

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

Notice of Price Adjustment

Docket No. R2008-1

**COMMENTS OF PITNEY BOWES INC. IN RESPONSE TO NOTICE AND ORDER
ON PLANNED RATE ADJUSTMENTS FOR MARKET DOMINANT POSTAL
PRODUCTS AND LIMITED CLASSIFICATION CHANGES**

James Pierce Myers
Attorney at Law
1617 Courtland Road
Alexandria, Virginia 22306
Telephone: (202) 331-8315
Facsimile: (202) 331-8318
E-Mail: jpm@piercemyers.com

Michael F. Scanlon
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
1601 K Street, NW
Washington, DC 20006
Telephone: (202) 778-9000
Facsimile: (202) 778-9100
E-Mail: michael.scanlon@klgates.com

Counsel to PITNEY BOWES INC.

DATED: March 3, 2008

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I. INTRODUCTION

On February 11, 2008, the United States Postal Service (Postal Service) filed with the Postal Regulatory Commission (Commission) its Notice of Market Dominant Price Adjustment (USPS Adjustment Notice). The USPS Notice represents the Postal Service's first exercise of its new, streamlined rate setting authority under the Postal Accountability and Enhancement Act (PAEA).¹

Pursuant to section 3622(d)(1)(C) of title 39 of the United States Code and rule 3010.13 of the Commission's Rules of Practice and Procedure, the Commission issued its Notice and Order on Planned Rate Adjustments for Market Dominant Postal Products and Limited Classification Changes (February 14, 2008)(Docket No. R2008-1). *See* 39 U.S.C. § 3622(d)(1)(C); 39 C.F.R. § 3010.13.

Pitney Bowes Inc. (Pitney Bowes) is pleased to provide these comments in response to PRC Order No. 59 (February 14, 2008). These comments address: (1) the timing of the price adjustment; (2) compliance with the annual limitation; (3) rate design / workshare discounts; and (4) compliance with the statutory objectives and factors.

II. DISCUSSION

A. Timing of the Price Adjustment

With respect to the timing of the notice of price adjustment, section 3622(d)(1)(C) provides that "not later than 45 days before implementation of any adjustment" the Postal Service must provide public notice of the proposed adjustment. 39 U.S.C. § 3622(d)(1)(C). Commission rule 3010.10 emphasizes that forty-five days is the minimum notice period, not a maximum. *See* 39 C.F.R. § 3100.10(a)(2). Rule

¹ *See* Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise noted, section references in these comments are to sections of title 39.

3100.10(b) also encourages the Postal Service to provide its notice of price adjustment “as far in advance of the 45-day minimum as practicable, . . .” 39 C.F.R. § 3100.10(b). The USPS Notice announced the Postal Service’s intention to adjust prices for all market dominant products on May 12, 2008. Accordingly, mailers will have 91 days to prepare for the price adjustments. The Postal Service is to be commended for delivering on its public commitment to provide additional advanced notice; the additional time will help mailers prepare for and implement the proposed pricing changes.

B. Compliance with the Annual Limitation

A defining feature of the PAEA is the statutory price cap for market dominant products. *See* 39 U.S.C. § 3622(d). Pursuant to the Commission’s rules, the annual limitation is measured using the U.S. Department of Labor’s Consumer Price Index for All Urban Consumers (CPI-U). *See* 39 C.F.R. § 3010.11. As set forth in Appendix D of the USPS Notice, the Postal Service calculated an annual limitation of 2.9 percent.

Section 3622(d)(1)(C) requires the Commission to assess the compliance of the noticed price adjustments with the statutory price cap. *See* 39 U.S.C. § 3622(d)(1)(C). The PAEA provides that the Commission’s review is limited to a determination of whether the noticed price adjustment complies with the annual limitation under section 3622(d)(1)(A). *See* 39 U.S.C. § 3622(d)(1)(A). The Commission’s rules faithfully implement that statutory directive. *See* 39 C.F.R. § 3010.13(c). Thus, the 45-day “quick look” is a price cap compliance matter. Other compliance determinations, such as those required for workshare discounts under section 3622(e), should be addressed through the annual determination of compliance under section 3653 or the complaint provisions of section 3662. *See* 39 U.S.C. §§ 3653, 3662.

PRC Order No. 59 invites public comment on:

(1) Whether the planned rate adjustments measured using the formula established in rule 3010.23(b) are at or below the annual limitation established in rule 3010.11; and

(2) Whether the planned rate adjustments measured using the formula established in rule 3010.23(b) are at or below the annual limitation established in rule 3010.28.

PRC Order No. 59, at 6.

Based on our review of the USPS Notice, including the accompanying library references, it appears that the planned price adjustments, measured using the formula in rule 3010.23(b), are at or below the annual limitation established in rule 3010.11. That is to say that the prices proposed by the Postal Service will be adjusted in amounts that are, on average, within the 2.9 percent statutory price cap, even where the prices within classes exhibit significant variance.

Because this is the first filing under the new system, the Postal Service has no unused price adjustment authority. *See* USPS Notice at 5. Accordingly, the question whether the planned price adjustments measured using the formula established in rule 3010.23(b) are at or below the annual limitation established in rule 3010.28, is inapplicable.

C. Rate Design / Workshare Discounts

1. Incremental Rate Design / Pricing Adjustments

Pitney Bowes commends the Postal Service for generally proposing “a more gradual, incremental” approach to its rate design and pricing adjustments under the new system. USPS Notice at 9. Pitney Bowes supports the Postal Service’s incremental approach as a means to enhance the predictability, and stability of the ratemaking

process, while preserving the Postal Service's ability to leverage its new pricing flexibility under the PAEA. The Postal Service's incremental approach also complements the more frequent, but less administratively burdensome process under the PAEA. As noted by the Postal Service "this price adjustment notice [is] one in a series of regulatory filings that will occur each year." USPS Notice at 8.

2. First-Class Mail Rate Design

The Postal Service's decision to "delink" the prices for Presort First-Class Mail and Single-Piece First-Class Mail is appropriate and consistent with the proposed Mail Classification Schedule (MCS). Under the proposed MCS, Presort First-Class Mail and Single-Piece First-Class Mail are two separate products. Accordingly, delinking Single-Piece First-Class Mail and Presort First-Class Mail is consistent with the Commission's long-standing practice of pricing and measuring workshare-related cost avoidances within a product (formerly a subclass), but not among or across different products (formerly subclasses).

3. First-Class Mail Workshare Discounts

Consistent with the comments filed in connection with the Notice of Filing of the Annual Compliance Report for fiscal year 2007 (Docket No. ACR2007), Pitney Bowes remains very concerned that the reported passthroughs for First-Class Mail workshare letters categories appear larger than they actually are because avoided costs and discounts are measured and reported for different time periods.

Appendix B of the USPS Notice, reports workshare cost avoidance estimates for the period of October 1, 2006 through September 30, 2007 (FY 2007), based on workshare discounts that reflect rates in effect for the period of May 15, 2007 through

September 30, 2007, and for proposed prices that will likely remain in effect until May 2009. As indicated in Pitney Bowes' ACR comments, the Postal Service's failure to align the measurement periods for workshare discounts and cost avoidance estimates is arbitrary and inhibits a meaningful comparison of workshare discounts with cost savings under section 3622(e). *See* 39 U.S.C. § 3622(e).

Because of the significant timing discrepancy (almost 20 months), Pitney Bowes maintains that the workshare related cost avoidance estimates in Appendix B are systematically understated because the Postal Service failed to adjust avoidance estimates for reasonably foreseeable changes (increases) in costs. Stated another way, the cost avoidance estimates reported in the USPS Notice should be adjusted to take into account the effects of inflation on costs thereby keeping the cost avoidance estimates in a proper relationship with Postal Service unit cost increases resulting from increases in labor, transportation and other reasonably foreseeable inflated costs. As Pitney Bowes advocated in its ACR comments, this could best be accomplished via a straight-forward inflationary adjustment.

4. Commission Information Request No. 1

On February 26, 2008 the Commission issued an Information Request No. 1 (CIR No. 1) requesting that the Postal Service provide additional justification for worksharing discounts that appear to exceed avoided costs. CIR No. 1 requests that the Postal Service justify the passthrough of more than 100 percent of the estimated avoided costs for First-Class Mail 5-digit automation presort letters. *See* CIR No. 1 at 1-2. This question need not have been asked if the Postal Service had made the adjustments referenced above to better reflect the underlying rate relationships. Had the cost avoidance estimate been

properly inflated to reflect cost increases between FY 2007 and the period in which the proposed prices will be in effect, the pass through underlying this discount would have been less than 100 percent. If the reported discounts and cost avoidance estimates were measured for the same time period, no justification would be necessary.

Alternatively, even assuming that a specific statutory exception were necessary to justify a 5-digit automation presort letters workshare discount because it exceeded avoided costs, the appropriate statutory exception would be section 3622(e)(2)(D), not section 3622(e)(2)(A). *See* 39 U.S.C. §§ 3622(e)(2)(A), (D).

To satisfy the statutory exception of section 3622(e)(2)(A) the Postal Service would need to establish that:

(A) the discount is --

(i) associated with a new postal service, a change to an existing postal service, or with a new workshare initiative related to an existing postal service; and

(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

39 U.S.C. §§ 3622(e)(2)(A)(i)-(ii) (emphasis added). Importantly, the language and construction of section 3622(e)(2)(A) is *conjunctive*; thus to satisfy this exception the Postal Service would need to establish the conditions of both section 3622(e)(2)(A)(i) and section 3622(e)(2)(A)(ii). And while maximizing the 5-digit automation presort letters workshare discount would likely promote the “economically efficient operation of the Postal Service,” 39 U.S.C. § 3622(e)(2)(A)(ii), the Postal Service could not establish that the discount was “associated with a new postal service, a change to an existing postal

service, or with a new workshare initiative related to an existing postal service[.]” 39 U.S.C. § 3622(e)(2)(A)(i).

Accordingly, assuming that a statutory exception were necessary to justify the 5-digit automation presort letters workshare discount, the appropriate exception would be section 3622(e)(2)(D), which provides an exception where: “reduction or elimination of the discount would impede the efficient operation of the Postal Service.” 39 U.S.C. § 3622(e)(2)(D).

This exception could be justified where, as here, the Postal Service exercises its pricing flexibility to maintain existing rate relationships in the interest of “creating predictability and stability in rates.” 39 U.S.C. § 3622(b)(2). Mailers respond to pricing signals and a downward departure to a key worksharing rate could have a significant impact on how a mailer prepares the mail (i.e., by encouraging mailers to enter less finely presorted mail in response to a reduced discount). Absent an exceptional circumstance, Pitney Bowes shares the Postal Service’s view that compliance determinations should be assessed “over the long-term, through a series of price adjustments, rather than in any one individual price change.” USPS Notice at 12. Therefore, pricing signals that depart from an established discount, solely for the purpose of satisfying strict compliance at a singular point in time, should be discouraged because they could adversely affect the efficient operation of the Postal Service.

D. Compliance with the Statutory Objectives and Factors

The Commission's rules require the Postal Service's notice of rate adjustment to include:

A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).

39 C.F.R. § 3010.14(b)(7).

The Postal Service contends that the section of its Notice entitled "Description of Prices," is responsive to this requirement. USPS Notice at 5-6. While the Postal Service lists the statutory objectives and factors, and entertains some discussion of them, on the whole the discussion is insufficient. The relative inattention to this aspect of the Notice appears to stem from the Postal Service's view that the statutory objectives are "largely achieved through the design of the new regulatory system itself, rather than through the particulars of any one pricing change made pursuant to that system." USPS Notice at 7. This statement is true as far as it goes, but it cannot serve as a license to avoid the regulatory compliance requirements set forth by the Commission. The Commission's rules are clear and definite; the Postal Service must include a discussion demonstrating how the specific planned adjustments are designed to help achieve the statutory objectives and to take into account the statutory factors. *See* 39 C.F.R. § 3010.14(b)(7).

Pitney Bowes agrees with the Postal Service's observation that the PAEA establishes a variety of considerations that are "sometimes in tension[,]" and that an individual objective or factor "may be particularly important in one year, and relatively less important in other years," and thus the Postal Service must have the ability to

implement its pricing strategy on a “incremental basis” and to assess compliance with the statutory objectives and factors “over the long-term, . . .” USPS Notice at 12.

Pitney Bowes maintains, however, that a specific discussion addressing how these often competing statutory objectives and factors are manifest in the proposed pricing adjustments would enhance the transparency of the rate setting system and comply with the Commission’s established rules.

III. CONCLUSION

Pitney Bowes appreciates the Commission’s consideration of these comments. The Postal Service and the Commission are to be commended for all of their efforts leading up to and making this first rate filing under the PAEA possible. Pitney Bowes is hopeful that the Postal Service and the Commission will consider these comments in developing future notices.

Respectfully submitted:

/s/

James Pierce Myers
Attorney at Law
1617 Courtland Road
Alexandria, Virginia 22306
Telephone: (202) 331-8315
Facsimile: (202) 331-8318
E-Mail: jpm@piercemyers.com

Michael F. Scanlon
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
1601 K Street, NW
Washington, DC 20006
Telephone: (202) 778-9000
Facsimile: (202) 778-9100
E-Mail: michael.scanlon@klgates.com

Counsel to PITNEY BOWES INC.