

Before the
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

**Inquiry Concerning Scope of Public
Service or Activity Cost Reporting**

Docket No. PI2014-1

**Comments of the
National Association of Postmasters of the United States
and the National Association of Postal Supervisors**

The National Association of Postmasters of the United States (NAPUS) and the National Association of Postal Supervisors (NAPS) submit these comments in response to Order No. 2163, the Postal Regulatory Commission's (Commission) Notice and Order that provides an opportunity for public comment relating to the "Scope of Public Service or Activity Cost Reporting Under 39 U.S.C 3651(B)(1)(C)," issued August 20, 2014.

NAPUS and NAPS are management associations that represent employees covered by the Executive and Administrative Schedule (EAS) of the United States Postal Service, the mid-level ranks. In addition, both organizations include retired EAS employees. Moreover, they both share a deep interest in the continued viability of a universal, accessible, affordable and high-quality Postal Service.

Section 204 of the Postal Accountability and Enhancement Act (PAEA) requires the Commission to issue an Annual Report concerning its operations. The subsection that is the focus of this docket relates to the obligation of the Commission to project the costs incurred by the Postal Service in providing unspecified "other public services or activities which, in the judgment of the Postal Regulatory Commission, would not otherwise have been provided by the Postal Service but for the requirement of law."¹ In past reports, the Commission has limited its review to the cost of activities such as providing six-day mail delivery, the operation of rural post offices, and discounted postage for periodical and non-profit mail. However, in its most recent annual report, the Commission suggested a cost review that would include a wider variety of public services and activities.² The Commission referenced a House of Representatives committee report on the legislative antecedent of the PAEA, H.R. 22, which specifically cited the inclusion of estimating the cost of postal law enforcement³; moreover, the Commission also raised the issue of the cost of postal-provided emergency response. Hence, the Commission has asked the Postal Service to share its views about "other public service or activities" that should be subject to the Commission's cost evaluation.

¹ 39 U.S.C. 3651(b)(1)(C)

² U.S. Postal Regulatory Commission, Annual Report to the President and Congress Fiscal Year 2013 (2013), at 31.

³ House Report No. 109-66, 109th Cong., 1st Sess., Part 1 (April 28, 2005), at 50.

On August 22, the Postal Service filed its analysis of which activities should be encompassed in the Commission's annual report, including a Commission cost-estimate for the performance of these activities.⁴ Among the activities that the Postal Service would like the Commission to review are: postal employee and retiree health benefits, postal retirement benefits, and Merit Systems Protection Board and Equal Employment Opportunity Commission appeals. Although the Postal Service suggested ten "high-cost" activities for review, NAPUS' and NAPS' comments focus on those particular "activities" that impact active and/or retired EAS employees.

The legislative language that serves as the basis of this inquiry stipulates that the Commission's review establishes a number of qualifications for the postal actions that may be considered under 39 U.S.C. 3651(b)(1)(C). NAPUS and NAPS do not believe that employee benefits or appeal rights, whether the result of managerial consultations, collective-bargaining, or provided under law, are a "public service or activity" within the meaning of the referenced subsection. Independent of the criteria for being considered a covered public service or activity, it is highly doubtful that health or retirement benefits would not have been provided by the Postal Service "but for the requirements of law."

First, the service or activity must be for the "public good" [emphasis added]. In its order the Commission references the House committee report that accompanied H.R. 22. Although H.R. 22 predates the final bill that was enacted into law, Public Law 109-435, section 204 of H.R. 22 is identical to the enacted verbiage. The report language explaining section 204 of H.R. 22 states:

As part of this report, the Commission is directed to prepare an estimate of public service costs borne by the Postal Service including universal service costs, revenue-forgone costs, and other costs (e.g., law enforcement activities).⁵

Absent legislative history to the contrary, it appears clear that Congress intended that the Commission estimate public service costs. There is no suggestion, however, that Congress envisioned that postal employee benefit costs, resulting from collective bargaining, management consultations or an employee appeal process, should be part of this required cost projection. In fact, Congress provided an explicit description of those activities that it considered a postal "public service or activity": expenditures related to universal service, revenue forgone and law enforcement. These types of services and activities do not involve or result in estimated employee benefit costs. Common to each of these services or activities is the core element of providing a direct public good. Universal service is a public good because it strives to ensure that all Americans have accessible, regular mail service, no matter their geographic location; revenue forgone is a public good because it provides affordable postage rates for charitable and educational institutions; and law enforcement is a public good because it guarantees the

⁴ PRC-LR-PI2014-1/1

⁵ *Supra*, House Report No. 109-66, page 50.

security of mail and the postal network. It is too far a stretch for negotiated and consulted employee benefits, or a procedure within the context of an employee appeal of an agency disciplinary ruling to be grouped with these public services or activities. Moreover, Commission entrance into this area may inappropriately insert itself into the employee consultative and negotiating process, or an extra-judicial process. Consequently, NAPUS and NAPS urge the Commission to find that employee health benefits are not subject to 39 U.S.C. 3651(b)(1)(C).

The second area of concern, which is independent from the first, is the identification of cost-eligible services and activities that must, in the judgment of the Commission, not “have been provided by the Postal Service but for the requirement of law.” Accordingly, the Commission would have to conclude that the Postal Service would not have provided health or retirement benefits to its employees and retirees if it was not required under the law. This assertion is unsupported. In fact, on September 10, 2014, the Kaiser Foundation reported that, among large firms (> 200 workers), 98 percent provided health benefits to at least some of their workers.⁶ Thus, for this condition to remain satisfied, the Commission would have to conclude that the Postal Service would be among the notorious 2 percent that does not provide health insurance, but for the requirement of law.

The Commission would have to reach the same conclusion for retirement benefits. Admittedly, a growing number of large employers have migrated to defined contribution plans; however, 24 percent of Fortune 500 firms continue to provide a defined benefit retirement plan or a hybrid defined contribution-defined benefit plan.⁷ However, within industries analogous to the postal sector (e.g., utilities and transportation), the percentage of employers that offer either a defined benefit or hybrid plan rises to 60 percent in utilities and 30 percent in transportation.⁸ Also, it is important to note that public employees are much more likely to participate in defined benefits or hybrid plans. Finally, defined contribution plans may include an employer matching contribution, similar to the match offered under the Federal Employee Retirement System. Nevertheless, the Commission would need to conclude that the Postal Service would not provide retirement benefits to be considered under this section of the law. Consequently, NAPUS and NAPS urge the Commission to find that employee health and retirement benefits are not subject to 39 U.S.C. 3651(b)(1)(C).

In summary, postal health and retirement benefits do not conform to the definition of a public service or activity of the character required under the statute, and the Postal Service has failed to demonstrate that the only reason it provides such benefits is because it is legally required. Therefore, NAPUS and NAPS urge the

⁶ The Kaiser Family Foundation, “Employer Health Benefits Annual Survey, Survey Design and Methods,” (September 10, 2014) at 35.

⁷ Towers Watson, “Retirement in Transition for the Fortune 500: 1998 to 2013,” (September 2014) at 1.

⁸ *Id.* at 3.

Commission to exclude postal health and retirement benefits from consideration under 39 U.S.C. 3651(b)(1)(C).

NAPUS and NAPS appreciate the Commission's consideration of these comments.

Respectfully submitted,

/s/

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