As Postal Regulatory Commission's review nears end, what might come next?

As this *Postal Record* was being prepared, the Postal Regulatory Commission's (PRC) 10-year review of the way the U.S. Postal Service sets prices for postage and postal products was still underway.

The review is one of the requirements of the 2006 Postal Accountability and Enhancement Act (PAEA), the first major piece of postal reform legislation to be enacted since the landmark Postal Reform Act of 1970 (PRA)—which marked the birth of the modern USPS.

From the start

The PRA created a fully self-supporting Postal Service with the flexibility to set its own rates, tasking what was then known as the Postal Rate Commission with the job of regulating postage prices. As a government-owned enterprise, USPS was not set up to profit from the sale of postage. Its mandate was to financially break even without taxpayer subsidies. With that in mind, the PRC would set prices that were generally in line with what the Postal Service needed to survive. The regulator would hold hearings on rate increases proposed by management, make changes if necessary, and then send its recommendations to USPS's Board of Governors for its approval.

Under PAEA, the Postal Rate Commission became the Postal Regulatory Commission and, among other things, implemented a new system of postage rate-setting system based on a rate cap. This system was the result of a compromise: The Senate called for a pricing scheme that capped adjustments on the general Consumer Price Index (CPI), while the House of Representatives pressed for giving experts at the PRC the authority to design an entirely new postage rate-setting system. The compromise? The Senate got its wish—but only for 10 years, after which the PRC would be required to conduct a thorough review of the entire system.

Over the 11 months since PAEA's 10th anniversary last December, the PRC has been reviewing the regulations governing postage rates, with an eye toward ensuring that the pricing system is achieving nine specific objectives spelled out in the law:

1. To maximize incentives to reduce costs and increase efficiency.
2. To create predictability and stability in rates.
3. To maintain high-quality service standards.
4. To allow the Postal Service pricing flexibility.
5. To assure adequate revenues, including retained earnings, to maintain financial stability.
6. To reduce the administrative burden and increase the transparency of the ratemaking process.
7. To enhance mail security and deter terrorism.
8. To establish and maintain a just and reasonable schedule for rates and classifications.
9. To allocate the total institutional costs of the Postal Service appropriately between market-dominant products (e.g., First Class Mail) and competitive products (e.g., Priority Mail).

"The current rate system has clearly failed to meet what is probably the

Postal Regulatory Commission leadership

Robert G. Taub (R)
Chairman

Taub is serving a second term on the Commission. His current term expires on Oct. 14, 2022. Taub has more than 30 years of experience in public service. As an Army senior executive, he was one of the principal civilian advisors helping lead a workforce of more than 1.2 million people, and manage an annual budget exceeding $200 billion.

Mark Acton (R)
Vice Chairman

Acton was reappointed to the Postal Regulatory Commission on Dec. 12, 2016, for a third term extending until Oct. 14, 2022. President George W. Bush first nominated Acton as a postal rate commissioner in 2005. Prior to that, Acton served as special assistant to the chairman of the PRC and assisted in managing all aspects of agency operations.

Tony Hammond (R)
Commissioner

Hammond was reappointed as commissioner of the PRC on Dec. 11, 2014. Hammond served on the PRC and its predecessor agency, the Postal Rate Commission, from 2002 to 2011. During that time, he also represented the Commission on the U.S. State Department delegation to the Universal Postal Union.

Nanci E. Langley (D)
Commissioner

Langley was sworn in as commissioner in December 2014 for a second term. Langley has more than 30 years of public service, including 24 years as a senior advisor to two U.S. senators, as well as deputy staff director on the Senate Committee on Homeland Security subcommittee on government management and the federal workforce.

most important objective: financial stability," NALC President Fredric Rolando said. "With the price cap in place, the Postal Service has not been able to pay for pre-funding."

Pre-funding, of course, is perhaps the most contentious of PAEA's requirements: that USPS fully fund an account to cover the projected health benefit costs of future postal retirees. No other government agency or private enterprise must pre-fund even one year in advance, whereas PAEA mandates that USPS must pre-fund these benefits decades into the future.

"Pre-funding, in fact, is responsible for 90 percent of the Postal Service's reported losses over the past 10 years," Rolando said. "Unfortunately, the cost of the pre-funding mandate was not factored into PAEA's rules for rate-setting, and in that respect alone, the law clearly has failed.

"To that end, we believe the PRC should eliminate the price cap entirely," the president said.

NALC, the other postal unions and USPS are generally in agreement that the price cap needs to go, he said, because its tie to the general CPI is not relevant to the cost of universal mail delivery.

"The cap hurts the Postal Service," Rolando said, "preventing it from setting postage rates high enough to cover its legitimate costs, to pay down what it owes the U.S. Treasury, to make crucial vehicle and facility investments, and even to earn modest profits."

Such profits, he said, would let the agency build some cash reserves to help it ride out any emergency situations or other unforeseen circumstances.

"And without adequate revenue, the Postal Service can't fulfill its fundamental mission," Rolando said, "to provide prompt and reliable mail delivery to every residential and business address in the U.S. at least six days a week."

Reading the tea leaves

After it wraps up its review in the coming months, the PRC has a number of ways that it could proceed. For example, the regulators could end up making no changes to the current rate-setting system, or they could create an entirely new system.

"We expect that the PRC will at least conclude that the current system is not meeting the objectives," Rolando said.

Since the current general CPI has no real meaning as it relates to the USPS—it tracks the prices of thousands of items that have nothing to do with universal postal delivery—one option being discussed would be to pick a more appropriate price index to use.

For example, the PRC could use the portion of the Consumer Price Index that tracks private delivery prices, the CPI for Delivery Services (CPI-DS), which would effectively benchmark postage rate changes to the rates changes made by FedEx and UPS.

But considering the number of fact-finding meetings and hearings, along with the numerous submissions from interested parties—NALC included, of course—it remains a challenge to predict just how the PRC will proceed. The regulating body could:

- Acknowledge that the system doesn't work but do nothing and leave it to Congress to legislate a new system instead.
- Propose an entirely new rate-setting system and then move in a general direction similar to the federal rulemaking process, first by opening up a public comment period on the new system and then by issuing a final ruling.
- Scrap the price cap entirely and base postage rates on some

level of profitability, following a process similar to the way public utilities set their rates—a process that can be difficult to maintain, let alone balance.

- Base a new, more flexible system on the current, reasonably stable CPI-based pricing plan, perhaps by tacking on an additional percentage point or two.
- Go back to the original rate-setting system under the PRA—which set rates after extensive hearings on the cost of providing service.

In the meantime, NALC has also urged the PRC to let USPS file for a one-time rate adjustment to allow the agency to make a moderate operating profit and help it achieve a measure of near-term financial stability.

"This so-called 'true up' increase should be implemented before the new system of rate regulation is introduced to replace the CPI price cap," Rolando said.

Competing priorities

Whereas USPS and its employee unions maintain a largely unified front in the argument for sensible pricing, many groups representing the mailing industry and other business interests bring to the table a separate set of priorities—one that sees removing the price cap and raising postage prices as unacceptable attacks on their bottom line.

And should the PRC propose any change in the overall rate-setting process, it's feared that some of these groups would file lawsuits to prevent such changes—or at least to delay them.

"Litigation and delays would certainly serve some short-term businesses interests," Rolando said, "but it would be extremely short-sighted."

There are indications that some of the fears about delay tactics and maneuvers are well-founded: Some mailers already have submitted a request for a preliminary ruling on the scope of the PRC's review, arguing—incredibly—that this review does not also allow the regulators to modify the price cap.

"Delays could become the new normal unless all of the parties can find a way to come together behind a sensible rate-setting scheme," Rolando said.

For example, if some mailers believe that the PRC is acting outside of PAEA's scope when it finally issues a ruling, or if the regulator decides it needs to implement a new rate-setting system, legal efforts to delay implementation are likely.

Another possible delay tactic: A mailer could claim that USPS's Board of Governors is the only body that is empowered to implement a change in postage rates.

The Board of Governors, which is supposed to oversee and direct the executive management of the Postal Service, has been vacant since last December, when the term of the last remaining appointee expired.

In December 2014, as more and more governors' terms were expiring, the board created a so-called "temporary emergency committee" to allow it to continue to operate in the absence of a quorum. (Postmaster General Megan Brennan and Deputy PMG Ronald Stroman are members of the board, by virtue of their offices.)

After 11 months in office, President Donald Trump has yet to nominate and send to the Senate for confirmation five Republican and four Democratic candidates to fill the nine open board positions. (To help ensure that the board remains bipartisan, the law allows no more than five governors to be from the same political party, with the president's party allowed to hold the majority on the board.)

A mailer could argue—some might say successfully—that without a functioning board, postage prices cannot be changed, including a CPI-based rate increase that is set to go into effect in January.

"Delay tactics such as these could wind up starving the Postal Service of the funds it needs to operate," Rolando said, "which would compound the damage done by the repeal of the exigent rate increase last year."

A Postal Service in a financial crisis would be bad for everyone, the president said—for the agency, obviously, as well as for its customers and its employees.

"NALC continues to work with the other postal unions to help ensure that the PRC goes about the review in a constructive, positive way," he said, adding that postal management, mailers, trade associations and other interested parties also are taking part in these review discussions.

"Any proposed change in the rate-setting system is likely to involve another public comment period," Rolando said, "and we fully intend to take part in the commission's future deliberations—gathering data, evaluating alternatives, making recommendations and submitting testimony.

"We remain hopeful that, no matter what the PRC ultimately decides, it will first restore rates to self-sustaining levels before implementing a new rate-setting system." **PR**