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BEFORE THE
POSTAL REGULATORY COMMISSION

Competitive Product Price Changes **Rates of General Applicability**	:	**DOCKET NO. CP2014-55**

COMMENTS OF UNITED PARCEL SERVICE ON COMPETITIVE PRODUCT PRICE CHANGES -- RATES OF GENERAL APPLICABILITY (July 16, 2014)

Pursuant to Commission Order No. 2111 (July 3, 2014) ("Order"), United Parcel Service ("UPS") hereby comments on the Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 14-3 (July 1, 2014) ("Notice"). In its Notice, the Postal Service states that it will **decrease** rates for Priority Mail Commercial Base and Commercial Plus by 0.9% and 2.3%, respectively, while raising the Retail rates used by individual consumers by 1.7%. Order at 2. The Commission has invited interested persons to comment on "whether the planned changes are consistent with 39 U.S.C. 3632 and 3633, and 39 CFR 3015.2." Id.

All data supporting the Postal Service's Notice have been filed under seal. Notice at 1. As a result, neither we nor other interested members of the public can know whether the planned Priority Mail rate changes are consistent with PAEA or the Commission's regulations.

DISCUSSION

Despite the lack of public information, we can raise some concerns about the Postal Service's decision to lower many Priority Mail rates.[1] Put simply, a decision to reduce any Priority Mail rates after imposing above-cap rate increases on Market-Dominant mailers and incurring nearly $5 billion in losses in FY2013 alone, with a total net deficit of $46.2 billion since FY2007, should raise a red flag for the Commission, postal policy-makers, and mailers alike. See FY2013 PRC Analysis of U.S. Postal Service Financial Results (Revised April 10, 2014) ("Financial Analysis") at ii, 3. The Commission should therefore examine this rate proposal with special care before the proposed rate decreases take effect. See Docket No. RM2007-1, Order No. 26 (August 15, 2007) ("Order No. 26") at ¶ 3034 ("[A] presumption of reasonableness cannot fairly be presumed for rate decreases of general applicability, which, at a minimum, intensify concerns about potentially unfair competition.")

Less than ten months ago, the Postal Service asked the Commission to allow it to raise Market-Dominant Product rates in excess of the statutory rate cap because its "wholly inadequate level of liquidity" put it "in an intolerably precarious position." Docket Nos. R2010-4R/R2013-11, Renewed Exigent Request of the U.S. Postal Service (September 26, 2013) ("Request") at 14. Despite Market-Dominant Products' declining volumes, the exigent rate increase

[1] While the Postal Service states in an attachment to its filing that the net rate change is 0.0%, we cannot know that for certain because of the lack of information in the filing. Given the small overall increase in Priority Mail Retail rates, the current rate change may very well result in an average net decrease in Priority Mail prices. If that is the case, the Commission should require the Postal Service to satisfy the heightened filing requirements of Commission Rule 3015.3.

was "necessary," according to the Postal Service, to "ensure that the Postal Service has sufficient liquidity to continue operating in accordance with [PAEA] . . . until such time as Congress makes fundamental changes to the Postal Service's business model." Id. at 14-15. In total, the Postal Service raised Market-Dominant Product rates 5.9% on average this year. Id. at 7.

In stark contrast, earlier this year the Postal Service raised Competitive Product rates only 2.4% on average, including no rate change overall for Priority Mail, and even some Priority Mail rate decreases. See Postal Service Press Release No. 13-086 (November 13, 2013); 78 Fed. Reg. 69554 (November 20, 2013) ("Overall, Priority Mail prices will average a net zero percent price increase."). The Postal Service is continuing that pattern here: imposing a net rate increase for individuals who use Priority Mail Retail rates while decreasing rates for commercial shippers. In fact, a number of Priority Mail Commercial Base and Commercial Plus rates will decrease by over 50%, with at least one rate cell decreasing by 57.8%.[2]

There is another red flag: on top of raising Market-Dominant Product rates at more than twice the pace of Competitive Product rates, the Postal Service has reduced -- and hopes to further reduce -- service standards for Market-Dominant Products, while enhancing Competitive Products' service features. See Docket Nos. R2010-4R/R2013-11, Statement of Stephen J. Nickerson (Revised

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[2] Compare Notice, Attachment to Governors' Decision No. 14-03 (June 18, 2014) ("Governors' Decision") at 8 (Commercial Base rates, Zone 4, 14-20 pounds) and 12 (Commercial Plus rates, Zone 4, 11-18 pounds) to Docket No. CP2014-5, Attachment to Governors' Decision No. 13-02 (October 22, 2013) at 23 (Commercial Base rates, Zone 4, 14-20 pounds) and 27 (Commercial Plus rates, Zone 4, 11-18 pounds).

November 22, 2013) at 14 (“The Five-Year Plan . . . identifies a number of significant cost saving initiatives . . . including . . . transition to a six-days-per-week delivery schedule for packages and five-day mail delivery.”); Postal Service Press Release No. 14-039 (July 1, 2014) (“‘Unlike others in the shipping industry, the Postal Service is not implementing any new dimensional-weight charges [for Priority Mail] . . . With the Postal Service, there are no shipping surcharges. We deliver on Saturdays for no extra charge, we pick up packages for free, and we deliver shipping boxes and envelopes, also for free.’”)

The Postal Service’s plan is apparent: to squeeze as much revenue as the Commission will allow out of Market-Dominant mailers, who have little or no alternative to using the Postal Service, while making a grab for competitive market share at Market-Dominant mailers’ expense. See Governors’ Decision (proposed rate decreases are designed to “enhance Priority Mail’s strategic position in the market” and are “targeted to attract ground volume . . . .”). This is the exact behavior that Congress intended to prevent in PAEA when it mandated the separation of Market-Dominant and Competitive finances, along with a Market-Dominant rate cap and Competitive Product rate floor. See 39 U.S.C. §§ 2011, 3622(d), and 3633(a).

PAEA’s mandated separation of Market-Dominant and Competitive Products finances and ratemaking cannot work unless (among other things): accounting is transparent; costs are accurately attributed to the products that cause them; and institutional costs are appropriately allocated between Market-Dominant and Competitive Products, with each group actually paying its fair share. <u>See</u> 39 U.S.C. § 3633(a). When, as now, over 45% of total postal costs cannot be attributed to any individual product, the Postal Service has an opportunity to avoid fiscal responsibility and accountability -- an opportunity it appears to be seizing. <u>See</u> Financial Analysis at 44; S. Rep. No. 318, 108th Cong., 2d Sess. (August 25, 2004) ("Senate Report") at 29 (PAEA has a goal of "prevent[ing] the subsidization of competitive products by market-dominant products by better identifying the costs incurred . . . in providing competitive products.").

Moreover, the opportunity for abuse is magnified when only 5.5% of total institutional costs is allocated to products that generate over 25% of total postal attributable costs and over 20% of total postal revenue. <u>See</u> Financial Analysis at 33, 43-44. The Commission's allocation of institutional costs between Competitive Products and Market-Dominant Products must be updated to account for the significant additions to the Competitive Products List and the significant increase in Competitive Products' relative shares of total costs and total revenues that have occurred since the 5.5% "appropriate share" was initially adopted. <u>See</u> Order No. 26 at ¶ 3061 ("The Commission anticipates that [the] need [to revise the appropriate share] may arise for any number of reasons, *e.g.*, additions or deletions to the competitive product lists and market conditions."); Docket No. MC2009-19, Order No. 391 (January 13, 2010) at 29 ("The Commission agrees with UPS that the cumulative impact of adding products to the Competitive Product List must be evaluated.") The problems resulting from an inequitable allocation of institutional costs between Market-Dominant and

Competitive Products are exacerbated by the overall decline in attribution because lower attribution creates a larger pool of unattributed institutional costs that is subject to the very low appropriate share allocation.

In short, until costs are better attributed and more appropriately allocated, and the results are more transparent, it is impossible for the public to know whether the proposed Priority Mail rates comply with PAEA.

The paucity of information filed publicly in this case makes it impossible to make any more substantive comments on the proposed rates' compliance with PAEA. As we have stated in other recent filings, the dramatic decline in transparency since the implementation of PAEA has caused a significant drop in public participation on Competitive Products costing issues, undermining the public's confidence in the fairness of the process and depriving the Commission of valuable input. That is counter to the intent of PAEA. See Senate Report at 30 (". . . the Postal Service and the Postal Regulatory Commission should partner with private sector accounting experts and postal stakeholders in an **open, transparent and continuous process** to improve cost accounting and cost attribution at the Postal Service, **especially as it applies to competitive products**.") (emphasis added).

While the Commission's rules allow interested parties to seek access to information filed under seal, those rules are not realistic in light of the statutory deadlines. The deadlines set by PAEA are so short -- as few as 30 days in a rate change case -- that there is hardly enough time for a potentially interested party to file a motion seeking access to the materials and to have that motion resolved by the Commission. Even if a motion were filed and a party were granted access to the sealed materials, no one would have time to review and analyze the materials and then make a decision on whether there is anything to offer the Commission that would warrant participation on substantive issues. In order to meaningfully participate in a docket such as this one, interested parties must have regular, ongoing access to the relevant postal data. That has not happened since PAEA was adopted.

The Commission can remedy this problem by requiring the Postal Service to file publicly in each proceeding the information necessary for the interested public to evaluate the Postal Service's compliance with the statutory criteria. At a minimum, this information should be filed publicly each year with the Annual Compliance Report. Without it, the public is effectively deprived of its right to participate in Commission proceedings.

We renew our call for the Commission to require the Postal Service to file publicly information sufficient to allow interested parties to analyze the Postal Service's compliance with PAEA. The Commission should, as promised, open one or more rulemaking proceedings to determine exactly what information and materials the Postal Service must publicly file and when. <u>See</u> Docket No. ACR2008, Order No. 196 (March 25, 2009) at 3. In addition, we encourage the Commission to move forward with its inquiry into the disappearance of the statutorily-mandated Competitive Products Fund, which Congress intended to be a key component of PAEA's separation of Market-Dominant Product finances and Competitive Product finances. <u>See</u> Docket No. PI2013-1; Senate Report at

28 ("This legislation provides a clear separation between market-dominant and competitive products by creating a new Postal Service Competitive Products Fund.")

Finally, we again urge the Commission to accelerate its current efforts to improve cost attribution (see Docket No. RM2011-3) and to find other ways to improve attributable costing as a whole, across all segments and components, and to improve the allocation of institutional costs between Market-Dominant and Competitive Products. We are encouraged by the Commission's recent efforts (and those of others) to reexamine the existing approach. See, e.g., PRC Study of Postal Service Institutional Cost, Solicitation No. PRC-2014-2 (May 22, 2014); Postal Service Office of Inspector General, "Greenfield Costing Methodology: An Opportunity to Deliver Transformative Change," Rpt. No. RARC-WP-14-005 (January 7, 2014). The intended operation of PAEA depends on accurate cost attribution and allocation to ensure that captive Market-Dominant mailers are not paying for Competitive Product rate reductions and service enhancements.

Respectfully submitted,

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