

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

MARKET-DOMINANT PRICE CHANGE

Docket No. R2020-1

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 3**
(October 23, 2019)

The Postal Service hereby responds to Chairman's Information Request No. 3, issued on October 16, 2019. The question is stated verbatim and is followed by the response.

Respectfully submitted,
UNITED STATES POSTAL SERVICE

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**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 3**

1. Please refer to the CY 2020 Earned Value Reply Mail promotion for First-Class Mail and USPS Marketing Mail. Notice at 20-21, 30.
 - a. Please explain if the Postal Service considers credits for the Earned Value Reply Mail promotion rates of general applicability consistent with 39 C.F.R. § 3010.1(g).¹
 - b. If the Postal Service considers the Earned Value Reply Mail promotion a rate of general applicability, please confirm that the four-cent credit is available uniformly to any mailer sending a First-Class Business Reply or Courtesy Reply Mail enclosure. If confirmed, please explain how a mailer who did not previously participate in the Earned Value Reply Mail promotion would be able to qualify for the four-cent credit, and how eligibility for the two-cent or four-cent credit is not dependent on factors other than the characteristics of the qualifying mailpieces.² If not confirmed, please explain how the four-cent credit for the Earned Value Reply Mail promotion are rates of general applicability consistent with 39 C.F.R. § 3010.1(g).
 - c. If the Postal Service considers the Earned Value Reply Mail promotion a rate not of general applicability, please provide updated First-Class Mail and USPS Marketing Mail library references that exclude the credit from the percentage change in rates calculations consistent with 39 C.F.R. § 3010.24. Alternatively, please provide updated Mail Classification Schedule (MCS) language that ensures the promotion only includes rates of general applicability and, if necessary, updated library references.
 - d. The Postal Service proposes that repeat participants of the Earned Value Reply Mail promotion that meet or exceed 93 percent of their comparable volume last year receive a two-cent credit and repeat participants that meet or exceed 100 percent of their comparable volume last year receive a four-cent credit. Notice at 20. However, according to the proposed MCS revisions, a repeat participant of the Earned Value Reply Mail promotion would receive a four-cent credit only if it “exceeds 100 percent of the mailer’s comparable volume count for the same period during 2019.” Notice, Attachment A at 8, 15, 21, 28, 34-35, 38-39, 47-48. Please confirm that the Earned Value Reply Mail promotion description should be revised so that the four-cent credit is available to a repeat participant that “meets or exceeds 100 percent of the mailer’s comparable volume count for the same period during 2019.” If not confirmed, please explain and provide revised MCS language, if necessary.

¹ See *e.g.*, Docket No. RM2014-3, Order Adopting Final Rules on the Treatment of Rate Incentives and De Minimis Rate Increases for Price Cap Purposes, June 3, 2014, at 25, 27-29 (Order No. 2086).

² See *generally* Order No. 2086; see *also* Docket No. R2013-6, Order Approving Technology Credit Promotion, June 10, 2013 (Order No. 1743).

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO CHAIRMAN'S INFORMATION REQUEST NO. 3

RESPONSE:

a-c. The Postal Service considers the Earned Value promotion to be a rate of general applicability consistent with 39 CFR 3010.1(g). The questions above appear to be premised on a theory that a mailer's prior year volumes and participation status are not included within the meaning of "the characteristics of the mail" for purposes of Rule 3010.1(g). Such a theory would conflict directly with the Commission's precedent one year ago in Docket No. R2019-1.

Specifically, in Docket No. R2019-1, the Postal Service introduced a redesigned Earned Value promotion with different credit structures for new and repeat participants. In particular, participation in the CY 2017 promotion determined a mailer's eligibility as either a new or repeat participant for the CY 2019 promotion.³ For repeat participants, the Postal Service introduced a 95 percent volume threshold: in order to qualify for 3-cent per-piece credits, a repeat participant was required to exceed 95 percent of its volume from the prior year.⁴ In contrast, new participants did not have to meet any threshold; they received a 3-cent per-piece credit for all BRM, CRM, and Share Mail volume.⁵ The Commission approved the redesigned promotion, including its price cap

³ See, e.g., Order No. 4875, Attachment A at 7.

⁴ Order No. 4875, Docket No. R2019-1 (Nov. 13, 2018), at 8 ("The promotion is available to repeat participants (those who registered for this promotion in CY 2017) and new participants (those who were not registered for this promotion in CY 2017). Repeat participants must meet or exceed 95 percent of their comparable volume from April 1, 2018, through June 30, 2018, to receive the postage credit. If the participant is new, there is no volume threshold").

⁵ *Id.*

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO CHAIRMAN'S INFORMATION REQUEST NO. 3

treatment.⁶ In doing so, the Commission necessarily accepted that prior year volumes were part of “the characteristics of the mail” for purposes of Rule 3010.1(g).

The questions above cite to Commission statements that precede the Commission’s actions in Docket No. R2019-1. To the extent the Commission views those earlier statements as conflicting with its Docket No. R2019-1 precedent, the Commission’s most recent precedent must control.⁷

Moreover, the Technology Credit promotion at issue in Docket No. R2013-6 is distinguishable from the CY 2020 Earned Value promotion, in that the Technology Credit promotion did not consider volume sent in the actual promotional year (FY 2013) at all, and it excluded some mailers from eligibility for all levels of credit.⁸ In determining that the Technology Credit promotion was not a rate of general applicability, the Commission noted that “mailers that did not meet the volume thresholds in FY 2012 cannot qualify for the promotion in FY 2013 regardless of any actions they may take. This contrasts with other rates of general applicability that are available to all qualified mailers at any given time”⁹ Later, in Docket No. RM2014-3, the Commission

⁶ *Id.* at 10 (“The Commission concludes that the Postal Service’s inclusion of the Personalized Color Transpromo Promotion, Emerging and Advanced Technology Promotion, and Earned Value Reply Mail Promotion in the price cap calculation for First-Class Mail is consistent with 39 C.F.R. § 3010.23(e)(2)”).

⁷ The Postal Service notes that the CY 2014 Earned Value promotion mentioned in Docket No. RM2014-3 differed fundamentally from the one offered in CY 2019 and planned for CY 2020. All mailers earned 2-cent per-piece credits in the CY 2014 promotion, and only earned an additional cent if they exceeded their prior year volume counts. See Docket No. R2013-10, Attachment D at 4. In that docket, the Postal Service attempted to generate cap space from the 3-cent portion of the promotion, at which time the Commission concluded that it did not have the historical data to support the adjustment. Order No. 1890 at 61.

⁸ Order No. 1743, Order Approving Technology Credit Promotion, Docket No. R2013-6 (June 10, 2013), at 5. In fact, the promotion included different credit amounts depending on the mailers volume.

⁹ Order No. 1743 at 15.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO CHAIRMAN'S INFORMATION REQUEST NO. 3

clarified that the Technology Credit's styling as a volume-based promotion was not what prevented the Commission from treating it as a rate of general applicability.¹⁰

In contrast to Technology Credit, all recipients of BRM, CRM, and Share Mail pieces are eligible to participate in the CY 2020 Earned Value promotion. Whereas Technology Credit only considered pieces mailed in the prior year to determine eligibility, the number of BRM, CRM, and Share Mail pieces sent during the CY 2020 promotional period dictates the degree to which participating mailers earn credits. This comports with the Commission's longstanding understanding that "[t]he volume of mail sent by a mailer under an incentive program is a characteristic of the mail to which the rates under the incentive program apply."¹¹ Specifically, similar to the CY 2019 promotion, new participants will earn credits for every BRM, CRM, and Share Mail piece they receive, albeit at a rate of 2-cents per piece instead of 3-cents per piece. For repeat participants, the threshold to receive credits has been revised slightly: volumes received during the promotional period will be compared to a threshold set equal to 93 percent of their CY 2019 volume (to earn 2-cents per piece) and 100 percent of their CY 2019 volume (to earn an additional 2 cents for a total of 4-cents per piece).¹² The aim of the higher threshold is to encourage repeat participants to grow their volumes. As

¹⁰ *Id.* at 16.

¹¹ Order No. 2086, Order Adopting Final Rules on the Treatment of Rate Incentives and De Minimis Rate Increases for Price Cap Purposes, Docket No. RM2014-3 (June 3, 2014), at 15.

¹² See Response to subpart (d). The MCS sets forth the individual standards for new participants to qualify for a 2-cent credit without a threshold, and for repeat participants to qualify for a 2-cent per-piece credit if they exceed a threshold, with the potential to earn an additional 2 cents under a more stringent threshold.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO CHAIRMAN'S INFORMATION REQUEST NO. 3

was the case under last year's 95 percent threshold, if repeat participants fall below their 93 percent threshold, they receive no credits.¹³

Identical to the promotion accepted as a rate of general applicability in Docket No. R2019-1, the CY 2020 promotion includes variant credit structures for new and repeat participants, and relies on those structures to drive individual mailer behavior. Since its inception, the objective of the Earned Value promotion has been to slow the decline of First-Class Mail BRM and CRM pieces. It would undercut the purpose of the promotion to offer the same credit structure to new and repeat participants. Given its financial condition, the Postal Service generally cannot afford to provide promotional discounts that do not generate cap space, and would need to forgo the most efficient design of promotions if the Commission interprets the rate of general applicability rules too restrictively. For the foregoing reasons, the Postal Service's price cap treatment of the CY 2020 Earned Value promotion is appropriate.¹⁴

¹³ Thus, a new participants would have access to the credit with a volume of 10,000 pieces, while a repeat participant might get a zero credit for an equivalent 10,000 pieces. On the other hand, new participants do not have access to the 4-cent credit because there is no comparable standard to show that they are increasing their receipt of BRM, CRM, and Share Mail. Neither of these conditions should be considered in conflict with a promotion satisfying the rate of general applicability standard.

¹⁴ If the Commission finds that the promotion's rate structure is not generally applicable (even though, unlike Technology Credit, every potential recipient of BRM, CRM, or Shared Mail can participate regardless of prior mailing practices or participation in the promotion), then the price cap adjustment would be to provide only 2 cents of price cap credit for pieces that qualify for the 2-cent additional discount by exceeding 100 percent of the threshold. The 2-cent credit applies to any pieces exceeding the 93 percent threshold, with a 2-cent bonus if volumes exceed the 100 percent threshold. See Response to sub-part (d).

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 3**

d. Not confirmed. Changes to the Mail Classification Schedule language are needed to clarify that the 4-cent credit is a 2-cent addition to the 2-cent credit, for participants whose CY 2020 volume exceeds 100 percent of their threshold volume, and that the 2-cent credit is available to repeat participants whose CY 2020 volume equals at least 93 percent of their threshold volume. The Postal Service submits the below revised language:

Provide a ~~\$0.023~~ per piece rebate on all Business Reply Mail, Courtesy Reply Mail, and Share Mail pieces when the ~~2020~~ volume of those pieces for a registered mailer meets or exceeds ~~93~~ percent of the mailer's comparable volume count for the same period during ~~2019~~, for those mailers that were registered for the ~~2017~~ Earned Value promotion. Provide an additional \$0.02 per piece rebate (for a total per piece rebate of \$0.04) for a mailer that was registered for the 2019 Earned Value promotion and whose 2020 volume exceeds 100 percent of the mailer's comparable volume count for the same period during 2019. For customers who did not participate in the 2019 promotion, provide a ~~The \$0.023 per piece rebate also applies to volume received by customers who did not participate in the 2017 promotion,~~ without a threshold. Qualifying mailpieces must meet program requirements and be placed in the mailstream by the recipient and scanned during the program period. To receive the rebate, registered customers must have distributed a Business Reply Mail, Courtesy Reply Mail, or Share Mail card or envelope, and must comply with all other eligibility requirements of the program.