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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001

ANNUAL COMPLIANCE REPORT, 2009	))	Docket No. ACR2009

REPLY COMMENTS OF THE PARCEL SHIPPERS ASSOCIATION

(February 23, 2010)

The Parcel Shippers Association respectfully submits these reply comments. These comments respond to the initial comments of the Public Representative, which ask the Commission to prescribe, on its own initiative, rate increases in excess of the CPI cap, and to [others—Valpak] who raise the issue of products which may not be covering attributable costs.

But first, we mention an issue on which there is broad agreement: that legislative relief on the schedule for pre-funding health and pension obligations is essential. As William Olson said at the Public Forum "part of the responsibility of the mailers in this room and mailing associations and in fact the Commission is to get the word back to the Hill that this is a burden that cannot be sustained." ACR Tr. 1/29. PSA agrees.

1. Now Is Not the Time for an Exigent Rate Adjustment.

Now is not the time to "tinker" with rates for market dominant products. *See* ACR Tr. 1/49. There seemed to be consensus on that at the February 17 Public Forum. Even the Public Representative, who is being cast by many as a villain in this proceeding, offered that he wanted "to make it clear that the public representative did a study which *did not* recommend rate increases, but was providing the opportunity for the Commission to understand what types of rate increases might be needed in three different scenarios. . . ." ACR Tr. 1/71 (emphasis added); *see also* Public Representative Comments at 15 ("Elsewhere, however, the Public Representative disavows any recommendation "that the Commission order any particular rate adjustments,")

Chairman Goldway is correct that the Postal Service finds itself in "dire straits" today. But, the Postal Service determined that it is not prudent to impose additional costs on mailers during difficult economic times by increasing market dominant product prices in 2010. Some may hope that 2010 price increases might yield additional short-term revenue, but that is not at all certain. PSA agrees with the course charted by the Postal Service. Predictability and stability in rates should prevail in 2010.

The Public Representative has done a service by reminding us how fortunate we are that Congress passed and the President signed the Postal Accountability and Enforcement Act (PAEA).[1] He calculates price increases ranging from 3.1 to 10.2 percent could be necessary for the Postal Service to achieve "break even" under different scenarios. Public Representative Comments at 13-26. Indeed, increases in that range would be required were it not for the PAEA. Fortunately, for the financial health of the mailing industry, the Postal Service, its customers, and PSA's members

[1] *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.

"break even" was a requirement of the old Postal Reorganization Act.[2] Under the PAEA it is no longer required.[3] And while "financial stability" is an objective of the PAEA as he points out, so is "predictability and stability in rates." *See* 39 U.S.C. §§ 3622(b)(2), (5).

In his written comments, the Public Representative suggests that the Commission could put in motion an "exigent" rate adjustment. He cites 39 U.S.C. §§ 3653(c) and 3662(c) as authority for that action. Section 3622(d)(1)(E), however, provides that the Commission may approve an exigent rate increase only if three conditions are satisfied: (1) the Postal Service must request the increase (2) "extraordinary or exceptional" circumstances must exist, and (3) the increase must be "reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States." 39 U.S.C. § 3622(d)(1)(E). As David Levy stated at the Public Forum "[w]e do not believe that either the statutory scheme or the postal service's present circumstances give the Commission authority to in effect *sua sponte* implement what would amount to an exigent rate increase that the postal service has not asked for. . . ." ACR Tr. 1/75. Mr. Levy has it correct. There has been no Postal Service request. There can be no exigent rate adjustment.

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[2] The Postal Reorganization Act, Pub. L. No 91-375, 84 Stat 719 (Aug. 12, 1970). Former 39 U.S.C.§ 3621 set forth a "break even" requirement.

[3] The PAEA dispensed with the "break even" requirement and replaced cost-of-service ratemaking with a price cap – (PRC Order No. 26, Para. 2009, which states, "These comprehensive provisions unequivocally establish subsection 3622(d) as the administrative cornerstone of the new rate setting system for market dominant products. Collectively, streamlined advance review procedures, the price cap mechanism, the banking exception, and the exigency clause are designed to foster pricing flexibility, reduce burden, and facilitate quick implementation of rate changes.")

At the Public Forum, some suggested the Commission could order, under §§ 3653(c) and 3662(c), rate increases that exceed the price cap if it found existing rates unlawful. The Public representative argues existing rates may violate the "financial stability" *objective* of 39 U.S.C. § 3622(b)(5). But that is an objective, just as "predictability and stability in rates" is an objective under § 3622(b)(2). Neither is a requirement.[4] And, of course, "break even" is no longer a requirement either. There has been no showing that existing rates are unlawful. As Commissioner Blair said, "our statutory role requires that we have a defined scope for the examination of the Service's future plans. . ." and the Commission should "continue to resist the temptation to lay our past practices on the new regulatory environment the Commission worked so hard to establish." ACR Tr. 1/7. Our members believe now would be a particularly disruptive time to increase prices. The current economic downturn has required cuts in mailing at *existing* postal prices. Perhaps a modest increase would increase revenue in the short term. Perhaps not. Most 2010 mailing budgets were set based on the promise there would be no priced increases in 2010. If prices increase, mailers may just cut volume to stay within those budgets. As the Government Accountability Office that pointed out "increasing postal rates may provide a short-term revenue boost but would risk depressing mail volume and revenues in the long term, in part by accelerating diversion

[4] When Congress intended a requirement it said so. See § 3622(d) which imposes the requirement of a price cap ("The system for regulating rates and classes for market dominant products shall . . . include an annual limitation on the percentage changes in rates . . .). The "financial stability" objective of 39 U.S.C. § 3622(b)(5) is subordinate to the CPI-based price cap requirement of 39 U.S.C. § 3622(d). An increase based on § 3622(b)(5) such as suggested by the Public Representative would violate the cap and thus be unlawful.

of payments, communications, and advertising to electronic alternatives."[5] The Postal Service determined that rate stability was more important in these challenging economic times than hiking prices in the hope of producing more short-term revenue. So, it promised mailers of market dominant products that there would be no price increases in calendar year 2010. Mailers "have the right to rely on the fact that they were told there would be no price increases during 2010 for market dominant products." ACR Tr. 1/50 (Myers). The Commission should honor that promise.

2. Now Is Not the Time to Increase Prices for Products That May Not Cover Attributable Costs; with respect to Market dominant Package Products, the Commission Has No Authority to Do So

In its comments, Valpak discussed the cost coverage issue at length. At the Public Forum, its representative advised: "I don't think PRA or PAEA envisioned that we would have money losing products that weren't contributing anything to institutional cost, and we do think that this is a matter that has to be resolved the next time rates are increased and the Commission has some responsibility to push the ball along on that one." ACR Tr. 1/30-31 (Olson).

Perhaps the Commission could encourage the Postal Service to "push the ball along," but with respect to individual products it does not have the authority to order price increases solely because a product is not covering costs. Under the PRA, rate categories, which were analogous to products under the PAEA, were not required to cover costs. Under the PRA, only groups of products, i.e. subclasses of mail, were

[5] GAO Report GAO-10-191T, U.S. Postal Service: Financial Challenges Continue, with Relatively Limited Results from Recent Revenue-Generation Efforts (Nov. 5, 2009) at 8.

required to cover attributable costs and make a reasonable contribution to institutional costs. [6] The PAEA repeats the PRA requirement, with minor changes not relevant here, and downgrades that requirement to a factor. A primary purpose of the PAEA is to increase the Postal Service's pricing flexibility. If individual products were not required to cover costs under the PRA, surely Congress did not intend to restrict the Postal Service's pricing flexibility by including such a requirement in the PAEA. Under the PAEA, prices for individual products that do not cover costs are not unlawful. Accordingly, the Commission may suggest or exhort but it cannot order those prices changed pursuant to 3653(c) or § 3662(c) solely because an individual product is underwater.

In any event, with respect to market dominant packages, the Postal Service with Commission approval has been "pushing the ball along" for several years. Over the last three years Standard Mail NFMs/parcels have experienced huge rate increases well in excess of inflation (33% for parcels and much higher increase for NFMs-- in May 2007, 9.7% in May 2008, 16.4% in May 2009. Further, the most recent Standard Mail package cost coverages reported (FY2009 CRA) do not fully reflect the May 2009 rate increases for this product nor do they reflect the cost savings from (1) the new mail preparation requirements accompanying that rate increase; and (2) the increased worksharing resulting from the May 2009 rate design.

[6] Former 39 U.S.C. § 3622(b)(3) provided "the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that [each] class or type [of mail service through reliably identified causal relationships] plus that portion of all other costs of the Postal Service reasonably assignable to such class or type" (bracketed language shows PAEA changes).

The Postal Service is addressing, responsibly, the pricing for these products so as not to inadvertently drive away this volume. The Commission must permit it to continue on this course.

Respectfully submitted,

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