

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

REVIEW OF NONPOSTAL SERVICES

Docket No. MC2008-1

**STATEMENT IN SUPPORT OF PITNEY BOWES INC.'S MOTION TO COMPEL
UNITED STATES POSTAL SERVICE TO FILE A COMPLETE LIST OF
NONPOSTAL SERVICES**

Hasler, Inc., and Neopost Inc. submit this Statement in Support of Pitney Bowes Inc.'s October 15, 2008 Motion to Compel United States Postal Service to File a Complete List of Nonpostal Services ("Motion to Compel"). The Postal Service's recent decision to offer USPS branded replacement postage meter cartridges as a substitute for manufacturer-branded postage meter ink cartridges violates the applicable statute and regulations as well as the industry relied upon understanding of the role of the Postal Service. As a result, the Commission must reopen this proceeding for additional comment.

**USPS failed to Identify the Products at Issue as Nonpostal Services and those
Products Would not Qualify as such under the PAEA**

Order No. 50, directs the Postal Service to file "a complete description of each nonpostal service offered by the Postal Service on the date of enactment of the PAEA." PRC Order No. 50, December 20, 2007, at 2. Notwithstanding Order No. 50, the Postal Service has commenced the sale of branded postage meter cartridges, blatantly disregarding the requirement to include those products in its list of nonpostal services. Neopost and Hasler assert that these products cannot reasonably be considered as a nonpostal service. Under the PAEA, the Postal Service may only provide those

nonpostal services that were offered as of January 1, 2006. The sale of USPS-branded postage meter cartridges fails to meet this threshold requirement.

The Products at Issue Fail to Qualify as Postal Services

Under 39 U.S.C. §102(5), postal services “refer to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” Meter printer cartridges cannot reasonably be considered as ancillary to any of these services. Moreover, even if the Postal Service made such an untenable argument, it is still required to follow the procedures under 39 U.S.C. § 3642: it must seek the Commission’s approval prior to introducing a new postal service. *See* PostCom et al. Reply Brief at 7-14. The Postal Service has failed to follow these procedures with respect to meter ink cartridges, probably because it recognizes that there is grave doubt that such a postal product meets the requirements of 39 U.S.C. § 3642(b)(3). *See* Pitney Bowes Motion to Compel at 6-7.

**Even Assuming, *Arguendo*, the Existence of a “Third Bucket,”
the Products at Issue Do Not Fall within It**

The Postal Service may seek to rely on the amorphous “third bucket” category of revenue producing activities that are neither postal product nor non-postal services to justify its venture into USPS branded replacement postage meter cartridges. Whether such a category exists has yet to be determined. Regardless, it is certainly not for the Postal Service to unilaterally decide exactly what new offerings it chooses to place in this category. Moreover, the Postal Service should not be allowed to decide (as it may have done here) that the sale of *any* USPS license products is beyond the Commission’s purview.

Hasler and Neopost recognize that the Postal Service is permitted to license its trademarks. However, licensing, *per se*, is not a separate product or service, and Section 404(e) plainly contemplates that the Commission must still determine whether the product that bears the Postal Service's trademark falls within either of the two statutory categories and, if so, is an appropriate activity for the Postal Service to be engaged in under the criteria of Section 404(e) or, as appropriate, Section 3642(b)(3). To read the statute otherwise would allow the Postal Service to use its licensing authority circumvent regulations and to engage in whatever business activity it decides is attractive – even activities in direct competition with private sector entities engaged in the same business. Accordingly, while there may be some revenue producing activities such as the sale of postal facilities that do not readily fit into either of the two statutory categories, it is clear that the business that is the subject of Pitney Bowes' Motion does not fall into that amorphous third bucket (if it exists at all).

Conclusion

Pitney Bowes raises important issues in its Motion to Compel. The Postal Service cannot be unfettered in its ability to introduce new competitive products simply under the rubric that licensing falls outside the scope of the Commission's authority. Hasler and Neopost believe instead that the sale of these products constitutes the introduction of a nonpostal service in violation of the PAEA. Meter manufacturers are facing significant harm from this brazen act by the Postal Service. Left unchecked, the Postal Service ultimately could use its regulatory authority to drive competitors out and ultimately harm

the consumer. It is essential that the Commission reopen this matter for additional comment as soon as possible to address these concerns.

Respectfully submitted,

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