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

Market-Dominant Price Adjustment and Classification Changes Related to Move Update Assessment	)))	**Docket No. R2017-7**

COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE
(July 20, 2017)

The Association for Postal Commerce ("PostCom") respectfully submits the following comments for the Commission concerning the Postal Service's Market-Dominant Price Adjustment and Classification Changes Related to Move Update Assessment specified in Docket No. R2017-7.

In PostCom's view, the move to the Census method is a positive development in that it more accurately accounts for the actual amount of non-compliant mail entered into the system. This improvement is further reinforced by the procedures to only assess a Move Update fee to non-complaint mail over the threshold. This procedure properly recognizes that instances of non-complaint mail that remain under the threshold rate fall within an acceptable level that does not impose substantial harm to the Postal Service.

However, there are a few elements in the Postal Service's filing, and in its proposed Move Update assessment process generally, that are of concern to PostCom and warrant further explanation. First, while the rate change from $0.07 to $0.08 is itself not necessarily objectionable, the Postal Service's justification for this increase as an "incentive" does not properly reflect Commission precedent. Second, the Postal Service maintains that it will investigate Move Update compliance and impose revenue deficiency assessments even when the Postal Service has not found any instance of non-compliance under the Census method. This

position is unreasonable and, again, inconsistent with Commission precedent. Third, the Postal Service intends to impose a charge on mail service providers instead of mail owners even though the Postal Service would have sufficient data to evaluate and assess individual mail owners. Fourth, the Commission should plainly state that any approval of the rate is contingent on the threshold for compliance remaining unchanged, and that any changes in the threshold must be approved by the Commission. Fifth, while the rate change from $0.07 to $0.08 was approved by Governors' Resolution No. 16-25, that decision was issued in December 2016, and the rate will not go into effect until January 2018. While PostCom understands that Congress and the President have placed the Postal Service in a difficult position by failing to nominate and confirm Governors, reliance on a Governor's decisions from 2016 to support a price increase in 2018 is far from a best practice. Each of these concerns are discussed in further detail below.

I. Move Update Assessment Must be Tied to Reasonable Costs Incurred

While the change of the Move Update assessment rate from $0.07 to $0.08 is itself not necessarily objectionable, the justification for this increase is at odds with the Postal Service's rate authority under the PAEA and Commission precedent.

In its Notice, the Postal Service stated that the rate increase of the Move Update assessment charge to $0.08, and the decrease of the threshold to 0.5 percent "are appropriate to encourage mailers to improve their address quality by reducing COA mail" and that the Move Update assessment charge "is designed to serve as an incentive." The use of the term *incentive* here is incorrect, however, as the charge does not act as a carrot, but rather as a stick. The Postal Service is correct that the charge is designed "to alter mailer behavior," but it is not an *incentive*.

The more honest term is that it is a deterrent; a disincentive; or simply, a penalty.[1] The Postal Service even goes as far to say "the aim is not to recoup the cost of handling UAA mailpieces."

PostCom objects to the deterrent rationale put forth by the Postal Service. While the Postal Service is correct that the Commission has previously approved a Move Update Assessment charge based on the "incentive" it provides mailers to comply with preparation requirements, Notice at 6, the Commission held open the possibility that such a rate structure could be unlawful in certain circumstances and encouraged the Postal Service to pursue "the goal of relating the size of the assessment with the number of non-updated addresses in the mailing" to "align the rate incentive with the mail characteristics that drive Postal Service costs." Order No. 348 at 16. The current statutory framework is clear that any charge must be related to the costs imposed by UAA mail, and any assessment must be proportional to the harm imposed. The Postal Service has not performed such an analysis here, instead relying solely on the fact that the charge will be applied only to non-compliant mail pieces above the threshold. Notice at 8. If the $0.08 cent charge applied to only non-compliant pieces above the threshold complies with PAEA, it is not because the charge is designed as a deterrent. Because any penalty, charge, or fee can have deterrent effect on behavior, any charge, regardless of amount or proportionality to costs, could be justified as reasonable if a deterrent effect is all that is required. The Commission should therefore affirm that penalty rates must still remain proportional to the costs imposed by the activity the Postal Service seeks to prevent. Doing so would be consistent with Order No. 348, in which the Commission rejected the Postal Service's proposal to apply single-piece First-Class Mail rates to an entire non-compliant mailing, instead limiting the charge to

[1] Later in its notice, the Postal Service refers to the charge as a "threat." "The Postal Service anticipates that as a result of the census method, including the information made available to mailers via a 'Mailer Scorecard' and the threat of the assessment fee, address quality will improve so that COA errors are kept below the threshold." Notice at 7.

$0.07 per piece and only in situations where the mailer did not make a good faith effort to comply. Order. No. 348 at 13-14, 18-19. It is also consistent with recent court precedent holding a revenue deficiency assessment based on Move Update violations unreasonable and disproportionate where the Postal Service failed to demonstrate how the alleged violations actually caused it more than a trivial amount of harm. *See Southern California Edison v. United States Postal Service*, 134 F. Supp. 3d. 311, 322 (D.D.C. 2015).

II. Compliance with Census Method Must Necessarily Limit Investigations and Revenue Deficiency Assessments.

In its Federal Register notice containing the latest iteration of its proposed Address Quality Censuses Measurement and Assessment Process rule, the Postal Service explains that the United States Postal Inspection Service will continue to investigate Move Update compliance and impose revenue deficiency assessments even when the Postal Service has determined an entity is in full compliance under the Census method. 82 Fed. Reg. 11871, 11873-74 (Feb. 27, 2017). The Postal Service explains that regardless of the outcome of the Census verification, a mailer does not qualify for presort discounts if it does not use an approved Move Update method to update the addresses in a mailing. *Id*. It further reserves the right to impose a deficiency equal to the difference between postage paid, including any Move Update assessment charge, and the applicable First Class Mail single-piece rate to every mailpiece in a mailing that did not use an approved Move Update method. *Id*. While it is understandable to wish to reserve any and all remedies and powers one can, there is a limit to what reason will entertain, and that limit is exceeded here. If a mailer is found in compliance under the Census method, reason follows that the mailer should not be under investigation for compliance with Move Update or assessed a revenue deficiency assessment in relation thereto. As the Commission explained in Order No. 348, charges should be imposed on an entire mailing only where the mailer "demonstrate[s] a

lack of good faith effort to comply with the Move Update requirements." Order No. 348 at 13. If every piece of a mailing is measured under the Census method, and the mailing is found to be compliant, it cannot be said that a mailer did not make a good faith effort to comply with Move Update. The Census method unequivocally demonstrates that the mailer *did* comply. The Commission should direct the Postal Service to provide a "safer harbor" to mailers and assure them that USPIS will not investigate their Move Update compliance if they are consistently found to be in compliance through census-based verification. This result, in fact, is mandated by *southern California Edison*, where the court rejected the Postal Service's argument that *any* Move Update violation would justify a revenue deficiency assessment for 100% of a mailer's discounted rates. *Southern California Edison*, 134 F. Supp.3d at 326.

Finally, to ensure any assessments are reasonable, there must be a mechanism by which a mailer can object to and appeal the decision of the Postal Service with regard to Move Update compliance under the census method. The census method entails a technological feat that is impressive in its scope. Any such endeavor of this scope is likely to, perhaps even certain to, be accompanied by unexpected technological failings. It is necessary under due process to afford stakeholders a mechanism to challenge and appeal the findings of this system. Simply deferring to the algorithm does not comport with Due Process and the Constitution of the United States. PostCom asks the Commission to take this seriously and direct the Postal Service to create an appeals process that comports with due process.

III. The Postal Service, When Equipped with the Necessary Data, Must Collect From the Responsible Party

While the Move Update assessment charge may meet the standards of proportionality, it is still an unreasonable charge if it is imposed on an entity that is not responsible for Move

Update compliance. By proposing to apply the charge to eDoc submitters, rather than mail owners, the Postal Service has proposed to impose the charge on the wrong entity.

PostCom has repeatedly explained to the Postal Service in comments to various iterations of the proposed Move Update assessment rule that applying the error threshold at the Mail Owner level would not impose a burden on the Postal Service. The Postal Service requires that information identifying both the Mail Owner and Mail Preparer ("by/for" information) be included with all eDocumentation for Full Service mailings. The Postal Service therefore has the information necessary to determine the Mail Owners with which any identified address quality errors are associated. In fact, the Proposed Rule acknowledges that "[d]ata showing the source of errors by the Mail Owner would be available." 82 Fed. Reg. at 11,873. Providing this information to the eDoc submitter is an unnecessary step when the Postal Service could use this information itself to measure and assess the responsible Mail Owners.

Further, measuring compliance at the Mail Owner level comports with industry practice and USPS requirements. Address quality and Move Update compliance processes are often done at a Mail Owner level, not at the eDoc submitter level, and the Postal Service has historically applied its Move Update requirements at the Mail Owner level. Likewise, USPIS investigations generally focus on Mail Owner Move Update practices. Requiring eDoc submitters to be responsible for the address hygiene and quality of the Mail Owners' address practices does not follow the common practices by which Move Update compliance was previously measured, and the Postal Service has not explained the basis for this change.

In shifting the responsibility for compliance from the Mail Owner to the eDoc submitter, the Postal Service may be creating a potential free rider problem. Individual mailers, especially those with smaller volumes, have a diluted incentive to comply with Move Update and Address

Quality standards. So long as the eDoc submitter's mailing as a whole is below the error threshold, individual Mail Owners will not bear the costs of their individual noncompliance. They will thus have less incentive to improve their address quality. Similarly, the positive incentives provided by the Proposed Rule, primarily the free ACS threshold, provide less incentive for Mail Owners to improve address quality when applied at the eDoc submitter level. For example, if an eDoc submitter submits a co-mailing for two equal-sized mailers, one with 100 percent Full Service and one with 80 percent Full Service mail, the mailing as a whole will not reach the 95 percent threshold at which free ACS is available. Thus, even the Mail Owner with 100 percent Full Service mail will still be required to pay for ACS. Because neither this Mail Owner nor the eDoc submitter can control the behavior of the Mail Owner with 80 percent Full Service mail, the incentive provided by free ACS disappears.

Finally, there are practical impediments to the Postal Service's proposal. Every Mail Owner has different practices by which they update the addresses within their databases. To require an eDoc submitter to be responsible for these practices across multiple mailers on a calendar month basis does not encourage the improvement of address quality; it only adds another layer of complexity to an already intricate process. This complexity is compounded by the fact that eDoc submitters have only 10 days to dispute assessments. Because it will likely take at least that long to investigate any errors when a mailing involves multiple Mail Owners with varying practices, the rational response to any assessment will be to dispute first and investigate later. If the assessment was leveled on the Mail Owner instead, the Mail Owner would likely have a better idea of what caused the errors and whether or not an appeal would be warranted. While the Postal Service's assurance that it will provide estimated assessment data throughout the month is helpful, it does not fully relieve this concern. 82 Fed. Reg. at 11,873.

Consequently, PostCom believes that the Postal Service, with the requirement of by/for information, should measure and assess address quality at the Mail Owner CRID level. If there are technical or practical impediments to doing so, the Postal Service has not identified them. Thus, absent further information, it appears that evaluating compliance at the Mail Owner level would provide incentives to the entities most responsible for compliance, reduce administrative burdens, and be more likely to result in improved address quality. The Commission should direct the Postal Service to modify its MCS language to clarify that the assessment will be imposed on Mail Owners, rather than eDoc submitters.

IV. The Threshold Is an Integral Component of the Rate

The reasonableness and cap compliance of the Move Update assessment charge is inextricably linked to the reasonableness of the compliance threshold. The tighter the threshold, and the more likely the charge is to be assessed, the more closely the Commission should scrutinize the relationship between the costs imposed on mailers through the assessment charge and the costs imposed on the Postal Service by mail that does not comply with Move Update standards.

It is difficult for PostCom to evaluate the reasonableness of the initial proposed threshold of 0.5% in the absence of experience with the census method. PostCom notes, however, that the threshold may be difficult for certain mailers to meet, particularly those in industries such as health care and insurance that face separate legal restrictions on when and how they can update their customers' addresses. While the Postal Service plans to maintain the Legal Restraint Method of Move Update compliance after census verifications begin, not all mailers who face these restrictions can qualify for Legal Restraint authority under the criteria the Postal Service relies on to evaluate applications for this authority.

Regardless of the reasonableness of the current compliance threshold, any changes to this threshold will impact the reasonableness of the assessment charge going forward. The Commission addressed this issue in Order No. 348. There, the Commission directed the Postal Service to file any notice of change in the compliance threshold with the Commission, "recognizing that any reduction in the tolerance may affect the relevant mails' average revenue per piece (and thus have an impact on the cap)." Order No. 348 at 17. The Commission should issue a similar direction in this docket.

V. The Governors' Rate Resolution is Stale

The Postal Service's rate adjustment relies on Governors' Resolution No. 16-25, which was approved on December 5, 2016 – over 6 months ago. The implementation date for this adjustment has been pushed to January 2018, over a year out from the original authorization. PostCom expresses concern over this practice of making price changes based on approvals given 6 months to a year in advance. Needless to say, a lot can happen in a year. This lag highlights the need for a full Board of Governors to properly oversee the Postal Service. PostCom understands, of course, that neither the Postal Service nor the Commission is responsible for the lack of Governors. At some point, however, it will become inappropriate for the Postal Service to rely on resolutions passed in 2016 to authorize future rate changes.

VI. Conclusion

While PostCom supports the Postal Service's proposal to move toward a census verification method for Move Update compliance and does not object to the proposed charge of $0.08 cents so long as the compliance threshold remains at 0.5%, there are still elements of the proposal that require further clarification and refinement, particularly the role of the USPIS and the party responsible for compliance with the standard and payment of the assessment. PostCom

urges the Commission to closely review the Postal Service's filing and direct the Postal Service to resolve the issues identified in these comments before imposing any assessments.

Respectfully submitted,

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