The result has been long periods in which no claims are processed, periods in which all claims are paid on the basis of the amount to be collected (with small, unexplained deductions) and periods in which claims are paid in seemingly random amounts. Most recently, there has been a series of claims paid at less than \$4.00 per claim, an amount substantially lower than any of the payment tiers supposedly in place.

Throughout this one-year period, Growing Family has not sat idly by. Instead, it frequently has questioned the payments, asked for explanations that have never been provided, asked for a meeting that has never been agreed to and provided proof of improper payments (such as the sub-\$4.00 payments).³ Each such request is met either by silence or by assurances that they are working on it.

With that as background, we arrive at the crucial question of whether the Commission is empowered to do what is right. Growing Family suggests that it does. In its notice, the Commission stated (Order No. 59 at 6):

The Commission's intention is to conduct this review by bringing its judgment to bear on the basis of the material presented in the Adjustment Notice, the objectives, factors and requirements of the PAEA, including referenced postal policies, Commission rules, and public comments.

³ One inquiry to the local post office in St. Charles, MO, about why postal clerks were crossing off the amount claimed and replacing it with a lower figure evoked a telling but wholly unsatisfactory response that the clerks were "just doing what we are told." One more recent inquiry to USPS headquarters brought forth an admission that USPS analysts who have been reviewing the claims and payment history had indeed found errors.

The PAEA includes more than just a requirement for a price cap. It also contains, as a rate “objective” in 39 U.S.C. 3622(b)(7) that rates be “just and reasonable” and as a factor in 39 U.S.C. 3622(c)(1) that rates should reflect the value of service to mail users. By any measure, the fee increase for COD service is excessive and contrary to the objectives and factors of the Postal Accountability and Enhancement Act.

Whether this situation rises to the level of unlawfulness is for the Commission to decide. That it rises to the level of absurdity is not debatable.

Respectfully submitted,

/s/ David R. Straus

David R. Straus
Attorney for Our365

Law Offices of:

Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006-1167
(202) 585-6900
dstraus@thompsoncoburn.com

4693949.1