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**BEFORE THE  
POSTAL REGULATORY COMMISSION**

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Regulations Establishing System of Ratemaking

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Docket No. RM2007-1

**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF POSTMASTERS OF THE UNITED STATES  
ON PROPOSED REGULATION**

The National Association of Postmasters of the United States (NAPUS) represents 40,000 Postmasters currently or formerly employed by the United States Postal Service. Its members are or were managing retail, delivery, transportation and processing operations of the federal agency. Consequently, NAPUS has a significant interest in the final rate-setting regulations. NAPUS' remarks relate specifically to Subpart E of Part 3001, concerning the requirement that the Commission "establish procedures whereby rates may be adjusted on an expedited basis due to either extraordinary or exceptional circumstances." 39 USC § 3622(2)(1)(E)

NAPUS desires to associate itself with comments filed by the National Mail Handlers Union, on September 24, 2007. Moreover, we agree with Commission's decision to operationally define those circumstances that it concludes are "extraordinary or exceptional." That conclusion would then be based upon a "focused explanation" provided by the United States Postal Service and with public input, as provided in Rule 3100.61. In this way, postal customers can rest sure that any proposed postage adjustment for market dominant products will not be arbitrary, or unsubstantiated.

1           Despite NAPUS' commendation of the Commission's work in developing the  
2 process for the determination of an expedited rate adjustment, Postmasters are  
3 concerned that the Commission reaches too far in constructing specific extra-statutory  
4 burdens, which could impair Postal Service operations. Therefore the Commission  
5 should strike the two offending Rules, § 3100.61(6) and § 3100.61(7), since they do  
6 not have foundation in the PAEA.

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8           First, the PAEA includes no statutory language requiring the Postal Service to  
9 anticipate a rate rescission, as part of its justification of a rate increase made  
10 pursuant to 39 USC § 3622(d)(2)(C). Under the proposed Rule § 3100.61(6), the  
11 Commission would require the Postal Service to provide: "An explanation of when, or  
12 under what circumstances, the Postal Service expects to be able to rescind the exigent  
13 increases in whole or part." Congress could have included a provision in the PAEA  
14 requiring the Postal Service to forecast when a postage increases resulting from "either  
15 extraordinary or exceptional circumstances" could be repealed; however, it did not.  
16 Consequently, the Commission ventures incorrectly into virgin territory.

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18           Second, the PAEA includes no statutory language requiring the Postal Service to  
19 justify why the "extraordinary or exceptional circumstances" giving rise to the rate  
20 increase was "unforeseeable or unavoidable." In fact, Congress affirmatively elected *not*  
21 to include "unexpected" as a criterion for an expedited rate increase. Adding this  
22 additional unforeseeable or unavoidable regulatory hoop improperly asks for Postal  
23 Service divination of future events and 20/20 hindsight of past events. The absence of  
24 statutory language requiring predictability of circumstances as a rationale for the rate  
25 case ought to be instructive, if not decisive. However, if legislative history is at all  
26 helpful, the decision by Congress to reject "unexpected" as a principle in evaluating

1 the necessity of an expedited rate increase should be controlling. While previous  
2 iterations of the PAEA may have included “unexpected” as criterion, the final  
3 legislation that was passed and signed by the President did not.

4  
5 NAPUS lauds the Commission for its exemplary work in proposing these  
6 regulations and the extraordinary speed with which the Commission released the  
7 regulations. However, NAPUS urges that the Commission delete draft regulations  
8 §3100.61(6) and §3100.61(7) in order that the regulations accurately reflect the  
9 statutory language and congressional intent of 39 USC § 3622(d)(2)(C).

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11 Respectfully submitted,

12  
13 Robert M. Levi

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21 October 9, 2007  
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