

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

REVIEW OF NONPOSTAL SERVICES

Docket No. MC2008-1

MOTION OF THE UNITED STATES POSTAL SERVICE  
FOR CLARIFICATION OF ORDER NO. 74  
(May 12, 2008)

On April 29, 2008, the Commission issued Order No. 74, granting the motion to compel filed by the Public Representative in the above-referenced docket. The Commission ordered the Postal Service to provide, among other things, “a complete listing and comprehensive description” of all “revenue-generating” activities which do not fall within the statutory definition of “postal services.” The Postal Service plans to file responsive information on June 9.

In addition to granting the Public Representative’s motion to compel, the Commission in its Order made various statements concerning the scope of its jurisdiction under section 404(e) of title 39, in response to the Postal Service’s filing of March 19, 2008.<sup>1</sup> On page 7 of its Order, the Commission observed that section 404(e) requires it to review “each nonpostal service” offered by the Postal Service, and noted that section 404(e)(1) defines “nonpostal service” as “any service that is not a postal service.” Later on, however, the Commission characterized section 404(e) as requiring it to “review all of the Postal Service’s nonpostal activities,” and that “[e]very revenue generating arrangement executed by the Postal Service entails either a postal service

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<sup>1</sup> United States Postal Service Notice of Submission of Sworn Statement on “Nonpostal Services” Pursuant to 39 U.S.C. § 404(e) (March 19, 2008).

or nonpostal service.” Order at 11. Furthermore, the Order states that 404(e) requires the Commission to review each of these “revenue-generating arrangements” in order to determine whether to “terminate the service or authorize it to continue.” *Id.* at 12.

This characterization of section 404(e) implies, among other things, that the Commission believes that it has the authority (whether or not it has the present intention to exercise that authority) to direct the Postal Service to cease engaging in activities expressly authorized by title 39, such as the sale or lease of its real or personal property, the consummation of agreements with other government agencies, or the acceptance of gifts, payments, or donations of services or property. The Commission’s understanding of section 404(e) also implies that if the Postal Service does not seek Commission authorization for these and other “revenue-generating arrangements,” the Postal Service will lose the authority to conduct those activities in the future.

In order to better understand the implications of the Commission’s Order, the Postal Service respectfully requests that the Commission clarify certain aspects of the Order.<sup>2</sup> First, the Postal Service requests clarification as to whether the Commission intended the Order to constitute a definitive statement of the scope of its jurisdiction under section 404(e), or whether the legal views it expressed were preliminary and interlocutory. For its part, the Postal Service suggests that a definitive interpretation of the scope of section 404(e) should await the development of a more comprehensive

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<sup>2</sup> It must be emphasized that in asking for clarification, the Postal Service does not waive any of the arguments it made in its filing of March 19. On the contrary, the Postal Service continues to believe that the scope of this proceeding is limited to a review of those services offered pursuant to the now-deleted 39 U.S.C. § 404(a)(6). The Postal Service must also emphasize that the queries posed here do not exhaust all questions for which clarification from the Commission may ultimately be necessary. One issue in particular is the manner by which many “revenue-generating arrangements” would be regulated, both as a procedural and substantive matter, under chapter 36 of title 39 (section 404(e)(5) requires that any “nonpostal service” that the Commission concludes may be continued must be regulated under chapter 36). Another issue is the extent to which the Postal Service’s data systems would need to be altered if attributable cost data had to be reported for all “revenue-generating arrangements.”

understanding of the full scope of the Postal Service’s “revenue-generating arrangements.” An analysis of the information the Commission has requested be filed on June 9 will allow a more fully informed discussion of the jurisdictional and factual issues raised by this proceeding.

Second, the Postal Service requests some clarification as to what the Commission means by the term “revenue-generating arrangement,” which the Order appears to equate with the statutory term “service.” The Postal Service generates revenue from numerous sources. Examples include (but are not limited to) forfeiture proceedings (civil, criminal, and administrative), civil penalties, emergency preparedness appropriations, FOIA and Privacy Act fees, collections from employees pursuant to the Debt Collection Act, unclaimed monies found in letters and parcels at Mail Recovery Centers, interest income, the sale of securities, the repurchase of debt, interest on overdue accounts receivable, and mortgage interest.<sup>3</sup> Are these sources of revenue “services”? Furthermore, the Postal Service generates revenue associated with the sale and lease of real property, and the sale, trade, or retirement of personal property such as postal equipment and postal vehicles. Is the sale of property a “service”? Is the lease of property a “service”? The Postal Service believes that resolution of these and similar issues would also benefit from a more fully developed record.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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<sup>3</sup> The Postal Service did not identify these sources of revenue in its March 19 filing but most, if not all, have been listed in the Trial Balances filed with the Commission.

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