

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Semi-Permanent Exceptions from  
Periodic Reporting of Service  
Performance Measurement

Docket No. RM2010-14

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO  
UNITED STATES POSTAL SERVICE REQUEST FOR  
SEMI-PERMANENT EXCEPTION FROM PERIODIC REPORTING OF  
SERVICE PERFORMANCE MEASUREMENT

(October 15, 2010)

The Public Representative hereby submits these comments responding to the Postal Service's request for a semi-permanent exception from the periodic reporting of service performance measurement for Applications and Mailing Permits.<sup>1</sup> The Public Representative provides these comments under Order No. 550, which established this Docket No. RM2010-14 to consider the Second Request and receive comments from interested persons, including the undersigned Public Representative.

The Postal Service submitted its Second Request under Order No. 465, which established final rules concerning periodic reporting of service performance measurements and customer satisfaction.<sup>2</sup> These rules enable the Postal Service to petition the Commission to request that a product be excluded from reporting if the Postal Service demonstrates that "[t]he product, or component of a product, defies meaningful measurement[.]" 39 CFR 3055.3(a)(2).

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<sup>1</sup> United States Postal Service Request for Semi-Permanent Exception from Periodic Reporting of Service Performance Measurement, Sept. 30, 2010 (Second Request). The Postal Service also requested semi-permanent exceptions several months earlier. Docket No. RM2010-11, United States Postal Service Response to Order No. 465 and Request for Semi-Permanent Exceptions from Periodic Reporting of Service Performance Measurement, June 25, 2010 (First Request).

<sup>2</sup> Docket No. RM2009-11, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010 (Order No. 465).

While reviewing the pleadings in this and related dockets, the Public Representative encountered several issues discussed below. These issues should be resolved before the Commission proceeds to the merits of the Second Request.

- A. The Postal Service must establish service standards for a product before requesting a semi-permanent reporting exception for it.

Establishing service standards for a product is a prerequisite to requesting a semi-permanent reporting exception for that product. If the Postal Service proposes not to establish service standards for a product, it should explain why in a public notice.

As the Commission described in Order No. 465, establishing service standards is the first in a four-step process for incorporating measurements of level of service into the modern system of rate regulation for market dominant products. Order No. 465 at 5. The Postal Service completed this task on December 19, 2007 by publishing as a final rule Modern Service Standards for Market Dominant Products.<sup>3</sup> The next steps involved identifying service performance measurement systems and establishing performance goals. Order No. 465 at 5-7. The final step in the process was achieved in Order No. 465 when the Commission issued rules specifying the reporting of service performance measurements and customer satisfaction. *Id.* at 7; see 39 CFR part 3055. This final step also established a formal process for the Postal Service to request semi-permanent exceptions and temporary, short-term waivers from reporting. Order No. 465 at 21-24.

The Postal Accountability and Enhancement Act<sup>4</sup> and the Commission's rules also established procedures to ensure that the Postal Service keeps the service standards current. 39 U.S.C. § 3691(a) enables the Postal Service to revise, by

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<sup>3</sup> *Id.* at 6. The Postal Service published the proposed rule and final rule for modern service standards in the *Federal Register*. See Modern Service Standards for Market-Dominant Products, 72 Fed. Reg. 58,946 (proposed Oct. 17, 2007); Modern Service Standards for Market-Dominant Products, 72 Fed. Reg. 72,216 (Dec. 19, 2007) (together, "Service Standards").

<sup>4</sup> Pub. L. 109-435, 120 Stat 3198 (2006) (PAEA).

regulation, its service standards for market dominant products. The Commission's rules on service performance and customer satisfaction reporting also require the Postal Service to propose new or revised service standards as necessary whenever it proposes adding or changing a market dominant product. 39 CFR § 3055.6. The Postal Service must also file notice with the Commission describing all changes to service standards 30 days before implementation. *Id.* § 3055.5.

The four-step process described above and the procedures for revising current service standards demonstrate that the Postal Service should not request a semi-permanent reporting exception for a product without first establishing a service standard for that product. If a service standard would be unnecessary, redundant, or infeasible, the Postal Service should explain its reasoning by regulation or other formal issuance to comply with 39 U.S.C. § 3691(a). In other words, the Postal Service should publicly and in detail explain why a product is incompatible with meaningful service standards *before* requesting a semi-permanent reporting exception. See First Request at 2. Otherwise, the process for incorporating measurements of level of service into the modern system of rate regulation would be subverted.

- B. The Postal Service has not properly addressed the issue of service standards for Applications and Mailing Permits.

The Service Standards do not address or even mention Applications and Mailing Permits. The Postal Service apparently did not address the issue of service standards for this product until it filed its Second Request. The Postal Service notes that this product was absent from the Service Standards because "the Postal Service considered it incompatible with the establishment of service standards for mail transit or for the provision of data related to delivery of specific mail pieces." Second Request at 3 n.6.

This explanation, however, does not explain why the Service Standards discuss *other* Special Services products and components for which service standards were also incompatible. These include Address Correction Service, Alternate Postage Payment Methods, Caller Service, Certificate of Mailing, Change of Address Credit Card

Authentication, Money Orders, Special Handling, Restricted Delivery, Parcel Airlift, Stamped Envelopes, Cards, and Stationery.<sup>5</sup> The Postal Service not only listed each product, but discussed each one at length to explain why establishing a service standard was unnecessary, redundant, or infeasible. 72 Fed. Reg. at 58,964. The Postal Service should have provided a similar justification in the Service Standards for Applications and Mailing Permits.

It appears that the Postal Service inadvertently omitted Applications and Mailing Permits from both its First Request and the Service Standards. The Public Representative is unaware of any updates to the service standards for Special Services products since the Postal Service published the Service Standards on December 19, 2007.<sup>6</sup> Indeed, in its requests for semi-permanent exceptions, the Postal Service only cites to the proposed and final rules. See First Request at 2 n.4; Second Request at 3 n.6. If service standards have not been updated since December 2007, then the general public was deprived of the opportunity to comment on the Postal Service's proposal not to establish service standards for Applications and Mailing Permits.

In its Second Request, the Postal Service does explain that the transactional nature of Applications and Mailing Permits makes establishing meaningful service standards difficult. Second Request at 3. However, the proper procedure for addressing this issue is by regulation under 39 U.S.C. § 3691(a), not through a request for a semi-permanent reporting exception. If it has not already done so, the Postal Service should revise the service standards by regulation to include standards for

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<sup>5</sup> 72 Fed. Reg. at 58,964. The Postal Service also proposed not to establish service standards for hard-copy Return Receipts. *Id.* However, the Commission expressed concern that the Postal Service did not propose to measure them in any way. RM2009-11, Notice of Proposed Rulemaking on Periodic Reporting of Service Performance Measurements and Customer Satisfaction, Sept. 2, 2009, at 25. In response, the Postal Service agreed to undertake a special study concerning green card Return Receipt service in FY 2010. Order No. 465 at 45.

<sup>6</sup> On March 2, 2010, the Postal Service issued a final rule revising its regulations on service standards for market dominant mail products to reflect a nomenclature change relating to the Network Distribution Center Transition. 75 Fed. Reg. 9343. The service standards for Special Services products was unchanged.

Applications and Mail Permits. Alternatively, it should issue a public notice explaining why a service standard would be unnecessary, redundant, or infeasible, as it did in the Service Standards for other Special Services products. Absent that, a request for a semi-permanent reporting exception is premature.

- C. The Postal Service should ensure that it has established service standards for all current market dominant products.

The absence of Applications and Mailing Permits from the Postal Service's First Request and Service Standards raises a broader issue of whether the Postal Service established service standards for all current market dominant products. The Public Representative compared the August 31, 2010 Market Dominant Product List with the Special Services discussed in the Service Standards. See 39 CFR part 3020, subpart A, Appendix A. The Public Representative found that, in addition to Applications and Mailing Permits, the Service Standards do not mention Customized Postage and Stamp Fulfillment Services, two other Special Services products. The absence of Customized Postage and Stamp Fulfillment Services makes sense because these products were not added to the product list until after the Postal Service issued the Service Standards.<sup>7</sup> Their absence, however, highlights the need for revising current service standards to incorporate new or changed products.

The Postal Service must promptly revise its current service standards to avoid potential problems with reporting data. As the Postal Service notes in its recent request for temporary waivers, "[t]he obligation to report on service performance for [Stamp Fulfillment Services] poses a conundrum....Because the Postal Service has not established service standards for [Stamp Fulfillment Services]...it is unclear how the

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<sup>7</sup> See Docket No. MC2009-19, Order Approving Addition of Postal Services to the Mail Classification Schedule Product Lists, Jan. 13, 2010, at 12 (Order No. 391); Docket No. MC2009-19, Order Accepting Product Descriptions and Approving Addition of Stamp Fulfillment Services to the Mail Classification Schedule Product Lists, July 13, 2010, at 6 (Order No. 487).

Postal Service can be expected to report on that product's service performance."<sup>8</sup> The Postal Service states that it was unaware of Stamp Fulfillment Services being discussed at earlier stages in the Commission's proceedings on service performance measurement and reporting. Waiver Request at 14. It also claims that the Commission did not inquire into service performance measurement and reporting in the mail classification proceeding concerning this product, nor did it add Stamp Fulfillment Services to the market dominant products list until after the Commission issued Order No. 465. *Id.* The Postal Service asserts that imposing measurement and reporting obligations for this product "has potential due process implications." *Id.* at 15.

As described above, both the PAEA and the Commission's rules provide procedures to ensure that service standards, once established, are kept current. However, the onus for periodically revising the service standards falls on the Postal Service. 39 U.S.C. § 3691(a) enables the Postal Service to revise the service standards from time to time by regulation. The Commission is not required to ask the Postal Service to undertake tasks that the Postal Service should do on its own.

Moreover, the Commission's rules specifically require the Postal Service to propose new or revised service standards, among other things, whenever it proposes adding or changing a market dominant product. 39 CFR 3055.6. As the Postal Service notes, the mail classification proceeding for Stamp Fulfillment Services "was pending during and after the proceeding in Docket No. RM2009-11 [establishing the Commission's reporting rules]." Waiver Request at 14. Once the Commission issued the final rules in Order No. 465, the Postal Service should have complied with the new rules by proposing service standards for Stamp Fulfillment Services. It could have done so well before the Commission added Stamp Fulfillment Services to the products list.

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<sup>8</sup> Docket No. RM2011-1, United States Postal Service Request for Temporary Waivers from Periodic Reporting of Service Performance Measurement, Oct. 1, 2010, at 14 (Waiver Request). Reporting issues regarding Stamp Fulfillment Services also apply to Customized Postage, which does not appear to have a service standard.

The Public Representative acknowledges that the Postal Service proposed to add Stamp Fulfillment Services before the Commission issued its reporting rules.<sup>9</sup> However, as the keeper of the service standards, the Postal Service is responsible for revising and updating them without prompting from the Commission.

The Public Representative recognizes that the service performance and customer satisfaction reporting rules are relatively new and that the Postal Service is still working to comply with all of the requirements. Unfortunately, there are probably other market dominant products for which the Postal Service has not yet established service standards, especially if the Postal Service has not revised the service standards since December 2007. The Public Representative recommends that the Postal Service review the current list of market dominant products to ensure that it has established service standards for each one. If it needs to propose new or revised service standards, then it should follow the procedures outlined in 39 U.S.C. § 3691(a) and 39 CFR 3055.5 and 3055.6.<sup>10</sup> If the Postal Service believes that a service standard would be unnecessary, redundant, or infeasible, it should explain its reasoning in a formal notice, just as it did in 2007 with the Service Standards. It should not request a semi-permanent exception from the Commission before doing so.<sup>11</sup>

Going forward, the Commission can also help the Postal Service keep service standards current by ensuring that the Postal Service proposes new or revised service performance measurement systems, service standards, service goals, data reporting elements, and data reporting methodologies for each market dominant product it seeks to add or change.

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<sup>9</sup> Docket No. MC2009-19, Request of the United States Postal Service to Add Stamp Fulfillment Services to the Mail Classification Schedule in Response to Order No. 391, April 26, 2010.

<sup>10</sup> The Postal Service may also need to propose new or revised service performance measurement systems, service goals, data reporting elements, and data reporting methodologies. See 39 CFR 3055.6.

<sup>11</sup> The Postal Service states that it would request a semi-permanent exception from the Commission if it finds that Stamp Fulfillment Services “does not admit of a meaningful service standard or performance measurement method.” Waiver Request at 15.

#### D. Conclusion

Before addressing the merits of the Second Request, the Public Representative recommends that the Commission first determine whether the Postal Service has, under 39 U.S.C. § 3691(a), established or properly addressed service standards for Applications and Mailing Permits. If so, then the Public Representative will provide additional comments on the merits of the Second Request. If not, the Commission should dismiss the Second Request as premature. These actions are necessary to ensure the integrity of the process for incorporating measurements of level of service into the modern system of rate regulation for market dominant products.

The Public Representative also recommends that the Postal Service review and revise the service standards as described above to ensure compliance with the PAEA and the Commission's rules.

The Public Representative respectfully submits the preceding comments for the Commission's consideration.

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