

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Annual Compliance Report, 2008

Docket No. ACR2008

PARCEL SHIPPERS ASSOCIATION RESPONSE TO THE PUBLIC  
REPRESENTATIVE'S MOTION TO MAKE CORE COST, VOLUME, AND  
REVENUE MATERIALS PUBLIC

(FEBRUARY 3, 2009)

Pursuant to Rule 3001.21(b) of the Postal Regulatory Commission's (Commission) Rules of Practice and Procedure, the Parcel Shippers Association (PSA) submits this response to the Public Representative's January 27, 2009 Motion to Make Core Cost, Volume, and Revenue Materials Public (PR Motion). The Public Representative moved that "the Commission, after a reasonable period for response to this Motion, make the original, private versions of the Postal Service's core costing materials public. This motion extends to all other 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.**" PR Motion at 2 (footnote omitted) (Emphasis added).

The Public Representative is meeting its responsibilities admirably in extending and significantly informing the debate over how the Commission should balance the sometimes competing goals of the Postal Accountability and Enhancement Act (PAEA)<sup>1</sup>

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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 in these comments are to sections of title 39.

for “transparency” and a “level playing field” in those markets where the United States Postal Service (Postal Service) competes with the private sector. The crux of the issue is what Postal Service information should be protected from public disclosure.

Several PAEA implementation proceedings have involved the confidentiality issue. As the Public Representative points out, the confidentiality issue is at the heart of at least two pending proceedings. PR Motion at 8.<sup>2</sup>

The Public Representative’s motion calls for disclosure of financial data for postal services, including competitive products at the individual product level or above. Presumably, this would permit the Postal Service to aggregate data for Parcel Select, Parcel Return Service, Express Mail, Priority Mail, and Bulk International Mail. This causes some concern. It also could require information to be publicly reported on individual competitive contract agreements with mailers and service providers which the Commission labels Negotiated Service Agreements. This causes great concern.<sup>3</sup>

In response to an earlier Postal Service motion,<sup>4</sup> PSA explained its position on confidentiality for competitive product data:

It appears to us that the Postal Service could sufficiently protect the confidentiality of its competitive product cost data by replacing codes (in its core costing materials) for specific competitive products (e.g., Parcel Select) with a general code for competitive products. For example, in IOCS (USPS-FY07-27 from Docket No. ACR2007), a direct tally for Parcel Select could be recorded as

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<sup>2</sup> See Docket No. RM2008-4, Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports (Order No. 104); Docket No. RM2008-1, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality (Order No. 96).

<sup>3</sup> We read the Public Representative’s motion that the Postal Service “display financial data for postal services at the individual product level or above” as potentially requiring public disclosure of commercially sensitive information on each individual competitive product contract rate (NSA).

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

a direct tally for competitive products. This approach is consistent with the approach taken in the FY 2008 RPW report (see Exhibit A attached), which effectively treats all competitive products as one product.

Response of Parcel Shippers Association and Direct Marketing Association, Inc. to Motion of the United States Postal Service Requesting the Establishment of Protective Conditions, December 19, 2008 (PSA/DMA Response) at 4.

As the Public Representative points out, in the FY2007 ACR, the Postal Service called for a “full discussion, in a suitable proceeding,” of the implications of the confidentiality issue, but “[t]he Commission has yet to solicit the anticipated ‘full discussion, in a suitable proceeding’ of the commercial sensitivity of postal data, and, consequently, it has yet to identify the ‘clear rules laying out what is and is not confidential.’” PR Motion at 7-8 citing FY 2007 ACR, December 28, 2007.

We share the Public Representative’s frustration that more than two years after the enactment of the PAEA a number of important implementation issues, including many of those related to confidentiality, remain open.<sup>5</sup> We also expressed displeasure that the Postal Service sought to impose overly burdensome protective conditions and perhaps overly restrictive confidentiality rules on this ACR proceeding through last-minute motion practice.<sup>6</sup> Fortunately, the Commission denied the Postal Service motion. PRC Order No. 155 (December 23, 2008).

We believe, however, that more experience under the PAEA, and a better record as to private sector practice is necessary to adequately inform the Commission and the

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<sup>5</sup> While we admit to frustration that some important PAEA implementation issues remain unresolved, it is difficult to imagine how implementation of this complex Act could have proceeded more rapidly or smoothly than it has under the Commission’s and the Postal Service’s leadership.

<sup>6</sup> See PSA/DMA Response at 1 (“After waiting for months, on December 12, 2008, the Postal Service asked the Commission to establish protective conditions with respect to the extensive supporting documentation for the 2008 Annual Compliance Report (ACR) to be filed on December 29, 2008”).

mailing community before information is disclosed in the manner sought by the Public Representative. This is particularly true with respect to the information on individual competitive product contract rates. Under the Commission's rules an individual contract rate agreement may constitute a separate product. It seems very likely that disclosure of price, volume, revenue, and cost information about such an individual contract, in a competitive market atmosphere, could cause commercial harm. At a minimum, such information on contract rates should be aggregated before being publicly disclosed as sought by the Public Representative.

We also do not believe the Public Representative has demonstrated an urgent need to have the information it seeks in connection with the pending ACR proceeding.<sup>7</sup> The Public Representative says it needs this information because it "intends to file comments that analyze the relationship between attributable costs and revenues for individual products, as well as trends in those relationships over time. Its comments would involve all products—market dominant and competitive—that are subject to the PAEA's positive contribution requirements." PR Motion at 1. While this information will be informative, it is not urgently needed. If the Public Representative intends to analyze "trends" in "relationships over time" under the PAEA, there has hardly been enough experience to establish any trends now—the anticipated May 2009 price adjustments will be only the second under the PAEA.

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<sup>7</sup> The Public Representative's reference to "star chamber" proceedings and its vision of "portions [of information requests] that will have to be secretly issued, answered, and couriered back and forth, only in hard copy form" may be a bit of an overstatement. See PR Motion at 11, 12.

While we are sympathetic to the Public Representative's wish to determine for itself whether the Postal Service is "in compliance,"<sup>8</sup> we do not believe that with respect to competitive products it is a necessary function of the Public Representative or any other party. We have said in the past, and continue to assert here, that to ensure a level playing field, aspects of the compliance responsibility with respect to competitive products may have to be confined to the Commission alone.<sup>9</sup>

We agree with the Public Representative that "[t]he authors of the PAEA clearly thought that they were establishing a regulatory framework that would enhance the transparency and accountability of the Postal Service." PR Motion at 14.<sup>10</sup> With respect to competitive product information, however, we do not think Congress intended the Postal Service to have to disclose more information than its private sector competitors. Transparency with respect to competitive products is substantially met through the PAEA's imposition of 10-K and other Securities and Exchange Commission reporting requirements and the application of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262).

Finally, we believe there is no need to rush. There is no need to risk disclosing information that may cause competitive harm to the Postal Service. As the PAEA-

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<sup>8</sup> See e.g. PR Motion at 1, 4, 6, 11-13,17.

<sup>9</sup> See Docket Nos. CP2008-8, 2008-9, and 2008-10, Comments of Parcel Shippers Association in Response to Order No. 81 Concerning Prices Under Global Plus Negotiated Service Agreements (June 19, 2008) at 3 ("Third, to promote a level playing field, the PAEA prohibits cross subsidization. See 39 U.S.C. §3633. However, a level playing field requires that it be the Commission, not a Postal Service competitor, that reviews and examines the terms of contracts for rates not of general applicability to ensure there is no cross subsidization and that they otherwise comply with applicable law. We are confident the Commission can and will fulfill its responsibilities in this area without the assistance of others.")

<sup>10</sup> See also PR Motion at 5 ("Section 504(g) instructs the Commission, when it determines what the Postal Service's public disclosure obligations are, to bear in mind that there is a '**public interest**' in maintaining the '**financial transparency**' of the Postal Service as a '**government establishment competing in commercial markets.**' (Emphasis added).")

required Federal Trade Commission Report demonstrated, the playing field does not currently tilt in favor of the Postal Service.<sup>11</sup> The mailing community can surely wait at least until the completion of the pending proceedings involving confidentiality issues to have this information.

## **CONCLUSION**

We are sympathetic with the Public Representative's position that Postal Service core financial information, particularly with respect to market dominant products, should be publicly available. It may also be possible to disclose financial information aggregated at the competitive product level in some instance without doing competitive harm.

We believe strongly, however, that it is appropriate to afford the Postal Service a level of confidentiality regarding competitive product information, particularly information related to contracts between the Postal Service and individual companies, that is comparable to that afforded to Postal Service competitors. PSA recommends that the Commission convene a separate proceeding to delve more deeply into this issue.

In the meantime, all financial information regarding individual competitive product contracts should remain confidential. In its motion the Public Representative "moves that the Commission, after a reasonable period for response to this Motion, make the original, private versions of the Postal Service's core costing materials public." PR Motion at 1-2. Should the Commission grant the Public Representative's motion, all

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<sup>11</sup> See Accounting for Laws that Apply Differently to the United States Postal Service and Its Private Competitors; A Report by the Federal Trade Commission (December 2007) at 64.

financial information regarding individual contracts should be redacted, coded, or aggregated before these materials are made public.

Respectfully submitted,

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