

**BEFORE THE POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-001**

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Review of Nonpostal Services )  
Docket No. MC2008-1 )  
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**RESPONSE**

Pursuant to the Commission's December 20, 2008 "Notice and Order Concerning Review of Nonpostal Services," Stamps.com Inc. ("Stamps.com") hereby submits our response to the Postal Service Responses and Statements of March 19, 2008, June 9, 2008 and June 23, 2008. We thank the Postal Regulatory Commission ("PRC") for the opportunity to submit this response.

**FRAMEWORK**

In this docket, the Postal Service has taken the position that there are three categories of services the Postal Service may provide. More specifically, the Postal Service states:

the new statutory framework of title 39 shows that the Postal Service is authorized to directly provide three types of services to the public: 1) "postal services" within the meaning of section 102(5); 2) "nonpostal services" within the meaning of section 404(e) (which are those services that are "nonpostal" within the meaning of former section 404(a)(6)), if authorized by the Commission; and 3) services that are not "postal services," but are authorized by a discrete grant of authority in title 39, such as government services and philatelic services.<sup>1</sup>

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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) at 2. See also FURTHER RESPONSE OF THE UNITED STATES POSTAL SERVICE TO ORDER NO. 74, AND NOTICE OF FILING OF SWORN STATEMENTS at 2-3.

As Stamps.com understands it, the Postal Service further believes that only the second category should be reviewed in this docket by the PRC pursuant to Section 404(e) and the Postal Regulatory Commission disagrees in its preliminary view.<sup>2</sup>

Indeed, the Postal Regulatory Commission ordered the Postal Service to provide “a complete listing and comprehensive description of each nonpostal service provided as of December 20, 2006 ... that generate[s] revenues.”<sup>3</sup> Stamps.com is against any decision to base PRC review on every nonpostal service that generates revenues. We note that Section 404 nowhere associates the identification of nonpostal services with services that generate revenues.<sup>4</sup> Such a decision would cause items to be reviewed that should not, and items not to be reviewed that should. As an example of adding items that do not belong, we think the order caused the Postal Service to identify the regulatory fees it charges for Customized Postage providers as an offering of the Postal Service.

As an example in the other direction, of leaving out items that do belong, we note that the Postal Service offers many services for free, for example the various software tools provided at its website usps.com. We think these services should also be considered in this docket, where appropriate. If the Postal Service expends significant resources to provide a service but does not charge customers for it because the cost is covered by some other service for which it charges, that should not exempt the service from review.

The Postal Service has now provided its listing and comprehensive description and also has identified which of its offerings it believes should be included in each of the three categories

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<sup>2</sup> See Postal Regulatory Commission Orders 74 and 77.

<sup>3</sup> Order Number 74 at page 14.

<sup>4</sup> Nonpostal services are defined for this purpose in Section 102(c)(1) as “any service that is not a postal service defined under section 102(5).” Section 102(5) provides “‘postal service’ refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.”

it proposes. Stamps.com appreciates the significant effort of the Postal Service to make this identification. In this response, Stamps.com will identify our views on certain of these offerings relevant to Stamps.com and our customers.

### **CUSTOMIZED POSTAGE**

The Postal Service identifies “Customized Postage” as an offering belonging in the first category, as a Postal Service.<sup>5</sup> As a first matter, Stamps.com believes that Customized Postage does not belong in this docket. Customized Postage, like all other PC Postage and postage metering offerings, should be viewed as offerings of the respective providers, such as Stamps.com and our various competitors. As an example, it would not make any sense to identify a Neopost or Pitney Bowes postage meter as an offering of the Postal Service, and the PRC would and should not consider meters in this context. Thus Customized Postage does not belong in this docket.

Stamps.com believes the USPS has likely identified Customized Postage in its response because of a concern the “revenues” it generates from the regulatory fees it charges providers to participate in the Customized Postage program make those fees responsive to Order Number 74. We do not believe the regulatory fees charged for Customized Postage constitute an offering of the Postal Service either. As witness Thomas Foti correctly points out, these fees are charged to enable the Postal Service to monitor compliance with the various regulatory requirements of the program. The providers who pay the fees are not thereby customers of the Postal Service.

To the extent the PRC disagrees and does review Customized Postage or Customized Postage regulatory fees, Stamps.com expresses its support for their continued provision.

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<sup>5</sup> FURTHER RESPONSE OF THE UNITED STATES POSTAL SERVICE TO ORDER NO. 74, AND NOTICE OF FILING OF SWORN STATEMENTS at 3.

Customized Postage itself has been a great success and has brought tremendous excitement to mail. Our Customized Postage product, PhotoStamps®, is a patented Stamps.com product that couples the technology of PC Postage with the simplicity of a web-based image upload and order process. It is currently available under authorization of the U.S. Postal Service for its fourth phase market test with an authorization through May 16, 2009. Customers may create full custom PhotoStamps with their own digital photograph, or they may choose a licensed image from one of many PhotoStamps collections such as NFL®, Collegiate, and now the limited edition American Idol® collection. Since launching PhotoStamps in May 2005, more than 60 million individual PhotoStamps have been shipped to customers. Stamps.com currently has PhotoStamps partnerships with Apple, Google/Picassa, HP/Snapfish, Adobe, and others. Stamps.com favors the Postal Service providing permanent approval to the Customized Postage program at the end of the current market test, in May, 2009.

### **ELECTRONIC POSTMARK (EPM)**

The Postal Service now seeks to include its Electronic Postmark (EPM) program in its second category, as a nonpostal service that should be reviewed in this docket.<sup>6</sup> The EPM program has been restructured to simply involve qualifying vendors paying a fee to use intellectual property, namely Postal Service trademarks. Stamps.com favors the currently structured EPM program. We believe there is value to the Postal Service making sure EPM vendors provide a secure product and to using the Postal Service trademarks to indicate to end consumers that they can trust vendor products.

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<sup>6</sup> See FURTHER RESPONSE OF THE UNITED STATES POSTAL SERVICE TO ORDER NO. 74, AND NOTICE OF FILING OF SWORN STATEMENTS at 6.

## **PROPERTY**

The Postal Service has categorized its ability to leverage its property (whether real property or intellectual property) for private use as belonging in their third category, authorized by statute. Without commenting on whether this is correct, Stamps.com would like to state its general support for certain of the identified services that are beneficial to Stamps.com and our small business customers.

The Postal Service makes space available for private parties to display marketing materials in its retail lobbies. One example is the placement in retail lobbies of exhibits promoting the use of Pitney Bowes postage meters. Stamps.com favors this practice, especially as applied to providers of postage evidencing systems, such as Pitney Bowes and Stamps.com. Postal Service retail lobbies are an ideal location to inform postal customers about the benefits of postage meters and PC Postage. Because the Postal Service saves money every time customers use postage evidencing systems instead of a Postal Service retail location, this is a win-win proposition for the Postal Service and the providers.

Stamps.com also favors the Postal Service Licensing program. In addition to generating revenues for the Postal Service to the benefit of all postal customers, we believe this program provides value to the various business and charitable organizations that use Postal Service intellectual property through the program.

Stamps.com also supports the Postal Service practice of providing affiliate linking agreements, including agreements with PC Postage providers, such as Stamps.com. As in the discussion of retail lobbies above, the Postal Service website is an ideal location to inform postal customers about the benefits of PC Postage. Because the Postal Service saves money every time

customers use PC Postage, this is another win-win proposition for the Postal Service and the providers.

We again thank the PRC for the opportunity to provide this response.

Respectfully submitted,

*/s/ Seth Weisberg*

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Seth Weisberg  
Chief Legal Officer  
Stamps.com  
12959 Coral Tree Place  
Los Angeles, CA 90066-7020  
Voice: (310) 482-5808  
Fax: (310) 482-5818  
sweisberg@stamps.com