

**BEFORE THE POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001**

**Regulations Establishing System
of Ratemaking**

Docket No. RM2007-1

**REPLY COMMENTS OF PITNEY BOWES INC. IN RESPONSE TO ORDER
PROPOSING REGULATIONS TO ESTABLISH A SYSTEM OF RATEMAKING
AND INITIAL MAIL CLASSIFICATION SCHEDULE**

James Pierce Myers
Attorney at Law
1211 Connecticut Avenue, NW
Suite 620
Washington, DC 20036
Telephone: (202) 331-8315
Facsimile: (202) 331-8318
E-Mail: jpm@piercemyers.com

Michael F. Scanlon
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
1601 K Street, NW
Washington, DC 20006
Telephone: (202) 778-9000
Facsimile: (202) 778-9100
E-Mail: michael.scanlon@klgates.com

Counsel to PITNEY BOWES INC.

DATED: October 9, 2007

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS.....	2
	A. The Commission’s Proposed Rules for Rate Adjustments of General Applicability Appropriately Embrace Cost-Reflective Rates as a Means to Promote Economic Efficiency and Protect Competitive Access.....	2
	B. The Commission’s Proposed Rules for the Computation and Application of the Price Cap Strike An Appropriate Balance Among Pricing Flexibility, Predictability, and Stability.....	3
	C. The Commission’s Proposed Rules Should be Revised to Facilitate the Expedited Implementation of Negotiated Service Agreements Under the New Ratemaking System.....	5
III.	REGULATION OF RATES FOR COMPETITIVE PRODUCTS.....	7
	A. Competitive Contract Rates Should Not be Classified as “Separate Products”.....	7
	B. The Commission Should Treat Inbound International Mail on an Exception Basis.....	8
IV.	PROPOSED MAIL CLASSIFICATION SCHEDULE.....	9
V.	CONCLUSION.....	10

I. INTRODUCTION

In its previous comments in this docket, including its September 24, 2007 comments in response to PRC Order No. 26 (August 15, 2007), the Order Proposing Regulations to Establish a System of Ratemaking (Order), Pitney Bowes Inc. (Pitney Bowes) suggested that in developing the modern system of ratemaking the Postal Regulatory Commission (Commission) should endeavor to: (1) embrace the letter and intent of the statute, (2) promote reduced costs and improved efficiency through rules and incentives, (3) enhance mail's value proposition, and (4) balance pricing flexibility with predictability and stability.

As explained in our previous comments, the Commission's proposed rules successfully capture the letter and intent of the Postal Accountability and Enhancement Act (PAEA) and appropriately balance the often competing statutory objectives of pricing flexibility, predictability, and stability.¹ Pitney Bowes is pleased to note the general consensus among the commenters about the importance of an active role for the Commission in implementing and administering the modern rate system and the need for clear advance guidance regarding the rules the Commission will apply in administering this system.

Below we respond to the comments of others on several key issues raised in the proposed rules including the Commission's role in administering cost-reflective rates, the application and administration of a price cap for market dominant products, the treatment

¹ See Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006).

of contract rates for market dominant and competitive products, and the treatment of inbound international mail.

The Commission's proposed rules also contemplate the establishment and maintenance of a new Mail Classification Schedule (MCS) to replace the existing Domestic Mail Classification Schedule (DMCS). The Commission directed the Postal Service to submit a draft MCS for review and discussion. *See* Order at 100. The Postal Service filed its draft MCS on September 24, 2007. We also comment below on the Postal Service's initial submission.

II. REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

A. The Commission's Proposed Rules for Rate Adjustments of General Applicability Appropriately Embrace Cost-Reflective Rates as a Means to Promote Economic Efficiency and Protect Competitive Access.

In the explanatory narrative accompanying the proposed rules, the Commission correctly recognizes that "efficient component pricing should be used as a guiding principle in establishing and maintaining workshare discounts." Order at 23. No one has disagreed with the Commission's characterization of efficient component pricing (ECP) as a "guiding principle" under the modern rate system and several parties expressly endorsed the Commission's proposal. *See* MMA Comments at 2; NPPC Comments at 2-3; and PB Comments at 2-7.

Pitney Bowes supports NPPC's suggestion that the Commission clarify its proposed rules to make clear that the term "workshare discount," as employed in the proposed rules and defined in the PAEA, applies to only a subset of the activities that could be performed by private participants in the mailstream. *See* NPPC Comments at 2-

3. As suggested in the initial comments of Pitney Bowes and NPPC, the Commission should extend the principles underlying ECP and cost-reflective pricing to all cost causing characteristics of the mail including shape, weight, distance, payment evidencing, address hygiene and others. *See* NPPC Comments at 3; PB Comments at 3-4.

Pitney Bowes also agrees with NPPC's suggestion that the proposed rules addressing workshare discounts be clarified to reflect all of the enumerated statutory exceptions and the general limitation as set forth in section 3622(e). *See* NPPC Comments at 3-4. In the same vein, the Commission should reject the APWU's suggestion that the Commission require the Postal Service to "state how it will eliminate the excess portion of any excessive discount." APWU Comments at 6. Such a requirement is unsupported by the PAEA, and would effectively read two exceptions and the general limitation out of the statute. The exceptions provided in sections 3622(e)(1)(C) and (D) are not time limited. 39 U.S.C. § § 3622(e)(1)(C)-(D). Nor is the limitation set forth in section 3622(e)(3). *See* 39 U.S.C. § 3622(e).

B. The Commission's Proposed Rules for the Computation and Application of the Price Cap Strike An Appropriate Balance Among Pricing Flexibility, Predictability, and Stability.

There is widespread agreement that the Commission's proposed rules for computing and applying the annual limitation (price cap) of section 3622(d) appropriately balance the pricing flexibility, predictability, and stability afforded under the PAEA. Numerous commenters acknowledge that the proposed rules correctly limit the nature of the Commission's review upon a notice of rate adjustment to a "quick look" review of price cap compliance issues. *See* ANM / MPA Joint Comments at 2, NPPC Comments at 2; PB Comments at 7-8; TW Comments at 4-5.

The proposed rules also appropriately distinguish between newly “establish[ed]” workshare discounts and existing discounts for purposes of both the nature of the information required and when that information must be provided. *See* proposed 39 C.F.R. § 3100.14(c). Consistent with the limited nature of the pre-implementation review, the Commission’s “quick look” review with respect to new workshare discounts should extend only to whether the Postal Service has provided the statutorily required explanation and certification. *See* 39 U.S.C. § 3622(e)(4).

The requirement that the Postal Service address how the proposed rates will help achieve the objectives and take into account the factors of the PAEA, *see* proposed rule 39 C.F.R. § 3100.14(b)(7), and the provision for public comment during the pre-implementation review, *see* proposed 39 C.F.R. 3100.13, will promote the enhanced transparency of the modern ratemaking process without imposing an undue administrative burden. This pre-implementation process is appropriate and widely supported. *See* APWU Comments at 2-3; ANM / MPA Comments at 2; NPPC Comments at 2; PB Comments at 7-8; ValPak Comments at 2.

The Commission’s refusal to allow the pre-implementation review process to degenerate into a “mini” rate case is equally sound. The notion that the limitation on the scope of public comment in connection with the pre-implementation review somehow offends notions of due process, *see e.g.*, ValPak Comments at 3-7, is without merit. The alleged due process concerns are particularly unsupportable where, as here, the PAEA expressly provides for expansive review procedures via the annual compliance determination, *see* 39 U.S.C. § 3653, and through the complaint process, *see* 39 U.S.C. § 3662.

McGraw-Hill proposes that the Commission revise the proposed rules to provide for a more expansive discretionary review of non-cap issues. *See* McGraw-Hill Comments at 7. This position is reasonable, but unnecessary. Section 3662 already provides the Commission with a procedural vehicle to intercede via a complaint at any time if it “believes the Postal Service is not operating in conformance with the requirements of the provisions of [Chapter 36].” 39 U.S.C. § 3662.

At the same time, Pitney Bowes does support the proposal of the Greeting Card Association to amend the regulations to make clear that while the scope of pre-implementation review is appropriately limited to cap compliance issues, the Commission’s “acceptance” of the noticed rate adjustment does not foreclose subsequent review or challenge, or create any presumption of compliance. *See* GCA Comments at 6.

Finally, Pitney Bowes agrees with NPPC’s suggestion that the proposed rules be further clarified to make clear that the notice period required by section 3622(d)(1)(C) is appropriately construed as a *minimum* period. *See* NPPC Comments at 5; PB Comments at 9. Additional time ought to be allowed and encouraged, as necessary, to ensure an orderly transition and implementation of new rates and classification changes. *See id.*

C. The Commission’s Proposed Rules Should be Revised to Facilitate the Expedited Implementation of Negotiated Service Agreements Under the New Ratemaking System.

While the Commission’s proposed rules regarding rate adjustments for negotiated service agreements (NSAs) are improvements over the current processes, further revisions are necessary to effectuate the PAEA’s promotion of NSAs.

First, the Commission should revisit its decision to classify NSAs as separate “products.” Several commenters correctly observed that the categorization of each NSA

as a separate “product” is not required by the PAEA and would have the unintended consequence of triggering the requirements of section 3642 and, thus, potentially frustrating the expedited 45-day notice provision contemplated by section 3622(d)(1). *See* Advo Comments at 2; PSA Comments at 10; Postal Service Comments at 3. As the Postal Service notes, in the majority of cases the NSA will not represent a distinct product and the procedural requirements of section 3642 are therefore inappropriate. Pitney Bowes agrees that to the extent the Commission’s intent is to ensure that all NSAs cover their attributable costs, the Commission may achieve that result without classifying NSAs as separate “products.” *See* Advo Comments at 2-3; Postal Service Comments at 2-10. For example, the Commission’s rules implementing section 3622(c)(10) appropriately require that each market-dominant NSA must “improve the net financial position of the Postal Service” or “enhance the performance of operational functions.” *See* proposed 39 C.F.R. § 3100.40; 39 U.S.C. § 3622(c)(10).

Second, the Commission should revisit the scope of the required notice under proposed rule 3100.42. *See* proposed 39 C.F.R. § 3100.42. Specifically, the Commission should omit the requirement of proposed rule 3100.42(d)(3) which requires the Postal Service to provide “[a]n analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement.” *See* proposed 39 C.F.R. § 3100.42(d)(3). As explained in the initial comments of Advo and Time Warner, this requirement is inconsistent with the nature of the new ratemaking system and text of the PAEA which requires only that the Commission ensure that the proposed agreement “not cause unreasonable harm to the *marketplace*.” *See* Advo Comments at 3; TW Comments at 11-12; 39 U.S.C. § 3622(c)(10)(emphasis added). As a general matter,

Pitney Bowes reiterates its concern that the procedural and data production requirements imposed by the proposed rules may have the unintended effect of foreclosing NSAs for all but the very largest mailers. The Commission should consider fashioning exceptions to its data production and reporting requirements for small-volume mailers.

Finally, the Commission must adopt rules to protect the disclosure of commercially sensitive information in connection with NSAs. *See* Amazon Comments at 2; PB Comments at 12; USPS Comments at 9-10. The requests for heightened disclosure requirements, formal discovery, and public participation in connection with a notice of rate adjustment implementing an NSA would turn the PAEA's expanded pricing flexibility on its head. *See e.g.*, APWU Comments at 6-8; ValPak Comments at 20-21. The Commission's regulations should facilitate, not frustrate, the explicit statutory authority for NSAs under the PAEA.

III. REGULATION OF RATES FOR COMPETITIVE PRODUCTS

A. Competitive Contract Rates Should Not be Classified as "Separate Products."

As discussed above, the Commission should revisit its decision to classify individual contract rates for competitive products as separate "products." The categorization of each contract rate as a separate "product" finds even less support on the competitive products side where the procedural requirements of section 3642 are entirely inconsistent with the PAEA's provision for implementing rates of non-general applicability in as few as 15 days. *See* PSA Comments at 11. Subjecting the Postal Service to a review process of indefinite length under section 3642 would severely undercut the Postal Service's ability to compete in a competitive marketplace. Pitney

Bowes agrees that to the extent the Commission's intent is to ensure that all competitive contract rates cover their attributable costs, it may do so in the normal course of its compliance review under section 3633(a)(2), without designating competitive contract rates as separate "products." *See* 39 U.S.C. § 3633(a)(2); PSA Comments at 11; Postal Service Comments at 2-10.

B. The Commission Should Treat Inbound International Mail on an Exception Basis.

For the reasons stated in the Postal Service's comments, Pitney Bowes supports the Postal Service's proposal to exclude inbound international mail from classification as either market dominant or competitive in the MCS. *See* Postal Service Comments at 13-22.

To the extent that the Commission requires the Postal Service to classify international inbound mail as either market dominant or competitive, it should be classified as a competitive product. Inbound international mail should be classified as a competitive product because the Postal Service cannot "exercise sufficient market power . . . [to] effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output without the risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). In fact, the Postal Service has no direct control over the price.

Moreover, classifying inbound international mail as a competitive product will ensure that the Postal Service is competing on a level playing field in the inbound international market as contemplated by section 407(e)(2). *See* 39 U.S.C. § 407(e)(2).

IV. PROPOSED MAIL CLASSIFICATION SCHEDULE

Pitney Bowes commends the Postal Service on its initial draft of the MCS. The new style of the draft MCS appropriately reflects the function of the classification schedule under the modern rate system. The Postal Service is also to be commended for exercising restraint in this initial draft by not proposing any substantive changes in eligibility for and availability of rates, fees, and services, as well as mail preparation and entry requirements.

The Postal Service has achieved its stated goal of creating a clearer, more understandable schedule. The Postal Service's adoption of a uniform lay-out for product descriptions, the presentation of prices and fees in a "ratefold" format, and the presentation of price categories in graphical format all represent improvements over the predecessor DMCS.

Consistent with the Commission's direction, the draft MCS endeavors to segment market dominant postal services into "products" based on two main criteria: "1) discernible differences in how customers use the mail; and 2) distinct methods of transportation and/or processing which may produce measurable differences in cost." MCS at 9.

In furtherance of these principles Pitney Bowes supports the Postal Service's proposal to disaggregate First-Class Mail letters and cards into two distinct products: single-piece and bulk. It is inarguable that the single-piece and bulk mail streams for First-Class Mail letters and cards represent distinct customer segments and distinct costs.

V. CONCLUSION

Pitney Bowes appreciates the Commission's consideration of these comments as it prepares to implement the modern system of ratemaking contemplated under the PAEA. With the few changes discussed above, the Commission's final regulations will promote and sustain a vibrant, growing mailing industry, enhance the value of the mailstream for senders and recipients, and ensure universal, affordable postal service.

Respectfully submitted:

/s/

James Pierce Myers
Attorney at Law
1211 Connecticut Avenue, NW
Suite 620
Washington, DC 20036
Telephone: (202) 331-8315
Facsimile: (202) 331-8318
E-Mail: jpm@piercemyers.com

Michael F. Scanlon
KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP
1601 K Street, NW
Washington, DC 20006
Telephone: (202) 778-9000
Facsimile: (202) 778-9100
E-Mail: michael.scanlon@klgates.com

Counsel to PITNEY BOWES INC.