

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

ANNUAL COMPLIANCE REPORT, 2009)
) Docket No. ACR2009
)

**MOTION OF
THE ASSOCIATION FOR POSTAL COMMERCE, DIRECT MARKETING
ASSOCIATION, ALLIANCE OF NONPROFIT MAILERS, MAGAZINE
PUBLISHERS OF AMERICA, INC., AND TIME WARNER INC.
FOR EXTENSION OF TIME TO RESPOND TO
MOTION OF THE PUBLIC REPRESENTATIVE
(December 22, 2009)**

Pursuant to Commission Rules of Practice 3001.16 and 3001.21, the Association for Postal Commerce (“PostCom”); Direct Marketing Association (“DMA”), Alliance of Nonprofit Mailers (“ANM”), Magazine Publishers of America, Inc. (“MPA”) and Time Warner Inc. (“Time Warner”) (collectively, “Mailers”) respectfully request that the Commission extend the time for responding to the Public Representative’s December 17 “Motion Requesting Commission to Direct United States Postal Service to Provide Estimates of Rate Adjustments Necessary to Maintain Financial Stability” from December 24, the current due date under Rule 3001.21, until January 7. While Mailers generally support the Postal Service’s Response filed on December 18, Mailers believe that a more thorough response to the Public Representative’s motion is warranted than allowed by the standard response period of seven days.

ARGUMENT

In its Motion, the Public Representative raises several novel arguments that demand a detailed and thoughtful response. Primary among the issues raised by the Public Representative is the degree to which the Commission can order an increase in rates based solely on the need to maintain the “financial stability” of the Postal Service. Contrary to the Public Representative’s suggestion, it is far from settled that the Congress intended to “preserve[] the policy that the Postal Service would not be funded by taxpayers.” Public Representative Motion at 6. The PAEA contains no language expressly endorsing this goal, and, as the Public Representative acknowledges, the language of the PRA relied on to establish this goal was specifically not included in the PAEA.

Even if such a purpose could be found in the PAEA, it is unclear whether the Commission would have any authority to enforce such a mandate through ordering the Postal Service to increase its rates. The fundamental thrust of PAEA was to replace the traditional cost-of-service ratemaking system of the Postal Reorganization Act with a new system based primarily on index-based ratemaking. This move is reflected most directly in the “requirement” of 39 U.S.C. § 3622(d) relating to the CPI-based limitation on rate increases. By contrast, nothing in the PAEA explicitly permits the Commission to order an increase in rates on the ground that doing so would promote the Postal Service’s “financial stability.” The only applicable reference to the “financial stability” of the Postal Service in the PAEA appears in section 3622(b)(5) of the PAEA, which merely lists the maintenance of financial stability as one of several “objectives” of modern rate

regulation. Hence, it is by no means evident that a policy disagreement over what rate levels best serve the Postal Service's financial stability in the current economic environment rises to the level of "noncompliance" with the PAEA sufficient to empower the Commission to override the Postal Service's rate-setting judgment under 39 U.S.C. § 3653(c).

Finally, if the Commission indeed lacks the authority to prescribe rate changes on this ground, there likewise appears to be no authority for the Commission to order the Postal Service to provide the rate estimates requested by the Public Representative in this proceeding. At a minimum, nothing in 39 U.S.C. § 3652, the provision governing annual reports by the Postal Service to the Commission, requires such information. Nor do the periodic reporting rules codified by the Commission at 39 C.F.R. Part 3050.

The discussion above is only a cursory examination of the issues raised by the Public Representative's motion. The novelty of the legal theories relied on by the Public Representative demands a more in-depth response from the mailing community. To ensure that the issues raised by the Public Representative are thoroughly addressed, Mailers ask that the time allotted for responses to the Public Representative's motion be extended to January 7, 2010. This extension is justified by the novelty of the Commission action sought by the Public Representative, the complexity of the issues raised by the Public Representative's motion, the interruptions to the work schedules of affected parties and the Commission caused by the historic snowstorm of December 19-20, and the limited availability of key personnel of the parties over the Christmas and

New Year's holidays. An extension to January 7 would ensure that the Commission will be provided with information in sufficient depth to allow it to make a reasoned decision on the merits of the Public Representative's motion.

Respectfully submitted,

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