

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Products Price Changes  
Re Rates of General Applicability )

Docket No. CP2008-3

PUBLIC REPRESENTATIVE COMMENTS  
IN RESPONSE TO NOTICE OF CHANGE IN RATES  
FOR COMPETITIVE POSTAL PRODUCTS  
AND LIMITED CLASSIFICATION CHANGES  
(March 27, 2008)

The Public Representative hereby comments on the Postal Service's notice of changes in rates for all competitive postal products and limited classification changes (hereafter, "USPS Notice").<sup>1</sup> These comments discuss generally the statutory requirements of 39 U.S.C. § 3633 and the Postal Service's compliance; make several observations regarding elements of the USPS Notice, and offer for the Commission's consideration, suggestions which might enhance the value of the Postal Service's competitive products for the mailing public. The Commission's notice and order in this proceeding (hereafter "Order No. 65") established a 14-day period for public comment on the planned price adjustments, extending through March 27, 2008.<sup>2</sup>

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<sup>1</sup> "Notice of the United States Postal Service of Governors' Decision No. 08-3," regarding changes in rates of general applicability and concomitant classification changes for all competitive products, March 12, 2008.

<sup>2</sup> "Notice and Order Concerning Change in Rates of General Applicability for All Competitive Products," Order No. 65, March 13, 2008. This order designated the undersigned as Public Representative to represent the interests of the general public in this proceeding.

**“Of all human powers operating on the affairs of mankind, none is greater than that of competition.”<sup>3</sup>**

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The USPS Notice heralds the first adjustment in rates of general applicability for competitive products under the Postal Accountability and Enhancement Act, Pub L. 109-435, 120 Stat. 3198 (2006) (“PAEA”). While market dominant products (the subject of Docket No. R2008-1 and Commission Order No. 66), must adhere to the statutory Consumer Price Index-based price cap,<sup>4</sup> or a “ceiling,” there is a pricing “floor” for competitive product prices. Conceding that the Postal Service has complied procedurally with the publication provisions of 39 U.S.C. § 3632 and 39 C.F.R. § 3015.2 by their Notice, its Statement of Explanation and Justification, the analysis of the proposed rates for compliance with 39 C.F.R. 3015.7 remains.

39 CFR § 3015.7 Standards for compliance.

For purposes of determining competitive products’ compliance with 39 U.S.C. 3633, the Commission will apply the following standards:

(a) Incremental costs will be used to test for cross-subsidies by market dominant products of competitive products. To the extent that incremental cost data are unavailable, the Commission will use competitive products’ attributable costs supplemented to include causally related, group-specific costs to test for cross-subsidies.

(b) Each competitive product must recover its attributable costs as defined in 39 U.S.C. 3631(b).

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<sup>3</sup> *In Defence [sic] of the American System*, Statesman Henry Clay, in the Senate of the United States, February 1832.

<sup>4</sup> 39 C.F.R. § 3010.11-12.

(c) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively is, at a minimum, 5.5 percent of the Postal Service's total institutional costs.

Postal Regulatory Commission Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products (October 29, 2007) set the "floor," or the appropriate share of institutional costs for competitive products collectively at 5.5 percent of the Postal Service's institutional costs.

Concurrently with the preparation of these comments, two additional fora are available in which cost coverage for the competitive products may be more fully explored and ascertained: *First*, initial commentary on the "Report of the U.S. Department of Treasury on Accounting Principles and Practices for The Operation of the United States Postal Service's Competitive Products Fund" (December 2007) (hereafter, "Treasury Report"). The Commission's Order No. 56 provides a sixty-day commentary period, which ends April 1, with reply comments due May 1, 2008.<sup>5</sup> *Second*, the Commission is analyzing data from the Postal Service's Annual Compliance Report (ACR). Section 3653(b) of the PAEA requires the Commission to make a determination of compliance with the provisions of Chapter 36 of Title 39 within 90 days of receiving the Postal Service's Compliance Report. The Postal Service filed its annual compliance report for FY 2007 with the Commission on December 28, 2007. The Commission invited public comment for Docket No. ACR2007 in its December 31,

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<sup>5</sup> "Notice And Order Providing An Opportunity To Comment On Treasury Report," Docket No. PI2008-2, January 28, 2008.

2007 notice,<sup>6</sup> and subsequently filed requests for additional information from the Postal Service.<sup>7</sup>

Due to this concurrent, exacting scrutiny of the competitive products' cost attribution and coverage, the Public Representative respectfully defers to the expertise of the Commission in determining USPS compliance with the requirements of 39 U.S.C. § 3633 and 39 C.F.R. §3015.7(c) – whether the competitive products, individually and collectively, cover their attributable costs and 5.5 percent of the USPS institutional costs, with no subsidization by market dominant products. The public interest would be well-served by the Commission's examination of the Treasury Report commentary and the ACR to ensure fiscal compliance of the Postal Service's competitive products pricing as set out in its Notice.

Although a public representative might spurn an argument for higher rates, it would nevertheless offend Title 39, and the public it serves, if mailings of any competitive products were subsidized by First-Class postage rates (and/or fees for other market dominant products). Accordingly, it is noted that the Commission requested in Docket No. CP2008-3, additional information on March 19, 2008 regarding the planned rate changes for Parcel Return Service (PRS).<sup>8</sup> In Docket No. ACR2007, a table in the Postal Service's Annual Compliance Report appears to indicate that revenues for PRS did not cover the corresponding attributable costs in FY 2007.<sup>9</sup> From the information

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<sup>6</sup> "Notice of Filing of Annual Compliance Report by the Postal Service and Solicitation of Public Comment," December 31, 2007.

<sup>7</sup> Commission Information Requests No. 1, 2 and 3, issued January 24, February 1, and February 12, 2008, respectively.

<sup>8</sup> Commission Information Request No. 1, March 19, 2008.

<sup>9</sup> Docket No. ACR2007, USPS-FY07-9, File: PP\_contribution.xls.

submitted with the USPS Notice, it is not clear that the average increase of 2 percent will produce sufficient revenues to cover the product's attributable costs. The Commission's further ACR analysis may reveal other rates for which the cost coverage is not met.

The Office of the Consumer Advocate Comments in RM2007-1 warned that, without an effective "ceiling" for competitive products, the Commission must be vigilant to diminution of service in areas where there may be less than effective competition, and pricing that exceeds reasonability.<sup>10</sup> In that regard, the USPS Notice offers justifications and explanations for competitive products price increases. The average increases do not generally appear to be excessive. For Express Mail and Priority Mail domestic service, the average increases are above the "ceiling" for market dominant products (the Consumer Price Index-based price cap of 2.9 percent for the 12 months ending December 2007). However, the PAEA created a discrete arena for competitive products. This provides the Postal Service the flexibility to adapt and improve its operations in an evolving market.

For international service, the competitive products' increases are even higher – ranging from an average 6.1 percent increase for Priority Mail International service to 21.3 percent for International Service Center (ISC) Drop Shipment Surface Airlift service. In determining prices for international products, the Postal Service must calculate costs for transportation to, and delivery in, the destinating country, as well as the initial domestic processing. Considering the recent position of the U.S. Dollar

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<sup>10</sup> OCA Comments In Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, Docket No. RM2007-1, April 6, 2007, 36-41.

among world currencies (particularly its relationship to the Euro), higher increases for international services appear to be logical and fair.<sup>11</sup>

The USPS Notice expands zone pricing for Express Mail, initiates volume incentives for corporate account customers, and provides discounts for customers using electronic payment systems when shipping Express Mail, Priority Mail and other competitive products. These pricing features promote efficiency and reward consumers who reduce costs. With the PAEA, Congress conferred on the Postal Service this power to compete.

In order to allow the Postal Service to run on a profit-making basis, the new law has largely price-deregulated the Postal Service, and removed public policy considerations from its pricing. In doing so, the clear intent of Congress was to eliminate the lengthy, arduous, and complex litigation that has surrounded postal rate-making over the last three decades.

Robert J. Brinkmann, "League Legislative Counsel" column *Postmasters Advocate*, July/August 2007.

Nevertheless, "competitive" does not solely refer to pricing; where two or more rivals endeavor to do the same thing, competition impels each "to perform the act ... or *render the service better or cheaper* than the rival."<sup>12</sup>

The Flat Rate Box (*sine qua non* for small office/home office ("SOHO") and on-line auction mailers) and the Flat Rate Envelope continue to be provided by the Postal Service for customers who want a simplified method of shipping items or documents. The Flat Rate box and envelope are available for domestic Priority and Express Mail, Express Mail International, and Priority Mail International. In addition to employing

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<sup>11</sup> *Wall Street Journal*, Dow Jones & Co., New York: "U.S. Dollar Exchange Rates in Late New York Trading," recent editions, to March 27, 2008.

<sup>12</sup> *Black's Law Dictionary*, Eighth Edition, West, 2004: definition of "competitors," (emphasis added).

environment-friendly packaging, these products allow customers a carefree way to ship a wide range of items. Rates for the large Priority Flat Rate box (\$12.95) for domestic addresses and the discounted \$10.95 rate for APO and FPO addresses (effective March 3, 2008 – see Order No. 63, Modifying Mail Classification Schedule) remain the same in the USPS Notice. The Public Representative salutes the Postal Service for providing a discounted rate for packages sent to military personnel overseas – another innovation made possible by the PAEA.

The Commission is responsible for reviewing the justifications for changes in competitive rates of general applicability affecting the Nation as a whole or any substantial region of the Nation.<sup>13</sup> The United States Postal Service has a herculean mission in providing reasonably-priced expedited services for remote locations across a land mass which dwarfs the delivery area of most postal administrations. It should be noted that domestic mailings can cross several time zones. Accordingly, critical entry times (CETs), dispatch and final pick-up times may be scheduled earlier in the day for customers in the Western United States, particularly for mail destinating in the Eastern United States. Dispatches from eastern time zones to western time zones have the luxury of time “added” through transit, while reciprocal shipments would find the window of time reduced one hour for each time zone traveled. Such considerations do not impact “general applicability.” These inherent conditions are well-known and accepted by the public. Nevertheless, the Postal Service’s actual performance in meeting the service standards for Express Mail and Priority Mail are not well-known While the PAEA required establishment of modern service standards for market dominant

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<sup>13</sup> See 39 U.S.C. § 3632(b)(4), and 3633; 39 C.F.R. §3015.7

products, publication of service performance data for Priority Mail and Express Mail could be a valuable tool for customers and make these products more “competitive.”

This data could be shared easily through electronic tracking already in place. The 2005 *Comprehensive Statement on Postal Operations* noted that:

Through 2005, Priority Mail has been measured by the Priority-End-to-End (PETE) system. However, in 2006 Priority Mail measurement will transition from PETE to the Delivery Confirmation Priority Mail–Retail (DCPM-R), a scanning system similar to that described above for Express Mail. PETE will be modified and used as an external validation system, similar to the system used for Express Mail. The changes will reduce costs, improve operational consistency, and increase sample size. PETE reported results primarily for flat-shaped Priority Mail. DCPM-R will expand coverage to other Priority Mail shapes. (at page 73).

This Public Representative has learned of anecdotal accounts of the electronic tracking systems being less than forgiving for some customers waiting in line in retail lobbies to send Express Mail items. Customers arriving at the point-of-sale (POS-ONE) units at the deadline, or one minute past, have been advised the service they requested was unavailable. Fortunately, there are also sales and service associates like “Ben” in the Suburban Maryland facility, 16501 Shady Grove Road in Gaithersburg, who recently told a customer, “You’ve missed the cutoff time [for the guarantee], but don’t worry – I’ll get[your Express Mail] to the truck.”

“General applicability”<sup>14</sup> is a term which can be interpreted to accommodate myriad exceptions facing the USPS’s commitment to universal service. Universal service is desirable. There are peculiar challenges, however, where increased transparency is practical while increased service may not be. These would include

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<sup>14</sup> 39 C.F.R. § 3015.2.

delivery locations in the interior of Alaska where flights arrive twice a week (weather permitting).<sup>15</sup> If possible, such anomalies should be entered into the POS-ONE system to permit Express Mail customers to select an appropriate service with a clear understanding of what service is possible. An analog approach is not appropriate for the digital age. This is the era of accountability and enhancement.

Increasing accessibility can improve service. The Public Representative recognizes the Postal Service's efforts to increase accessibility with its Click-N-Ship services, and the incentives offered to customers to initiate postal transactions on-line. Discounts for more efficient transactions make good business sense and serve the public well. Accordingly, the Postal Service is encouraged to consider the possibilities of adding PC-type access, and appropriate customer discounts, at the 2,500 Automated Postal Centers, select post office lobbies, and/or public libraries. This could empower those who do not yet have personal computers.

Lastly, The Public Representative notes that the Postal Service is changing the name of Express Mail (A) Service to "Hold for Pick Up," and employing the new zoned-price schedule. Customers who mail items using Express Mail (A) service get a guaranteed, expedited service from post office to post office. This is an excellent option which permits the addressee the freedom to pick up the item from a post office rather than having to wait at his or her delivery address until the guaranteed delivery time. Frequently, it is available for pickup before regular mail delivery. As valuable as this service is, there seems

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<sup>15</sup> *E.g.*, see Initial Comments of David B. Popkin (at 4), Docket No. CP2008-3, March 27, 2008.

to be no mention of it on the Postal Service website, *usps.com*. One could appreciate the Postal Service's restraint from frustrating customers who might attempt to purchase Express Mail (A) service when that service is not offered from their local post office. Nevertheless, one might want to use this service from a post office near one's place of employment or along the commute. The only practical way for a customer to do so is to inquire at each post office if the service is available. The POS-ONE unit must confirm such a transaction, because even if the accepting post office participates in providing both ends of Express Mail (A) service, the destination post office may not be a post office where the network can provide Express Mail (A) service. A customer might also inquire whether the recipient could pick up the item at an alternative post office. The data requested – for the fastest service the Postal Service offers – would take on the guise of the children's game, "Battleship," where opponents guess secret locations mapped on a grid. In this case, the customer must come prepared with a list of alternate ZIP Codes nearby the recipient's ZIP Code. This *Catch-22*<sup>16</sup> can dishearten customers who know of, and want to use, a tremendous product.

"Hold for Pick Up" is a welcome new name for the arcane Express Mail (A) service, and the Public Representative requests the Commission to encourage the Postal Service to promote it. Employees and customers should be aware of this option. The Postal Service may wish to consider expanding this service to nearly every post office. Local customers should be able to take advantage of

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<sup>16</sup> Joseph Heller, *Catch-22*, New York: Simon and Schuster, 1961: Regulations based on self-contradictory circular logic create absurd no-win situations.

Hold for Pick Up service, at least to other post offices within the same 3-digit ZIP Code area or served by the same plant.

The future of the mail will depend upon the ability of the Postal Service to develop a new fusion of traditional services and advanced information technologies, "a digital postal network." Successfully realized, a digital postal network will enhance the value of the mail as a 21st century communications mode and improve virtually every aspect of the nation's postal service, from efficiency and security to the range and quality of customer choices.

The President's Commission on the United States Postal Service, "Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service," July 2003, at 143.

The USPS Notice sets out reasonable pricing schedules that ensure that the American public has a moderately-priced option for expedited services and some shipping options that empower consumers who want to purchase goods without leaving home. As of Fiscal Year 2007, competitive products accounted for approximately eight-tenths of one percent (0.8%) of mail volume the Postal Service handles, yet its contribution to USPS revenue was slightly more than ten percent (10%).<sup>17</sup> This is the arena in which the PAEA has provided the Postal Service the flexibility to become a profit-making business. The Public Representative encourages the Postal Service to harness the power of competition, and to build on its success in meeting the challenges of operating under a different, but very exacting business model.

The Public Representative respectfully submits the preceding Comments for the

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<sup>17</sup> See volume, revenue and costing data materials accompanying United States Postal Service FY 2007 Annual Compliance Report, December 28, 2007 (Docket ACR2007).

Commission's consideration.

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