

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

Regulations Establishing System
Of Ratemaking

DOCKET No. RM2007-1

REPLY COMMENTS OF
MAIL ORDER ASSOCIATION OF AMERICA
ON
PROPOSED RULE

Introduction

The Initial Comments of the Postal Service and other parties on the Commission's proposed Rule exhibit the same dichotomy exhibited in the comments submitted pursuant to the Advance Notice of Rulemaking.

The Postal Service and most parties recognize that the Postal Accountability and Enhancement Act (PAEA) effects a profound change in the entire process of establishing rates and classifications and allows the Service broad freedom unless and until the Commission determines under the Annual Review or Complaint procedures that the Service has strayed beyond the boundaries imposed by the PAEA. The Commission's proposed Rule provides the Service with needed flexibility and otherwise sets forth sound procedures all with admirable clarity.

Some, however, persist in their support of procedures that would severely restrict Postal Service pricing and classification flexibility, a flexibility that is the core of the PAEA. Those parties seek various changes in the Proposed Rule that, directly or indirectly,

would impinge upon the flexibility that the Commission has determined to be appropriate. Their counsel should again be rejected by the Commission.¹

Negotiated Service Agreements (Customized Agreements)

Upon review of the Initial comments, however, MOAA recognizes that there are two areas that should be clarified to ensure against any misunderstandings. The first is the nature of the procedures that will be required for the establishment of Negotiated Service Agreements (NSAs) or “customized agreements” as they are probably more accurately referred to by the Postal Service. The question of the correct interpretation of the provisions of the Rule as they will govern NSAs has been raised by the Postal Service and a number of other parties.² As stated by the Service, the treatment of “each customized agreement ... as a separate product ... leads to an ambiguity in the Commission’s proposed rules as to the procedures that will be used for the introduction of such agreements.”³ The “ambiguity” is that by characterizing each customized agreement as a separate product, the proposed Rule is subject to an interpretation that would subject NSAs to the requirements of § 3642, which govern the introduction of new products.

The Postal Service presents a compelling discussion demonstrating that “the § 3642 procedures are unsuitable for the review of customized agreements, and would also likely constitute a significant hindrance to postal customers and the Postal Service

¹ The Initial Comments of the Association for Postal Commerce contains a proposal that would serve to preserve and enhance the Service’s flexibility by explicitly precluding complaints during the notice period prior to rate adjustments. MOAA supports that proposal.

² Initial Comments of Time Warner, Inc. in Response to Commission Order No. 26 at 11-13; Comments of Discover Financial Services LLC in Response to Order No. 26 at 2-4; Comments of Advo, Inc in Response to Proposed Regulations Establishing a System of Ratemaking at 2-5; Comments of Parcel Shippers Association in Response to the Commission’s Order Proposing Regulations at 9-11; and Comments of National Postal Policy Council on Order No. 26 at 8-10.

³ Initial Comments of the United States Postal Service in Response to Order No. 26 at 2.

entering into customized agreements, on both the competitive and market-dominant sides of the business in contravention of the Act.⁴

The Postal Service also establishes that the procedures in the proposed Rule specifically governing NSAs will permit the Commission to fulfill its regulatory responsibilities, whereas the regulations governing the review of new products are not properly applied to customized agreements.⁵ As concluded by the Postal Service:

With no need to designate customized agreements [NSAs] as “products for regulatory purposes, and strong business reasons not to do so, the proper approach seems clear: the Commission should not treat each customized agreement as a separate “product”.

Id. At 12.

The overwhelming majority of mailers support a regulatory approach to customized agreements (NSAs) that accord with the position of the Postal Service.

Valpak is an exception. Valpak supports the adoption of provisions that would add to the burden of establishing, and lessen the utility of, NSAs. The Valpak position conforms to its general approach to the procedures that should be used under the PAEA, i.e. the adoption of procedural requirements that would hinder, if not entirely prevent, the effective exercise of Postal Service flexibility. The Commission’s proposed Rule recognizes that heeding Valpak’s counsel would assuredly result in the failure of the PAEA to fulfill its purposes. There is nothing in Valpak’s current comments that should result in a revisiting of that sound judgment.

⁴ Id. At 3.

⁵ Id. At 5-12.

Similarly, the OCA supports the adoption of additional regulatory burdens for NSAs.⁶ The adoption of the suggestions of the OCA would result in movement in exactly the wrong direction and would only serve to discourage, rather than encourage, the use of NSAs to the detriment of all mailers. They should be rejected by the Commission.

Partial-Year Price Cap Calculation

A number of parties have raised the issue of whether the implementation of a partial-year limitation, as governed by §3100.22, would result in increases that exceed the annual CPI-U limitation contrary to the requirements of the PAEA. The issue has been comprehensively addressed and a solution proposed in the statement of Antoinette Crowder and William Miller.⁷ In candor, counsel does not fully understand the presentation of the error and the proposed solution as found in the Crowder/Miller Statement. Nevertheless, it appears that the Commission's proposed regulation would permit rate increases in excess of the statutory cap and that the adoption of the approach advocated in the Statement would prevent that from occurring. In any event, the Commission should ensure that the final regulations will not permit rate increases in excess of the statutory maximum.

Other Issues

The Newspaper Association of America suggests that proposed § 3100.13(b) should be amended to include a reference to 39 U.S.C. § 403(c).⁸ The proposal is disturbing only to the extent that it is contending that a rate increase that complies with the newly adopted provisions of § 3622 could nevertheless be found to have resulted in

⁶ Office of the Consumer Advocate Comments in Response to Order No. 26 Proposing Regulations to Establish a System of Ratemaking at 3-9.

⁷ Statement of Antoinette Crowder and William C. Miller in Response to Commission Order No. 26 on Proposed Rules Establishing a System of Ratemaking.

⁸ Comments of the Newspaper Association of America on Notice of Proposed Rulemaking at 13-15.

unreasonable discriminations or preferences. Such an interpretation would be entirely unreasonable. In sum, the NAA suggestion is redundant and should not be adopted.

Conclusion

The passage of the PAEA is the result of a congressional conclusion that the current approach to pricing postal products has failed. The Commission's conclusion that the Service must be free to adopt prices without burdensome requirements, including explanations of how a particular rate satisfies all of the provisions of the PAEA should not be revisited. There should be no requirement imposed that would in any way restrict the full exercise of the Service's flexibility. To do so would be to risk the failure of the PAEA before there has been an opportunity to determine whether the Service's exercise of pricing freedom will foster the continuation of universal service at affordable prices.

Respectfully submitted

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