

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

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Review of Nonpostal Services )  
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Docket No. MC2008-1

PUBLIC REPRESENTATIVE RESPONSE TO PITNEY BOWES INC. MOTION TO  
COMPEL UNITED STATES POSTAL SERVICE TO FILE A COMPLETE LIST OF  
NONPOSTAL SERVICES

(October 22, 2008)

The Public Representative generally supports Pitney's Bowes Inc.'s (Pitney Bowes) Motion to Compel the United States Postal Service to File a Complete List of Nonpostal Services.<sup>1</sup> Through its Motion and supporting Wragg Declaration, Pitney Bowes identifies a purportedly nonpostal service – the sale of Postal Service branded postage meter ink cartridges – that was not identified in any of the Postal Service's pleadings filed to date in this case. This apparent oversight by the Postal Service occurred despite the fact that the Commission twice ordered the Postal Service to provide a complete list of nonpostal services.<sup>2</sup> Had Pitney Bowes not filed the instant Motion and asked the Commission to give the Postal Service an additional opportunity to supplement its evidence in this case, the Postal Service's ability to offer postage

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<sup>1</sup> Pitney Bowes Inc. Motion to Compel United States Postal Service to File a Complete List of Nonpostal Services, October 15, 2008 ("Motion" or "Motion to Compel"). While the Public Representative generally supports the Motion to Compel, the Public Representative does not take a position at this time on Pitney Bowes' claim that the Postal Service has no authority under the PAEA to offer the service discussed in its Motion. That issue is not material to the outcome of the Motion to Compel. If Pitney Bowes is concerned that the Postal Service is currently providing a nonpostal service that it did not offer prior to January 1, 2006 – in violation of §404(e) – it should file a complaint proceeding requesting that the Commission order the Postal Service to cease and desist offering such nonpostal service.

<sup>2</sup> PRC Order No 50, December 20, 2007; PRC Order No. 74, April 29, 2008.

meter ink cartridges as a nonpostal service would have ceased on December 20, 2008 by operation of law.<sup>3</sup> See 39 U.S.C. § 404(e)(4). The general public is concerned that such activity was not brought to the Commission's attention by the Postal Service. It is also concerned that there may be other activities subject to this proceeding that the Postal Service has not brought to light in its prior pleadings which will terminate pursuant to § 404(e)(4). Accordingly, the general public supports Pitney Bowes Motion. The Commission should, once again, order the Postal Service to file a complete list of nonpostal services that may be subject to this proceeding and afford interested persons appropriate due process to comment and submit evidence on the new activities.

The sale of Postal Service branded postage meter ink cartridges highlights the Public Representative's concern with interpreting the term nonpostal services extremely narrowly as suggested by the Postal Service. If the Commission were to interpret § 404(e) as advocated by the Postal Service, the Postal Service would be allowed to offer Postal Service branded postage meter ink cartridges at any time without regard to the requirements of § 404(e) because brand licensing is independently authorized by §§ 401(3) or 401(5).

Indeed, as exhibited with respect to the sale of Postal Service branded postage meter ink cartridges, such an interpretation would effectively render § 404(e) meaningless. The Postal Service could engage in virtually any activity by licensing its brand name to a third party to use in offering that activity. If that occurs, the Postal Service would then be generating revenue for participating in such an activity through the terms of the licensing agreement. Accordingly, the Commission should reject the Postal Service's strained interpretation of the term nonpostal services.

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<sup>3</sup> While the general public believes it is in its best interest to provide the Postal Service with as many opportunities as possible to "get it right" so long as participants are afforded appropriate due process, the Commission would be justified in allowing any nonpostal service not identified in the Postal Service's prior filings to terminate by operation of law through § 404(e)(4). The Postal Service has already had numerous bites at this apple.

The Public Representative respectfully requests that the Commission grant Pitney Bowes Motion to Compel. Upon granting the Motion to Compel, the Commission should provide an appropriate procedure schedule for the submission for witness statements and briefs on the newly identified nonpostal services.

Respectfully Submitted,

/s/ Robert Sidman

Robert Sidman

Public Representative for  
Docket No. MC2008-1

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