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

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

COMMENTS OF PITNEY BOWES INC.
(October 29, 2019)

Pursuant to Order No. 5273, Pitney Bowes Inc. (Pitney Bowes) respectfully submits these comments in response to the United States Postal Service's (Postal Service) October 9, 2019 Notice of Market-Dominant Price Change (Notice).

These comments address: (1) the Postal Service's failure to justify the proposed Presort Letter rates, including the reductions to the discounts and passthroughs for the 5-Digit Automation Letters and other workshare rates, (2) the need for changes in the Postal Regulatory Commission's (Commission) workshare rules to maximize pricing and operational efficiency, (3) support for the Single-Piece rate design, including maintaining the five cent pricing differential for Metered Letters, and (4) the need for clear guidance and consistent enforcement of the Commission's rules with respect to proposed rate adjustment filings.

I. The Proposed Presort Rates Fail to Maximize Incentives for Pricing and Operational Efficiency; More Information is Required to Enable the Commission to Review and Approve the Proposed Presort Rates

The Notice does not provide the Commission sufficient information to meaningfully assess and approve the proposed Presort rates. The Postal Service's failure to justify the proposed Presort rates is significant because the changes in the workshare discount passthroughs, especially the 5-Digit Automation Letters rate, are inconsistent with the statutory objective of maximizing incentives for pricing and operational efficiency.

The Commission has previously held that setting prices to incentivize lower cost, more efficient, and more profitable Presort letters as a strategy to maximize net revenue (contribution) is reasonable and consistent with the statutory objectives and factors.[1] By reducing workshare discount passthroughs and raising the effective price of the most efficient and profitable Presort product, 5-Digit Automation Letters, the proposed rates will have the opposite effect. The Commission should require the Postal Service to supplement its initial notice with additional information to justify its pricing strategy and to demonstrate how reducing the workshare discount and passthrough for the 5-Digit Automation Letters rate and other workshare discounts within Presort comply with the relevant objectives and factors of section 3622 of the Postal Accountability and Enhancement Act (PAEA).[2]

The Postal Service states that as compared to Single-Piece mail, Presort mail is more price sensitive and more profitable. *See* Notice at 16-17. The Postal Service further observes that Presort mail helps reduce costs and improves the operational efficiency of the Postal Service by shifting the risk and expense of mail preparation operations from the Postal Service to mailers. *See id*. The Notice does not justify the proposed Presort rates on the basis of these considerations, nor could it given that the proposed rates reduce workshare discounts and passthroughs and increase the effective prices of Presort mail and, thus, fail to encourage operational efficiency or future investment in the postal system.

In fact, the single-paragraph discussion in the Notice fails to justify the proposed Presort rates on any of the relevant statutory objectives and factors. Instead, the Notice cites generically to considerations relevant to virtually any rate design (Objective 5 (adequate revenues) and Factor 3 (effect of rate increases on mail users)), but seeks to justify the proposed rates by appealing to the "reasonable exercise[] of the Postal Service's pricing flexibility" and the unsupported assertion that the proposed rates are "fully consistent with the objectives and factors of Section 3622[.]" Notice at

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[1] *See* Order No. 5285 at 36, 38, 55, 57, 60, and 66.

[2] *See* Pub. L. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise noted, section references in these comments are to sections of title 39.

17. The recent Court of Appeals decision in *Carlson v. Postal Regulatory Commission*, No. 18-1328, 2019 WL 4383260 (D.C. Cir. Sept. 13, 2019), confirms that conclusory assertions of compliance and generalized appeals to "pricing flexibility" are not enough. *See Carlson*, No. 18-1328, 2019 WL 4383260 at *16 (holding that the Commission must apply the relevant objectives and factors to individual rate adjustments, focusing on pricing flexibility alone is insufficient).

Further justification on the record is required because the proposed Presort rates are facially inconsistent with the relevant statutory objectives and factors and with the Commission's repeated encouragement that the Postal Service set workshare discounts that "increase (rather than decrease) pricing efficiency."[3] By reducing workshare discounts and passthroughs for 5-Digit Automation Letters and other workshare rates, the proposed Presort rates fail to achieve the objectives of the modern rate system described in section 3622(b)(1)("maximize incentives to reduce costs and increase efficiency"), 39 U.S.C. § 3622(b)(1), and fail to take into account section 3622(c)(4)("the available alternative means of sending and receiving letters and other mail matter at reasonable costs"), section 3622(c)(5)("the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service"), section 3622(c)(7)("the importance of pricing flexibility to encourage increased mail volume and operational efficiency"), and section 3622(c)(12)("the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable postal services"). 39 U.S.C. §§ 3622(b)(1) and 3622(c)(4),(5), (7), and (12).

The proposed reduction in the discount and passthrough for 5-Digit Automation Letters is the most problematic because it affects the substantial majority of Presort volume. The proposed rates reduce key workshare passthroughs. The AADC and 5-Digit passthroughs have moved farther away

[3] *See* Docket No. R2019-1, Order 5285 (Oct. 24, 2019) at 36, 38 ("price adjustments are consistent with Objective 1 by encouraging the entry of First-Class Mail pieces that are less costly to the Postal Service to process. Moreover, these price adjustments are consistent with pricing efficiency, another component of Objective 1, by improving adherence to the principle of Efficient Component Pricing (ECP).").

from the modeled costs avoided; the same is true for Marketing Mail 5-Digit Automation letters. Unfortunately, the reduction of these key passthroughs is reflective of a larger trend - of the 32 workshare rates with passthroughs of 100 percent of costs avoided in Docket No. R2019-1, 28 were reduced in the current rate adjustment, zero increased, and four remained at 100 percent.[4]

The Commission's rules require the Postal Service to "identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs." 39 C.F.R. 3010.12(b)(6). The Postal Service ignores this rule completely. Notwithstanding the fact that the proposed Presort rate design sets all of the First-Class Mail Presort Letters and Cards workshare discounts at less than the full measure of avoided costs, no explanation is provided.

The proposed Presort rates are also inconsistent with the Commission's recent proposed rule requiring that all workshare discounts pass through between 85 percent and 115 percent of the modeled costs avoided.[5] The Commission's proposed rule would establish a requirement that workshare discounts for First-Class Mail and Marketing Mail pass through between 85 percent and 115 percent of the modeled costs avoided. Workshare discounts that fall within the prescribed range would be presumptively valid; workshare discounts that fall outside of the range would be deemed noncompliant.

The proposed workshare rule has not yet been finalized, but the 85 percent lower band serves as an obvious proxy for purposes of identifying workshare discounts with passthroughs that are "substantially" below avoided costs for purposes of triggering 39 C.F.R. 3010.12(b)(6); thus, the Postal Service is required to justify the 53.3 percent passthrough for the Nonautomation Machinable

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[4] Comparison of all passthroughs in Docket No. R2019-1, United States Postal Service Notice of Market-Dominant Price Change (October 10, 2018), attachment b.xls to all passthroughs in Docket No. R2020-1, United States Postal Service, Notice of Market-Dominant Price Change (October 9, 2019), attachment b r2020-1.xls.
[5] *See* Order No. 4258, Dkt. No. RM2017-3, at 93 (Dec. 1, 2017).

Letters discount, the 83.3 percent passthrough for the AADC Automation Letters discount, and the 82.4 percent passthrough for the 5-Digit Automation Letters discount.

For the reasons stated above, the Notice does not provide sufficient explanation to enable the Commission to meaningfully assess and approve the planned Presort rates. Accordingly, the Commission should reject the initial Notice for failure to comply with the Commission's rules under 39 C.F.R. part 3010 or, alternatively, the Commission should require the Postal Service to supplement its initial Notice with, at a minimum: (1) information sufficient to demonstrate how the planned Presort rates are "designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c)" consistent with 39 C.F.R. 3010.12(b)(7) and (12), and (2) information sufficient to identify and explain workshare "discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs" consistent with 39 C.F.R. 3010.12(b)(6).

II. Changes in the Workshare Rules are Required to Maximize Pricing and Operational Efficiency

The proposed Presort rates underscore the need for changes in the Commission's workshare rules. The 5-Digit Automation Letters rate is the most important rate for commercial mailers. It accounts for the substantial majority of all First-Class Mail Presort Letters volume. 5-Digit Automation Letter mail is among the most efficient mail for the Postal Service to process. For all of these reasons, the Postal Service should set prices to encourage more 5-Digit Automation Letters volume by increasing the workshare discount to reflect the full cost avoided, thus, lowering the effective price for mailers that prepare mail to 5-Digit levels. Successive rate adjustments have sent opposite signals. The 5-Digit Automation Letters discount has steadily declined from 3 cents, to 2.9 cents, to 2.8 cents, falling farther and farther away from the 3.4-cent FY2018 cost avoidance.[6] The

[6] *See* Docket No. R2018-1, Notice of Market Dominant Price Adjustment (October 6, 2017), attachment b.xls, "FCM Bulk Letters, Cards", cell F11; Docket No. R2019-1, United States Postal Service Notice of Market-Dominant Price Change (October 10, 2018), attachment b.xls, "FCM Bulk Letters, Cards", cell F11; Docket No.

proposed reduction in the discount for 5-Digit Automation Letters directly contradicts the Commission's instruction that the Postal Service "strive to set discounts that increase (rather than decrease) pricing efficiency," Order 5285 at 38, and thus, represents another missed opportunity to encourage efficient mail preparation, reduce Postal Service costs, encourage investment in mail, and improve the Postal Service's financial stability.

The proposed Presort rates confirm the Commission's prior findings as part of the mandatory 10 year review of the modern rate system; while the Postal Service has had the pricing authority to set workshare prices to maximize incentives to promote operational efficiency and to improve its own financial position by shifting the risk and cost of mail processing to more efficient mailers, it has not consistently exercised that authority.[7] The Commission's 10 year review also confirmed that the Postal Service's failure to use its pricing flexibility to maximize workshare discounts and incentives "may have harmed operational efficiency within the postal system because the Postal Service may have processed more mail than it otherwise would have if efficient price signals were sent."[8]

The Commission correctly concluded that clear regulatory standards are necessary to maximize incentives for operational and pricing efficiency. Accordingly, as discussed above, the Commission proposed establishing, by rule, bands for workshare discount passthroughs with upper and lower bounds. The proposed rule would effectively minimize operational inefficiency from setting workshare discounts substantially below or substantially above avoided costs. Workshare discounts set within the established range (85 percent to 115 percent) would be deemed compliant; workshare discounts set outside the range would be deemed noncompliant and subject to remedial action.

R2020-1, United States Postal Service, Notice of Market-Dominant Price Change (October 9, 2019), attachment b r2020-1.xls, "FCM Bulk Letters, Cards", cell F11.
[7] *See* Order No. 4257 at 139, 216-19.
[8] Order No. 4257 at 218.

Pitney Bowes supports the concept of establishing clear regulatory standards for workshare discounts. The Commission's proposal is a reasonable and balanced approach. Pitney Bowes and a number of other commenters recommended the Commission to refine the proposal by tightening the bands on First-Class Mail and Marketing Mail (95 percent to 105 percent) to maximize incentives to reduce costs and increase efficiency consistent with the objectives of the PAEA. Pitney Bowes urges the Commission to adopt these improvements to its workshare regulations, as part of the 10 year review of the modern rate system, or as a stand-alone rule.

III. The Proposed Single-Piece Rate Design Is Supported on the Record and Will Help Small and Medium-sized Businesses, Mailers, and the Postal Service

The Notice provides a detailed discussion of the proposed Single-Piece First-Class Mail rate design. The Postal Service explains its decision to continue the Stamped Letters price at 55 cents promotes the "simplicity" of the retail rate structure (Factor 6) by maintaining rates denominated in five cent increments and by extending the rate as part of a multi-year strategy. Notice at 12. The Postal Service also justifies the rate freeze as a means of promoting rate predictability and stability (Objective 2), while noting that the five cent increase spread over multiple rate adjustments further confirms the reasonableness (Objective 8) of the Single-Piece rate structure. The Postal Service justifies the reasonableness of the proposed Single-Piece rate design relative to historical adjustments for other domestic rate categories and on a comparative basis with international rates. *See* Notice at 14-15.

The Notice explains that maintaining the five cent price differential between Stamped Letters and Metered Letters will continue to encourage small and medium-sized mailers to use Postal Service products to grow their business. *See* Notice at 16. The Postal Service justifies this non-workshare, policy-based pricing differential as a means of promoting operational efficiency consistent with statutory Objective 1 and Factors 5, 7, and 12. The Postal Service states that metered mail provides a more secure, efficient payment channel because the use of meters "eliminates the need for stamp production, distribution, and cancellation - and fosters more consistent use of the postal system." Notice at 16. As noted by the Postal Service, *id*., at 16, n.28, the Commission has repeatedly and correctly held that non-workshare, policy-based pricing differentials, like the Metered Letters rate, are appropriately within the pricing authority granted to the Postal Service under the PAEA, especially where, as here, the rate is fully justified on the relevant statutory objectives and factors.[9] Maintaining the five cent price differential for Metered Letters is also good for the Postal Service. The Metered Letters rate serves as the benchmark for setting First-Class Mail Presort Letters prices; therefore, the price differential for Metered Letters enables a lower price for Presort which helps maximize net revenue to the Postal Service by incentivizing the entry more efficient and profitable mail volume.

In summary, the Notice appropriately explains the policy rationale for the proposed Single-Piece rate design and how it relates to the relevant statutory objectives and factors. *See* Notice at 11-16. The Notice thus provides the Commission with sufficient information to consider and approve the Single-Piece rate design as consistent with the relevant statutory objectives (Objectives 1, 2, 5, 8) and factors (Factors 4, 5, 7, and 12).

IV. The Commission Should Enforce Existing Rules Requiring the Postal Service to Justify Its Proposed Rate Adjustments in Its Initial Notice

The Commission has addressed issues specifically related to the justification of the First-Class Mail rate design approved in Docket No. R2019-1 in a separate order.[10] The Commission should, nevertheless, use this proceeding to clarify the Postal Service's obligation under the Commission's existing rules to provide a sufficient justification for proposed rate adjustments in the

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[9] *See* Order No. 5285 at 66 (upholding proposed meter rate as part of an integrated pricing strategy to slow electronic diversion, incentivize more cost efficient channels, and promote intelligent mail as consistent with statutory objectives and factors); *see also,* Docket No. ACR2016, Annual Compliance Determination at 75-76 (Mar. 28, 2017)("The Commission has previously noted that one objective of the PAEA is to allow the Postal Service pricing flexibility, subject to the inflation-based cap and that this flexibility can be used to apply non-uniform price adjustments within a class. It appears that with respect to metered letter prices, the Postal Service's approach is consistent with the objectives of the PAEA.").

[10] *See* Docket No. R2019-1, Order 5285 (Oct. 24, 2019).

initial notice. Clarification is necessary because the current notice does not provide the Commission with sufficient information to approve key elements of the proposed price adjustment, specifically the Presort Letters rate design.

The deficiencies in the current notice follow from the Postal Service's view that the PAEA and the Commission's rules require only that it justify the "overall" rate adjustment based on the Governors' consideration of the "broad and often competing policy criteria" of section 404(b) and "other considerations underlying the Governors' business judgment." Notice at 10-11; 39 U.S.C. § 404(b). The Postal Service observes that not every objective and factor will be relevant to every "specific rate adjustment at the class, product, price-category, or price-cell level[.]" Notice at 11. That is correct, but it does not follow that the statutory objectives and factors "cannot" apply at those levels. To the extent the Postal Service's position is that the specific objectives and factors cannot apply to individual rates it is inconsistent with the language or structure of the PAEA, the Commission's implementing regulations, and the relevant decisional law.

It is also incorrect to state that "Congress did not directly subject the Postal Service's setting of rates to the objectives and factors in Section 3622[.]" Notice at 9. The ratemaking authority granted to the Governors in section 404(b) is expressly limited by section 3622. *See* 39 U.S.C. § 404(b) (the Governors are authorized to "establish reasonable and equitable rates classes of mail and reasonable and equitable of rates of postage and fees for postal services *in accordance with the provisions of chapter 36.*"). *Id*. (emphasis added). Section 3622 sets forth the framework of statutory requirements, objectives and factors and reserves to the Commission, not the Governors, the authority to consider and approve proposed market-dominant rate adjustments based on the statutory objectives and factors.

The Commission's rules require that the Postal Service's initial notice of a proposed market-dominant price adjustment include "[a] discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c)." 39 C.F.R. 3010.12(b)(7). The rules further state that the Postal Service must provide all other information the Postal Service believes "will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies." 39 C.F.R. 3010(b)(12). As the Commission has previously held, applying the objectives and factors to a particular set of price adjustments is "necessarily fact-specific, situation-specific, and qualitative in nature." Order No. 5285 at 24.

The recent Court of Appeals decision confirms that while the statute does not specify how the objectives and factors in section 3622 must be applied to a particular rate design, the Commission must consider and apply all relevant statutory objectives and factors as part of the regulatory approval process when reviewing individual rate adjustments. *See Carlson*, No. 18-1328, 2019 WL 4383260, at *11; *see also, Newspaper Ass'n of Am. v. Postal Regulatory Comm'n*, 734 F.3d 1208, 1210 (D.C. Cir. 2013)("[i]n reviewing [proposed] rates for market-dominant products, the Commission must consider the statutory factors set out in 39 U.S.C. § 3622(c).").

Clear guidance and consistent application of the Commission's rules will serve the interests of the Postal Service and mailing community. Clear guidance will ensure the Commission timely receives sufficient information in the initial notice to enable the Commission to meaningfully assess whether the proposed rate adjustments are designed to achieve the relevant statutory objectives and take into account the relative statutory factors. Improving the quality and completeness of the initial notice will also mitigate the risk of legal challenges to future rate adjustments, thus promoting the statutory objective of "predictability and stability of rates." 39 U.S.C. § 3622(b)(2).

V. Conclusion

Pitney Bowes respectfully requests the Commission: (1) reject the initial Notice for failure to comply with the Commission's rules under 39 C.F.R. part 3010 or, alternatively, require the Postal Service to supplement its initial Notice with additional information to justify how the proposed

Presort rates, and notably the 5-Digit Automation Letters rate, comply with the statutory objectives and factors and the Commission’s prior holdings, (2) establish clear regulatory standards for workshare discounts to maximize incentives for operational and pricing efficiency, and (3) approve the proposed rate adjustments for Single-Piece First Class Mail Letters, including the five cent price differential for Metered Letters.

Respectfully submitted:

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