

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

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Notice of Price Adjustment

Docket No. R2009-2

PARCEL SHIPPERS ASSOCIATION COMMENTS
IN RESPONSE TO NOTICE OF PRICE ADJUSTMENT
FOR MARKET-DOMINANT POSTAL PRODUCTS
AND LIMITED CLASSIFICATION CHANGES
(March 2, 2009)

Pursuant to Postal Regulatory Commission (Commission) Order No. 180¹ and Commission Rules of Practice, the Parcel Shippers Association (PSA) submits these comments on the price changes proposed by the United States Postal Service (Postal Service).² Order No. 180 invites interested persons to “submit comments on the planned price adjustments.” Order No. 180 at 20. PSA appreciates this opportunity to

¹ Notice and Order on Planned Rate Adjustments and Classification Changes for Market Dominant Postal Products (Docket No. R2009-2) (Order No. 180).

² United States Postal Service Notice of Market-Dominant Price Adjustment (February 10, 2009) (Adjustment Notice).

comment on the second round of market dominant price increases under the Postal Accountability and Enhancement Act (PAEA).³

PSA is a voluntary industry association consisting of members that ship packages, largely from business to consumers, and companies that support those activities. A list of PSA members is available on the association's web site at www.parcelshippers.org. PSA's mission is to promote competition in the package delivery sector. It strives to encourage a competitive environment that results in the best possible service at the lowest possible costs.

PSA's members, collectively, touch the vast majority of the Postal Service's product in the Package Services class now categorized as "competitive products." See section 3631(a). PSA members also make extensive use of carriers other than the Postal Service. Its members, however, also ship, or consolidate for delivery to the Postal Service, hundreds of millions of packages, such as First-Class Mail parcels, Standard Mail parcels, Bound Printed Matter, and Media Mail, that are now categorized as "market-dominant products" and are addressed by this Order.

We do not ask the Commission to take any action *at this time* to change the prices proposed by the Postal Service. In fact, we applaud the Postal Service for increasing workshare incentives for destination entry, particularly to the Destination Delivery Unit (DDU) and the Sectional Center Facility (SCF) for Standard Mail Parcels and Not Flat Machinables (NFM's). We do, however, ask the Commission to consider,

³ Pub. Law 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.

in the future, two issues raised by the Adjustment Notice. First, is an increase for a product that is four times as large as the price cap amount, permissible under the PAEA? Second, how should *de facto* increases resulting from Postal Service rule changes be taken into account for purposes of the price cap?

Average Price Increases Should Not Substantially Exceed the Price Cap

In its Adjustment Notice, the Postal Service proposes to increase prices for Standard Mail parcels and NFM's by an average 16.4 percent.⁴ The Price Cap is 3.8 percent (as adjusted for unused pricing authority from last year's rate adjustment).⁵ The average Standard Mail Parcel and NFM price increase is more than four times the Price Cap. In its comments on the 2008 ACR PSA said:

The 9.66 percent average increase for Standard Mail Parcels and NFM's, which is three times the cap and twice the increase of any other mail product, is inconsistent with the objectives and factors of the PAEA. We believe this will have to be addressed by the Postal Service or in future proceedings.⁶

We understand the Postal Service believes the Standard Mail Parcels and NFM product is "below cost," but as we said before "[t]o the extent the Postal Service believes it needs to increase the cost coverage, it should do so on a more gradual and incremental basis." PSA 2008 Comments at 6. In that docket PSA, the Direct Marketing

⁴ Adjustment Notice at 14.

⁵ Adjustment Notice at 3.

⁶ Comments of the Parcel Shippers Association on Planned Rate Adjustment for Market Dominant Postal Products and Limited Classification Changes. (Docket No. ACR2008) at 10 (PSA 2008 Comments).

Association, and the Association for Postal Commerce each argued that the proposed increase for Standard Mail parcels was excessively high. Deciding that the proposed increases met “minimum requirements,” the Commission decided that question only for the purposes of that case:

The Commission recognizes that this filing represents the initial Postal Service effort to seek rate adjustments under the Commission rules issued last October. The Commission expects the Postal Service will gain experience from both mailer comments and this review, and use this experience to improve its justifying rationale in future filings. For purposes of this initial rate case filing, the Commission finds that the Postal Service’s explanation meets the minimum requirements of the PAEA and the Commission’s rules and that the above average increases sought for categories that may not be covering their costs are appropriate in this case.⁷

PSA supports pricing flexibility for the Postal Service. It is necessary if the Service is to survive and thrive. Pricing flexibility, however, should be exercised to “encourage increased mail volume,” not drive it away as we fear the proposed price increases for Standard Mail Parcels and NFMs may do. See 39 U.S.C. § 3622(c) (7). In fact, we believe these prices are so out of line that *if* they are challenged by complaint pursuant to § 3662 or *when* they are reviewed through the annual compliance procedure pursuant to § 3652, PSA believes that they would result in a system that does not achieve another important objective under the PAEA—“[t]o establish and maintain a just and reasonable schedule of rates and classifications. . .” 39 U.S.C. § 3622(b) (8).

⁷ Review of Postal Service Notice of Market Dominant Price Adjustment, (Docket No. R2008-1)(Order No. 66) (March 17, 2008) at 41.

We reiterate, this increase is more than four times the applicable price cap. This is not reasonable. The Commission should amend its rules to prohibit increases of this magnitude in the future.

De Facto Price Increases Resulting from Rule Changes Should be Taken into Account in Determining Price Cap Compliance

The Postal Service posted final rules, effective May 11, 2009 on its website (pe.usps.com/FederalRegisterNotices.asp) at the same time as the proposed market-dominant price adjustments.⁸ Included in these final rules are major changes for Standard Mail Parcels and NFMs, most importantly making origin-entered parcels ineligible for SCF/3-Digit and 5-Digit prices. USPS-R2009-2/2, Standard Mail Attachment Preface FINAL.doc.

As result of the rule changes described above, the average rate increase for Standard Mail parcels and NFMs will be even higher than the 16.4 percent estimated by the Postal Service. Adjustment Notice at 14. In the Postal Service's price cap calculations, the 16.4 percent average rate increase was developed based upon the assumption that a large portion of SCF/3-Digit and 5-Digit origin-entered parcels and NFMs will migrate to destination entry and thus pay lower rates in response to the new standards. USPS-R2009-2/2, CAPCALC-STD-FY2009.xls, "Parcels Migration Distributions." PSA believes that the average rate increase should be calculated assuming constant mail mix, i.e., origin-entered SCF/3-Digit and 5-Digit parcels will

⁸ According the USPS website, the rules have not yet been published in the *Federal Register*.

remain origin-entered in May and thus pay the BMC presort rate. Under this constant mail mix assumption, the average rate increase for Standard Mail Parcels and NFM's is approximately 20 percent, four percent higher than the USPS estimate.⁹

During postal reform implementation proceedings commenters warned against and the Commission recognized the possibility of such *de facto* price increases that could, in effect, circumvent the price cap. In Order No. 26 the Commission discussed this:

Finally, the McGraw-Hill Companies, Inc. (McGraw-Hill) suggests that the rules should include a method to reduce the price cap if the Postal Service performance levels deteriorate, or if the Postal Service places costly mail preparation requirements on mailers. See McGraw-Hill Reply Comments, July 30, 2007, at 6-7. During the Kansas City field hearings, witness Stumbo of Meredith Corporation expressed a similar concern:

We would submit that the critical issues regarding cost shifting and service reduction are [sic] the rate-setting process must contain a mechanism to adjust rates to reflect the shift in cost from the Postal Service to private industry. In addition, the rules should contain methodology to adjust rates to reflect the diminished level of service the imposition of preparation rule changes or other means. Transcript of Kansas City Field Hearing, June 22, 2007, at 40.

No commenter has suggested a method for applying such adjustments. The Commission is sympathetic to these concerns, yet finds the better course is to defer such considerations. The statute establishes a system of accountability through increased transparency. The Commission is developing separate rules providing for annual Postal Service reports that will include data on service achievement. Additionally, proposed rule 3200.91 requires the Postal Service to

⁹ The "constant mail mix" calculation can be performed by setting the values in the green Origin ADC, Origin ADC/BMC, and Origin BMC cells in worksheet "Parcels Migration Distributions" equal to 1 and the values in the remaining green cells equal to zero. Once these values are changed, the average Standard Mail parcel and NFM increase in cell E159 of worksheet "LFP Revenue@New Prices" increases from 16.4% to 19.9%.

inform the Commission of changes that would alter the nature of a product through the imposition of preparation rule changes.

The Commission expects that the Postal Service will operate within both the letter and the spirit of the PAEA. For now, it is best to presume that the Postal Service will do so. If experience shows that additional regulations in this area are necessary to achieve the objectives of the legislation, the Commission is obligated to develop such regulations, or recommend to Congress appropriate additional legislation.¹⁰

PSA believes the time has come for the Commission to initiate a rulemaking to determine whether *de facto* price increases, such as described above, should be allowed under the price cap regime required by the PAEA.

Conclusion

Under the PAEA, implementing rules, and prior Commission decisions, it would be appropriate for the Commission to find for purposes of this case only that the prices proposed by the Postal Service for market-dominant package products are in compliance with the price cap. Indeed, PSA commends the Postal Service for using the pricing flexibility afforded it by the PAEA to promote package delivery at lowest combined costs by providing more meaningful destination entry price incentives.

PSA is very concerned, however, about two questions raised by the Adjustment Notice. First, is an average percentage increase for a product that is four times as large as the price cap amount, permissible under the PAEA? Second, how should *de facto* price increases resulting from Postal Service rule changes be taken into account

¹⁰ Order No. 26 at 32-33

for purposes of the price cap? PSA urges the Commission to initiate a rulemaking in the near future to address these two questions.

Respectfully submitted,

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