

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

Rules for Complaints

Docket No. RM2008-3

COMMENTS OF PITNEY BOWES INC.

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I. INTRODUCTION

Pitney Bowes Inc. (Pitney Bowes) submits these comments in response to Order No. 101, the Postal Regulatory Commission's (Commission) Notice and Order of Proposed Rulemaking Establishing Rules for Complaints, issued August 21, 2008.

The proposed rules seek to implement section 3662 of the Postal Accountability and Enhancement Act (PAEA)¹ by establishing a procedural framework for addressing complaints and other written communications received by the Commission. These proposed rules will replace the Commission's current complaint procedures. *See* 39 C.F.R. §§ 3001.81 *et seq.*

The PAEA expanded the Commission's complaint authority and elevated the importance of complaints as a means to enforce compliance with the objectives, factors, and requirements of the PAEA and to provide interested parties the ability to raise important concerns regarding rate, service, and unfair competition issues under the modern rate system. The proposed rules for complaints strike a reasonable balance between the competing statutory goals of greater pricing flexibility and enhanced transparency and accountability. At the same time, the rules for complaints serve as a primary tool for enforcing compliance with the objectives, factors, and requirement of the PAEA. *See* 39 U.S.C. §§ 3622(b)-(d). Further, Pitney Bowes supports the Commission's proposed "two-tiered" approach for complaints and rate and service inquiries.

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.

II. DISCUSSION

A. The Increased Importance Of Complaints Under The PAEA

Under the Postal Reorganization Act of 1970 (PRA),² all rate and classification changes were subject to prior review by the Commission. Thus, complaints did not serve as a primary mechanism for raising rate and service issues because interested parties had an opportunity to raise those issues before the rate or classification change became effective.

In contrast, under the PAEA prior review of pricing changes is limited and the Postal Service is afforded significant pricing flexibility.³ For market dominant rates of general applicability, proposed changes in pricing may be adopted in as little as 45 days. Also, while the Commission's regulations afford interested parties the opportunity to file comments in connection with the Postal Service's notice of rate adjustment, commenters are urged to limit the focus of their comments to cap compliance issues. *See* 39 C.F.R. § 3010.13(b). The scope of the Commission's review in connection with a notice of rate adjustment is similarly limited. *See* 39 U.S.C. § 3622(d)(1)(C)(iii); 39 C.F.R. § 3010.13. Accordingly, the complaint process takes on special importance under the PAEA.

The scope of the Commission's complaint authority under the PAEA is also substantially broader than it was under the PRA. Section 3662 provides, in pertinent part:

Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

² *See* former 39 U.S.C. § 3662 (2000), *superseded by* P.L. 109-435.

³ The Commission's rules continue to provide the opportunity for prior review of classification changes. *See* 39 C.F.R. §§ 3020.34, 3020.55, 3020.75.

39 U.S.C. § 3662(a). In contrast, the Commission’s complaint authority under the PRA was limited by its terms to rate and service complaints.

Moreover, under the PRA, if the Commission found a complaint to be justified, its remedial authority was limited to issuing a public report for service issues, or a recommended decision to the Governors of the Postal Service for rate and classification issues. *See* former 39 U.S.C. § 3662; 39 C.F.R. §§ 3001.85-3001.87.

Under the PAEA, the Commission is authorized to order the Postal Service to undertake corrective action to achieve compliance with the statute and remedy the effects of any non-compliance, *see* 39 U.S.C. § 3662(c), and to order fines in cases of deliberate non-compliance. *See* 39 U.S.C. § 3662(d). Under the PAEA, the decision of the Commission on a complaint is a final order, enforceable by a United States district court, *see* 39 U.S.C. § 3664, and subject to appellate review. *See* 39 U.S.C. § 3663.

This expanded complaint authority reflects Congress’ intent that complaints become a primary tool to enforce compliance with the objectives, factors, and requirements of the PAEA and to provide interested parties the ability to raise important concerns regarding rate, service, and unfair competition issues under the modern rate system.

B. The Proposed Rules Appropriately Distinguish Between “Complaints” and “Rate or Service Inquiries”

Because the expanded complaint authority vested in the Commission under the PAEA must be balanced with the flexibility afforded to the Postal Service, the proposed rules distinguish between the nature of complaints that may be filed with the Commission. The proposed rules recognize that the Commission ought to “focus more

of its limited resources on important issues that raise rate and service issues with broad implications or unfair competition issues, and less of its resources on issues that can more easily be remedied by postal management on a local level.” Order 101 at 5.

Accordingly, the proposed rules establish a “two-tiered” approach in which written petitions for relief are categorized either as “complaints” or “rate and service inquiries.”

1. Complaints

Under the proposed rules, complaints are subject to prescribed form and manner requirements and are intended to address either (1) broad rate or service policy matters, or (2) unfair competition issues. Notwithstanding the general principle that the Commission’s complaint authority is to be used to consider issues of broad applicability, the proposed rules recognize the appropriateness of individualized complaints to vindicate unfair competition claims. Specifically, Order No. 101 recognizes the propriety of individualized complaints for claims against the Postal Service under section 403(c) regarding unduly discriminatory rates, classifications, or fees, under section 404a for alleged violations of intellectual property protections or the improper use of the Postal Service’s regulatory authority to unfairly compete in a competitive market, and under section 601 regarding the scope of the private express provisions.

The “form and manner” requirements for complaints require the complainant to specifically allege the legal and factual basis of the complaint. The proposed “form and manner” requirements in part 3030.10 appear reasonably calculated to facilitate a meaningful response from the Postal Service and to enable the Commission to determine whether the complaint raises a material issue of fact or law.

By statute, the Commission is limited to considering complaints that raise “material issues of fact or law.” *See* 39 U.S.C. § 3662(b)(1)(A)(i). The proposed rules adopt a reasonable burden of production for the complainant which recognizes that relevant data or evidentiary support may be unavailable to the complainant when the complaint is filed. *See* proposed part 39 C.F.R. §§ 3030.10. The proposed rules further provide the Commission the flexibility to obtain additional information, by issuing a request or appointing an investigator, to assist the Commission’s determination as to whether the complaint raises material issues of fact or law. *See* proposed part 39 C.F.R. §§ 3030.20. Both of these measures are sound.

2. Rate and Service Inquiries

The proposed rules establish separate informal procedures for those written petitions that do not satisfy the form and manner requirements of complaints. Under the proposed rules, the Postal Service assumes a lead role in resolving rate and service inquiries. Pitney Bowes supports the informal procedures for rate and service inquiries as a means of minimizing the administrative burden on the Commission and the Postal Service and promoting the efficient resolution of isolated claims.

The transparency and accountability objectives of the PAEA are satisfied through the Commission’s monitoring role, *see* proposed part 39 C.F.R. § 3031.11, and the Commission’s authority to convert a rate or service inquiry into a complaint where the Commission receives a sufficient volume of rate or service inquiries on the same or similar issue. *See* proposed part 39 C.F.R. § 3031.12.

Proposed part 3030.13 prohibits the Commission from using the rate or service inquiry procedures in connection with complaints that raise unfair competition issues or

broad rate or service concerns. This general limitation is appropriate because these issues raise important policy issues that the PAEA has reserved for the Commission's consideration.

III. CONCLUSION

Pitney Bowes appreciates the Commission's consideration of these comments.

Respectfully submitted:

/s/

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