

Before The  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Institutional Cost Contribution  
Requirement for Competitive Products

Docket No. RM2012-3

**MOTION OF THE PARCEL SHIPPERS ASSOCIATION TO EXTEND THE PERIOD  
FOR PREPARING INITIAL AND REVISED COMMENTS**

(February 24, 2012)

The Parcel Shippers Association moves that the deadlines for submitting initial and reply comments in this docket be changed from March 5, 2012 and April 2, 2012 to February 6, 2013 and March 6, 2013, respectively. See Order No. 1108, January 6, 2012. This time extension is appropriate and possible because (1) the controlling statute<sup>1</sup> permits it, (2) there is no urgency that requires the Commission to make the determination contemplated by this proceeding in the immediate future, and (3) the passage of time will permit interested parties to submit better informed comments and the Commission to make a better informed determination.

**I. THE CONTROLLING STATUTE PERMITS THE TIME EXTENSION**

The PAEA directs the Commission to promulgate regulations to ensure that competitive products, collectively, bear an “appropriate share” of the Postal Service’s

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<sup>1</sup> The Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3218 (2006),

institutional cost. See 39 U.S.C. 3633(a)(3). The initial Commission review determined that competitive products, collectively, should contribute a minimum of 5.5 percent of the institutional costs of the Postal Service annually. Order No. 43, October 29, 2007, ¶¶ 3040-47; Rule 3015.7(c). The PAEA further directs the Commission to revisit this question every 5 years. See 39 U.S.C. 3633(b).<sup>2</sup>

Five calendar years have passed since enactment of the PAEA. As contemplated by the Congress the Commission initiated this docket to conduct a 5-year review and determine whether existing rule should be “retained in its current form, modified, or eliminated.”

Congress was somewhat imprecise with respect to the timing of the 5-year review. There is no specified starting date.<sup>3</sup> There is no prescribed end date or time period for the review, e.g. 90 days. The PAEA just requires the Commission to “conduct a review” every five years.

When Congress wants a review completed by a specific time or conducted within a specific time period it knows how to require that and has done so elsewhere in the PAEA.<sup>4</sup> It did not do that here.

By initiating this review when it did the Commission complied with the PAEA. The duration of the review is not prescribed by law and is a matter for Commission discretion. Thus, the statute permits the Commission to extend the comment period.

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<sup>2</sup> REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.

<sup>3</sup> Section 3633 says the review will occur “[f]ive years after the date of enactment of this section, and every five years thereafter. . .” The date of enactment was December 20, 2006. “Year” as used in this section means a “fiscal year.” See 39 U.S.C. 102(10). It is unclear whether the fiscal year in which the section was enacted (FY 2007) counts for determining when a review must be initiated.

<sup>4</sup> See 39 U.S.C. 3622(d)(1)(E) (requiring the Commission to make a determination “within 90 days” of a Postal Service request); 39 U.S.C. 3632(b)(1) requiring a Commission decision in “no case less than 15 days”; 39 U.S.C. 3651(a) (requiring the Postal Service to submit a report “no later than 90 days after the end of each year.”); 39 U.S.C. 3653(a) (requiring the Commission to make a written determination “not later than 90 days” after receiving a Postal Service submission).

## II. THERE IS NO URGENCY

The Commission points out:

When establishing the initial level of appropriate contribution from competitive products, the Commission tried to balance the risk of setting the contribution level too high with the risk of setting it too low. Given a very competitive marketplace where the Postal Service's market share is relatively small, setting the contribution level too high could adversely affect the Postal Service ability to compete. On the other hand, establishing a markup that is too low could give the Postal Service an artificial competitive advantage.

Order No. 1108 at 2.

Experience shows that the Commission successfully balanced these risks when it established the level of appropriate contribution at 5.5 percent. As a result, there is no urgent need to make a determination regarding whether to retain, modify, or eliminate it.

On December 29, 2011, the Postal Service filed its 2011 Annual Compliance Report with the Commission. That report indicates that in FY 2011 revenue from competitive products minus their attributable costs equaled 7.84 percent of the Postal Service's institutional costs.<sup>5</sup> This is up from FY 2007, when the revenue from competitive products minus their attributable costs equaled 5.66 percent of total institutional costs.<sup>6</sup>

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<sup>5</sup> See Docket No. ACR2011, FY 2011 Annual Compliance Report, December 29, 2011, at 64. Competitive products contribution, \$2.317 billion, divided by total institutional costs, \$29.554 billion.

<sup>6</sup> FY 2007 Annual Compliance Determination, March 28, 2008, at 113.

**Table 1**  
**Increases in Competitive Product Rates of General Applicability**  
**(Source: Notice of Rate Adjustment/Comp. Products; CPI from prc.gov)**

Product	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total
CPI	4.4%	-0.3%	1.7%	2.7%	1.9%	10.8%
Parcel Select	5.7%	5.9%	4.7%	4.4%	8.5%	32.8%
Parcel Rtn Svc	2.0%	5.3%	3.0%	3.1%	4.6%	19.3%
Priority Mail	4.0%	3.9%	3.3%	3.5%	3.1%	19.1%
Express Mail	3.1%	5.7%	4.5%	4.6%	3.3%	23.1%

Table 1 shows that since the modern system of rates has been in effect under the PAEA, competitive product rates of general applicability have increased faster than the Consumer Price Index.

Table 2 shows cost coverages<sup>7</sup> for competitive products in the aggregate. Since enactment of the PAEA, the coverage has increased slightly. These two tables, coupled with the increase in the proportion of non attributable to attributable costs since PAEA, i.e. 5.66% to 7.84%, suggest that competitive products have not been priced in a predatory manner.

**Table 2**  
**Domestic Competitive Product Cost Coverage**  
**(Source: Competitive Product Income Statements)**

Fiscal Year	Cost Coverage
2007	129%
2008	127%
2009	132%
2010	139%
2011	135%

<sup>7</sup> "Coverage" is revenue divided by attributable cost.

Table 3 shows that domestic competitive product volume (Express Mail, Priority Mail, Parcel Select, and Parcel Return Service) has been relatively stable in recent years. There has been no significant increase in Postal Service market presence, It remains a relatively small player in the overall market. This suggests the risks identified in Order No. 1108 have not come to pass and are unlikely to do so if the comment period is extended.

**Table 3**  
**Domestic Competitive Product Mail Volume**  
**(Source: USPS RPW Reports)**

Fiscal Year	Volume (Billion)
2008	6.9
2009	6.8
2010	7.1
2011	7.2

So, while it is unlikely the “playing field” is perfectly level, and different interests will have differing views on which way it tilts, it appears to PSA that extending the comment period will not have undue impact on the market place. And, as explained below, additional time will permit any change in the existing rule to be better tailored to suit the purposes of that rule.

### **III. A TIME EXTENSION WILL ENABLE A BETTER INFORMED DETERMINATION**

The statute requires the Commission, “in making its determination [to] consider all relevant circumstances.” Unfortunately, today many relevant circumstances are shrouded in uncertainty. Extending the deadline for comments should dispel at least some and perhaps much of this uncertainty.

Yesterday, in announcing the planned closure of 223 plants, the Postal Service web site noted:

The Postal Service is in the midst of a financial crisis due to the combined effects of the economic recession, increased use of electronic communications, and an obligation to prefund retiree health benefits. First-Class Mail volume has deteriorated, leading to significant revenue declines, and the obligation to prefund these retiree health benefits on an accelerated basis remains unresolved. To date, legislative proposals to address the financial crisis remain pending, leaving the Postal Service and the mailing industry it supports in an increasingly precarious position.

See <http://about.usps.com/news/electronic-press-kits/our-future-network/>.

If this consolidation occurs it will have a massive impact on postal service costs. Other “relevant circumstances” that render an informed determination now difficult if not impossible include:

- The significant and apparently ongoing changes in mail mix that impact, arithmetically, the relative contribution share of competitive and market dominant products,
- The significant effect of the postponement of or failure to make retiree benefit and other statutorily required payments on the relative shares of contribution,
- The impact of (1) the recently approved transfer of products (more than one billion lightweight packages annually) to the competitive side (e.g. Parcel Select Lightweight, First Class Commercial) and (2) the publicly discussed desire of Postal Service management to transfer additional products to the competitive side, and
- The business model changes being sought by the Postal Service.

All of these changes potentially impact the amounts and relative relationships of attributable and institutional costs.

#### **IV. CONCLUSION**

Given the current state of postal affairs PSA does not anticipate it can submit with confidence comments addressing whether the existing rule should be “retained in

its current form, modified, or eliminated,” especially when the statute seems to contemplate that any action taken through this proceeding will remain in effect for five years. Accordingly, PSA respectfully requests that the Commission grant the additional time requested for preparation of comments in this proceeding.

Respectfully submitted,

/s/

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