

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

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**Review of Nonpostal Services**

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**Docket No. MC2008-1**

**PITNEY BOWES INC. MOTION FOR CLARIFICATION  
OF ORDER NOS. 154 AND 168  
(January 12, 2009)**

Pitney Bowes Inc. (Pitney Bowes) hereby moves for clarification of Postal Regulatory Commission (Commission) Order Nos. 154 and 168, issued on December 19, 2008 and January 9, 2009 respectively.

The Postal Accountability and Enhancement Act (PAEA)<sup>1</sup> limits the Postal Service's authority to provide nonpostal services to those it offered as of January 1, 2006 and directs the Commission to review each nonpostal service offered by the Postal Service on the date of the PAEA's enactment, December 20, 2006, within two years of that date. 39 U.S.C. §§ 404(e)(2) and (e)(3).

The purpose of the Commission's review under section 404(e) is to determine which revenue-generating activities of the Postal Service are nonpostal services within the scope of section 404(e), which of those was offered on January 1, 2006 and thus is eligible for the grandfather, and which of those eligible nonpostal services should continue taking into account the public need for the service and the private sector's ability to meet that need. *See* 39 U.S.C. § 404(e). Any nonpostal service that the

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<sup>1</sup> *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 refer to sections of title 39.

Commission concludes should not continue shall terminate. *See* 39 U.S.C. § 404(e)(4). Any nonpostal service that the Commission authorizes to continue “shall be regulated under this title as a market dominant product, a competitive product, or an experimental product.” 39 U.S.C. § 404(e)(5).

In Order No. 154, the Commission established the scope of its jurisdiction under section 404(e) and determined that 15 of the 47 revenue-generating activities identified by the Postal Service met the definition of nonpostal services. *See* Order No. 154, at 3. The Commission authorized 14 of the 15 nonpostal services to continue, and ruled that one nonpostal service be terminated. *See id.* Order No. 154 further stated that of the 14 revenue-generating activities which were deemed nonpostal services, the “record is not sufficiently developed” in two areas – commercial licensing and the warranty repairs program. Order No. 154, at 4. Thus the Commission reserved judgment as to whether these two nonpostal services could continue “pending the outcome of Phase II of this proceeding.” *Id.*

However, with respect to commercial licensing, the discussion in Order No. 154 as to the scope of the Phase II proceedings and the related issue of whether the PRC's determination with respect to various commercial licensing activities is final for purposes of judicial review is ambiguous.

Order No. 168, states that the Commission “deferred ruling on three issues . . . licensing, the warranty repair program, and sales of music compact discs.” Order No. 168, at 1. Order No. 168 “establishes procedures to develop a more complete record on these issues . . . .” *Id.*

With respect to commercial licensing, Order No. 168 appears to clarify Order No. 154, holding that “the Commission generally authorized the licensing of the Postal Service’s intellectual property to continue as a nonpostal service[,]” Order No. 168, at 2 (citing Order No. 154, at 73), but “found that the record on licenses related to Postal Service operations to be insufficiently developed for it to determine whether those licenses should be terminated or authorized to continue.” Order No. 168, at 2 (citing Order No. 154, at 76).

With the benefit of the discussion in Order No. 168, Order No. 154 appears to be a final order with respect to the holding that the commercial licensing activities of the Postal Service constitute nonpostal services. However, it appears that the Commission’s determination with respect to whether the Postal Service’s commercial licensing activities which the Commission characterizes as “related to postal operations” may continue or shall be terminated is interim, preliminary, and interlocutory, pending the outcome of Phase II of this proceeding.

Because the Commission’s ruling with respect to the Postal Service’s commercial licensing activities is of critical importance to Pitney Bowes and other interested parties, and because the period of time to file an appeal under section 3662 may expire shortly (and well before a more thorough record can be developed in Phase II of these proceedings), Pitney Bowes respectfully requests that the Commission clarify certain aspects of Order Nos. 154 and 168. *See* 39 U.S.C. § 3662. Specifically, Pitney Bowes requests clarification as to whether the Commission intended its determination with respect to the commercial licensing activities of the Postal Service to constitute a final order or whether the determination is interim, preliminary, and interlocutory.

Respectfully submitted:

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