

**UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001**

**Regulations Establishing a System of  
Ratemaking**

**Docket No: RM 2007-1**

**COMMENTS OF NATIONAL NEWSPAPER ASSOCIATION IN RESPONSE TO  
PRC PROPOSED REGULATIONS  
ESTABLISHING A SYSTEM OF RATEMAKING  
(September 24, 2007)**

Pursuant to Commission Order No 26, National Newspaper Association hereby provides its comments on the Commission's Proposed Regulations Establishing a System of Ratemaking.

The National Newspaper Association, established 1885, has been a frequent intervener in matters before this Commission and its predecessor Postal Rate Commission. NNA has appeared in every omnibus rate case and in other matters affecting periodicals mail or mail users in general. NNA's 2,500 members are community newspapers, primarily weeklies and small dailies, and are customarily locally-owned or in small groups, published in hometowns across America. Its members rely heavily upon the Postal Service as their primary circulation vendor and partner. NNA's concern before this Commission generally is the Within County subclass of Periodicals mail. Its members also heavily use Outside County Periodicals mail to reach subscribers, and Enhanced Carrier Route Standard Mail to reach non subscribers with regular shoppers and Total Market Coverage advertising publications, as well as to solicit new subscribers.

NNA's concerns here focus heavily upon ensuring that during this transition from cost-of-service rates to a class-based rate cap, the smaller subclasses receive the due process protections from the Commission that the authorizing

statute permits. NNA does not agree with other commenters that the Commission should always take “light-handed” approach. The potential dislocation of mailers in sudden and dynamic price shifts could cause volume losses as well as severe economic consequences for mailers. Neither does NNA seek to replicate cost-of-service type inquiries or timelines. A balance should be achieved and during a time of transition, should be weighted slightly toward mailers most vulnerable to price increases. NNA believes the system will self-adjust if the Commission exercises its discretion in important areas now to ease both mailers and USPS toward the “light-handed” approach that some hope the Postal Accountability and Enhancement Act (PAEA) will encourage.

In particular, because PAEA applies the cap at the class level, rather than at the subclass level, the Postal Service retains the power to apply high rate increases to the more captive subclasses while it allows itself an advantage in more competitive, but still market dominant, subclasses. However, there is nothing in the legislative history that indicates Congress intended the new law to be exercised to displace vulnerable classes and subclasses. Rather, NNA believes the intent of Congress was to give USPS more pricing flexibility, to encourage greater efficiency and to streamline regulatory processes, but to give the Commission a critical role of helping to keep the Service in balance for its users. Hence, the Commission was given significant leeway in deciding what information it would seek and how much public participation to permit and it was provided certain tools to be used to help achieve that balance.

NNA’s members have been hard-hit by 2007 rates—not only from a forceful 18-20% increase in Within County rates, but also with the newly complex Outside County periodicals schedule. The rates included a container charge on sacks and bundles that small mailers have not paid in the past. USPS also included a charge on flats tubs, just as NNA was working to encourage their use as a cost-saving and processing-friendly alternative to sacks. The charge was not recommended by the Commission in its Opinion and Recommended Decision,

Docket R2007-1. NNA has questioned the legality of a rate applied to a container whose costs were unexamined by the Commission, and would seek a review of that rate in a cost-of-service case.

Nonetheless, NNA commends the Commission for pushing the Notice of Proposed Rulemaking (NPRM) out ahead of schedule and encouraging the USPS Board of Governors to adopt its next rates under PAEA and not through a cost of service case. Though NNA's concerns with cost methodologies and the container charge would have been more easily addressed under the 1970 Postal Reorganization Act statute, NNA agrees that the overall well being of universal service calls for getting on with the new era of postal regulation.

NNA comments here on some matters raised by Order No. 26, in the sequence provided in the NPRM.

- 1. NNA agrees that a 45 day notice period prior to a Type 1-A rate adjustment must be a minimum period, capable of extension by the Commission.**

NNA agrees with the Commission's view that treating the 45 days as a "maximum" pre-implementation period would violate the clear intent of PAEA.

A sufficient notice period serves two functions.

First, particularly during early implementation years, interveners will need an opportunity to fully understand the parameters of the new law. While NNA hopes the Postal Service moves with due deliberation before making disproportionate adjustments within the market-dominant classes, the potential for serious displacement of mailers exists both now and in future postal administrations.

Second, the notice period provides mailing software vendors the time they need to update and reprogram their products.

As periodicals mailers discovered in the R2007-1 case, the disruption to software programmers from radical new rate schedules, surcharges and mail preparation requirements can be palpable. The delay in implementation of the 2007 rates from May 15 to July 15 granted by the USPS governors was essential and well-appreciated, but it was solely within the governors' discretion to offer, and might in a different financial environment have been denied. Commendably, the Postal Service has indicated it expects to file its proposed rates 90 days prior to implementation in the first round of PAEA-authorized adjustments. However, additional insurance of adequate notice for the mailing community within the Commission's rules is still important in the event that USPS takes a different view.

Accelerated software programming puts staffing pressure on software vendors, which creates higher costs that are passed on to customers. NNA is particularly sensitive to these costs because, prior to 2007, some of its smaller members had felt PAVE-certified software was unaffordable. They used a combination of off-the-shelf software and USPS Internet tools to prepare mail and create mailing statements. But NNA's continued prodding and the complexity of the 2007 rates propelled a new wave of conversions to better software. Purchase costs for products within the community newspaper's market range from \$2,000 to \$10,000 and above—an expense not easily absorbed by a small business. Any external pressure that unnecessarily aggravates vendors' costs to make the software most costly simply creates new barriers for small newspaper mailers that are already struggling to keep up with the warp speed changes handed down by USPS and the Commission.

For both reasons, fewer than 45 days would be inadequate. Indeed, a lengthier period should be permitted in cases where USPS announces its intention to make major adjustments to a subclass price or structure, to

implement significantly more complex mail preparation-related charges or discounts, or to pass on new obligations to PAVE-certified software vendors in conjunction with new rates. NNA is inclined to agree with Time Warner that a 90-day time period may be warranted but thinks the four month review period suggested by the Office of the Consumer Advocate is probably not needed, provided that the complaint process is adequate for mailers who believe a violation of PAEA has occurred. Therefore, NNA believes the Commission should exercise its discretion to implement a pre-rates review period between 45 and 90 days, as the complexity of the pending rates dictates. NNA also urges the Commission to allow different notice periods for the various market dominant classes at times when changes ahead suggest a need for differential review.

**2. Wide distribution of notification about pending new rates is important.**

NNA further concurs that a USPS filing in the Federal Register of its intent to increase rates is unnecessary if the Commission intends to publish a notice as quickly as possible. USPS intends to broadly disseminate notification to the public and the mailing community. But its information dissemination system has sometimes proven unequal to the task of creating public awareness, such as in its efforts to garner community involvement in the network realignment discussions. Even when it tries, an enterprise's self-interest may not motivate it to attract genuine public involvement, though it is usually in the public's interest to have the opportunity. The Commission is more naturally positioned to ensure that proper notice is carried out.

Nonetheless, NNA believes the Postal Service and the Commission should be urged to do its utmost to reach under-served segments of the population. Over-reliance on the Internet for public notice leaves many Americans out of the information loop. In particular, according to most recent findings of the Pew Center for the Internet and American Life, 40% of rural America, 45% of

Americans earning less than \$35,000 a year, and 38% of African-Americans and 39% of persons with a high school education are not yet using online services.<sup>1</sup> Printed notices, press releases, paid newspaper and magazine advertisements and radio/television announcements are still necessary to get the word to large segments of America. If the Postal Service does not adequately use these media, the Commission should consider doing so.

### **3. Comment during the 45+ day notice period is appropriate.**

NNA agrees with the Newspaper Association of America that a period of public comment would add to the transparency, and appreciates the Commission's tentative conclusion that a comment period will be permitted.

Again, particularly during a transitional period of PAEA's implementation, it will be important to encourage maximum participation by the public and mailing community in the entire rate-and-service process. The Postal Service has admirably activated a wide mailing community's participation in some of its own deliberations since the passage of PAEA. The Commission would benefit from the same. Among the benefits will be assistance to the Commission's limited staff from the intense scrutiny that mailers' groups will give to rates and classification changes affecting their particular mail products.

NNA encourages the Commission not to explicitly limit the public comment period to 20 days, but to permit a longer comment period where the Commission determines a longer review than 45 days is warranted. The comment period should be roughly half the time period of the proceeding at hand.

---

<sup>1</sup> See [http://www.pewinternet.org/trends/User\\_Demo\\_6.15.07.htm](http://www.pewinternet.org/trends/User_Demo_6.15.07.htm), where Pew regularly publishes its report: "Who's Online."

**4. The Commission should reconsider whether an explanation is needed for subclass increases dramatically in excess of the price cap.**

NNA's anxiety about the potential impact of PAEA's ultimate decision to place the price cap at the class level is acute. The onset of the new law leaves a vulnerable subclass—the within county mail that generally drew NNA's primary attention in cost-of-service cases—with rates whose original basis derives from costing methodology with thinly-sampled cost segments. If R2007-1 established the baseline from which new increases will grow, it set a foundation based upon methodology that NNA has questioned since the R94-1 omnibus rate, and that the Commission also has repeatedly questioned. Without rearguing the R2007-1 case, in which the Commission noted the thinness of costing data but found itself unable to implement NNA's proposed adjustment, NNA merely notes that its members' most important subclass has been hit hard by the 2007 rates, and that nothing in subsequent communications from the Postal Service has assuaged mailers' fears that more double digit increases are ahead.

NNA agrees with the substance of the concern raised by NAA about the intra-class rate authority. PAEA does, indeed, give the Postal Service a great deal of power over the rates of small and vulnerable subclasses. If USPS continues to believe, as it did in 2006, that within county mail fails to cover its costs, and it relies upon internal data no more fulsome than that introduced in R2007, it has both rationale and ability to continue to implement major increases. Because Within County mail composes less than 10% of the volume of the Periodicals class, double digit increases could be set without disturbing the price cap.

NNA, unfortunately, is compelled to agree with the Commission's conclusion that PAEA's intent limits the Commission's ability to correct disproportionate subclass increases, and somewhat curtails its power to probe the rationale for them, and, furthermore, that imposition of standards not explicitly found in PAEA

might exceed the Commission's authority. At the same time, however, the Commission is charged in Section 3622(b)(2) with creating a system that leads to predictability and stability in rates, which clearly provides some leeway for the Commission to throw its weight against undue rate shock by engaging in inquiry and requiring transparency. Therefore, NNA urges the Commission to reconsider its apparent view that PAEA discourages any examination of costs whatever.

Here, as at several junctures, a balance of simplicity and probity can be found. Asking the Postal Service to provide certain reports is not necessarily an invitation to a cost-of-service stampede. Rather, it will simply enable mailers as well as the Commission to understand trends and the impacts of changes within the system. The burden will be minimal as the Postal Service will continue to maintain costing systems and to use them as a guide in price setting, as any business would do. Indeed, compliance with proposed rule 3100.14(b)(5), requiring explanation of work-sharing discounts in excess of avoided costs, will require some costing calculations.

Submission of reports such as or similar to the current Cost and Revenue Analysis and the Billing Determinants reports would not violate the intent of PAEA and on the contrary provide a skeleton for understanding pricing decisions within classes. Such reports would enable both the Commission and the mailing community to evaluate the Postal Service's use of its intra-class discretion. It also would enable mailers to track the impact of various mail processing and automation changes over time. It would provide some factual basis for a later challenge of unjust rates, as well as for a petition to the Commission to consider additional regulations, which it suggests it will entertain if needed.

While cost of service is no longer the regulatory basis for postal prices, the market dominant classes overseen by the Commission remain largely unable to suppress price increases through market competition, as do the competitive classes. NNA believes the intent of Congress in setting the cap at the class level,

as the Postal Service wished, was to give the Service the opportunity to set prices rationally as any business would do, not to use its price powers unjustly. With respect to Within County rates, NNA believes the Postal Service insufficiently accounts for many work-shared components provided by mailers, and is also unable to fairly estimate the subclass's costs because of the size of the subclass. PAEA in this case gives the Service the power to be irrational in this respect while blindly trusting its rationality in trying to discourage below-cost mail. The Commission must provide mailers in this subclass, and in subclasses similarly situated, with sufficient information to understand their plight.

Therefore, NNA strongly encourages the Commission to reconsider its position in proposed rule 3100.14(b)(1). The rule should also require a basic Cost and Revenue Analysis for the subclasses (or products), and a written explanation of the specific cost justifications for any subclass (or product) price increase that is at variance with the adjustment in the class overall. It would also be helpful in understanding shifts in mail volume if the most recent Billing Determinants reports by class were filed. Where mailing organizations play a vital role in encouraging members to absorb expenses—like software programs—that are not likely to bring direct returns to the business, knowing how work sharing trends affect long run cost trends is an important piece of the dialogue.

In a similar vein, the Commission's proposed rule 3100.14(b)(6), which requires justification of both passthroughs in excess of 100% and those significantly below 100% is the right approach, and further supports the need for the basic cost information that NNA seeks above.

- 5. NNA takes no position on use of moving average or point-to-point calculation of the cap, but agrees that unused rate authority must be used within the class.**

NNA generally agrees with NAA and others that a moving average for calculating the price cap provides greater stability and predictability. It disagrees with the proposal by APWU to permit unused rate authority to be transferred outside the class. Numerous sound reasons exist for confining the application to the class. But one strong rationale motivates NNA's position: the incentive for USPS to continue to solve problematic cost spirals for flats processing (particularly for periodicals) will remain stronger if pricing allowances cannot be borrowed from other product lines.

**6. McGraw-Hill's proposal for reducing the price cap as a tool of applying service penalties should be examined during comments on service standards.**

McGraw-Hill has proposed that the Commission's rules should permit reduction of the price cap if service standards are not met or if costly mail preparations are newly required of mailers.

NNA has participated in the Postal Service's deliberation over the setting of service standards and believe the Service is proceeding in good faith to create standards that it can achieve and that will meet existing mailer expectations. Briefings before the Commission will occur on the day these comments are due; and the Commission has indicated that it will inaugurate a new round of public comments about the creation and measurement of service standards. The service standard aspects of PAEA are still taking shape. Therefore, NNA believes consideration of McGraw-Hill's proposal should be suspended for a time, but hopes that the Commission will reiterate the proposal as a part of any notice for new rulemaking on service standards.

**7. NNA's position on various other issues raised by the NPRM follows:**

- ***On including Negotiated Service Agreement (NSA) volumes in price cap calculations:*** NNA agrees generally with ADVO and Pitney Bowes that NSA volumes should not be included in price cap calculations. Including those volumes would increase the Postal Service's pricing flexibility beyond that contemplated by the statute. The Postal Service argues that NSA mailers may actually be paying high rates than the rest of the class and that their volumes would help the class, but NNA is dubious that an NSA with higher than average prices will be a common occurrence.

- ***On NSA pricing:*** NNA questions the Commission's implied finding that PAEA is necessarily intended to provide the Postal Service with new pricing flexibility for NSAs. The general intent of the statute to give the Postal Service greater flexibility may overlay the entire scheme of the law, but NNA believes Congress carefully balanced the concerns of the advocates and detractors of the NSA concept and left the status basically unchanged. It is, in fact, the Commission that is charged under Section 3622(c)(10) with taking into account the desirability of special classification agreements with mailers. The statute seems to give the Commission even the power to deny these agreements altogether, so it would be contrary to the intent of the statute to argue that the Commission should take anything like a hands-off approach to NSAs. The statute clearly requires a balancing of the NSA mailers' needs, the overall good to the Service and the effect upon the marketplace. The Commission's approach proposed in the NPRM seems reasonably balanced to meet these ends, but the NPRM does not clearly say that the Commission intends to permit a period of public comment following a Postal Service notice of an impending NSA. The balance required by NSA agreements is far more to be attained if non-NSA mailers concerned about contribution to the overall service as well as potential competitors are given an opportunity for comment. NNA urges the Commission to make that opportunity explicit in the rules.

- **On Exigent Price Increases:** The Postal Service is permitted to exceed the price cap in the event of “extraordinary or exigent circumstances, “which the Commission would designate as a Type 2 rate adjustment. The process by which the Commission would examine such requests is well developed in the NPRM. The Commission asks whether the exigent circumstances potentially qualifying for a Type 2 adjustment should be defined in the regulations. NNA believes that it would be unwise for the Commission to try to foretell exigencies. But by the definition of the word, the circumstances must be of a nature that are substantially outside the control of the Postal Service and its employee groups. That PAEA has left in place the system of arbitration outside management’s control for settling compensation disputes cannot become a lever for exigencies. NNA believes that while a menu of potential exigent circumstances would be so much fortune-telling at this juncture, but the regulations should clearly indicate that circumstances must have taken shape **outside** the ambit of both management and labor. Thus, neither unwise investments nor excessive compensations can be a rationale for exceeding the cap.

Respectfully submitted,

Tonda F. Rush  
KING & BALLOW  
PO Box 50301  
Arlington, VA 22205  
(703) 812-8989

#### CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing document online in accordance with the Commission’s Rules of Practice.

Tonda F. Rush  
Counsel for National Newspaper  
Association, Inc., Arlington, VA

September 24, 2007