

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

DOCKET No. MC2009-24

FINAL REPLY OF XLA TO REPLY BY THE UNITED STATES POSTAL SERVICE
PURSUANT TO XLA'S COMMENTS PURSUANT TO PRC ORDER 207

May 7, 2009

On May 6, 2009, the USPS filed a reply to our comments made in response to Order No. 207 on May 5.

In the first instance, the USPS related our comments on Order 207 to what they deemed to be a similar issue ruled on last year in Dockets MC2009-10 and CP2009-12 and reminded the Commission that at the time the Commissioners ruled that the issue raised by XLA was beyond the scope of that proceeding and to the extent that XLA thought that the 'regulatory advantages' it cited fell within the Commission's purview, it would need to develop its claim more fully.

Our most recent comments do not cite any regulatory advantages attributed to the USPS versus other competitors in the international parcel delivery Competitive Products space, regardless as to our feelings on this issue. Much debate has been had relative to whether these "regulatory distinctions" are advantageous or not, in fact in the very dockets the USPS referred to mentioned in the previous paragraph, Mr. Alverno's comments included the following paragraph:

"Finally, in response to concerns about the purported advantages the Postal Service has over private sector companies, the Postal Service submits that these issues were briefed and considered at length by the Federal Trade Commission in its report to Congress. The Commission findings that various federal laws produce a net competitive financial disadvantage for the Postal Service compared to its competitors, in the range of \$330-782 million annually, demonstrate that the Postal Service carries a burden in executing its statutory responsibilities, that far outweighs any perceived advantages to which competitors might point."

XLA's views about the veracity of this statement and the study relative to the abovementioned Dockets aside, Section 407 (e)(2) states that the laws are to be applied "*in the same manner*" by all relevant agencies. By writing how they are disadvantaged by the unequal regulatory regime, the USPS by implication acknowledges that the laws are not being applied in the same manner.

In the same reply Mr. Alverno filed last December, he stated that "it appears Mr. Gensburg's purpose is to draw attention to 407(e)(2), without actually asking that the

Commission do anything about it in this proceeding.” In our comments filed on May 5, we are asking for either of two possible remedies specifically mentioned at the end of our comments, one of which would still allow for accession to the USPS’s request to move the NSA in question to the Competitive Product List.

In his comments filed yesterday, Mr. Alverno “underscores” the following passage from his earlier reply comments (I assume to say they still apply today):

“Section 407 (e)(2) is not being ignored. As required by that provision and other status applicable to the exportation of postal items, the Postal Service, Customs and Border Protection and the Department of State are collaborating with each other and other UPU members on the practical implementation of section 407(e)(2). Therefore, the Commission need not address customs clearance in this proceeding.”

Whether Section 407(e)(2) is or isn’t being ignored in the sense that the USPS is “collaborating” on it with various governmental agencies is something we can’t speak to. However, implied by his statement is the fact that Section 407(e)(2) has yet to be carried out, nearly two and a half years after the PAEA became law.

Mr. Alverno’s reply then goes on to reiterate that the USPS is in the “ongoing process of implementing Section 407(e)(2) in a manner that is feasible for all concerned. To take sudden action in this proceeding would compromise that process, and it would unduly complicate the Postal Service’s contractual relations with a foreign postal administration that do not concern customs processes”.

So, and obviously I am paraphrasing, the USPS claims to be engaged in an ongoing process of implementing one part of a law enacted almost two and a half years ago that is feasible for all concerned (except competitors who claim harm by the same ‘ongoing process’) yet to accept either of XLA’s suggestions concerning this NSA would somehow obstruct that process and would upset a commercial (by virtue of the desire to move it to the Competitive Product List) agreement made with a foreign postal administration, which should somehow trump the law that isn’t yet being comported with.

The PAEA allows the USPS to act more commercially in a competitive environment yet also sets up certain safeguards to ensure that the regulatory playing field is even. Even the USPS, in its comments above and referred to in the past, seems to verify that the playing field is not even. XLA’s view is that the law has interconnected parts and must be applied evenly and simultaneously as written, not in pieces over time and under at least the partial direction of a party that stands to gain or lose, depending on perspective, by acceding to its legal obligations.

Respectfully submitted,

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