

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

COMMENTS ON REPORT TO THE PRESIDENT
AND CONGRESS PURSUANT TO SECTION 701
OF THE POSTAL ACCOUNTABILITY
AND ENHANCEMENT ACT

Docket No. PI2016-3

COMMENTS OF
AMERICAN POSTAL WORKERS UNION, AFL-CIO
(June 14, 2016)

On April 14, 2016, the Postal Regulatory Commission issued a Notice and Order Seeking Comments on Report to the President and Congress Pursuant To Section 701 of the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006), § 701.

In response to the Request for Public Comment, the American Postal Workers Union, AFL-CIO (APWU) respectfully submits the following Comments.

COMMENTS

I. Postal Service Financial Situation

A Eliminate pre-funding of retiree health benefits

The Postal Service's financial condition has been distorted by the PAEA's requirement to pre-fund and make additional payments to pre-fund premiums for future retirees into a newly created Postal Service Retiree Health Benefits Fund (PSRHBF). See 5 U.S.C. §8909a. The Postal Service is required to fully pre-fund future retiree health benefits 75 years in advance over a ten- year period. This is a requirement that

no other public or private entity must make, and has placed a large burden on the Postal Service making it financially difficult to make those payments.

According to the Postal Service's FY 2015 Annual Report to Congress, at p. 22, "when the impact of the required prefunding payments, FERS amortization and non-cash expenses for workers' compensation are excluded, the income from ongoing business activities or "controllable income" was \$1.2 billion." The Postal Service's FY 2015 Annual Report at p. 25 shows a \$1.188 billion profit when non-controllable costs like the prefund expense were excluded.

Congress should eliminate the prefunding mandate and legislate a refund of those prefund payments. This would assist the Postal Service to have the necessary cash flow to continue to make improvements in the service, its vehicle fleets and other expanded needs to make the Postal Service viable again.

B. Restore the historically expansive function of postal services

1. Expanded services are part of the Postal Service's natural business model.

The Postal Service's financial condition has also been needlessly crippled by a contradictory theory of privatization. The argument made by private firms seeking to out-compete and take over the postal system depends on a contradiction. Management observers of the Postal Service frequently complain that it is not allowed to run the Service as a business. Yet the same critics often insist that the Postal Service should not develop an innovative plan for using its infrastructure for any services other than an narrowly defined core of mail delivery.

This makes little sense as a business model. By definition, operating the Postal Service as a business would lead entrepreneurial managers to use its infrastructure for

as many ancillary functions as possible. But the one-sided argument of privatization is that the Postal Service may not be innovative – only the private businesses poised to take it over may do so. The private retailers to whom the Postal Service is rapidly contracting are taking over postal work precisely because they are diversifying their original product and service base. It contradicts the expectation that the Postal Service should be a business when its critics demand that it operate with as little imagination as possible.

2. Expanded services are part of the Postal Service’s historic function.

The narrow view of “postal service” as limited to hard copy and ancillary functions flies in the face of the Service’s history.

The Post Office provided expanded financial services for over fifty years from 1911 to 1967. This was not considered some irrelevant “non-postal” service, but part and parcel of the natural infrastructure of the Nation’s postal network. From the beginning of the Republic, U.S. post offices, housed originally in “the most frequented coffee-house in the most public part of town,” were a “headquarters of life and action, the pulsating heart of enterprise.” James H. Bruns, *Great American Post Offices* 3 (1998). In later years, post offices continued to “function[] much like community social clubs, places to gather and find out what was happening elsewhere in the district.” *Id.* at 48.

The Postal Service itself should use its infrastructure to operate natural complements to mail delivery like a modern version of the financial services offered from 1911 to 1967: These services can be added and have been recommended by the Office of Inspector General (see OIG Report RARC-WP-14-007 January 27, 2014) The

Postal Service is already meeting some of the needs of the underserved and is well positioned to play a greater role in reaching the unbanked (see Study on USPS Money transfer Services for the Unbanked Report February 9, 2011 Joy Leong Consulting, LLC for the Postal Regulatory Commission PRC109909-10-Q-0021.)

II. Market Dominant Rate System

A. Exigent Rate

After the Commission's orders and the remand in *Alliance of Nonprofit Mailers v. Postal Regulatory Com'n*, 790 F.3d 186 (D.C.Cir. 2015), the exigent price increase for market dominant products of two cents was granted through 2016. Reducing the price of a first-class stamp this year will cause a \$2 billion loss per year going forward. This was the first price reduction since 1919. The Commission has strongly resisted Postal Service requests for any kind of rate increase. This helps commercial mailers, but it cripples the long-term viability of the Postal Service.

Congress should restore the exigent rate that was in place through 2016. The price reduction is of little moment to individual mailers, for whom the first-class mail system is far less expensive than overnight competitors. The extra two cents reduction per piece is far more a boon to the major mailers who already receive excessive discounts under the guise of worksharing compared to individual mailers. This gift to the mailers comes at a time when the Postal Service needs to restore its capital stock, like a new fleet of trucks, and faces urgent needs to restore service standards.

B. Worksharing discounts

Workshare discounts have caused large losses in the billions to the USPS going back to 2009. The Commission identifies 53 workshare discounts with compliance issues and 24 discounts that exceed USPS work savings when work is performed by large mailers. Because under the PAEA, 39 U.S.C. §3622(e), workshare discounts may not exceed “avoided costs,” the Commission has concluded that the USPS should take “the appropriate action by aligning the discounts with the avoided costs,” when it files its next request for a general rate increase. Docket No. ACR2015, Annual Compliance Determination 2015 at 8-32. The OIG also has reported out that the worksharing discounts for large mailers are too high and 19 workshare discounts exceeded the costs by \$104 million (Report Number MS-AR-11-001). To date, however, the Commission has not compelled the USPS to terminate these unlawful discounts beyond mere hortatory appeals.

The Commission should direct the Postal Service to enforce the law against discounts in excess of actual work savings. Since the Commission has been passive on this problem to date, Congress should authorize private complaints to rescind unwarranted discounts. Mail houses are now doing over 40% of the processing of first class mail. The Postal Service needs to take back the discounts so that all mailers, large and small, have access to universal service at uniform rates.

III. Negotiated Service Agreements

The Postal Service has attempted to contract out postal work by sending more first class mail work to mail houses and private companies like Pitney Bowes, and contracting out post office retail services to other companies like Staples, as a way to rid

itself of the burden of operating that Congress and the Constitution expect the Postal Service to take up.

The Negotiated Service Agreement is the vehicle for many of these forms of contracting out. However, the terms of such Agreements are currently treated as trade secrets that may not be disclosed in the public docket or even Domestic and International through the Freedom of Information Act. This includes International agreements that never even name the company or customer the Postal Service is dealing with. Consequently a party may be harmed by the NSA because of the NSA advantage given a specific company, has no way to know about the specific docket in which to intervene, or to discover any details after the fact. This cuts against the public role of the Postal Service. Postal functions should not be allowed to be contracted out, particularly on terms kept secret from the public. Congress should act to require that NSAs for both market dominant and competitive services both International and Domestic be public, to provide for public scrutiny of deals that the Commission currently reviews in secret.

IV. Post Office Closing/Consolidation Procedures

The PAEA requires the Postal Service to “preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.” 39 U.S.C. §3691(b)(1)(B). The Postal Service’s massive program of plant closings and consolidations since 2012 has violated this mandate.

Congress should require the Postal Service to reverse its plant consolidations, reopen the closed facilities and restore the statutorily mandated service under the pre-2012 standards. In order to bring our services back to the USPS there should be a

reversal of the consolidations that have occurred over the last five years and stop any future consolidations planned for 2017.

This is no more than what Postal Service operational plans purport to call for. The USPS handbook, PO-408 Chapter 8, deals with what actions the USPS should take when the need occurs to reverse consolidation moves. It gives two examples of when this should occur: 1) Inability to maintain service standards, and 2) advances in automation technology. Both of these events have happened since 2012.

The USPS has not maintained service standards, even those degraded service standards that do not provide overnight service. For the second year in a row, External First Class Mail scores have failed to meet the degraded standards, despite repeated directives from the Commission. Annual Compliance Determination FY 2015, Docket No. ACR2015, pp. 94-145. Commissioner Goldway cites a “precipitous decline in many aspects of service quality in the first two quarters of FY 2015.” Order No. 2512 issued May 27, 2015, Docket No. C2013-10. This is confirmed by the Office of the Inspector General’s August 13, 2015 *Management Alert—Substantial Increase in Delayed Mail* (Report Number NO-MA-15-004) finding a 48% increase in mail delivery delays in violation of service standards in the first six months of 2015 compared to the same period in 2014. See <https://uspsoidg.gov/sites/default/files/document-library-files/2015/no-ma-15-004.pdf>.

Delayed mail has occurred in many gaining facilities as well due to the inability to handle all the mail being sent from the consolidation sites. Gaining facilities are transporting additional runs to other facilities to assist with the overflow. Employee

overtime has hit an all- time high for the last three years- calling into question whether consolidations have really saved on labor costs.

At the same time, there have been advances in the DBCS equipment as they now have Phases 3-6. Phase 1-2 DBCSs are being replaced by the newer equipment with advanced technology. Phase 3-6 DBCS could be placed back into those sites that have been consolidated as well as new AFCSs.

As to post office closures, the Commission holds appeals in abeyance without making timely findings whether the action is arbitrary or capricious. The Commission appears to hold that it has no binding authority to countermand USPS consolidations and closures, as when it held that the Postal Service was not required to wait for its Advisory Opinion before proceeding with the consolidations. Order No. 1387, Docket No. C2012-2 (June 29, 2012).

This cries out for a Congressional correction. Congress should order the reversal of the plant consolidations effected in 2012-present, and place a moratorium on post office closures.

V. Service Standards

A. Substantive standards

For the same reason, Congress should legislate the restoration of service standards in effect before 2012 under 39 C.F.R. § 121.1-4.

The maintenance of historic standards of on-time delivery is essential for the long-term health of the Postal Service. The degradation of service standards, the elimination of overnight mail, and the inability to meet even the degraded standards create a self-fulfilling prophecy. The less the Postal Service offers in return for first-class

postage, the more customers will gradually seek alternative forms of document delivery. To justify a first-class level of revenue, the Postal Service must offer a first-class level of service.

The gradual erosion of service cannot be stopped once the Postal Service accepts it as the natural *status quo*. If, in the name of cost savings, mail that took a day to arrive now takes 2-5 days, and mail that took 2 days now takes 3-5 days, there is no reason the erosion will not continue. Left unchecked, the U.S. Mail may soon take weeks for delivery, on the theory such degradation of the mails is the easiest way to save money during the Postal Service's perpetual financial crisis.

Congress should intervene where the Commission has not. The service standards should be restored to pre-2012 levels.

B. Standards as enforceable mandates, not mere aspirations

Congress should also insist on meaningful enforcement, both from private complaints and from mandatory Commission orders.

In Order No. 2512, Docket No. C2013-10 (May 27, 2015), the Commission made this astonishing claim: "Published service standards represent service expectations. They are not requirements, nor can they be violated . . . The service standards set forth by the Postal Service in 39 C.F.R. § 121.1 are service 'expectations,' and not service 'requirements.' . . . [T]he premise that a complaint lies based on failing to provide service in conformance with an expectation is misplaced." The Commission held that any nationwide claim was necessarily duplicative of the Annual Compliance Determination, and therefore could bring no new basis for enforcement if the complain was already supported by EXFC data in the Commission's possession.

This statement was contrary to existing law. However, Congress need not wait for the courts to correct it. The Commission may not use its own practice of extreme leniency to the Postal Service's service violations to prevent private complaint. Congress should restate its existing requirement that the Commission has a mandatory duty to take action on meritorious service complaints beyond hortatory requests for compliance.

VI. Expanded Services and "Non-Postal" Services

As we discuss in Part I.B above, the term "non-postal services" is often a misnomer that Congress should correct. The PAEA revoked the Postal Service's authority to offer new "nonpostal" services. See 39 U.S.C. §404(c)(2). As applied, however, this phrase ignores that services like postal banking, are a natural part of the public infrastructure of the Post Office, are historically within the Post Office's mission.

VII. Advisory Opinion Process

The Advisory Opinion process currently takes place in only 90 days. The process is so short that it is not possible for unions and customers to get due process for complicated issues. This occurs in large part because the Postal Service does not provide complete and important information at the start of the clock. This reinforces the sense that the process is available only to insiders like the USPS and the mailing lobby.

Congress should direct a change to allow for extensions on Advisory Opinions as necessary to prepare documentation and testimony. This is only a matter of reciprocity. The Postal Service frequently fails to provide the required documentation to the Commission in important cases. This causes Advisory Opinions to be held up at the

Postal Service's behest. If the Commission indulges the Postal Service's need for more time, it should be required to do the same for interested private parties.

VIII. Requirement of a Public Representative

Currently, the PRC assigns a Public Representative only on a case-by-case basis. See 39 U.S.C. §505; 39 CFR §3002.14. The Commission designates PRC staff to be the ad hoc Public Representative for a single case. Many staff have been designated. None of the staff have consumer advocacy as the key part of their portfolio. None of the staff has outside authority to initiate action outside the case assigned.

Congress should authorize a Consumer Advocate to help individual participate in PRC matters. This Advocate would be an independent and not reliant on ad hoc designation by the Commission.

IX. Postal Pulse, VOE Employee Engagement and Work Environment

The Commission has directed the Postal Service to provide a better program for employee engagement, and the Postal Service has now spent over \$1.8 million on Gallup surveys. The Postal Service has continued to spend even more money on Gallup to provide Supervisor/Ambassador training.

Though the Gallup Surveys (Postal Pulse) did provide results that the Postal Service has a major problem with providing employees a good work environment, the Unions could have provided that same information. Union contracts provide for ways to better the working conditions of all employees and all four Unions are the representatives of postal workers. Instead of the waste of monies to outside firms, the Postal Service should work with the Unions to provide for better working conditions

concerning employee engagement and the Commission should require that the Postal Service work with the Unions to better workplace environment issues.

X. Recommended Legislation

To review, APWU urges Congress to enact postal legislation to:

- Eliminate the prefunding of retiree benefits and refund the past three years of prefunded benefit payments.
- Restore the 2010-16 exigent rate increase and abolish the inflexible rate cap of the PAEA.
- Prohibit worksharing discounts in excess of actual costs saved, with remedies for the public to secure orders rescinding unwarranted discounts by private complaint
- Require all terms of Negotiated Service Agreements for Competitive and Market-Dominant Products to be publicly available
- Place a moratorium on plant consolidations and post office closures, including contracting out transportation services, and reducing retail service hours at post offices, for at least a five-year period.
- Restore service standards in effect before 2012
- Mandate Commission enforcement action on service violations
- Remove the language prohibiting non-postal services
- Mandate right to vote by mail in federal elections
- Establish an independent Consumer Advocate with standing to assert the rights of consumers before the PRC.

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Respectfully submitted,

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