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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

OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO AMERICAN MAIL ALLIANCE PETITION
(March 10, 2020)

Just one day before reply comments were to be filed in what appears to be the final phase of this proceeding, a group of mailing-industry stakeholders filed a last-ditch effort to suspend the docket. Petition of the American Mail Alliance for Initiation of a Public Inquiry and for Suspension of Statutory Review, PRC Docket No. RM2017-3 (Mar. 3, 2020). The petition offers no basis to veer off-course.

The substance of the petition – a plea for regulatory inaction based on the possibility that above-inflation rate authority might trigger an unprecedented spike in demand elasticities – is not new. Indeed, the petitioners themselves have raised the same argument at every stage of this proceeding.[1] Three years ago, the Postal Service

[1] Comments of Alliance of Nonprofit Mailers, Association for Postal Commerce, MPA—The Association of Magazine Media, American Catalog Mailers Association, Direct Marketing Association of Washington, Nonprofit Alliance, Envelope Manufacturers Association, Saturation Mailers Coalition, and Continuity Shippers Association, PRC Docket No. RM2017-3 (Feb 3, 2020) [hereinafter "ANM *et al.* 2020 Comments"], at 38; Comments of American Forest & Paper Association, PRC Docket No. RM2017-3 (Feb 3, 2020), at 3; Explanation of Options for a Financially Stable Postal Service, filed by Greeting Card Association et al., PRC Docket No. RM2017-3 (Feb. 3, 2020), at 1; Comments of Mailers Hub LLC, PRC Docket No. RM2017-3 (Feb. 3, 2020), at 3-7; Comments of Alliance of Nonprofit Mailers, American Catalog Mailers Association, Inc., Association for Postal Commerce, Idealliance, and MPA—The Association of Magazine Media, PRC Docket No. RM2017-3 (as refiled Mar. 7, 2018), at 79-82; Comments of the American Catalog Mailers Ass'n, PRC Docket No. RM2017-3 (Mar. 1 2018), at 6; Comments of the EMA, PRC Docket No. RM2017-3 (Mar. 1, 2018), at 3; Comments of Mailers Hub LLC and the National Association of Advertising Distributors, Inc., PRC Docket No. RM2017-3 (Mar. 1, 2018), at 6; Comments of the American Forest & Paper Association, PRC Docket No. RM2017-3 (Mar. 20, 2017), at 15.

and other commenters proposed above-inflation rate authority to bring market-dominant rate regulation, at long last, in line with all of the statutory objectives (including Objectives 5 and 8). The petitioners clearly could have anticipated such a proposal, as some of their own March 2017 comments (and those of other mailing-industry stakeholders) included the same argument advanced here. Indeed, the argument has an even longer pedigree within the mailing industry.[2] For the entire pendency of this proceeding, if not longer, the petitioners have had ample time to offer evidence to bear out their hypothesis or to propose appropriate methodologies. Instead of doing so, they have waited until this proceeding was almost at an end to file an extraordinary and open-ended request for further study.

Unexplained and unwarranted tardiness aside, the petition is woefully deficient. It makes no effort to "provide analytical approaches that would allow [pertinent] factors to be directly incorporated into a postal demand model," nor does it identify "a new postal demand model to replace the current Postal Service's demand model." Order No. 3100, Order Closing Docket, PRC Docket No. RM2014-5 (Feb. 26, 2016), at 8-9. Absent such a specific proposal, the Commission in that case declined to engage in a fundamental rethinking of the well-established demand model. The same result should obtain here.[3]

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[2] *See* Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement in Opposition to Exigent Rate Increase, PRC Docket No. R2013-11 (Nov. 26, 2013), at 36-38; *see also* Order No. 1926, Order Granting Exigent Price Increase, PRC Docket No. R2013-11 (Dec. 24, 2013), at 148-54 (describing arguments by the same commenters' declarants).

[3] Previous assertions in this proceeding about the alleged inadequacy of the Postal Service's elasticity estimates were accompanied by a host of self-interested (and theoretical) impact statements from individual business mailers and unscientific "surveys" that amount to the same thing. *See, e.g.*, Declaration of Meta A. Brophy on Behalf of Consumer Reports, Inc., *filed with* ANM *et al.* 2020 Comments; Declaration of David O'Sullivan on Behalf of Guideposts Foundation, Inc., *filed with* ANM *et*

The sole empirical predicate invoked by the petition is the fact that some elasticity estimates have fluctuated from year to year under the existing demand models. Petition at 2-3. That is nothing new; there is no reason why the same observation could not have been made in comments filed at any earlier time in this proceeding – as, indeed, it was. Initial Comments of the Greeting Card Association, PRC Docket No. RM2017-3 (Mar. 20, 2017), app. C. The petition acknowledges that the changes may be due at least in part to model revisions that "may well all be [econometric] improvements." Petition at 3. Naturally, other differences will be due in part to statistical variation in the estimates. This cannot serve as the basis for such a material expenditure of regulatory effort, and it certainly does not explain why such an effort is warranted at this late juncture. And, significantly, the fluctuations shown in the petition are all within the range of inelastic demands.

The remaining predicate consists of characterizations of the quantum of rate authority proposed in Order No. 5337, which then lead into "conclusions" that such rate authority will vitiate the current demand model. *Id.* at 3. For one thing, to call these propositions "conclusions" stands the scientific method on its head: as they have done throughout this proceeding, the petitioners have posited mere hypotheses about what might or might not happen, not conclusions based on empirical evidence testing such hypotheses. The petitioners offer no prediction about what evidence would bear out

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al. 2020 Comments; Infotrends, Exploring Mail Volume Impact from the PRC's Proposed Rate Structure (Feb. 2018), *filed with* Comments of the EMA, PRC Docket No. RM2017-3 (Mar. 1, 2018); WPA Research, A National Research Study Among Mail Decision Makers on Postal Rate Sensitivity of Demand (Mar. 2017) (filed by Envelope Manufacturers Association, PRC Docket No. RM2017-3 (Mar. 20, 2017)). As the Commission has already held, such "biased" submissions cannot "substitute for the missing historic data required for demand forecasting" and "do not 'provide an adequate alternative to the econometrically calculated Postal Service own-price elasticities.'" Order No. 3100 at 9-10 (quoting Order No. 1926 at 156-57). Perhaps for this reason, the petitioners here do not attempt to rely on such materials, yet they do not offer anything further to cure the deficiency.

these hypotheses, nor do they offer any evidence in order to render a conclusion.

For another thing, the same proposition has been offered and refuted numerous times in the 2010-2013 exigent proceeding and throughout the instant proceeding. In all cases, the Postal Service and other commenters have pointed to numerous empirical examples of above-inflation price increases – even dramatic and repeated ones – to which demand responded in line with existing estimation models.[4] Moreover, when the Postal Service Office of the Inspector General (OIG) conducted a study to empirically and objectively test the proposition advanced in this petition, it found that demand for postal products is inelastic, is not in flux, and, if anything, may have become less, not more, elastic as electronic diversion has increased. *See generally* OIG, RARC-WP-13-008, Analysis of Postal Price Elasticities (2013). Despite multiple opportunities to offer competing evidence to corroborate their hypotheses, the petitioners and their allies have adduced none, instead falling back on sheer repetition of rhetoric. This petition is no more worthy of consideration – let alone last-minute procedural derailment – than the petitioners' unsupported earlier efforts.

In the end, as we have noted before, the accuracy of elasticity estimates is primarily a business concern for the Governors, whereas the Commission's role in this proceeding is to adopt a ratemaking system that will achieve the statutory objectives. No statutory objective expressly calls for a prediction of future mail volume trends, and the Commission has not proposed to base the new system on such an exercise.

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[4] Reply Comments of the United States Postal Service in Response to Order No. 5337, PRC Docket No. RM2017-3 (Mar. 4, 2020), at 15-17 & nn.19-20 (discussing the lack of extraordinary demand response to the exigent price increase, significantly above-inflation increases in individual prices within the CPI price cap, and significantly above-inflation postal price increases in the United Kingdom); *see also* Reply Comments of the United States Postal Service in Response to Order No. 4258, PRC Docket No. RM2017-3 (Mar. 30, 2018), at 27-30 & nn.71, 74.

Instead, the Commission has consistently proposed to address any unforeseen developments by examining the new system after five years, and sooner if need be. In the meantime, the Commission's task is fundamentally to define the outer bounds of the Postal Service's pricing authority that are consistent with the statutory criteria. It is for the Governors, not the Commission, to consider how (and how much of) that pricing authority can be used at a given time, given, among other things, the possibility of demand impacts not predicted by established demand models.

The Petition lacks any factual predicate. Continuous incremental improvement of estimates is a feature of any conceivable demand model and has no bearing on whether the current demand model would be robust with above-inflation price increases. And all indications are that the model would be so robust, as documented by numerous instances put forward in earlier comments yet unaddressed in this Petition. The Commission should see this Petition for what it is: a baseless, last-minute push for indefinite delay, just when it appears that this proceeding is reaching its long-awaited and necessary conclusion.

Respectfully submitted,

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