

**BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001**

RATE ADJUSTMENT DUE TO)
EXTRAORDINARY OR) Docket No. R2010-4
EXCEPTIONAL CIRCUMSTANCES)

**RESPONSE OF THE
AFFORDABLE MAIL ALLIANCE TO
OCTOBER 6 LETTER-PETITION OF THE
UNITED STATES POSTAL SERVICE
AND OCTOBER 12 LETTER-RULING OF
THE OFFICE OF GENERAL COUNSEL
(October 13, 2010)**

The Affordable Mail Alliance (“AMA”) respectfully responds to the October 6 letter from the Postal Service requesting clarification of “the exact amount of authority that is currently available to the Postal Service to adjust rates under the CPI-U price cap.” Letter from R. Andrew German to Shoshana M. Grove (filed October 6, 2010). AMA agrees with the Postal Service that the Commission should issue a decision formally clarifying this issue.

AMA also requests that the Commission rescind the letter-ruling issued by the Commission’s Office of General Counsel (“OGC”) in this matter late yesterday afternoon. Letter from Stephen L. Sharfman to R. Andrew

German (filed October 12, 2010). The letter-ruling violates the Administrative Procedure Act (if treated as a substantive ruling) or is ineffective (if treated as an interpretive ruling). It is also wrong on the merits.

BACKGROUND

On October 6, 2010, the Postal Service filed a letter with the Commission requesting clarification of “the exact amount of authority that is currently available to the Postal Service to adjust rates under the CPI-U price cap.” The letter stated that “some uncertainty was expressed” about the amount “when the Commission was announcing its decision in the exigent case.” The Postal Service asked the Commission for “definitive identification of the amount of adjustment authority currently available” under the price cap so that the Postal Service could have precise information to “rely on” in “developing its own financial plans.”

The letter appears to have been prompted by a colloquy between Chairman Goldway and a member of the Commission’s staff during the question-and-answer period at the end of the September 30, 2010, press conference where the Commission announced its final decision in Docket No. R2010-4. *See* audio recording of the press conference posted on the Commission’s website at 16:30-17:16.

The uncertainty about the precise amount of unused rate authority currently available to the Postal Service is the result of two developments.

First, the Consumer Price Index (Urban) (“CPI-U”) fell sharply in the second half of calendar year 2008. As a result, the trailing 12-month average of the CPI fell throughout most of 2009, and remained below the December 2008 level (the level on which the R2009-2 rate increases were based) from March 2009 through January 2010. Second, the USPS did not file a CPI-based rate adjustment to take effect in May 2010 (the one-year anniversary of the R2009-2 rate adjustments), presumably because the 12-month trailing CPI average at the time was -0.356%.¹ As a result, the “additional unused rate authority” established by Rule 3010.26(c)(2) for the period between December 2008 and August 2009 is *negative*—specifically, negative 0.604 percent.

The question thus raised by the Postal Service is this: does the net “unused rate authority” specified by Rule 3010.26(c)(3) equal the sum of the 12-month “unused rate authority” of Rule 3010.26(c)(1) and the “additional unused rate authority” of Rule 3010.26(c)(2) in all cases, or only when the latter value is positive? Giving weight to both components of the formula prescribed by Rule 3010.26(c) yields a net unused rate authority of 0.873 percent—i.e., 1.477 percent plus *negative* 0.604 percent. Excluding the second component of the formula yields an unused rate authority of 1.477 percent.

Rules 3001.21(a) and (b) of the Commission’s Rules of Practice and Procedure allow interested parties seven days to respond to any motion or

¹ The calculations appear in cell G 38 on the first worksheet of the Excel spreadsheet attached as Attachment A to this Response.

“application for an order or ruling not otherwise specifically provided for in this part” unless the Commission specifies a different response period. 39 C.F.R. §§ 3001.21(a) and (b). Unless modified by the Commission, this rule thus entitled interested parties seven days—i.e., until the close of business on Wednesday, October 13—to reply to the Postal Service’s October 6 letter-petition.

Out of an abundance of caution, however, AMA quickly informed the Commission’s staff that AMA intended to reply to the Postal Service. On Friday, October 8, James Cregan, an executive of MPA, telephoned Stephen Sharfman, the Commission’s General Counsel, to inform him that an AMA reply was in the offing. Although Mr. Cregan did not reach Mr. Sharfman directly, he spoke with a member of the General Counsel’s office who informed him that Mr. Sharfman was in a meeting. Mr. Cregan asked that Mr. Sharfman call him back, which Mr. Sharfman did several hours later. Although Mr. Cregan was out of the office, Reese Goldsmith, also with MPA, received Mr. Sharfman’s call. Upon being notified by Ms. Goldsmith that Mr. Sharfman had returned his call, Mr. Cregan attempted to contact Mr. Sharfman again. Unable to do so, Mr. Cregan asked Rita D. Cohen, another executive at MPA, to contact Michael Ravnitzky, Chief Counsel to Chairman Goldway. Ms. Cohen reached out to Mr. Ravnitzky by telephone and email. Over the phone, Ms. Cohen informed Mr. Ravnitzky that a group of mailers intended to comment on the Postal Service’s letter. When Mr. Ravnitzky asked if he should inform Mr. Sharfman, Ms. Cohen told him that would be

helpful and thanked him. Mr. Ravnitzky later confirmed to Ms. Cohen that he had passed on the information to Mr. Sharfman.

Despite unquestionably having notice that mailers intended to submit comments on the Postal Service's request,, the OGC nevertheless issued its letter-ruling yesterday, October 12—one day before the expiration of the seven-day reply period afforded by Rule 3001.21(b), and without waiting to find out what AMA or any other customer of the Postal Service might say in response to the Postal Service.

ARGUMENT

I. THE OCTOBER 12 LETTER-RULING OF THE OFFICE OF GENERAL COUNSEL IS EITHER UNLAWFUL OR INEFFECTIVE.

The OGC letter, if treated as a binding substantive ruling, violates the due process rights of AMA and its members. AMA's members have a substantial economic interest in the CPI price cap formula. The methodology adopted in the OGC letter for computing the Postal Service's unused rate authority under the CPI cap could subject users of market-dominant products to approximately \$360 million per year in extra postage and fees compared with the computation of the price cap formula that AMA and the Postal Service believed was in effect until recently.² As interested parties, AMA's

² The difference between the two competing interpretations of the Commission's rules amounts to approximately \$360 million in postage and fees per year, based on the FY 2009 Public Cost and Revenue Analysis figure of \$59.8 billion in market-dominant revenue multiplied by the 0.604% difference in the price cap under the two interpretations. Moreover, postal

members thus have a right to be heard *before* the Commission or a subordinate official decides the matter. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action *and afford them an opportunity to present their objections.*” *Mullane v. Central Hanover Bank & Trust Co* , 339 U.S. 306, 314-315 (1950) (emphasis added). This is so regardless of whether the proceeding is treated as a substantive rulemaking or an adjudication. See 5 U.S.C. § 553(b) and (c) (procedural requirements for rulemaking); *id.*, §§ 554(b) and (c), 556(d), and 557(c) and (d) (procedural requirements for adjudications); *Mail Order Ass’n of America v. USPS*, 2 F.3d 408, 428-430 (D.C. Cir. 1993) (right to notice and opportunity to be heard in adjudication).

The OGC letter-ruling did not comply with these due process requirements. As noted above, the Commission gave no advance notice to AMA or other interested parties that they would have less than seven days, the default reply period under Rule 3010.21(b), to respond to the October 6 Postal Service letter. Moreover, the OGC issued its letter-ruling on October 12 *despite specific notice to the Commission’s staff that AMA planned to reply to the Postal Service on October 13.*

price levels increased by the use of a larger rate adjustment factor would become the base rates for future price cap adjustments; hence, the one-year difference would be replicated in perpetuity (and would be inflated to reflect future changes in the CPI).

The OGC apparently regards these procedural omissions as harmless on the theory that the October 12 letter-ruling is merely an “interpretative rule,” exempted by 5 U.S.C. § 553(b)(A) and 39 C.F.R. § 3001.41(e) from the notice-and-comment requirements of the Administrative Procedure Act. October 12 letter at 1 (characterizing letter as “informal advice on the interpretation of [the Commission’s] rules”). Whether or not this characterization is correct, an “interpretive rule” in this sense cannot establish a binding rule, and thus cannot provide the “definitive” guidance sought by the Postal Service or the additional certainty sought by the Postal Service’s customers.

As noted above, the Postal Service, in its October 6 letter, specifically asked the Commission for “*definitive* identification of the amount of adjustment authority currently available” that is sufficiently certain for the Postal Service to “rely on it” in “developing its own financial plans.” *Id.* (emphasis added). This was a legitimate and reasonable request. Moreover, the Postal Service’s customers have a similar economic interest in certainty for their own planning and budgeting. An interpretive rule under 5 U.S.C. § 553(b)(A), however, binds neither the Commission nor reviewing courts and cannot preclude relitigation *de novo* of the methodological issue it purports to resolve.³ Hence, the October 12 letter, if treated as an interpretive rule,

³ *Lincoln v. Vigil*, 508 U.S. 182, 196 (1993); *Warshauer v. Solis*, 577 F.3d 1330, 1339-40 (11th Cir. 2009); *Sorenson Communications, Inc. v. FCC*, 567 F.3d 1215, 1222-23 (10th Cir. 2009); *Manufactured Housing Institute v. EPA*, 467 F.3d 391, 397-98 (4th Cir. 2006); *Brooks v. Village of Ridgely Park*, 185 F.3d 130, 135-136 (3d Cir. 1999); *Home Health, Inc. v. Shalala*, 188 F.3d 1043, 1047 (8th Cir. 1999); *Clean Ocean Action v. York*, 57 F.3d 328, 333 (3d Cir. 1995).

merely defers the issue for relitigation in the next CPI-based rate adjustment case initiated by the Postal Service under 39 U.S.C. § 3622(d)(1)(C) and thus fails to provide the certainty that the Postal Service and its customers seek now. Only a formal ruling by the Commission itself can provide an interpretation sufficiently “definitive” for the parties to rely on in planning their business affairs.

II. THE LANGUAGE AND STRUCTURE OF RULE 3010.26(c), AND THE POLICIES UNDERLYING 39 U.S.C. § 3622(d) AND THE PAEA GENERALLY, REQUIRE THAT THE POSTAL SERVICE’S NEGATIVE RATE AUTHORITY BE SET OFF AGAINST ANY POSITIVE RATE AUTHORITY ACCUMULATED IN THE PAST 12 MONTHS.

The October 12 letter-ruling is also wrong on the merits. The “unused rate authority” defined by Rule 3010.26(c)(3) for a proposed rate adjustment established more than 12 months after the last previous rate adjustments established under 39 U.S.C. § 3622(d) and Rules 3010.20-3010.29 equals the sum of the unused rate authority established by Rule 3010.26(c)(1) plus the “additional unused rate authority” established by Rule 3010.26(c)(2)—*regardless of* whether the latter value is positive or negative (i.e., regardless of whether the latter value reflects inflation or deflation).

This conclusion follows from the language and structure of Rule 3010.26(c) and the underlying policies of 39 U.S.C. § 3622(d) and the PAEA. It is also consistent with the rules of other federal regulatory commissions for the computation of price indexing mechanisms. Finally, the Postal Service

itself acknowledged the reasonableness of this construction of Rule 3010.26(c) in its July 6, 2010 Request in this docket.

Under the rule as properly interpreted, the unused rate authority currently available to the Postal Service under Rule 3010.26(c), based on the August 2010 CPI-U monthly index (the most recent value published by the Bureau of Labor Statistics) is 0.873 percent⁴—not 1.477 percent, the value dictated by the OGC’s erroneous interpretation.

A. The Language And Internal Structure Of The Commission’s Rules For The CPI Price Cap Require Recognition Of Deflation As Well As Inflation.

The Commission promulgated the rules governing the computation of the CPI price cap in Orders No. 26 and 43 of Docket No. RM2007-1, *Regulations Establishing A System of Ratemaking*. The rules are codified at 39 C.F.R. §§ 3010.21 through 3010.29. The language and internal structure of the rules indicate that the unused rate authority must reflect intervening periods of deflation as well as inflation.

The contention of the October 12 letter-ruling that the Commission failed to anticipate in Docket No. RM2007-1 the possibility that “the Postal Service might accrue negative rate authority . . . during periods of deflation” (October 12 letter-ruling at 2) ignores the Commission’s express language. Each of the three examples offered by the Commission in Order No. 26 to

⁴ The Postal Service is also entitled to use the small amounts of “banked” increase authority remaining from Docket No. R2009-2.

illustrate the working of the formula includes at least one period of deflation, and in each instance, the resulting “negative rate authority” is offset against the positive rate authority in calculating the net rate authority available to the Postal Service. *See* Order No. 26 at ¶¶ 2055-63 (Examples 1-3).

We discuss in turn the application of the formula to annual rate adjustments, rate adjustments at intervals shorter than 12 months, and rate adjustments at intervals longer than 12 months.

Rate Adjustments At Annual Intervals. Rule 3010.21 prescribes the methodology for calculating the annual price cap limitation in the simplest case: when the Postal Service applies CPI-based rate adjustments at annual intervals. The CPI-based rate increase authority for an annual rate adjustment equals the percentage difference between (1) the unweighted average of the monthly CPI values for the most recent 12-months for which the CPI-U is available when the Postal Service files a notice of rate adjustment, and (2) the unweighted average of the monthly CPI-U values for the corresponding period ending one year earlier. 39 C.F.R. § 3010.21; Order No. 26 at ¶¶ 2055-2057.

Order No. 26 made clear that, in computing these averages, periods of deflation were to be weighted along with periods of rising prices. In the illustrative example provided by the Commission in paragraph 2057 of Order No. 26, the months of June-July 2004, November 2004-January 2005, June-July 2005 and October-December 2005 were all periods of deflation. In each instance, the months of deflation were weighted along with the months of

inflation to compute the 12-month averages. See Order No. 26 at ¶ 2057 (Example 1).

Rate Adjustments At Intervals Less Than 12 Months. Rules 3010.22 and 3010.26(b) are supplemental rules defining the unused rate authority when less than 12 months of additional CPI-U values are available since the vintage of the CPI-U used to compute the last CPI-based rate adjustment. In this circumstance, the CPI-based rate increase authority equals the percentage difference between (1) the unweighted average of the monthly CPI values for the most recent 12-months for which the CPI-U is available when the Postal Service files a notice of rate adjustment, and (2) the unweighted average of the monthly CPI-U values for the most recent 12 months when the Postal Service requested the previous rate adjustment. 39 C.F.R. §§ 3010.21, 3010.22, 3026(b); see Order No. 26 at ¶¶ 2059-2061 (Example 2).

Here again, the Commission made clear that periods of deflation were to be weighted along with periods of rising prices. In the illustrative example provided by the Commission in paragraph 2061 of Order No. 26, the months of June-July and October-December 2005 were periods of deflation. In each instance, the months of deflation were weighted along with the months of inflation to compute the part-year average. *Id.*

Rate Adjustments At Intervals Greater Than 12 Months. Rule 3010.26(c) specifies how to compute the unused rate authority when the Postal Service proposes a CPI-based price adjustment after an interval of

more than 12 months since the last notice of rate increase. 39 C.F.R. § 3010.26; Order No. 26 at ¶¶ 2062-2063. As noted above, Rule 3010.26(c) defines the net unused rate authority as the sum of (1) the unused rate authority derived from a 12-month look-back period for annual rate adjustments and (2) the unused rate authority generated during the additional look-back period going back to the vintage of the CPI-U underlying the most recent previous rate increase. 39 C.F.R. §§ 3010.26(c)(1) and (2).

Nothing in Rule 3010.26(c) suggests that individual months of deflation should be excluded from the averaging process. To the contrary, the illustrative example provided by the Commission in Paragraph 2063 of Order No. 26 includes several months of deflation: October-December 2005 and August 2006-February 2007. *See* Order No. 26 at ¶ 2063 (Example 3).

Nor does anything in Rule 3010.26(c) suggest that the *aggregate* “additional unused rate authority” calculated under Rule 3010.26(c)(2) should be added to the annual unused rate authority of Rule 3010.26(c)(1) only when the former value is positive, and disregarded when the former value is negative. To the contrary, Rule 3010.26(c)(3) states—without qualification—that “[t]he results from step one and step two *are added together*” (emphasis added). And the Commission expressly noted that including the full interval of cumulative changes in the CPI since the value used in the last previous rate adjustment was essential to avoid skewing the incentives given to the Postal Service regarding the timing and amount of rate adjustments. *See* Order No. 26 at ¶ 2062.

The October 12 letter-ruling makes no attempt to reconcile its one-sided interpretation of Rule 3010.26 with the actual language of the rule. Instead, the OGC relies on Rule 3010.2(a), a separate rule that classifies rate adjustments into several types according to their statutory bases. *Cf.* OGC letter-ruling at 1-2. The OGC’s reasoning seems to be that Rule 3010.2(a), by distinguishing between “Type 1-A” and “Type 1-B” rate adjustments, and authorizing the Postal Service to implement either or both, leaves the Postal Service free to include the “unused rate authority” generated during the most recent 12-month period, while ignoring the *negative* “unused rate authority” established in prior periods. *Id.* Whatever Rule 3010.2(a) means, however, it cannot trump 39 U.S.C. § 3622(d), the statutory foundation for all of the Commission’s price cap rules, including Rule 3010.2(a). As we explain in the next section, allowing the Postal Service to cherry pick among its negative and positive rate authority would violate both the explicit language and underlying purpose of 39 U.S.C. § 3622(d).

B. Failure To Reflect Deflation As Well As Inflation In the CPI Cap Would Violate The Plain Language And Frustrate The Underlying Policies Of 39 U.S.C. § 3622(d).

Ignoring periods of deflation in calculating the Postal Service’s unused pricing authority would contravene the plain language of 39 U.S.C. § 3622(d) and the underlying policies of the Postal Accountability and Enhancement Act of 2006. 39 U.S.C. § 3622(d)(1)(A) requires that the regulatory system established by the Commission for market-dominant products “include an annual limitation on the percentage changes in rates” equal to the

seasonally-unadjusted change in the Consumer Price Index for All Urban Consumers (CPI-U) for the most recent 12-month period for which CPI-U data are available on the date of the filing of the Postal Service's notice of rate adjustment. The price cap provisions of Section 3622(d) are designed to protect mailers and the public by limiting price increases to changes in the rate of inflation over time. Order No. 547 at 10-14.

Maintaining the integrity of this structure requires that the price cap reflect periods of deflation as well as inflation. Recognizing increases in the CPI, while disregarding the "additional unused rate authority" accrued under Rule 3010.26(c)(2) whenever its value is negative, would allow the Postal Service to ratchet up its prices over time faster than inflation by refraining from rate adjustments following intervals of deflation. See Attachment A (last worksheet).

The resulting distortion in price levels would be large. The difference between unused rate authority of 1.447 percent and unused authority of 0.873 percent, or 0.604 percent, is approximately \$360 million per year. Moreover, postal price levels inflated by the use of an excessive rate adjustment factor would become the base rates for future price cap adjustments; hence, the original overcharge would recur in perpetuity (and would be inflated to reflect future changes in the CPI).

Moreover, the divergence between postal rates and the CPI would tend to widen over time. Recurring periods of deflation are not unlikely in the

current economies of the United States and the world.⁵ If the economy alternates between periods of inflation and deflation that leave the CPI roughly flat, selective timing of CPI-based price adjustments could result in postal price increases substantially outpacing inflation over time.

Allowing the Postal Service to exploit the “unused rate authority for the 12 months represented by the annual limitation” (Rule 3010.26(c)(1)), while ignoring the *negative* “additional unused rate authority” accrued during *earlier* periods (i.e., the “additional unused rate authority” established under Rule 3010.26(c)(2)), would also violate 39 U.S.C. § 3622(d)(2)(C)(iii)(III), a provision of the PAEA included by Congress to prevent the Postal Service from gaming the price cap through selective application of unused rate authority from prior periods. The provision establishes a first-in-first-out rule: the Postal Service must “use the unused rate adjustment authority from the *earliest* year such authority first occurred and *then* each following year.” *Id.*, (emphasis added). The approach embraced in the October 12 letter-ruling of the OGC turns this rule of priority on its head—allowing the Postal Service to exploit its unused rate adjustment authority from the *most recent* 12-month period *first*, while leaving implementation of negative

⁵ See, e.g., Neil Irwin, “Federal Reserve's James Bullard: Long-term deflation is a possibility,” Washington Post (July 30, 2010) (interview with James Bullard, president of Federal Reserve Bank of St. Louis) www.washingtonpost.com/wp-dyn/content/article/2010/07/29/AR2010072906016.html ((downloaded October 11, 2010); “Deflation Risk Can't Be Dismissed: Fed's Lockhart,” [www.cnbc.com/id/39406085/Deflation Risk Can t Be Dismissed Fed s Lockhart](http://www.cnbc.com/id/39406085/Deflation_Risk_Can_t_Be_Dismissed_Fed_s_Lockhart) (Sept. 28, 2010) (downloaded Oct. 11, 2010).

unused rate adjustment authority from earlier periods for last—or, more likely, never.

No reviewing court is likely to find this nonsensical outcome consistent with the plain language of 39 U.S.C. § 3622(d)(2)(C)(iii)(III) or the policies of Section 3622(d). Having negative “unused rate adjustment authority” amounts to maintaining rates in excess of the CPI cap. The OGC’s interpretation of the rules would allow the Postal Service to maintain—and increase further—rates in excess of the CPI cap indefinitely.

C. The Price Cap Mechanisms Established By Other Regulatory Commissions Reflect Deflation As Well As Inflation.

The principle of ensuring that rate changes accurately track changes in the chosen inflation index—both up and down—has been embraced by other regulatory authorities that have implemented price cap regulation. Indeed, some regulators have *mandated* that regulated carriers implement outright rate reductions whenever the index-based price cap goes negative. See *Railroad Cost Recovery Procedures*, 3 I.C.C. 2d 60 (1986), petition for review dismissed, *Alabama Power Co. v. ICC*, 852 F.2d 1361, 1364-1368 (D.C. Cir. 1988); *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985 (1993) (“Order No. 561”) at 30,954 (“If deflationary pressures push the ceiling level below the filed rate in any year, those filed rates that exceed the new, lower ceiling must be lowered to the new ceiling.”); *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424, 1438-41 (D.C. Cir. 1996) (upholding FERC’s automatic rate

reduction requirement as a proper exercise of FERC's authority to ensure rates remain just and reasonable).

The Federal Energy Regulatory Commission ("FERC") has also addressed the issue of deflation by eliminating any lag period in the calculation of available cap authority. The index used by the FERC "is cumulative from year to year." Order No. 561 at 30,954. Pipelines are required to calculate a rate ceiling each year based on the previous year's ceiling and the change in the index published by FERC. Because the ceiling is calculated every year, regardless of whether the pipeline files for a rate increase, the ceiling rate level will always track changes in the index and account for both inflationary and deflationary periods.

D. The Postal Service Has Recognized That Index Adjustments Under Rule 3010.26(c) Must Reflect Deflation As Well As Inflation.

The Postal Service itself has previously recognized the reasonableness of the interpretation of Rule 3010.26(c) advanced by AMA in this Response. Attachment B to the Postal Service's Request at the outset of Docket No. R2010-4 made a downward adjustment to the CPI-based price cap in months when the "Rule 3010.26.c Adjustment" was negative. *See* USPS Request (July 6, 2010), Attachment B, next-to-last column.

III. APPLYING THE CORRECT METHODOLOGY

This section provides a step-by-step explanation of how to compute the precise amount of the Postal Service's price adjustment authority based on

the August 2010 CPI-U index. The Excel spreadsheet attached to these comments contains a calculation of the available price cap authority based on this rule. The following narrative explains how the figures in this spreadsheet were calculated.

As noted above, Rule 3010.26(c) explains how to calculate the CPI cap when the interval between rate adjustments is longer than 12 months. 39 C.F.R. §3010.26(c)(1); Order No. 26 at ¶¶ 2062-2063. If the Postal Service were to file a notice of CPI-based rate adjustment today, the unused authority would be calculated as follows:

First, one would compute the amount of the unused rate authority for the most recent 12-month period for which CPI-U data are available. 39 C.F.R. § 3010.26(c)(1). As the “August 2010” row of the second worksheet in the attached Excel spreadsheet indicates, the rate authority produced by the difference between the trailing average of CPI values for the 12 months ending August 2010, and the trailing 12-month average of CPI values for the 12 months ending August 2009, is 1.477 percent.

Second, one would add to this value the rate authority produced by the difference between the trailing average of CPI values for the 12 months ending August 2009, and the trailing average of CPI values for the 12 months ending December 2008 (i.e., the “Recent Average” value underlying the R2009-2 rate increases; see 39 C.F.R. § 3010.21). 39 C.F.R. § 3010.26(c)(2). Because of the decline of the CPI in the second half of 2008, this value is

negative 0.604 percent. Adding negative 0.604 percent to 1.477 percent yields a net increase authority of 0.873 percent.

Third, one would add to this amount the class-specific increase authority that the Postal Service “banked” rather than used in R2009-2.

These amounts are relatively small:

First-Class Mail	0.030 %
Standard Mail	0.103 %
Periodicals	0.015 %
Package Services	0.025 %
Special Services	0.137 %

The price cap authority for each class of mail would equal 0.873 percent plus the additional “banked” percentage for each class. For First-Class Mail, for example, the rate increase authority would be 0.030% + 0.873%, or 0.903%.

CONCLUSION

The method of calculating the price cap limitation for the next notice of market-dominant rate adjustment that comports best with the language and structure of the Commission’s rules, and the policies underlying 39 U.S.C. § 3622(d) and the PAEA generally, is to add the interim unused rate authority to the annual price cap limitation, following the calculation method prescribed in 39 C.F.R. § 3010.26. Accordingly, the Commission should clarify that the Postal Service should use the method of calculating the price cap described in these comments—the same method that the Postal Service used in its July 6, 2010 Request in this docket.

Respectfully submitted,

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October 13, 2010

APPENDIX A

CALCULATION OF ANNUAL LIMITATION UNDER RULE 3010.21

YEAR	MONTH	CPI-U MONTHLY INDEX	TRAILING 12-MO. AVG.	TRAILING 12-MO. AVG. WITH 1-YR. LAG	RATIO (COL. D / COL. E)	% CHANGE (COL. D / COL. E)
2007	January	202.416				
2007	February	203.499				
2007	March	205.352				
2007	April	206.686				
2007	May	207.949				
2007	June	208.352				
2007	July	208.299				
2007	August	207.917				
2007	September	208.490				
2007	October	208.936				
2007	November	210.177				
2007	December	210.036	207.342			
2008	January	211.080	208.064			
2008	February	211.693	208.747			
2008	March	213.528	209.429			
2008	April	214.823	210.107			
2008	May	216.632	210.830			
2008	June	218.815	211.702			
2008	July	219.964	212.674			
2008	August	219.086	213.605			
2008	September	218.783	214.463			
2008	October	216.573	215.099			
2008	November	212.425	215.287			
2008	December	210.228	215.303	207.342	1.03839100	3.839%
2009	January	211.143	215.308	208.064	1.03481294	3.481%
2009	February	212.193	215.349	208.747	1.03162756	3.163%
2009	March	212.709	215.281	209.429	1.02794548	2.795%
2009	April	213.240	215.149	210.107	1.02400011	2.400%
2009	May	213.856	214.918	210.830	1.01938843	1.939%
2009	June	215.693	214.658	211.702	1.01396104	1.396%
2009	July	215.351	214.273	212.674	1.00751893	0.752%
2009	August	215.834	214.002	213.605	1.00186013	0.186%
2009	September	215.969	213.768	214.463	0.99675973	-0.324%
2009	October	216.177	213.735	215.099	0.99365719	-0.634%
2009	November	216.330	214.060	215.287	0.99430410	-0.570%
2009	December	215.949	214.537	215.303	0.99644454	-0.356%
2010	January	216.687	214.999	215.308	0.99856601	-0.143%
2010	February	216.741	215.378	215.349	1.00013273	0.013%
2010	March	217.631	215.788	215.281	1.00235506	0.236%
2010	April	218.009	216.186	215.149	1.00481681	0.482%
2010	May	218.178	216.546	214.918	1.00757421	0.757%
2010	June	217.965	216.735	214.658	1.00967742	0.968%
2010	July	218.011	216.957	214.273	1.01252333	1.252%
2010	August	218.312	217.163	214.002	1.01477048	1.477%

CALCULATION OF UNUSED RATE AUTHORITY UNDER RULE 3010.26(c)

YEAR	MONTH	CPI-U MONTHLY INDEX	TRAILING 12-MO. AVG.	TRAILING 12-MO. AVG. WITH 1-YR. LAG	COL. D / COL. E	% CHANGE (COL. D / COL. E)	COL. D / CELL D26	% CHANGE (COL. D / CELL D26)	COL. E / CELL D26	% CHANGE (COL. E / CELL D26)	UNUSED CPI U AUTHORITY
2008	December	210.228	215.303	207.342							
2009	January	211.143	215.308	208.064							
2009	February	212.193	215.349	208.747							
2009	March	212.709	215.281	209.429							
2009	April	213.240	215.149	210.107							
2009	May	213.856	214.918	210.830							
2009	June	215.693	214.658	211.702	1.01396104	1.396%	0.99700538	-0.299%			-0.299%
2009	July	215.351	214.273	212.674	1.00751893	0.752%	0.99521990	-0.478%			-0.478%
2009	August	215.834	214.002	213.605	1.00186013	0.186%	0.99396121	-0.604%			-0.604%
2009	September	215.969	213.768	214.463	0.99675973	-0.324%	0.99287204	-0.713%			-0.713%
2009	October	216.177	213.735	215.099	0.99365719	-0.634%	0.99271877	-0.728%			-0.728%
2009	November	216.330	214.060	215.287	0.99430410	-0.570%	0.99423021	-0.577%			-0.577%
2009	December	215.949	214.537	215.303	0.99644454	-0.356%	0.99644454	-0.356%			-0.356%
2010	January	216.687	214.999	215.308	0.99856601	-0.143%			1.00002438	0.002%	-0.141%
2010	February	216.741	215.378	215.349	1.00013273	0.013%			1.00021791	0.022%	0.035%
2010	March	217.631	215.788	215.281	1.00235506	0.236%			0.99990091	-0.010%	0.226%
2010	April	218.009	216.186	215.149	1.00481681	0.482%			0.99928821	-0.071%	0.411%
2010	May	218.178	216.546	214.918	1.00757421	0.757%			0.99821375	-0.179%	0.579%
2010	June	217.965	216.735	214.658	1.00967742	0.968%			0.99700538	-0.299%	0.668%
2010	July	218.011	216.957	214.273	1.01252333	1.252%			0.99521990	-0.478%	0.774%
2010	August	218.312	217.163	214.002	1.01477048	1.477%			0.99396121	-0.604%	0.873%

NOTES:

1. Values in right-hand column do not reflect "banked" rate adjustment authority for individual classes from Docket R2009-2.

IGNORING PERIODS OF DEFLATION CAN ALLOW OVERRECOVERY OF INFLATION THROUGH SELECTIVE TIMING OF RATE ADJUSTMENTS

YEAR	MONTH	CPI-U MONTHLY INDEX	TRAILING 12-MO. AVG.	TRAILING 12-MO. AVG. WITH 1-YR. LAG	RATIO (COL. D / COL. E)	% CHANGE (COL. D / COL. E)	PRICE INCREASES AUTHORIZED IN DECEMBER OF ODD-NUMBERED YEARS	CUMULATIVE INCREASE AUTHORIZED
0	December	100.000						
1	January	101.000						
1	February	102.010						
1	March	103.030						
1	April	104.060						
1	May	105.101						
1	June	106.152						
1	July	105.101						
1	August	104.060						
1	September	103.030						
1	October	102.010						
1	November	101.000						
1	December	100.000	103.046					
2	January	99.010	102.880					
2	February	98.030	102.549					
2	March	97.059	102.051					
2	April	96.098	101.388					
2	May	95.147	100.558					
2	June	94.205	99.562					
2	July	95.147	98.733					
2	August	96.098	98.069					
2	September	97.059	97.572					
2	October	98.030	97.240					
2	November	99.010	97.074					
2	December	100.000	97.074	103.046	0.94204524	-5.795%		
3	January	101.000	97.240	102.880	0.94517578	-5.482%		
3	February	102.010	97.572	102.549	0.95146756	-4.853%		

3	March	103.030	98.069	102.051	0.96098271	-3.902%		
3	April	104.060	98.733	101.388	0.97381635	-2.618%		
3	May	105.101	99.562	100.558	0.99009901	-0.990%		
3	June	106.152	100.558	99.562	1.01000000	1.000%		
3	July	105.101	101.388	98.733	1.02688767	2.689%		
3	August	104.060	102.051	98.069	1.04060145	4.060%		
3	September	103.030	102.549	97.572	1.05100798	5.101%		
3	October	102.010	102.880	97.240	1.05800426	5.800%		
3	November	101.000	103.046	97.074	1.06152015	6.152%		
3	December	100.000	103.046	97.074	1.06152015	6.152%	6.152%	6.152%
4	January	99.010	102.880	97.240	1.05800426	5.800%		
4	February	98.030	102.549	97.572	1.05100798	5.101%		
4	March	97.059	102.051	98.069	1.04060145	4.060%		
4	April	96.098	101.388	98.733	1.02688767	2.689%		
4	May	95.147	100.558	99.562	1.01000000	1.000%		
4	June	94.205	99.562	100.558	0.99009901	-0.990%		
4	July	95.147	98.733	101.388	0.97381635	-2.618%		
4	August	96.098	98.069	102.051	0.96098271	-3.902%		
4	September	97.059	97.572	102.549	0.95146756	-4.853%		
4	October	98.030	97.240	102.880	0.94517578	-5.482%		
4	November	99.010	97.074	103.046	0.94204524	-5.795%		
4	December	100.000	97.074	103.046	0.94204524	-5.795%		
5	January	101.000	97.240	102.880	0.94517578	-5.482%		
5	February	102.010	97.572	102.549	0.95146756	-4.853%		
5	March	103.030	98.069	102.051	0.96098271	-3.902%		
5	April	104.060	98.733	101.388	0.97381635	-2.618%		
5	May	105.101	99.562	100.558	0.99009901	-0.990%		
5	June	106.152	100.558	99.562	1.01000000	1.000%		
5	July	105.101	101.388	98.733	1.02688767	2.689%		
5	August	104.060	102.051	98.069	1.04060145	4.060%		
5	September	103.030	102.549	97.572	1.05100798	5.101%		
5	October	102.010	102.880	97.240	1.05800426	5.800%		
5	November	101.000	103.046	97.074	1.06152015	6.152%		
5	December	100.000	103.046	97.074	1.06152015	6.152%	6.152%	12.683%
6	January	99.010	102.880	97.240	1.05800426	5.800%		
6	February	98.030	102.549	97.572	1.05100798	5.101%		
6	March	97.059	102.051	98.069	1.04060145	4.060%		

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6	May	95.147	100.558	99.562	1.01000000	1.000%		
6	June	94.205	99.562	100.558	0.99009901	-0.990%		
6	July	95.147	98.733	101.388	0.97381635	-2.618%		
6	August	96.098	98.069	102.051	0.96098271	-3.902%		
6	September	97.059	97.572	102.549	0.95146756	-4.853%		
6	October	98.030	97.240	102.880	0.94517578	-5.482%		
6	November	99.010	97.074	103.046	0.94204524	-5.795%		
6	December	100.000	97.074	103.046	0.94204524	-5.795%		
7	January	101.000	97.240	102.880	0.94517578	-5.482%		
7	February	102.010	97.572	102.549	0.95146756	-4.853%		
7	March	103.030	98.069	102.051	0.96098271	-3.902%		
7	April	104.060	98.733	101.388	0.97381635	-2.618%		
7	May	105.101	99.562	100.558	0.99009901	-0.990%		
7	June	106.152	100.558	99.562	1.01000000	1.000%		
7	July	105.101	101.388	98.733	1.02688767	2.689%		
7	August	104.060	102.051	98.069	1.04060145	4.060%		
7	September	103.030	102.549	97.572	1.05100798	5.101%		
7	October	102.010	102.880	97.240	1.05800426	5.800%		
7	November	101.000	103.046	97.074	1.06152015	6.152%		
7	December	100.000	103.046	97.074	1.06152015	6.152%	6.152%	19.615%
8	January	99.010	102.880	97.240	1.05800426	5.800%		
8	February	98.030	102.549	97.572	1.05100798	5.101%		
8	March	97.059	102.051	98.069	1.04060145	4.060%		
8	April	96.098	101.388	98.733	1.02688767	2.689%		
8	May	95.147	100.558	99.562	1.01000000	1.000%		
8	June	94.205	99.562	100.558	0.99009901	-0.990%		
8	July	95.147	98.733	101.388	0.97381635	-2.618%		
8	August	96.098	98.069	102.051	0.96098271	-3.902%		
8	September	97.059	97.572	102.549	0.95146756	-4.853%		
8	October	98.030	97.240	102.880	0.94517578	-5.482%		
8	November	99.010	97.074	103.046	0.94204524	-5.795%		
8	December	100.000	97.074	103.046	0.94204524	-5.795%		
9	January	101.000	97.240	102.880	0.94517578	-5.482%		
9	February	102.010	97.572	102.549	0.95146756	-4.853%		
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9	July	105.101	101.388	98.733	1.02688767	2.689%		
9	August	104.060	102.051	98.069	1.04060145	4.060%		
9	September	103.030	102.549	97.572	1.05100798	5.101%		
9	October	102.010	102.880	97.240	1.05800426	5.800%		
9	November	101.000	103.046	97.074	1.06152015	6.152%		
9	December	100.000	103.046	97.074	1.06152015	6.152%	6.152%	26.973%