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

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| Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products | Docket No. RM2017-3 |

**REPLY COMMENTS OF**

**THE COALITION FOR A 21ST CENTURY POSTAL SERVICE**

March 4, 2020

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**Reply Comments of The Coalition for a 21st Century Postal Service**

The Coalition for a 21st Century Postal Service (C21) respectfully submits this reply to the initial comments in this proceeding. C21 consists of public and private companies and industry associations representing newspapers, advertisers, catalogers, e-commerce, parcels, greeting cards, financial services, telecommunications, insurance, retail, paper, printing, technology, envelope manufacturing, and mail services, which understand the essential role of the Postal Service and want it sustained for the future. C21 represents a broad cross-section of an industry generating nearly $1.6 trillion in sales and supporting 7.3 million jobs[1] throughout the United States.[2]

The Coalition has not previously submitted comments to the Commission, but the importance of the issues in this docket to the Postal Service for years to come compels us to do so now. Despite the many different ways that C21 members use mailing and shipping, and rely on an entire supply chain for those uses, they are united in opposition to proposals to attempt to solve the Postal Service's problems by the mechanism of

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1 Chapman and Johnson, *EMA's 2019 U.S. Mailing Industry Economic Jobs Study* at 8 & 10 (January 2020).

2 A list of C21 members is appended hereto.

higher, above-CPI rates.[3] Doing so would not solve the Postal Service's problems, would cause irreparable harm to the Postal Service, and irreversible harm to mailers, shippers, and suppliers.[4] In other words, an entire industry and the government service at its center would be placed in great jeopardy by the proposals propounded in the Revised Notice of Proposed Rulemaking ("RNPRM"), and in the initial comments of the Postal Service, postal unions, and the Public Representative in this docket.

With respect, we submit the points of view expressed in the comments of the above parties are regrettably narrow. They focus considerably more on preserving the status quo via excessive price increases than responding more aggressively to changing market conditions. Many mailers have undergone wrenching changes, including streamlining and restructuring operations to shifting to new business models to adapt to new circumstances. To take one example, the paper industry has faced the same volume declines as the Postal Service and has adapted by realigning its manufacturing infrastructure and capacity to more closely match demand, relentlessly improving efficiency, and working collaboratively with its workforce to make changes that reflect the real-world circumstances it faces. But most importantly, it has done this **and** stayed close to the customer to make sure it could meet changing needs. It simply would not have survived as an industry by meeting the declining volume

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[3] *E.g., Comments of the United States Postal Service* at 5, 12-14, 18-28; *National Association of Letter Carriers Comment*s at 6 (19% increase); *National Postal Mail Handlers Union Comments* at 3 ($6 billion); Order 5337.

[4] C21's mission is to encourage legislation to address the Postal Service's problems. That is drawn from our conviction that what ails the Postal Service cannot be fixed through pricing. Congress is indispensable, in our view, because only it can provide new tools to, and relief from some of its obligations for, the Postal Service. That is why we are truly shaken by the implications of this proposal alone, let alone badly exacerbated by the proposed "reset."

challenge through price increases and reduced service. Neither the paper industry, in this example, nor other mailers, nor the Postal Service, nor its employee unions are simply entitled to more revenue while ignoring the realities of the marketplace.

It is important also to note that many of us explained in previous comments in this proceeding, which are hereby incorporated by reference, that it is not clear that the Commission has legal authority under the Postal Accountability and Enhancement Act ("PAEA") or the Constitution to allow the Postal Service to exceed the statutory price cap. And we have explained why as a policy matter it should not.[5] We expressly preserve that position and by addressing in these comments the proposals advanced in this proceeding by the Postal Service, several unions, and in the RNPRM itself do not waive any legal objections to Commission actions that might allow the Postal Service to exceed or circumvent that price cap.

## I. The Idea of a Reset is Fundamentally at Odds with Both the Price Cap and the Current Review

The Postal Service and parties supporting its viewpoint propose not only to dismantle the statutorily-required price cap but to compound the damage with a so-called "reset" of (in the Postal Service's view) $6 billion in yet more additional revenue.

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[5] *See Initial Comments of the Greeting Card Association*, Docket No. RM2017-3 (Mar. 20, 2017); *Comments of the Major Mailers Association, The National Association of Presort Mailers, and the National Postal Policy Council*, Docket No. RM2017-3 (Mar. 20, 2017); *Comments of the National Postal Policy Council, the Major Mailers Association, and the National Association of Presort Mailers*, Docket No. RM2017-3, at 19-41 (Mar. 1, 2018) ("*First-Class Business Mailers Phase II Comments*").

This proposal is not only at odds with the idea of a price cap; it is also inconsistent with the Commission's task under 39 U.S.C. §3622(d)(3).

Scholarly submissions on the theory of price caps are invoked to support the "reset" idea. This confuses two very different situations: starting a price-cap system from ground zero versus the Commission's statutory assignment to review and improve the existing system.

When the present system was established, the “baseline” or “going-in” rates were compensatory because they had been set under the old breakeven rules in Docket No. R2006-1. Thus, the “baseline” rates were by definition sufficient to support the Postal Service when the current system took effect.

In this proceeding, the Commission has a different task, which is to consider improvements to the current price-cap system to make it more capable of achieving all of the Objectives including (among other things) financial stability. It is not to establish a new system with initial baseline rates. Nevertheless, the Postal Service wants the Commission to act as if it is setting up a brand-new system with a fresh set of “going-in” rates – to the tune of another $6 billion to be extracted from ratepayers. Current law allows for only two methods to increase postage rates: increases within the scope of the price cap and increases through the process of responding to exigent circumstances. The “reset” proposals seek to invent a third method not provided for by the statute.[6] The Commission should not accept the invitation to adopt this extra-statutory proposal.

[6] Or it could be viewed as in essence asking for an exigency increase bypassing the process that the PAEA established to govern such a request and, in particular, without any showing of the extraordinary or exceptional circumstances on which an exigency request must be based.

## II. The Commission May Not Modify the Regulatory System in Ways That Do Not Better Achieve the Objectives

### A. Objective 5 is Not More Important Than Other Objectives

Congress directed in Section 3622(b) that each of the nine Objectives "shall be applied in conjunction with the others." The Commission consistently has held for over a decade that none of the objectives should be given a higher priority over the others. *See Annual Compliance Determination*, Docket No. ACR2008, at 36 (Mar. 30, 2009); *Order 4257*, Docket No. RM2017-3, at 16-17 (Dec. 1, 2018). We believe the Commission has been correct all these years. Buttressed by the plain meaning of the above statutory language,[7] *all* of the objectives must be considered; *no* objective is more important or paramount than the others. Nothing in Section 3622(d)(3), pursuant to which the Commission is conducting this proceeding, alters the equal weight of the objectives established by Section 3622(b) and consistently affirmed by the Commission.

C21 believes that in their single-minded effort to improve the Postal Service's balance sheet and create retained earnings, Order 5337 and the comments of the Postal Service and unions relegate to secondary status Objectives (taking into account the Factors) other than financial stability such as "rate predictability and stability," "maximizing incentives for efficiency and cost reduction," "value of the mail," and even a "just and reasonable rate schedule." This is compounded by pleas by the Postal

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[7] For calculating the Postal Service's financial needs, the Commission divided them into short, medium and long-term, with accompanying objectives that the Commission determined needed to be applied on each segment. Order 4257 at 153-155. However, to the extent that any or all of these analyses applied selected objectives, they fly in the face of the plain meaning of the statute. "[E]ach of which shall be applied in conjunction with the others" does *not* allow an interpretation that any one objective can be applied without considering, or only considering some of, the other objectives. Or, for that matter, creating a *primus inter pares* out of Objective 5. Had Congress intended that it would have said so, and certainly would not have placed this objective precisely in the middle of the list.

Service and postal unions to "reset" base rates, for even more rate authorities or even for deregulation. These equally important Objectives simply are not treated equally by prioritizing Objective 5 through proposing numerous mechanisms to give the Postal Service new and additional rate authority.

Nothing in Section 3622(d)(3) authorizes the Commission to elevate Objective 5 and to diminish or sacrifice other objectives and Factors in order to achieve certain policy outcomes. By focusing almost exclusively on Objective 5, the Commission has not adhered to the statutory command to apply all of the objectives in conjunction with one another and has not followed its own precedent.

### B. The Commission May Not Modify the System in Ways That Cause Objectives Currently Being Achieved From Continuing to Succeed, or That Make it More Difficult to Achieve Other Objectives Not Currently Being Met

The Commission's assignment under 39 U.S.C. §3622(d)(3) is to modify the market-dominant ratemaking system, or replace it with an alternative, in order to achieve the section 3622(b) Objectives while taking into account the section 3622(c) Factors. Everything the Commission does, or refrains from doing, in this proceeding should have that as its goal. Equally, the Commission must avoid spoiling the achievements of the existing system and making it harder to achieve the objectives it has found are still unaccomplished.

Order 4257 set out the Commission's view of which Objectives had or had not been achieved, in relation to the three "topics" of (i) ratemaking structure, (ii) financial stability, and (iii) service quality.

*Stability and predictability.* The Commission found that the system had produced stability and predictability in rates (Objective 2). The proposals in Order 5337, however, would make rates far less stable and predictable, and the modifications urged by the Postal Service and other commenters would only make matters worse. A system incorporating a choice between two formulas for additional pricing authority based on unpredictable variations in mail volume per delivery point clearly undermines achievement of Objective 2. Customers often make mailing commitments many months in advance, and these commitments commonly reflect a compromise between effectiveness and budgetary limits. An unforeseeable postage reduction means that effectiveness is sacrificed, just as an unforeseeable increase busts the budget.

In Order 4257 (at 109) the Commission found that the CPI-U was an "accurate predictor" of the magnitude of price changes. The proposed alterations to the price cap would destroy that accuracy. Objective 2, which the Commission found is being achieved, would be achieved no longer.

*Financial stability and the equality of all objectives.* The Commission found that Objective 5 was not being achieved in the medium and long term. Order 5337, however, appears designed to achieve financial stability (as the Commission understands it) at the expense of other objectives. And the further proposals offered in the comments of the Postal Service and postal unions compound that error.

All of those proposals seek to promote financial stability to a predominant position which the statute (39 U.S.C. §3622(b)) explicitly forbids while simultaneously frustrating the achievement of other equally important Objectives. The Objectives must be applied "in conjunction with" one another and, as the Commission has repeatedly said, be given equal weight and none is to be made pre-eminent (*see* Order 4257 at 16-18). Our discussion of Objective 2 shows that the Commission is pursuing Objective 5 at the expense of stability and predictability – a co-equal Objective. But rate stability and predictability are not the only casualties.

Objective 1 requires the system to maximize incentives to efficiency and cost reduction. The price cap in its statutory form is central to this goal; the canonical justification for moving to a price-cap system is that a cost-of-service system fails to incentivize efficiency. The Commission states that the alterations it proposes to make to the price cap are tied to circumstances the Postal Service cannot control, but this distinction does not make the departure from the efficiency-promoting price cap system any less troubling. In what sense, for example, does the Postal Service "control" the price of a gallon of diesel fuel or a kilowatt-hour of electric energy? What the Commission proposes is in fact a disincentive to pursuing cost reductions where they are available, and thus undermines achievement of Objective 1. An objective the Commission said is not being achieved now would be even farther from accomplishment under the Commission's proposals.

The additional rate authority the Commission proposes is not even likely to promote the achievement of Objective 5. That is so because the rate increases it entails are so large that their effect on mail volume is practically unknowable with existing analytical techniques. What *is* known is that volume estimation models like the Postal Service's, with which the Commission has done its best in the face of rate increases of two or three percent, cannot deal reliably with increases substantially larger. The Commission's proposals could entail increases as large as 29 to 41 percent over five years in First-Class Mail and USPS Marketing Mail, and nearly 50 percent for Within County Periodicals.[8] For their part, the Postal Service and unions offer proposals that could result in 19.3 percent increases in one year alone or, if deregulated as the Postal Service urges, even higher.

Simply assuming that "postal products are price-inelastic" is not good enough – particularly when (i) there are gross substitutes in the form of electronic media – often very inexpensive – for many products, and (ii) one of the additional rate authorities is tied directly (and a second tied indirectly) to volume behavior and thus would impose even greater burdens on customers the more their mailings shrank in response to price increases. Creating a vicious circle of this kind is not a reasonable way to put the Postal Service "on the path" to financial stability.

The ratemaking system should be designed to achieve all of the Objectives. The Commission cannot assume that any changes it makes will not cause currently achieved Objectives to no longer be met, nor may it make changes that make it even harder to achieve Objectives 1, 3, and 5 that Order 4257 held are not being achieved.

## III. Failing to Consider the Effects of the Proposed Rate Authorities on Mail Users is Not Reasoned Decision Making

The proposals by the Postal Service, the postal unions, and contained in Order 5337, if adopted, would authorize the Postal Service to impose by far the most substantial postage increases on mailers of market-dominant products since some of the rate cases under the Postal Reorganization Act ("PRA") era that Congress clearly

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8 These hikes could increase by 5 percentage points or more if volume declines trigger even bigger increases in the density factor.

intended to end with the passage of the PAEA. Of course, an important distinction is that PRA rate cases and postage increases occurred at roughly three-year intervals. Under the current proposals, the major increases that would be allowed, troubling enough in just one year, would repeat each year and compound to an intolerable degree by the fifth year.

It is well to remember one of the central understandings underpinning PAEA: the spiky, unpredictable and periodic increases approved only after the lengthy PRA adversarial proceeding would be exchanged for reliable, predictable, and limited rate increases that could be imposed each year with only notice and comment review. What makes the present proposals even more troubling is that their partial return to PRA-style cost-of-service ratemaking would lack the procedural and evidentiary safeguards of the old statute. Setting aside the question of whether they could be applied legally or not, the proposals at hand would jettison that bargain, and effectively undermine the future of the postal system as we know it.

Numerous parties in their initial comments on Order 5337 stated that those increases, if adopted, would have very significant negative effects on postal volumes and accelerate electronic diversion.[9] These commenters pointed out repeatedly that they simply cannot raise rates in today's environment, and that as the Postal Service, its unions, and Order 5337 propose would cause the very damage to the Service that the Commission wants to avoid.

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[9] *E.g., Comments of the Alliance of Nonprofit Mailers, et al.* at 23-28; *Comments of the American Forest and Paper* Association at 5-6; *Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement* at 36-38 & 48-49; *Expert Declaration of Kevin Neels and Nicholas Powers* at 11-18.

The additional rate authority proposed for underwater products will put further stress on what are in many ways the most vulnerable products in the system, imperiling the viability of many periodicals, catalogs and more.[10] However, as discussed in Section II *infra,* in this proceeding Congress directed the Commission to apply all of Objectives in conjunction with the others, including maximizing the incentives to reduce costs and increase efficiency in Objective 1 and creating predictability and stability in rates in Objective 2.[11] And it remains clear that the Commission must take into account the value of the mail service actually provided both to sender and recipient, the relative value of the kinds of mail matter, and the ECSI value. 39 U.S.C. §3622(c)(1), (8) & (11).

Once before, in the 1970s, postal pricing ignored the impact on periodicals and actively contributed to their demise. Titles such as *Look* and *Life*, competing with television but retaining their rich heritage and well-earned value to the American public and the Postal Service, could not adjust to declining circulation with postage increases spiraling on top of that, and were effectively priced into radically reduced size or out of existence altogether. The same could happen again, only now what's left of catalogs, periodicals and other industry segments could be killed off entirely. Given their value to the "mail moment" and their multiplier effects on the package side especially, the proposals to raise their rates an additional 2% (on top of all of the other increases to

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[10] *Comments of Meredith Corporation* at 2; *Comments of the National Newspaper Association* at 8 & 16; *Comments of the News Media Alliance* at 9-12; *American Catalog Mailers Association* at 1-2;

[11] Although C21 includes mailers that are deeply affected by the two-point proposal and others that are not, it calls the Commission's attention to comments of the flats mailing community about the special pressure put on this mail by the RNPRM. C21 takes no position on the solutions for underwater products.

boot). notwithstanding their precarious position, appear short-sighted and counterproductive.[12]

C21 reiterates that adopting the proposed supplemental and additional rate authorities, or the "resets" to "baseline" rates urged by certain commenters, would cause a dramatic and permanent loss of volume.[13] Once mail, or packages, are gone, they're gone, and are not coming back. And that in turn would aggravate the very problem that Order 5337 purports to address. Raising postage rates while establishing formulas that force rates still higher as volume falls is self-defeating.

The Commission has previously taken seriously the possibility that rate increases could cause damaging volume losses. The appropriate quantification of volume losses due to extraordinary and exceptional circumstances was a central issue in the R2013-11 exigent surcharge case. There, the Commission stated that proof needed to quantify a requested exigent surcharge "must be commensurate with the amount of the proposed adjustment." Order 864 at 50. And the Commission requires the Postal Service to file annually its latest econometric volume forecasting model and explain any modifications from the preceding version, the most recent model being filed in January of this year.

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[12] This underscores that the Postal Service, unions, and in many places the Commission are solely focused on recovering costs without sufficient inquiry into *why* postal costs are so high. This is of particular significance to these underwater products, whose costs have increased at about twice the factor prices, and nearly three times the rate of growth in the CPI-U, for the past two decades.

[13] For example, after rates for catalogs were increased by 20 to 40 percent in Docket No. R2006-1, catalog volumes plummeted and have never recovered. Catalog volumes remain far below 2006 levels, and this leads to less volume in other types of mail as well. For another example, the exigent surcharge approved in 2013 caused large business mailers to make permanent reductions in their use of the mail to avoid the higher postage expense. Due to the longer lead times that mail requires, that decline largely manifested itself some two years after the surcharge was removed, and the decline continues to this day. The Service expects volume to decrease by approximately another 4 billion pieces in FY2020. *USPS FY2020 Integrated Financial Plan* at 3.

If the volume effects were relevant in the exigency case when temporary above-CPI rates were being approved, then they should be at least equally relevant here when even larger and permanent above-CPI rate authorities are under consideration.

Given the important consequences of postage price changes on volume, the undersigned find the failure of Order 5337 to consider the volume effects of its proposals either singly or cumulatively to be inexplicable. This failure is only compounded by the further failure by the Postal Service and unions to consider the volume losses that *their* proposals could cause. The Commission must not simply give tools to the Postal Service with which it can raise postage prices permanently by unprecedented amounts without evaluating the damage those rates could do to volumes.

Several of the initial comments on Order 5337 contain well-founded criticisms of the validity of the Postal Service's current estimates of price elasticity if applied to price increases of the ranges being contemplated here. Our point is that the Commission cannot reasonably conclude that the proposed new rate authorities are "necessary" to better achieve the objectives *without considering the effects on mail volumes* both immediately and in the years to come. For this reason, a number of parties have separately supported a Petition For Initiation of a Public Inquiry and Suspension of Statutory Review to suspend the current proceeding in order to initiate an inquiry into determining the impact of rate increases significantly above the CPI.[14] We encourage the Commission to consider this petition and the benefit of fully understanding the likely impact of the new rate structure.

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[14] *Petition of the American Mail Alliance for Initiation of a Public Inquiry and for Suspension of Statutory Review*, Docket No. RM2017-3 (Mar. 3, 2020).

**IV. Conclusion**

This is a pivotal proceeding. The Commission must avoid adopting measures that would allow the Postal Service to imperil the continued success and viability of the mailing industry by raising rates above the CPI-U price cap. For the foregoing reasons, the Coalition for a 21st Century Postal Service respectfully urges the Commission to retain the CPI-U price cap.

Respectfully submitted,

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