

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

Postal Regulatory Commission
Submitted 4/5/2010 4:24:23 PM
Filing ID: 67558
Accepted 4/5/2010

PAEA Section 802(c) Request

Docket No. SS2010-1

JOINT MOTION OF THE ASSOCIATION FOR POSTAL COMMERCE, ALLIANCE OF NONPROFIT MAILERS, DIRECT MARKETING ASSOCIATION, INC., ENVELOPE MANUFACTURERS ASSOCIATION, GREETING CARD ASSOCIATION, MAGAZINE PUBLISHERS OF AMERICA, MAIL ORDER ASSOCIATION OF AMERICA, MAILING AND FULFILLMENT SERVICE ASSOCIATION, MAJOR MAILERS ASSOCIATION, NATIONAL ASSOCIATION OF LETTER CARRIERS, NATIONAL ASSOCIATION OF POSTMASTERS OF THE UNITED STATES, NATIONAL LEAGUE OF POSTMASTERS, NATIONAL NEWSPAPER ASSOCIATION, NATIONAL RURAL LETTER CARRIERS' ASSOCIATION, READER'S DIGEST ASSOCIATION, INC., SATURATION MAILERS COALITION, TIME WARNER, INC., VALASSIS DIRECT MAIL, INC., VALPAK DIRECT MARKETING SYSTEMS, INC. AND VALPAK DEALERS' ASSOCIATION, INC., AND CONDE NAST PUBLICATIONS TO
(1) INCORPORATE DOCUMENTS FROM DOCKET ACR2009 IN THIS DOCKET;
(2) ESTABLISH AN OPPORTUNITY FOR PUBLIC COMMENTS ON THE ACTUARY'S REPORT; AND
(3) ESTABLISH A PARALLEL CONSOLIDATED PROCEEDING PURSUANT TO SECTION 701(a) OF THE PAEA

(April 5, 2010)

The Association for Postal Commerce, Alliance of Nonprofit Mailers, Direct Marketing Association, Inc., Envelope Manufacturers Association, Greeting Card Association, Magazine Publishers Of America, Mail Order Association Of America, Mailing And Fulfillment Service Association, Major Mailers Association, National Association of Postmasters of the United States, National Association of Letter Carriers, National League Of Postmasters, National Newspaper Association, National Rural Letter Carriers' Association, Reader's Digest Association, Inc., Conde Nast Publications, Saturation Mailers Coalition, Time Warner, Inc., Valassis Direct Mail, Inc., Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc., hereinafter referred to as the Joint Movants, hereby move to (1) incorporate in this

docket relevant comments submitted in Docket ACR2009 pertaining to the issue of the appropriate allocation of CSRS pension obligations between the Postal Service and the federal government, to be made available to the Commission's selected actuary in assessing the issues in this review proceeding; (2) establish an opportunity for public comment on the actuary's report prior to consideration by the Commission; and (3) establish a parallel consolidated proceeding pursuant to section 701(a) of the Postal Accountability And Enhancement Act (PAEA). In support of this motion, the Joint Movants state as follows:

BACKGROUND

This proceeding was initiated by the filing of a request by the United States Postal Service on February 23, 2010, requesting that the Commission, pursuant to section 802(c) of the PAEA, review the determination made by the Office of Personnel Management (OPM) concerning the Postal Service's Civil Service Retirement System (CSRS) liabilities.

On March 2, 2010, the Postal Service clarified that it is requesting the Commission's independent opinion on "the fairness and equity of the current OPM method used to apportion the CSRS obligation between the Postal Service and the POD [Post Office Department]." USPS Clarification at 1. As the Postal Service notes, the OPM's method for allocating the federal government's share of pension obligations for employees of the old Post Office Department who continued employment with the USPS after its creation in 1971 "essentially assumes that POD employees retired at the point of the Reorganization," resulting in the federal government bearing no responsibility for pension obligations resulting from pay increases after June 30, 1971,

whether “they be related to cost of living, step increases, promotions, or general increases as a result of collective bargaining.” *Id.* at 2. The Postal Service states that it concurs with the Office of the Inspector General (OIG) report’s recommendation that the more appropriate and equitable approach is to apportion the obligation on the basis of “high-three salaries at the date of retirement and a years-of-service approach.” *Id.*

On March 1, 2010, the Commission issued a notice concerning the Postal Service’s request for review, stating that it would acquire the services of an actuary and take other actions consistent with the provisions of section 802(c) of the PAEA.

On March 16, 2010, the Commission issued a solicitation requesting actuarial consultant services (Solicitation No. PRC_SOW_031610) with respect to the issues in this docket.

I. MOTION TO LODGE AND INCORPORATE IN THIS DOCKET RELEVANT COMMENTS SUBMITTED IN DOCKET NO. ACR2009

Any assessment of the appropriate method for allocating the Postal Service’s pension obligations must take into account the structural framework and legal constraints under which it operates. In this regard, the Commission’s statement of work for actuarial consulting services, while relatively comprehensive, does not adequately describe the Postal Service’s unique posture. The Commission, for example, requests that the consultant:

- Provide an assessment of how an allocation would be structured if all parties had negotiating power similar to that involved in acquisitions in the private sector;
- As applicable, provide recommendations typically made in similar situations for estimating the allocation of pension liability between a parent company and subsidiaries, particularly if those subsidiaries are divested;

- As applicable, compare OPM's current method of allocation to standard or typical allocation methods used in a spin-off by other semi-government, government bodies or private sector entity undergoing a similar restructuring.

Yet assessment of the OIG's approach, or of allocation methods "typically" used in "similar" situations in other arenas such as private sector divestitures or spin-offs, necessarily requires that the actuary be apprised of relevant constraints that apply to the Postal Service.

These issues were addressed in Docket ACR2009 in the "Submission by the National Postal Mail Handlers Union" (NPMHU), February 5, 2010, and the "Reply Comments of Valassis Direct Mail, Inc. and the Saturation Mailers Coalition Concerning Postal Service Financial Stability" (Valassis/SMC), February 23, 2010,. The constraints on the Postal Service, as described in the Valassis/SMC comments, include:

- By section 1005(d) of the Postal Reorganization Act, Congress required that all Postal Service officers and employees be covered by the federal civil service retirement program.
- The features and benefits of the mandatory CSRS program – including eligibility and vesting rules, contribution levels, pension benefit calculations and levels – are set by Congress.
- Congress did not give the Postal Service freedom to set employee compensation and benefits as it saw fit. Instead, in 39 U.S.C. section 1003(a), Congress required the Postal Service "to maintain compensation and benefits of all officers and employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy."
- Congress also imposed constraints on the manner by which postal wages were set. In 39 U.S.C. sections 1203 and 1207, it required that the Postal Service honor existing labor agreements and that wages be set through collective bargaining and binding arbitration.
- Significantly, that bargaining and arbitration process excludes consideration of changes to features of employee pension plans which are established by Congress. Moreover, in considering

compensation issues, the negotiating parties as well as the arbitrators must take into account the Congressional policy directive of private-sector pay comparability.

The Valassis/SMC comments also address how the Postal Service's situation differs from those of companies in the private sector that, unlike the Postal Service, have a variety of means to mitigate their pension liability either by modifying or negotiating changes in the benefits or, in the worst case, declaring bankruptcy and restructuring their debts and employee obligations.

Because these two sets of comments in Docket ACR2009 – the NPMHU initial comments and the Valassis/SMC reply comments on financial stability – are highly relevant to the assessments the Commission is asking the actuary to undertake, we move that they be lodged and incorporated in the record of this docket, and be made available to the actuary chosen by the Commission for consideration in preparing its report.¹

II. MOTION TO ESTABLISH AN OPPORTUNITY FOR PUBLIC COMMENTS ON THE ACTUARY'S REPORT IN THIS DOCKET.

The issue to be addressed in this proceeding is of immense importance to the financial viability of the Postal Service, as well as to mail users and postal employees. We understand that the Commission will want to review and issue its report on the actuary's analysis expeditiously. However, given the importance of this issue, we submit that allowing an opportunity for public comment on the actuary's report shortly

¹ For the convenience of the Commission and interested parties, these two referenced comments, as filed in Docket ACR2009, are being submitted as electronic attachments to this filing.

after it is issued will assist in the Commission's review process without unnecessarily delaying the proceeding.

III. MOTION TO ESTABLISH A PARALLEL CONSOLIDATED PROCEEDING PURSUANT TO SECTION 701(a) OF THE PAEA.

Under PAEA section 802(c)(1)(B), the Commission's actions upon receiving the report of outside actuary consultant are limited to (1) determining that the report satisfies the requirements of the statute; (2) approving the report, with any comments it may choose to make; and (3) submitting the report with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

Importantly, under section 802(c)(2), although OPM upon receiving the Commission's report must "reconsider its determination or reconsideration in light of such report" and "make any appropriate adjustments," the Commission's report and recommendations are not binding on OPM. Thus, a proceeding under section 802(c) could very well end with OPM simply disagreeing with the Commission's report and declining to make any adjustments. Moreover, OPM's reconsideration is not subject to any statutory time limit, raising the specter that final resolution may not be known for some time.

The PAEA, however, gives the Commission alternative ways to address this issue and present recommendations to Congress. Specifically, under section 701(a) of the PAEA, the Commission is charged with the duty to, "*at least* every 5 years," submit a report to the President and Congress concerning (1) "the operation of amendments made by" the PAEA, and (2) "recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States." That mandate necessarily encompasses the authority to make legislative or

other recommendations on an interim basis, particularly in circumstances such as this where the Postal Service's solvency is at risk, and where postponing action until the formal five-year report could leave the Postal Service in an even more dire financial condition at that time.

This issue of the proper allocation of the CSRS pension obligation between the Postal Service and the federal government is already of growing interest to Congress. On March 18, 2010, in hearings before the Senate Subcommittee on Financial Services and General Government of the Committee on Appropriations, Senator Durbin, Chairman of the Subcommittee, described the OIG report as raising a "threshold" issue that needs to be understood and addressed promptly because its resolution will have a major impact on other potential remedies Congress will be considering for the Postal Service. This topic was addressed more recently in March 24th hearings on OPM appropriations before the same subcommittee, in dialog between Senator Collins, ranking minority member, and OPM Director John Berry (see webcast at <http://appropriations.senate.gov/webcasts.cfm?method=webcasts.view&id=11f73d73-2d37-4d41-8f28-4193860f1e80>, starting at 41:36 minutes). Additional Congressional hearings are expected soon.

Accordingly, we move that the Commission initiate a parallel consolidated proceeding under section 701(a) that will enable the Commission to consider these issues expeditiously and to present recommendations and/or legislative proposals to Congress in a timely manner. Importantly, this motion should not be construed or implemented in any manner to delay consideration of the Postal Service's request under section 802(c).

Respectfully submitted,

Ian D. Volner
David M. Levy
Matthew Field
VENABLE LLP
575 Seventh Street, N.W.
Washington DC 20004

*Counsel for Association for Postal
Commerce, Magazine Publishers
of America, Alliance of Nonprofit
Mailers, and Mailing And Fulfillment
Service Association*

Jerry Cerasale
Senior Vice President
DIRECT MARKETING ASSOCIATION, INC.
1615 L Street, N.W., Suite 1100
Washington DC 20036

*Counsel for Direct Marketing
Association, Inc.*

Maynard H. Benjamin, CAE
President and CEO
Envelope Manufacturers Association
500 Montgomery Street, Suite 550
Alexandria, Virginia 22314-1565

*For Envelope Manufacturers
Association*

David F. Stover
2970 South Columbus Street
No. 1B
Arlington, VA 22206-1450

Counsel for Greeting Card Association

David C. Todd
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037

*Counsel for Mail Order Association of
America*

Mury Salls
President, Major Mailers Association
c/o DST Mailing Services
1100 Investment Blvd.
El Dorado Hills, CA 95762

For Major Mailers Association

James Sauber
Chief of Staff
National Association of Letter Carriers
100 Indiana Ave
Washington, D.C. 2001

*For the National Association of Letter
Carriers*

Robert Levi
Director of Government Relations
National Association of Postmasters of
the United States
8 Herbert Street
Alexandria, VA 22305-2600

*For the National Association of
Postmasters of the United States*

Robert J. Brinkmann
 Law Offices of Robert Brinkmann LLC
 1730 M Street, NW, Suite 200
 Washington, DC 20036

*Counsel for the National League Of
 Postmasters*

Tonda Rush
 King & Ballow
 PO Box 50301
 Arlington, VA 22205

*Counsel for the National Newspaper
 Association*

Kevin Talley
 National Rural Letter Carriers'
 Association
 1630 Duke Street
 Alexandria, VA 22314-3467

*For National Rural Letter Carriers'
 Association*

R. Craig Cecere
 Director, Global Postal Affairs
 Reader's Digest Assn., Inc.
 Reader's Digest Road
 Pleasantville, NY 10570

For Reader's Digest Association, Inc.

John M. Burzio
 Timothy L. Keegan
 Burzio McLaughlin & Keegan
 1054 31st Street, N.W., Suite 540
 Washington, DC 20007

Counsel for Time Warner, Inc.

Thomas W. McLaughlin²
 Burzio McLaughlin & Keegan
 1054 31st Street, N.W., Suite 540
 Washington, DC 20007
 (202) 965-4555, bmklaw@verizon.net

*Counsel for Valassis Direct Mail, Inc.
 and the Saturation Mailers Coalition*

William J. Olson
 WILLIAM J. OLSON, P.C.
 8180 Greensboro Drive, Suite 1070
 McLean, Virginia 22102-3860

*Counsel for Valpak Direct Marketing
 Systems, Inc. and Valpak Dealers'
 Association, Inc.*

Howard Schwartz
 Executive Director, Distribution
 Conde Nast Publications
 4 Times Square, 5th Floor
 New York, NY 10036

For Conde Nast Publications

² Contact for communications with respect to this document.