**Postal Regulatory Commission**
**Submitted 10/29/2019 12:19:19 PM**
**Filing ID: 110840**
**Accepted 10/29/2019**

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

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| Market-Dominant Price Change | ) ) ) | Docket No. R2020-1 |

**COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE**
**(October 29, 2019)**

Pursuant to Order No. 5273, the Association for Postal Commerce ("PostCom") submits these comments on the Postal Service's Market-Dominant Price Adjustment, scheduled to take effect on January 26, 2020. While the prices proposed by the Postal Service appear to comply with the statutory price cap, in that in each class, the Postal Service's pricing proposals produce increases that do not exceed the pricing authority for that class, a number of the Postal Service's proposals nevertheless raise general issues of reasonableness. In particular, because an objective of the Postal Accountability and Enhancement Act (PAEA) is to improve the stability and predictability of postage rates, several features of the Postal Service's rate proposal require comment.

## I. FIRST-CLASS MAIL

### A. Single-Piece Price and Statutory Objectives

The amount of intra-class variation in rate increases contained in the Notice undermines USPS arguments about predictability. Steep increases on the heels of decreases in the previous year sends confounding price signals to commercial customers. In describing how FCM rates comply with the objectives and factors of PAEA, the Postal Service argues that "rate design is viewed not as a single year snapshot, but rather in terms of a business strategy that navigates the current ratemaking system's significant constraints by executing in steps over multiple years."

United States Postal Service Notice of Market-Dominant Price Change at 11 (Oct. 9, 2019) ("Notice"). This argument is difficult to reconcile with what USPS has done with the First-Class Mail single-piece rate; a ten percent increase last year followed by a price freeze in R2020-1. Yes, the Postal Service must consider multiple objectives and factors, but it is difficult to divine a coherent strategic purpose behind such fluctuations. In attempting to retroactively justify the current 55 cent rate, USPS ends up undoing its own arguments. It argues that the rate is reasonable – in fact a bargain relative to other countries; that increases in this rate will not burden consumers as use of the rate is declining; and that the low elasticity and contribution of Single-Piece Letters in comparison to Presort Letters justifies greater price increases to the Single-Piece rate. Yet it simultaneously declares that the Single-Piece rate must not be raised this year. Notice at 15. There appears to be nothing behind this logic other than the specious claim that increasing single-piece prices in five-cent increments increases the "simplicity of structure" of the rate schedule. Notice at 12. In light of the Postal Service's suggestions otherwise, it must be noted that this factor refers to "simplicity of structure for the *entire rate schedule* and simple, identifiable relationships between the rates or fees *charged the various classes of mail*"—neither of which are implicated by the five-cent increment for a single rate. 39 U.S.C. § 3622(c)(6) (emphasis added).

Additionally, while it is certainly reasonable for the Postal Service to develop and execute a multi-year pricing strategy, neither the statute nor the Commission's regulations allow for evaluation of rates over a multi-year period. Moreover, the independent review of each rate change is logical since the Postal Service is under no obligation to adhere to any future pricing plans. The Commission's determination must turn on the rates before it in this proceeding, not on the Postal Service's promises regarding the rates it might implement in some future proceeding.

Finally, the Postal Service seeks to assure the Commission that the single-piece rate is not unjust or unreasonable. Notice at 14. In doing so, however, it repeats the Commission's erroneous reasoning in Order No. 4257 that attempts to define "just" as whether a rate is excessive to the mailer and "reasonable" as whether the rate threatens the financial integrity of the Postal Service. *Id.* However the Commission rules on the Postal Service's prices, it cannot rely on this definition of "just and reasonable" when doing so as this definition ignores one hundred years of court and agency decisions construing this phrase. As the D.C. Circuit has explained, evaluation of whether a rate is just and reasonable "begin[s] from this basic principle, well established by decades of judicial review of agency determination of 'just and reasonable' rates: an agency may issue, and courts are without authority to invalidate, rate orders that fall within a 'zone of reasonableness,' where rates are neither 'less than compensatory' nor 'excessive.'" *Farmers Union Cent. Exch. v. FERC*, 734 F. 2d 1486, 1502 (D.C. Cir. 1984) (*"Farmers Union II"*). The court explained that the relevant costs of providing the service are generally "the most useful and reliable starting point for rate regulation" in determining *both* whether a rate is less than compensatory for the carrier or excessive to the consumer. *Id*.

The Postal Service has made no claim that a 55-cent single-piece rate is necessary to cover the costs of providing this service; even using the Commission's standard, it cannot seriously be said that a lower rate (or one not divisible by 5) would "threaten the financial integrity of the Postal Service." Notice at 14. With respect to whether a rate is excessive to the consumer, the question is not the absolute burden on the consumer. All postal rate increases involve mere pennies per piece. The question is whether the increase is excessive in light of the costs incurred by the Postal Service to provide the service—whether the Postal Service earns "creamy returns" on the rate that reflect a possible exercise of market power. *Farmers Union II* at 1509.

PostCom does not contend that the 55-cent Single-Piece rate is unjust and unreasonable or otherwise in contravention of the statute. It is, however, concerned that the Postal Service and the Commission are in danger of establishing bad precedent and promulgating tortured interpretations of the PAEA through repeated efforts to justify a rate structure that lacks a logical basis.

B. <u>USPS Should Decouple Retail and Commercial FCM Prices</u>

To truly simplify the rate schedule, USPS should consider complete decoupling of FCM retail prices from FCM commercial prices. The products serve different markets and exhibit different demand characteristics (Notice at 15). While commercial users pay Single-Piece rates on small quantities of residual volume, that rate needn't necessarily be identical to the retail stamp price.

C. <u>FCM Workshare Discounts Should be Increased</u>

Passthroughs on much of FCM are well below 100 percent (*see* Notice, Attachment B). Given the Postal Service's recent inability to reduce costs or improve productivity, passthroughs below 100 percent represent a significant opportunity to improve efficiency.

D. <u>Promotions Can Play an Important Role in Slowing Volume Loss</u>

PostCom endorses the proposed expansion of the Earned Value Promotion (Notice at 20). PostCom supports efforts to slow the ongoing erosion of First-Class Mail volume. Promotions that provide incentives to slow diversion and continue use of the mail are an important component of postal pricing that should be continued and expanded where possible. With regard to timing however, PostCom recommends that the Postal Service extend or modify the periods during which promotions are available. Historically the Postal Service has offered its promotions on a fixed schedule which may disadvantage mailers whose volume is concentrated during a period when promotions are not available.

## II. PERIODICALS

The Postal Service's greater than average rate increase on bundles appears to be ill-considered. Ostensibly intended to encourage operational efficiency, it may have the opposite effect. Mailers will be incentivized to create larger bundles to minimize the impact of the increase. To the extent that larger bundles are less structurally stable, this could lead to a greater incidence of bundle breakage and higher manual sortation costs as a result.

## III. MARKETING MAIL

The Postal Service's proposed increase for Marketing Mail masks a considerable amount of variation in price adjustments for various categories. For instance, High Density Flats and Parcels rates increase by less than one percent while Marketing Mail flats rates will increase by nearly four percent (Notice at 22). These differences reflect efforts to comply with previous Commission directives and a possible corrective for above average price increases in R2019-1.

In addition, changes in specific rate elements – specifically the rates for Detached Address Labels (DAL) and Detached Marketing Labels (DML) – will see rate increases substantially above the average. The 25 percent increase for DMLs is predicated on the customer placing higher relative value on DMLs than DALs, though the Postal Service provides no evidence to support this proposition (Notice at 23). Use of marketing messages on DALs – which can only be sent accompanying Marketing Mail with significant contribution - has been permitted for years. The comparison to Outside County Periodicals confounds mailer perception of value and preferential treatment of material with educational, cultural, scientific or informational (ECSI) value.

PostCom does not argue that this variation in prices within the class is illegal. However, the choices made by the Postal Service in its current proposal raise several policy issues that deserve comment. If the Postal Service has quantitative evidence that recipients place a higher value on certain types of mail, we encourage its dissemination. Otherwise, using intuitive assessment of perceived value to differentiate prices is inherently risky. PostCom is concerned that such a large increase will cause some customers to shift to substitute channels, or discontinue use of the product entirely. The Postal Service reports on volume and revenue on a quarterly basis, and the lead time for the Postal Service to prepare and vet a price change is considerable. Consequently, if the Postal Service errs in estimating customer reaction, corrective action may take up to two years. As Marketing Mail contributes billions of dollars to the Postal Service's institutional costs, all users of the mail have a vested interest in pricing decisions regarding this class. Efforts by the Postal Service to engage in more aggressive price differentiation should be pursued cautiously if at all.

Finally, for reasons discussed above, price increases that deviate sharply from the average – especially when divorced from the underlying costs – may not be just and reasonable. The Postal Service would be better served by predictable, moderate price adjustments than by trying to extract maximum value based on dubious distinctions among users of virtually identical products.

## IV. CONTINUED EROSION OF DESTINATION ENTRY DISCOUNTS WILL DISCOURAGE WORKSHARING AND INTRODUCE INEFFICIENCIES

In R2020-1, the Postal Service continues to narrow destination entry discounts for Marketing Mail. For instance, the passthroughs for DNDC and DSCF letters will be reduced to

105.3% and 113% respectively. Notice at 24 (Table 8). The Postal Service justifies this change – and others like it – as necessary to reduce workshare passthroughs that exceed 100 percent. While the Postal Service may simply be adhering to the Commission's past directives, the result is selective, inefficient, and may distort the market for transportation services in certain lanes. As Postal customers pay rates, and are largely indifferent as to their derivation, the changes will induce customers to behave in ways that may reduce the Postal Service's efficiency.

The Postal Service's processing and transportation costs continue to outpace inflation by a considerable margin.[1] Forcing mailers to enter mail further upstream exacerbates a well-documented cycle of dysfunction. In addition to a reduction in overall efficiency, erosion of drop shipment incentives punishes customers by forcing them to accept service degradation. There is a persistent pattern in the Postal Service's service performance across its products: the closer to origin that mail is entered, the lower the service scores. Postal customers should not be forced to pay more for less. PAEA specifically allows workshare discounts to exceed avoided costs where "reduction or elimination of the discount would impede the efficient operation of the Postal Service." 39 U.S.C. §3622(e)(2)(D). This provision was included in the statute precisely to prevent the situation described above.

Respectfully submitted,

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[1] *See* USPS OIG Audit Report Number NO-AR-19-008, Assessment of the U.S. Postal Service's Service Performance and Costs at 13 (Sept. 17, 2019).