

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Ratemaking Procedures for Inbound
Letter Post and Related Services

Docket No. RM2019-2

ORDER CLOSING DOCKET

(Issued January 10, 2019)

I. INTRODUCTION

On November 16, 2018, the Postal Service filed a petition requesting that the Commission revisit the application of the market dominant price cap to rates for Inbound Letter Post and certain other inbound international market dominant products (Inbound International Registered Mail, Inbound International Reply Coupon Service, and Inbound International Business Reply Mail Service).¹ The Postal Service seeks replacement of price cap treatment for these products with an “evaluation of whether price changes for these services promote the objectives in [39 U.S.C.] [s]ection 3622(b), taking into account the factors in [s]ection 3622(c).” Petition at 2.

¹ Petition of the United States Postal Service to Initiate a Rulemaking Concerning Ratemaking Procedures for Inbound Letter Post and Related Services, November 16, 2018 (Petition).

On November 20, 2018, the Commission issued an advance notice of proposed rulemaking initiating this docket, appointing a Public Representative, and inviting public comment on the Petition.² On November 20, 2018, the Postal Service filed a notice of clarification, noting that “it is not reviving its 2007 argument that the relevant products should be excluded from the standard market-dominant/competitive classification framework,” rather, it contends that the price cap aspect of the market dominant rate-regulation system should not apply to Inbound Letter Post (and related services).³

On November 21, 2018, the Association of Postal Commerce (PostCom) filed a motion to extend the deadline for filing comments.⁴ On November 27, 2018, the National Postal Policy Council and a group of other mailer associations (collectively, NPPC) submitted comments in support of PostCom’s motion to extend deadline.⁵ On November 28, 2018, the Postal Service filed a response opposing PostCom’s motion to extend deadline.⁶ On November 29, 2018, the Commission granted PostCom’s motion in part, extending the deadline for filing comments through December 20, 2018.⁷ The

² Advance Notice of Proposed Rulemaking Concerning Ratemaking Procedures for Inbound Letter Post and Related Services, November 20, 2018 (Order No. 4882).

³ United States Postal Service Notice of Clarification, November 20, 2018, at 1, 2 (Postal Service Notice of Clarification).

⁴ Motion of the Association for Postal Commerce to Extend Comment Deadline, November 21, 2018.

⁵ Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement on PostCom Motion for Extension of Time, November 27, 2018.

⁶ Response of the United States Postal Service to Motion to Extend Comment Deadline, November 28, 2018.

⁷ Order Granting Motion to Extend Deadline for Filing Comments, November 29, 2018 (Order No. 4904).

Commission received comments from PostCom,⁸ NPPC,⁹ United Parcel Service, Inc. (UPS),¹⁰ and the Public Representative.¹¹

On December 4, 2018, PostCom filed a motion for issuance of information request.¹² The Motion asks the Commission to issue requests for Inbound Letter Post volume and revenues disaggregated by shape and weight. PostCom Motion at 2. It also seeks information on the impact of potentially higher Inbound Letter Post rates on other First-Class Mail prices. *Id.*

For the reasons stated below, the Commission closes this docket. As a result of the closure of this docket and due to considerable changes to the categories within Inbound Letter Post as discussed below, the Commission denies the PostCom Motion as moot.

⁸ Comments of the Association for Postal Commerce, December 20, 2018 (PostCom Comments).

⁹ Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement, December 20, 2018 (NPPC Comments).

¹⁰ Comments of United Parcel Service, Inc. on Advance Notice of Proposed Rulemaking Concerning Ratemaking Procedures for Inbound Letter Post and Related Services, December 20, 2018 (UPS Comments).

¹¹ Public Representative Comments, December 20, 2018 (PR Comments).

¹² Motion of the Association for Postal Commerce for Issuance of Information Request, December 4, 2018 (PostCom Motion).

II. BACKGROUND

A. Inbound Letter Post and the Universal Postal Union

Inbound Letter Post is a market dominant product consisting of inbound international letter post mailpieces.¹³ The Postal Service currently receives Inbound Letter Post mailpieces from designated operators¹⁴ in accordance with the Universal Postal Union's (UPU's) Universal Postal Convention (UPU Convention). The UPU Convention includes provisions relating to terminal dues, which are the remuneration paid by the designated operator of the origin country to the designated operator of the destination country for the delivery of letter post items.

On August 23, 2018, President Donald J. Trump issued a presidential memorandum to the Postmaster General and the Chairman of the Postal Regulatory Commission, among others, entitled *Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail*.¹⁵ The Presidential Memorandum outlines the policy of the executive branch to support efforts to further a system of unrestricted and undistorted competition between the United States and foreign merchants. Presidential Memorandum, section 2(d). It states such efforts should include ensuring that charges for the delivery of foreign-origin mail containing goods do not favor foreign mailers over

¹³ The Commission uses the term "Inbound Letter Post" to refer to the market dominant Inbound Letter Post product as defined in section 1130 of the Mail Classification Schedule (MCS).

¹⁴ A designated operator is "any governmental or non-governmental entity officially designated by the member country to operate postal services and to fulfill the related obligations arising out of the Acts of the Union on its territory[.]" Convention Manual, Article 1.12, 2018 available at http://www.upu.int/uploads/tx_sbdownloader/actManualsInThreeVolumesConventionManualEn.pdf (UPU Convention).

¹⁵ Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018, available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission/> (Presidential Memorandum).

domestic mailers or favor postal operators over non-postal operators. *Id.* at section 2(d) (i), (ii).

On October 17, 2018, the White House Press Secretary issued a statement indicating that the President concurred with a recommendation from the Department of State that the U.S. should adopt self-declared rates for terminal dues as soon as practical, but no later than January 1, 2020.¹⁶

B. Petition

The Postal Service's Petition seeks to distinguish Inbound Letter Post and related products from other market dominant products and exempt this product from price cap treatment.¹⁷ The price cap currently provides a class-level limitation on all market dominant products based on the changes in the consumer price index for all urban consumers (CPI-U) in the 12 months preceding the Postal Service's notice to the Commission that it intends to increase rates. 39 U.S.C. § 3622(d)(1)(A). The Commission reviews the Postal Service's proposed rates for compliance with the price cap in advance and provides an opportunity for the public to comment. 39 U.S.C. § 3622(d)(1)(C).

The Petition points to the Presidential Memorandum and recommendation from the Department of State regarding adoption of self-declared rates for terminal dues as precipitating events for the Petition, but maintains that its requested treatment of Inbound Letter Post rates should apply whether the rates are self-declared or not. Petition at 4-5.

In support of the Petition, the Postal Service states that nothing in the text or legislative history of the Postal Accountability and Enhancement Act¹⁸ suggests that

¹⁶ See Statement from the Press Secretary, October 17, 2018 (Press Release), available at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-38/>.

¹⁷ Petition at 2. The Postal Service states that it intends for the proposal in the Petition to apply to related products remaining on the market dominant product list upon resolution of Docket No. MC2019-7, Petition at 2, n.4.

¹⁸ Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006).

Congress intended to protect the interests of foreign postal operators with the price cap. *Id.* at 7. It further recommends that, in lieu of the price cap, the Commission evaluate market dominant international mail and services by applying the statutory objectives and factors in accordance with 39 U.S.C. §§ 3622(a)-(c). *Id.* at 9. The Postal Service suggests that the Commission conduct this evaluation after the price change has been in effect, instead of the current practice of *ex ante* review. *Id.* at 10.

C. Related Proceedings

Docket No. RM2017-3. Inbound Letter Post is one of many considerations currently under review in Docket No. RM2017-3, the Commission's statutorily mandated review of the entire system of regulating rates and classes for market dominant products, initiated 10 years after the PAEA was signed into law (10 year review). See 39 U.S.C. § 3622(d)(3). If, pursuant to its review, the Commission determines that the system is not achieving the objectives, taking into account the factors, the Commission may, by regulation, make modifications or adopt an alternative system as necessary to achieve the objectives. *Id.*

In Order No. 3673, the Commission requested public comment on the system of market dominant rate regulation and its achievement of statutory objectives and factors.¹⁹ In Order No. 4257, the Commission issued its findings on the market dominant ratemaking system for a determination of whether it had achieved the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).²⁰

The Commission concurrently issued Order No. 4258, in which it proposed modifications to the current system and sought public comments and proposed

¹⁹ Docket No. RM2017-3, Advance Notice of Proposed Rulemaking on the Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products, December 20, 2016, at 10-11 (Order No. 3673).

²⁰ See Docket No. RM2017-3, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, December 1, 2017, (Order No. 4257).

alternatives to its proposal.²¹ In its response comments to Docket No. RM2017-3, the Postal Service proposed that the Commission not apply the market dominant price cap to Inbound Letter Post.²² The Commission received reply comments from UPS, which urged the Commission to keep Inbound Letter Post under the market dominant price cap.²³

The Commission's 10 year review is ongoing, and among the many issues under consideration in Docket No. RM2017-3 is the Postal Service's proposal to remove Inbound Letter Post from the market dominant price cap.

Transfer Request. At the same time it filed the instant Petition, the Postal Service filed a concurrent request in Docket No. MC2019-17.²⁴ In the Transfer Request, the Postal Service sought Commission approval to: (1) remove Inbound Letter Post small packets and bulky letters from the market dominant Inbound Letter Post product, and associated inbound registered mail services from the market dominant product list; and (2) add identical services to the competitive product list. Transfer Request at 12-13. The Commission conditionally approved the Transfer Request on January 9, 2019, pending the proposal, review, approval, and implementation of new prices.²⁵

²¹ See Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

²² Docket No. RM2017-3, Initial Comments of the United States Postal Service in Response to Order No. 4258, March 1, 2018, at 153-158. (Postal Service RM2017-3 Initial Comments).

²³ Docket No. RM2017-3, Reply Comments of United Parcel Service, Inc., March 30, 2018, at 1-3 (UPS RM2017-3 Reply Comments).

²⁴ Docket No. MC2019-17, United States Postal Service Request to Transfer Inbound Letter Post Small Packets and Bulky Letters, and Inbound Registered Service Associated with Such Items, to the Competitive Product List, November 16, 2018 (Transfer Request).

²⁵ See Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019 (Order No. 4980).

III. COMMENTS

The Commission received comments from PostCom, NPPC, UPS, and the Public Representative. All of the commenters oppose the Petition.

PostCom asserts that excluding Inbound Letter Post from price cap regulation is unnecessary because the Postal Service is able to utilize existing price adjustment procedures to bring these rates in line with the objectives and factors of the PAEA. PostCom Comments at 2. It points to the Transfer Request for evidence that the Postal Service may exercise “significant flexibility” in setting rates for those products that qualify for transfer to the competitive product list. *Id.* at 2-3. For other products that remain in the market dominant category, PostCom argues that the existing market dominant price adjustment procedures are available to the Postal Service without the need to resort to extraordinary remedies such as exclusion from the price cap. *Id.* at 3-4. Additionally, PostCom maintains that the Commission lacks the legal authority to “apply the CPI price cap selectively.” *Id.* at 5. It notes that even if the Commission were to establish a new system of rate regulation pursuant to the 10 year review that does not include a CPI price cap, it only has the authority to regulate the “system” of market dominant rates and not parse out individual products independent of that system. *Id.*

NPPC concurs with PostCom, stating that the circumstances cited by the Postal Service in its Petition do not necessitate exempting Inbound Letter Post and related rates from the price cap. NPPC Comments at 2-3. If the Postal Service were to self declare rates, NPPC points out that “the Postal Service merely would need to apply some cap authority to I[nbound] L[etter] P[ost] rates instead of to other First-Class Mail.” NPPC Comments at 6. It asserts that other First-Class Mail products have been cross-subsidizing Inbound Letter Post products while the Postal Service was tied to UPU rates and therefore unable to raise rates to a compensatory level. *Id.* at 7-8. As such, NPPC requests that if the Commission grants the Petition, it also “eliminate all vestiges of existing cross-subsidy at the same time” by imposing a one-time reduction in First-Class Mail cap authority equal to the amount of the cross subsidy for the preceding fiscal year. *Id.* at 8-9.

In the same vein, UPS states that the Commission previously rejected proposals by the Postal Service to exclude Inbound Letter Post from the price cap, and no market conditions have changed sufficiently to warrant separate treatment of these products from other market dominant products. UPS Comments at 2. UPS argues that the PAEA imposes a strict dichotomy between market dominant and competitive products, and the rate cap is a key element of the market dominant system. *Id.* at 5-6. In lieu of creating a “nebulous third category of products” by excluding Inbound Letter Post from the rate cap, UPS recommends that the Postal Service avail of other methods that preserve the integrity of the current system, such as filing for a one-rate adjustment due to either extraordinary or exceptional circumstances under 39 U.S.C. § 3622(d)(1)(E). *Id.* at 6-7. Finally, UPS takes issue with the after-the-fact review of Inbound Letter Post rates proposed by the Postal Service in the Petition, noting that all other market dominant products must undergo prospective review with the opportunity for public comment. *Id.* at 7-8.

Finally, the Public Representative also opposes the Petition, asserting that “permanently eliminating applicability of the price cap to Inbound Letter Post products at this time without full consideration of the implications in the ten-year review case is premature.” PR Comments at 2. Instead, he proposes a “true-up” procedure, wherein the Commission would allow the Postal Service to increase Inbound Letter Post rates to compensatory levels for an interim period until final determinations in the 10 year review. *Id.* at 6. Absent such a true-up, he maintains that the issues raised by the Petition should be deferred for consideration in the 10 year review. *Id.* at 7.

IV. COMMISSION ANALYSIS

In Docket No. RM2007-1, the Commission considered whether the Inbound Letter Post product should be a separate category from either market dominant or

competitive products.²⁶ In Order No. 43, the Commission rejected that argument noting that if Congress had intended to create a system of regulation for inbound international mail separate from the market dominant or competitive categories, it would have done so explicitly. The Commission acknowledges that the Postal Service is making a more nuanced argument in this docket. It no longer contests that Inbound Letter Post and related products “will remain at least partially within the market-dominant regulatory system”,²⁷ but rather seeks an exemption from the price cap for this product given the potential “perverse result that self-declared rates will end up harming the Postal Service’s financial condition.” Petition at 1.

The Commission concurs with the commenters’ observation that the Presidential Memorandum and the potential for self-declared rates do not preclude the Postal Service from utilizing the pricing flexibility available under the current market dominant ratemaking system to generate compensatory rates for the Inbound Letter Post product. After the eligible categories of Inbound Letter Post are transferred to the competitive product list, the categories that will remain in the Inbound Letter Post will be smaller in total volume and revenue. The Postal Service may use its existing pricing flexibility to propose compensatory rates for the few remaining market dominant categories within Inbound Letter Post with minimal impact. The transfer of eligible categories of Inbound Letter Post to the competitive product list substantially reduces the amount of market dominant price cap authority that would need to be used in the setting of self-declared rates.

The Commission also notes that there is inherent value in the current *ex ante* review of proposed rates because of the opportunity for transparency and public input provided by this formal process. An after-the-fact review for some, but not other, rates as proposed by the Postal Service, even taken separately from a price cap exemption,

²⁶ See Docket No RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43).

²⁷ Postal Service Notice of Clarification at 1.

would undermine the goal of transparency and accountability that comprises the cornerstone of the PAEA.

Additionally, the Commission recognizes that the 10 year review docket has provided the Postal Service and interested parties ample time and opportunity to comment on the price cap as a whole, as well as the applicability of the price cap to Inbound Letter Post and related products specifically. See Postal Service RM2017-3 Initial Comments at 153-158; UPS RM2017-3 Reply Comments at 1-2. In Docket No. RM2017-3, the Commission reviewed and analyzed the performance of the system as a whole in Order No. 4257 and provided proposed solutions to address the deficiencies of the system in Order No. 4258. Removing individual products from the purview of the price cap without considering the potential effect on other products and services would not only detract from this holistic review, it may result in unintended consequences for any potential modifications to the market dominant ratemaking system.

For the same considerations, the Commission rejects the proposed alternative solution of a “true-up” system proposed by the Public Representative. A series of interim rate increases for Inbound Letter Post to compensatory levels during the consideration of the 10 year review may result in inequitable treatment, as a single noncompensatory product would be treated in a substantially disparate manner from other noncompensatory products within the market dominant ratemaking system. The Commission is continuing to evaluate these products and potential solutions in the 10 year review.

For the foregoing reasons, the Commission closes the instant docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission closes Docket No. RM2019-2, Ratemaking Procedures for Inbound Letter Post and Related Services as the issues raised in the Petition are currently under consideration in Docket No. RM2017-3.

2. The Motion of the Association for Postal Commerce for Issuance of Information Request, filed December 4, 2018, is denied as moot.

By the Commission.

Stacy L. Ruble
Secretary