

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

Annual Compliance Report, 2008

Docket No. ACR2008

**PITNEY BOWES INC. RESPONSE TO THE MOTION
OF THE PUBLIC REPRESENTATIVE TO MAKE
CORE COST, VOLUME, AND REVENUE MATERIALS PUBLIC**

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DATED: February 3, 2008

I. INTRODUCTION

Pursuant to Rule 3001.21(b) of the Postal Regulatory Commission's (Commission) Rules of Practice and Procedure, Pitney Bowes Inc. (Pitney Bowes) submits this response to the Public Representative's January 27, 2009 Motion to Make Core Cost, Volume, and Revenue Materials Public.¹

The Public Representative argues that the public information provided by the Postal Service in connection with the Annual Compliance Report (ACR) for fiscal year 2008 is inadequate, and that the Postal Service has not met its burden of showing that publicly disclosing core costing materials would cause substantial commercial harm to any of its competitive products. *See* PR Motion at 1. The Public Representative further alleges that the Postal Service's failure to publicly disclose its core costing information will frustrate the overarching policy goal of the Postal Accountability and Enhancement Act of enhanced transparency and accountability. *See id.*, at 2.

The Public Representative moves the Commission, as an "interim solution for purposes of this docket[,]” to make publicly available all private versions of the Postal Service's core costing information, including "library references filed in this docket, as well as any other financial reports that are needed for compliance review, that display financial data for postal services at the individual product level or above.” *Id.* The Public Representative further observes that a "comprehensive analysis of the commercial sensitivity of the Postal Service's financial information[.]” is an issue that should "occur in a docket that is less compressed than the annual compliance review.” *Id.*

¹ *See* Motion of the Public Representative to Make Core Cost, Volume, and Revenue Materials Public (PR Motion), filed January 27, 2009.

Pitney Bowes agrees that the Commission should provide a forum for a comprehensive analysis of the commercial sensitivity of the Postal Service's financial information, to identify the appropriate balance between the statutory goals of transparency and accountability and the Postal Service's legitimate interest in protecting confidential commercial information regarding its competitive products.

II. DISCUSSION

Notwithstanding separate Commission proceedings regarding procedures for according appropriate confidentiality² and periodic reporting obligations,³ no proceeding has yet afforded a comprehensive analysis of the commercial sensitivity of the Postal Service's financial information. Similarly, the recent Postal Service motion seeking to impose additional access restrictions to nonpublic core costing information – which the Commission correctly denied as overly-restrictive – directly implicated these issues but did not resolve them.⁴

Pitney Bowes recognizes the legitimate interest the Postal Service has in protecting commercially sensitive information about its competitive products and, therefore, agrees that certain financial information pertaining to competitive products will likely be unsuitable for unqualified public disclosure. At the same time, Pitney Bowes shares the Public Representative's concerns regarding the public disclosure obligations of a government establishment competing in commercial markets. Pitney Bowes also shares the concern that overbroad access restrictions may frustrate the transparency and

² See PRC Order No. 96, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality (Dkt. No. RM2008-1), issued August 13, 2008.

³ See PRC Order No. 104, Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports (Dkt. No. RM2008-4), issued August 22, 2008.

⁴ See Motion of the United States Postal Service Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation (USPS Motion), filed December 12, 2008.

accountability objectives of the PAEA and discourage public participation which has historically informed and benefited the Commission's oversight responsibilities.

Under the PAEA it is incumbent upon the Postal Service to make an affirmative showing that the likely commercial injury to the Postal Service outweighs the public interest in disclosure. *See* 39 U.S.C. §§ 504(g)(3)(A); 3652. With respect to the core costing information withheld from the 2008 ACR, the Postal Service has failed to meet that burden. The Postal Service has not come forward with any specific allegations of competitive harm and, in fact, the same information was disclosed in the 2007 ACR without apparent harm.⁵

As noted by the Public Representative, the Postal Service's 2007 ACR filing contemplated a "comprehensive assessment by the Postal Service, the Commission, and interested stakeholders of what data should, and should not, be accorded protection," PR Motion at 7 (quoting FY 2007 ACR, at 33). The Commission should initiate a separate proceeding or issue an information request in a pending Commission rulemaking to allow a fuller exploration of the complex interrelationship of transparency, accountability, and competitive interests as they pertain to the core costing information presented in the ACR.

III. CONCLUSION

For the reasons stated above, Pitney Bowes requests that the Commission initiate a separate proceeding or issue an information request in a pending rulemaking to facilitate the comprehensive analysis of the commercial sensitivity of the Postal Service's financial information.

⁵ We note that the Postal Service cooperated fully with Pitney Bowes' request for access to SAS programs which had been filed in USPS-FY07-7, but which were not filed publicly in Docket No. ACR2008.

Pitney Bowes further commends the Public Representative for advancing the dialogue on these important issues.

Respectfully submitted:

/s/

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