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American Bankers Association
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Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

STATUTORY REVIEW OF THE SYSTEM FOR REGULATING RATES AND CLASSES FOR MARKET DOMINANT PRODUCTS	Docket No. RM2017-3

REPLY COMMENTS OF AMERICAN BANKERS ASSOCIATION
(March 4, 2020)

The American Bankers Association (ABA),[1] on behalf of its member banks, is pleased to provide the following reply comments to the U. S. Postal Regulatory Commission (PRC) in response to the Revised Notice of Proposed Rulemaking (RNPRM) for the statutory review of the system for regulating rates and classes for market dominant products.

Stakeholders from across the system confirmed in initial comments that the PRC should adopt the workshare regulations, with improvements targeted to increase efficiency and reduce costs, as required by Objective 1. Beyond workshare, however, commenters supported ABA's position that the Commission should rework the RNPRM to address its many theoretical and practical shortcomings. Many commenters confirm that the Commission should abandon proposals to confer "supplemental" and "performance-based" rate authority on the Postal Service as inconsistent with the

[1] The American Bankers Association is the united voice of America's small, regional and large banks that together employ more than 2 million women and men, hold nearly $17 trillion in assets, safeguard $12.8 trillion in deposits and extend more than $9 trillion in loans. Through a broad array of information, training, staff expertise and other resources, ABA supports America's banks as they perform their critical role as drivers of America's economic growth and job creation.

incentive rate system that Congress envisioned in the Postal Accountability and Enhancement Act[2] (PAEA) and many of the statutory objectives. The declaration filed by Professor Willig[3] explains that rather than maintain a price cap regime as required by law, the PRC's proposed alterations to the cap undermine the incentives for more efficient behavior, which price caps are designed to achieve. Implementing the changes as proposed will produce a system with perverse incentives that violate the statutory objectives and factors and that bears no relationship to the price cap system contemplated by Congress in enacting the PAEA.

Worksharing Changes Should Be Implemented, With Modifications, and the PRC Should Resist USPS Requests for an 85% De Facto Floor

Numerous commenters confirm that the proposed workshare rules are the only aspect of the RNPRM likely to improve efficiency and reduce costs. The workshare changes are improvements, and should be adopted with modifications proposed by ABA and others.

The majority of the comments expressed concern that the 85 percent floor as a standalone safe harbor is unnecessary and will frustrate the Commission's stated intent to move workshare discounts closer to full efficient component pricing (ECP) rates. Many commenters noted that it risks frustrating the Commission's stated intent to encourage incremental improvement in pricing efficiency (the Commission's "do no harm" principle) by always moving workshare discounts closer to 100 percent of the cost savings. The majority of comments further confirmed that a strictly enforced waiver

[2] P.L. 109-435 (2006).
[3] RM2017-3, Doc. 112172.

process will provide sufficient flexibility for those rare instances in which moving workshare discounts closer to ECP would impede operational efficiency.

The idea that the Postal Service may use flexibility in a way that ultimately leads to inefficient pricing is more than an academic concern; the Postal Service has confirmed that is precisely why it desires this flexibility.[4] Indeed, in its initial comments, USPS is explicit on this point—the Service asks for an 85% *de facto* maximum pass-through because "the Postal Service could at times find it difficult to fully exercise its rate authority if no decrease in the size of a workshare discount is permitted."[5] However, this flexibility is at odds with the entire idea of workshare discounting: banks should be rewarded for the work they perform that ultimately saves USPS money.

Discounts that reflect the full value of the work our members perform mean lower effective prices for banks, which helps keep mail as an attractive commercial medium and sales channel. Efficient workshare prices stimulate mail volume growth, stem erosion to other delivery channels, and help the Postal Service outsource the cost of mail processing operations, thereby minimizing costs and maximizing operational efficiency. The Commission has properly rejected the Postal Service's position as inconsistent with Objective 1, and should continue to do so.

The Postal Service's comments confirm that they do not want to change its behavior to promote more efficient operations. USPS pricing behavior for the past thirteen years has demonstrated that it will not set efficient workshare prices unless forced to do so. The Commission should reject the litany of excuses offered by the Postal Service as to why it should not be required to move discounts set below avoided

[4] RM2017-3, Doc. 112184 at 85.
[5] *Id*.

costs closer to ECP rates. The Postal Service's initial comments and past pricing behavior confirm that the Postal Service will not move workshare discounts closer to ECP rates unless required to do so.

Because any flexibility will be used to set less efficient prices, the Commission should tighten the exceptions and waiver process to ensure that absent a proven justification, USPS has to price to maximize efficiency. The Postal Service's request for more expansive waiver authority for workshare discounts subject to a pending costing rulemaking should be rejected as overbroad and unnecessary. USPS controls the timing of when it files for changes in the costing methodology and this exception would invite abuse.

The Commission should also reject the Postal Service's arguments for added flexibility to account for volume-variability uncertainty and the risk of "overestimation" of cost savings in the models. The Postal Service has failed to cite any specific deficiencies in the approved cost models to justify systematic deviation from ECP rates. If the Postal Service has specific concerns, it should petition the Commission to correct the models.

As ABA argued, the Commission should require by rule that workshare discounts be moved closer to full ECP rates (100 percent pass-throughs, not 85 percent pass-throughs), unless the Postal Service can demonstrate via the waiver process that doing so would impede operational efficiency.

Comments Confirm that Tying Rates to USPS Density is a Mistake; Supplemental Rate Authority Proposals Should Be Withdrawn

The majority of the initial comments confirm that the Commission should reconsider both elements of the supplemental rate authority. The comments filed by Professor Willig on behalf of the Alliance of Nonprofit Mailers (ANM) *et al.*[6] explain the theoretical shortcomings of the proposed density-based rate authority. As Professor Willig argued, allowing USPS to recover unlimited additional rate authority to address declines in mail density (volume) would convert the PAEA's incentive regulation price cap system back into a cost of service regime.[7]

As Professor Willig noted persuasively, the Commission's underlying premise that mail volume declines are beyond the Postal Service's control and thus "exogenous" is simply wrong.[8] "For example, the Postal Service could limit density declines by improving service and enhancing its marketing efforts. In contrast, the PRC's proposal in effect rewards the Postal Service for density declines by providing additional annual pricing authority retroactively without providing any built-in incentive for the Postal Service to limit density declines (to the extent it can do so, even indirectly)."[9]

The initial comments of the First Class Mail business mailers demonstrate that the proposal also is flawed in practice.[10] This is true for several reasons, notably that it would allow the Postal Service to "over recover" for delivery costs. The initial comments also confirm that the additional supplemental rate authority earmarked for retirement

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[6] RM2017-3, Doc. 112172.
[7] *Id*. at 3.
[8] *Id*. at 13.
[9] *Id*.
[10] Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement, RM2017-3, Doc. 112178 at 30-33.

obligations (health and pension) should be rescinded because it will provide only limited benefits to the Postal Service while imposing real burdens on captive rate payers.

As ABA has argued throughout this proceeding, Congress must address the unfunded liability issues. We stand ready to work with lawmakers, the Postal Service, and all interested stakeholders to achieve a legislative solution.

Comments Highlight the Flaws in Performance-Based Rate Authority Proposals

The initial comments confirm that the performance-based rate authority proposal is deeply flawed and should be revisited. Any "performance-based" rate authority must be linked to *actual improvements in performance*. Therefore, the Commission should reject the arguments advanced by the Postal Service and postal employee groups that additional rate authority is necessary in advance to make the investments necessary to improve efficiency and service.[11] And, in fact, we note that under the current system the Postal Service already has extremely generous performance based rate authority: the current cap regime, unlike many other systems, does not have an X factor which reduces the CPI authority based on reasonable projected productivity improvements, so Postal Service already keeps 100 percent of any productivity improvements it can produce. It's hard to conceive of a system with stronger incentives than this.

The initial comments confirm that total factor productivity is a flawed metric, among other reasons because it seeks to incentivize the very same behavior the CPI price cap is designed to incentivize—with no "x" factor or other uncertainty that can lead

[11] RM2017-3, Doc. 112184.

to an inability to plan for postal expense (for mailers) and revenues (for the Postal Service) in advance. No party supports using total factor productivity.[12]

As stated in ABA's initial comments, if the Commission persists with this rule, it should revise the proposal to ensure that USPS can only recover under the performance-based productivity component when there is an actual net improvement in productivity. Indeed, while this sounds obvious, by tying the productivity component to benchmarks, the PRC can reward USPS for the status quo. The majority of the commenters point out that as proposed the service standards component is flawed because it is not tied to actual service performance, but rather is conditioned on the maintenance of published service standards.

The Postal Service's legal objections that conditioning additional rate authority on its performance somehow impermissibly infringes on operational decisions is meritless and fundamentally misconstrues the nature of performance-based supplemental authority. USPS comments at 30. Rewarding USPS with additional "performance-based" rate authority even if it fails to meet published service standards is arbitrary and capricious, as ABA noted in its initial comments. The Commission should reject the Postal Service's proposals to further dilute the proposal as a step in the wrong direction.

Conclusion

Although the PRC should implement the worksharing changes, the initial comments confirm that the PRC should otherwise begin anew. A decision by the PRC

[12] *See, e.g.*, RM2017-3, Doc. 112184 at 39 (US Postal Service Comments); RM2017-3, Doc. 112172 at 33 (Declaration of Robert Fisher in Support of Comments of the Alliance of Nonprofit Mailers, The Association for Postal Commerce, MPA - The Association of Magazine Media, The American Catalog Mailers Association, *et al*.).

to radically change the rate structure will have short- and long-term consequences for the Postal Service that can and should be avoided. The ABA continues to believe that the best, statutorily true, and certainly simplest option is to leave the current structure of the rate system in place. It is working, and has provided the Postal Service with the incentives necessary to modernize its operations.

ABA values the Postal Service and stands ready to work with the USPS to discuss legislative solutions that address the fiscal pressures the Postal Service currently faces, and which continue to maximize the efficiency of the Postal Service, while stabilizing rates so demand for postal services remains strong.

Respectfully Submitted,

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