

## **MOTION OF THE AFFORDABLE MAIL ALLIANCE TO DISMISS REQUEST**

The Affordable Mail Alliance respectfully moves to dismiss this case on the ground that the Request and supporting documentation filed by the Postal Service on July 6, even taken in their most favorable light, fail to satisfy 39 U.S.C. § 3622(d)(1)(E).

The Affordable Mail Alliance is a coalition of large and small businesses, nonprofit organizations and associations of mailers that together account for a majority of the mail sent in the United States. A list of the Alliance's members appears in Appendix A to this Motion.

### **SUMMARY**

Allowing the Postal Service to raise prices above the Consumer Price Index in this case would nullify the single most important safeguard for mailers and the public in the Postal Accountability and Enhancement Act of 2006 ("PAEA"). One of the most fundamental tasks of rate regulation is to prevent regulated firms from exploiting their market power to earn excessive profits or recover inefficiently high costs. The PAEA, like many other modern regulatory statutes, accomplishes this task by limiting the average price increase for each market-dominant postal class to the rate of inflation as measured by the CPI. This mechanism, known as price-cap or incentive regulation, is designed to encourage the Postal Service to improve its productivity and control its costs, protect mailers from having to pay for

inefficiently high Postal Service costs, and protect the overall economy from further cost increases downstream.

Section 3622(d)(1)(E) offers an escape valve from the CPI cap for exigent circumstances, when the Postal Service could not continue operating without overall price increases above the CPI. But the exception is narrow. The authors of PAEA recognized that exigency clauses are the potential Achilles heel of incentive regulation. If failure to recover actual costs led to relaxed enforcement of the index-based price cap, the incentive mechanism would lose its credibility as a control on costs. Hence, Section 3622(d)(1)(E) allows the Postal Service to breach the CPI cap only in “extraordinary or exceptional circumstances” that would otherwise leave the Postal Service short of the funds needed to provide necessary services despite the “best practices of honest, efficient and economical management.”

The present circumstances do not begin to satisfy these requirements. The Postal Service claims that it needs more money for a variety of reasons, including the recession that began in December 2007, which has accelerated the long-term diversion of communications from mail to the Internet. But the Postal Service’s most fundamental problem is not the Internet, or the recession, but a lack of effective cost control.

The Postal Service has long had great difficulty in managing its costs—particularly the costs of its mail processing network and its workforce. Until recently, the long-term growth of mail volume and revenue allowed the Postal Service to live with this problem. Over the past 15 years, however, the

likelihood that the rise of the Internet would slow and eventually reverse the growth of mail volume has become increasingly obvious. Despite ample notice of this threat, the Postal Service took only limited steps to get its house in order by reducing its plant capacity and labor costs and improving its flexibility to shed further costs quickly if the decline in volume and workload accelerated. In FY 2007, the last complete fiscal year before the start of the current recession, the Postal Service still carried an infrastructure and workforce designed to handle 300 billion pieces of mail annually—almost 50 percent more than actual mail volume in the same year, and twice the mail volume that the Postal Service projects for the year 2020.

With the recession came the day of reckoning. The Postal Service was hardly the only enterprise to suffer sharp declines in volume and revenue from the downturn. Most large American companies—including competitors of the Postal Service such as FedEx and UPS—experienced comparable or even greater declines. Indeed, many of the Postal Service’s customers saw their own revenue fall by 20 percent or more. Efficiently run private companies, however, responded to the recession by making aggressive (and often painful) cuts in capacity and employment, and freezing or cutting wages and compensation. As a result, FedEx, UPS and other well-run private companies achieved large enough productivity gains to return to profitability within a quarter or two after the recession bottomed out in early 2009. Efficiently managed nonprofit organizations and municipal governments survived with similar austerity measures.

The Postal Service's countermeasures have been far less effective. It has done little since December 2007 to shrink or consolidate its oversized and inefficient mail processing network. It also has implemented virtually no layoffs or furloughs, and has relied almost entirely on attrition and other voluntary measures to reduce the size of the workforce. While these measures have reduced work hours, the downsizing has not come close to offsetting the drop-off in revenue and work load. As a result, while private sector productivity has increased, Postal Service productivity has fallen. Further, while most other American workers have endured pay freezes or cutbacks, the Postal Service has increased compensation rates that were already above market.

The result has been devastating. In Fiscal Year 2009, when prices in the overall economy actually declined, the Postal Service costs per unit of output *increased by more than six percent*. Had the Postal Service merely held its costs to the level of inflation in the general economy, *the Postal Service would have made a profit in 2009*.

The Postal Service's actual performance does not begin to approach the "best practices of honest, efficient, and economical management" required by 39 U.S.C. § 3622(d)(1)(E) as a condition for any exigent rate increase. Nor has the Postal Service satisfied the other two standards of Section 3622(d)(1)(E): that the circumstances causing the Postal Service's financial woes be extraordinary or exceptional, and that the projected shortage of

funds would jeopardize the ability of the Postal Service to continue providing service.

This case should be recognized for what it is: less than four years after PAEA became law, the proposed rate increases would nullify the primary line of defense established by Congress to protect mailers and the American public from abuse of the Postal Service's market power. If the increases are approved, the central regulatory constraint of PAEA will be dead. With traditional cost-of-service regulation of class-wide rate increases having been repealed in 2006, allowing the Postal Service to breach the CPI cap whenever the Postal Service expects to lose money would eliminate any regulatory discipline on the Postal Service to control its costs.

The Postal Service's continuing failure to control its costs is a fundamental structural problem, and a long-run threat to the survival of the institution that can no longer be finessed by rising volume or price increases. Failure to confront this reality serves the interests of no one—least of all the Postal Service, its employees, and its customers. As Senator Carper commented a month ago:

Based on the work I've seen over the years from GAO, the Postal Service's Inspector General and others, we likely have some overcapacity and too large of a workforce. This must be confronted head on. Postal customers . . . still depend on the Postal Service. But at a time when the pace of electronic diversion is likely picking up, we probably can't rely for very much longer on customers' willingness to continue paying for a

postal system that seems in many ways to be much larger than we need.<sup>1</sup>

Without effective cost control, trying to make the Postal Service solvent through financial infusions will be like trying to fill a bucket with a hole in its bottom. The Postal Service will lurch from one financial crisis to the next.

## COMMENTS

### **I. 39 U.S.C. § 3622(d) ALLOWS THE POSTAL SERVICE TO RAISE RATES FASTER THAN INFLATION ONLY IN EXTREMELY NARROW CIRCUMSTANCES.**

#### **A. The CPI Price Cap Of 39 U.S.C. § 3622(d) Is The Main Defense Established By PAEA Against Recovery of Excessive Costs From Users Of Market-Dominant Postal Products.**

One of the most fundamental tasks of rate regulation is to serve as a surrogate for effective competition in markets where it is lacking. Thus, regulation is intended to prevent the regulated firm from exploiting its market power by earning excessive profits or recouping inefficiently high costs. Stephen G. Breyer, *et al.*, *Administrative Law and Regulatory Policy: Problems, Text, and Cases* 228 (4th ed. 1999); Stephen G. Breyer, *Regulation*

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<sup>1</sup> Opening statement of Sen. Tom Carper in “Having Their Say: Customer and Employee Views on the Future of the U.S. Postal Service,” Hearings Before the Subcom. on Federal Financial Management, Government Information, Federal Services, and International Security, Committee on Homeland Security and Governmental Affairs (June 23, 2010).