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

Before Commissioners: Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Notice of Market Dominant Price Adjustment — Docket No. R2020-1

PUBLIC REPRESENTATIVE COMMENTS

(October 29, 2019)

I. INTRODUCTION

On October 9, 2019, the Postal Service filed notice of a Type 1-B market dominant rate adjustment.[1] In accordance with Order No. 5273[2], the Public Representative submits comments on the proposed adjustment.

Pursuant to the Commission's rules, public comments are directed to focus primarily on whether planned the rate adjustments proposed by the Postal Service are at or below (1) the annual limitation calculated under 39 C.F.R. §§ 3010.21 or 3010.22, and (2) the limitation of unused rate adjustment authority under §3010.29. "Public comments may also address other relevant statutory provisions and applicable Commission orders and directives." 39 C.F.R. § 3010.11(c).

As the Commission stated in Order No. 5273, "any issues specifically related to Docket No. R2019-1 First-Class Mail rates and the *Carlson* decision will be addressed in a separate order in Docket No. R2019-1 and will not be adjudicated as part of the instant proceeding." Order No. 5273 at 4. As such, these comments will not address

[1] United States Postal Service Notice of Market-Dominant Price Change, October 9, 2019 (Notice).
[2] Notice and Order on Price Adjustments and Classification Changes for Market Dominant Products, October 10, 2019 (Order No. 5273).

those issues specifically related to First-Class Mail rates in Docket No. R2019-1 and the opinion in *Carlson v. Postal Regulatory Commission,* No. 18-1328, 2019 WL 4383260 (D.C. Cir. September 13, 2019).

Part II of this document addresses the proposed price adjustment's compliance with the annual limitation and unused authority, as well as issues with specific products. Part III addresses workshare discounts, particularly those with passthroughs above 100 percent.

II. ANNUAL LIMITATION AND UNUSED (BANKED) AUTHORITY

The annual limitation on the percentage change in prices is equal to the change in the Consumer Price Index for All Urban Consumers (CPI-U) over the most recent 12-month period. 39 U.S.C. § 3622(d)(1)(A). This limitation applies to each class of mail. § 3622(d)(2)(A). If the Postal Service does not use a portion of its annual limitation in a case, it may carry forward that portion in the next market dominant rate case as "banked" authority. § 3622(d)(2)(C). However, the Postal Service may not use more than 2 percentage points of banked authority for any class of mail in any 12 month period. 39 C.F.R. § 3010.29. The total available cap space available in a 12 month period is the sum of the banked authority and the annual limitation. For this rate adjustment, the total available cap space is 1.933 for First-Class Mail, 1.909 for USPS Marketing Mail, 1.900 for Periodicals and Package Services, and 1.911 for Special Services. Notice at 4.

As the Postal Service's proposed price adjustments neither exceed the price cap authority in any mail class nor utilize more than 2 percentage points of banked authority for any class of mail, the proposed price adjustment appears to conform with the requirements of 39 U.S.C. § 3622 and 39 C.F.R. part 3010. The remainder of this section will focus on specific products warranting further comment.

Earned Value promotion. The Postal Service proposes a modified Earned Value Reply Mail promotion for First-Class Mail and USPS Marketing Mail. Notice at 20-21, 30. This promotion is designed to encourage mailers to distribute Business Reply Mail (BRM), and Courtesy Reply Mail (CRM) envelopes and cards, along with Share Mail.

Id. In CY 2020, the Postal Service includes a revised threshold requirement for repeat participants, who must meet or exceed 93 percent of their comparable volume from the prior year to receive a two-cent credit. *Id*. at 20. If repeat participants meet 100 percent of their comparable volume from the prior year, they can receive a four-cent postage credit for each BRM, CRM, and Share Mail piece placed in the mail stream and scanned during the promotion period. *Id.* New participants to the promotion will receive a two-cent credit for each BRM, CRM, and Share Mail piece without a threshold. *Id.* at 21.

The Commission issued CHIR No. 3, question 1 to inquire whether the Postal Service considered the credits being granted in the promotion as rates of general applicability consistent with 39 C.F.R. § 3010.1(g). In its response, the Postal Service replied in the affirmative, contending that " [i]dentical 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." Response to CHIR No. 3, question 1a-c.

The Public Representative acknowledges that there are similarities between the CY 2019 and CY 2020 promotions. However, there are fundamental differences between the two that warrant different price cap treatment. The CY 2019 promotion separated participants into two groups —new customers and return customers— each with ostensibly different credit structures, but both types of customers could qualify for a 3-cent per-piece credit for all BRM, CRM, and Share Mail volume during the promotion period. While the CY 2019 promotion required only return customers to meet a 95 percent threshold based on their promotion volume from the prior year, as a practical matter, the same threshold applied for all customers. For new customers, setting no threshold is mathematically equivalent to setting a 95 percent threshold because 95 percent of zero is zero. Thus, all mailers could qualify for the same credit under the same conditions in CY 2019.

By contrast, the CY 2020 promotion includes a 2-cent per piece credit that is only available to some mailers. Other mailers are unable to qualify for the credit regardless of any actions they may take. Notice at 20-21. While both new and return customers can earn a 2-cent per piece credit on eligible volume, only return customers can earn an additional 2-cent per piece credit for meeting the 100 percent threshold. *Id.*

Only the credits available to both new and returning customers should be included in the price cap calculation because rates (including credits) that are not available to all mailers are rates not of general applicability. Thus, the additional 2-cent per piece credit available to returning customers should be omitted from the price change calculation. This change should not cause First-Class Mail and USPS Marketing Mail to pierce the price cap and would have the added benefit of increasing the accuracy and transparency of the Postal Service's rate structure.

The Postal Service's Response to CHIR No. 3, question 1 suggests that it believes that the Commission's acceptance of its CY 2019 promotion in Docket No. R2019-1 establishes a decisive precedent that any and all promotions including the mailer's prior year volume and participation status should be considered rates of general applicability consistent with 39 C.F.R. § 3010.1(g). The Public Representative believes the Postal Service's characterization of Commission precedent is erroneous. The Commission is free to consider an alternate price cap treatment for a promotion that is structured to exclude the majority of mailers. Unlike the CY 2019 promotion, part of the CY 2020 promotion does not qualify as a rate of general applicability under 3010.1(g) and merits a different price cap treatment by the Commission.

USPS Marketing Mail Flats. The Commission has continued to express concern about this product's cost coverage. Although USPS Marketing Mail Flats has never covered its costs, it experienced the worst performance to date for both cost coverage and unit contribution in FY 2018.[3] In the FY 2018 ACD, the Commission directed the Postal Service to increase prices for this product by at least 2 percentage points above the class average. *Id.* The Postal Service has failed to comply with this directive by proposing to raise prices for USPS Marketing Mail by 3.193 percent, which falls short of 2 percentage points above the class average of 1.891. Notice at 22.

Notably, the Commission also spent a significant portion of the FY 2018 ACD discussing the longstanding cost coverage problems with this product and the Postal Service's ineffective measures to remedy these issues. *See* FY 2018 ACD at 47-72. It

[3] Docket No. ACR2018, Annual Compliance Determination, April 12, 2019 (FY 2018 ACD).

identified this product as an "extreme case" of deficient cost coverage and directed the Postal Service to continue to reduce product costs and provide required documentation of these efforts along with the minimum 2 percentage point above average increase. *Id* at 72. Given this finding, the Postal Service's continued disregard of the Commission's FY 2018 ACD Directive merits decisive action from the Commission. The Postal Service's pricing strategy has only served to increase the cost coverage deficits of USPS Marketing Mail Flats in the past, and will continue to produce the same results in the future if not accompanied by dramatic cost cutting measures. The Public Representative recommends that the Commission reject the Postal Service's proposed prices for USPS Marketing Mail Flats because they fail to comply with the Commission's directive.

USPS Marketing Mail Parcels. As with Flats, the Commission in its FY 2018 ACD found that "there is an ongoing cost coverage shortfall that has existed for a significant period of time, and the Postal Service's approach to improving cost coverage seems to be inadequate" despite steps taken to improve cost coverage. FY 2018 ACD at 78. The Commission directed the Postal Service to increase prices at least 2 percentage points above average. *Id.* The Postal Service increased the price by 3.913 percent, slightly above the 2 percentage point requirement. Notice at 22. The Postal Service should continue to monitor the cost coverage of this product and, if the problem persists, consider whether a larger price increase may be warranted in future price adjustments.

Media Mail/ Library Mail. Despite a small increase in cost coverage for the Media Mail/Library Mail product in FY 2018, it did not generate sufficient revenues to cover costs for the twelfth consecutive year. FY 2018 ACD at 92-93. The Postal Service stated in that docket that it planned to continue providing above-average price increases for this product in subsequent rate cases. *Id.* at 93. The Postal Service has nominally complied with this plan by increasing prices for the Media Mail/Library Mail product at 1.993 percentage points, an amount slightly above the class average of 1.892. Notice at 31.

The Public Representative questions whether this increase will create revenue sufficient to cover costs, especially given the longevity of the cost coverage issues.

However, the Public Representative acknowledges that the Postal Service does have competing priorities with its balancing the ECSI value of this product with the need for cost coverage.

III. WORKSHARE DISCOUNTS

Seven USPS Marketing Mail passthroughs exceed 100 percent passthrough. With the exception of DSCF Dropship Letters, the Postal Service reduced the passthroughs by at least 10 percentage points. The Postal Service justified the Nonprofit Mixed NDC Machinable Barcoded Parcels, Nonprofit Mixed NDC Irregular Barcoded Parcels, and Mixed NDC Barcoded Marketing Parcels passthroughs pursuant to section 3622(e)(2)(D) and justifies the DNDC and DSCF Dropship Letters passthroughs pursuant to the rate shock exception in section 3622(e)(2)(B).

Mixed NDC Machinable Barcoded Parcels, Mixed NDC Irregular Barcoded Parcels, Mixed NDC Barcoded Marketing Parcels. In the FY 2018 ACD, the Commission directed the Postal Service to reduce workshare discounts for USPS Marketing Mail Mixed NDC Machinable Barcoded Parcels, Mixed NDC Irregular Barcoded Parcels, Mixed NDC Barcoded Marketing Parcels by at least 10 percentage points in future price adjustments. FY 2018 ACD at 30-31. The Postal Service reduced the passthroughs by well over that amount, and should be commended for its commitment to continued reductions.

DSCF Dropship Letters. The Postal Service justifies the DSCF Dropship Letters passthroughs pursuant to the rate shock exception in section 3622(e)(2)(B). Notice at 25. In previous dockets, the Commission accepted the rate shock exception contingent on the Postal Service's plan to reduce the passthroughs by at least 10 percentage points in each subsequent rate case. *Id.* However, in the instant docket, the Postal Service reduced the DSCF Dropship Letters passthrough by only 8.7 percentage points. Due to the tenth of a cent rounding constraint, the Postal Service states that it was unable to reduce the passthrough by exactly 10 percentage points. Having to choose between a slightly above and slightly below a 10 percentage point reduction, the Postal

Service reduced the discount from 2.8 cents 2.6 cents, or 8.7 percentage points. *Id.* at 25-26.

The Postal Service was aware of the rounding constraint when it declared its plan to reduce passthroughs by 10 percentage points in future price adjustments. An 8.7 percentage point reduction in the passthrough falls demonstrably short of the minimum 10 percentage points promised by the Postal Service for this rate case. The Postal Service provides no evidence as to the harm that a larger reduction in the discount would cause. Therefore, the Public Representative views the rate shock exception as improperly justified.

Respectfully submitted,

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