

**BEFORE THE
POSTAL REGULATORY COMMISSION**

ANNUAL COMPLIANCE REPORT, 2008

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DOCKET NO. ACR2008

**RESPONSE OF UNITED PARCEL SERVICE TO MOTION
OF THE UNITED STATES POSTAL SERVICE REQUESTING
ESTABLISHMENT OF PROTECTIVE CONDITIONS TO GOVERN
ACCESS TO CERTAIN CORE COSTING DOCUMENTATION
(December 19, 2008)**

Pursuant to Rule 3001.21(b) of the Commission's Rules of Practice and Procedure, United Parcel Service ("UPS") hereby responds to the Motion of the United States Postal Service (the "Postal Service") requesting the establishment of protective conditions to govern access to the costing information identified in the Motion that is to be filed with the Postal Service's FY 2008 Annual Compliance Report.

In its Motion, the Postal Service notifies the Commission and the public that it will file the identified costing documentation in a non-public annex. The items it intends to file under seal include the FY 2008 Cost and Revenue Analysis Report and the FY 2008 Cost Segments and Components Report, as well as much of the supporting information for those reports.

DISCUSSION

The Postal Accountability and Enhancement Act (“PAEA”) greatly altered the manner in which postal rates are set and evaluated. Congress granted the Postal Service flexibility to change its rates, but those rates remain subject to certain statutory requirements. The procedures for changing rates are much more streamlined than those used under the Postal Reorganization Act (“PRA”).

However, the Postal Service remains a government agency, and it still has a monopoly over the products that generate the vast majority of its revenue while it also competes with private enterprise. In exchange for granting the Postal Service increased flexibility to change rates, PAEA strengthened the Commission’s regulatory authority and mandated increased public transparency into the Postal Service’s finances and operations. As a result, PAEA “guarantees a higher degree of transparency to ensure fair treatment of customers of the Postal Service[] and those companies competing with the Postal Service’s competitive products.” S. Rep. No. 108-318, at 1 (2004). See also Docket No. RM2008-1, Order No. 96, at 5 (August 13, 2008) (“The PAEA relies on **public** transparency, in addition to regulation, to achieve its goal of Postal Service accountability”) (emphasis added).

The Commission and the Postal Service have both recognized that the Postal Service’s Annual Compliance Report is “[p]erhaps the most important tool[] provided by the PAEA for achieving the transparency on which the new statutory scheme relies” Docket No. RM2008-4, Order No. 104, at 2 (August 22, 2008); see also Initial Comments of the United States Postal Service in Response to Order No. 104, at 1 (October 16, 2008) (“The proposed [periodic reporting] rules represent the next step in

the evolutionary process from the former regime under the Postal Reorganization Act (PRA), in which the primary conduits of cost, volume, and revenue information from the Postal Service to the Commission were omnibus rate proceedings, to the new regime under the Postal Accountability and Enhancement Act (PAEA), in which the primary conduits of comparable information necessary for transparency and regulation are the Annual Compliance Reports”).

Nevertheless, the Postal Service has expressed its intention to file under seal the information most critical to understanding and analyzing its rates. While “eligible individuals” would be given access to the materials under restrictive protective conditions, the information would be shielded from the public at large. It would be inaccessible both to many mailers who pay those rates, and to competitors -- the same two groups to whom Congress “guaranteed” a higher degree of transparency when enacting PAEA. See S. Rep. 108-318, supra, at 1.

The withdrawal of this costing information from public view would be a dramatic departure from the status quo. The Postal Service on many occasions under the PRA sought protection from public disclosure under section 410(c) of title 39 and section 552(b) of title 5 for information it considered commercially sensitive on the ground that disclosure would cause competitive harm. However, it has routinely filed the type of costing information at issue publicly over 30-plus years under the PRA without contending that the information should be protected from disclosure under those sections. The Postal Service also filed this information publicly in last year’s Annual Compliance Report. See Motion, at 2 (December 12, 2008).

UPS submits that a decrease in public transparency of this magnitude should not be done lightly. As the Commission has stated, “Interested parties’ comments help the Commission determine if [the] requirements [of the statute] have been met.” Docket No. CP2009-8, Order No. 146, at 7 (December 11, 2008). The Commission should commence a proceeding to address whether all or some of the identified costing information should be withheld from the public, as well as other matters relating to the confidentiality of Postal Service data. In the interim, the Commission should maintain the status quo by requiring the Postal Service to file publicly the information identified in its Motion, which has been made public for more than 30 years. This would give all interested parties an adequate opportunity to fully brief this important issue.

Respectfully submitted,

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