

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

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

JOINT MOTION TO HOLD PROCEEDING IN ABEYANCE
March 23, 2020

Pursuant to 39 C.F.R. § 3001.21, the undersigned parties¹ respectfully move that the Commission formally hold this proceeding in abeyance and refrain from issuing a final order until the current declared national emergency concerning the novel coronavirus disease (COVID-19) has been rescinded. Doing so will serve two purposes: (1) it will allow the mailing industry, ratepaying customers, and the Postal Service to focus on maintaining critical operations without diverting resources to further proceedings in this docket, including potential appeals of a final order, and (2) it will ensure that any Commission order issued in this proceeding will reflect the significant societal, economic, legal, and regulatory changes that are likely to result from the current emergency.

Reply comments in this docket were filed on March 4, 2020. Little over a week later, on March 13, 2020, the President issued a Proclamation on Declaring a

¹ The undersigned parties are the Association for Postal Commerce, the Alliance of Nonprofit Mailers, MPA – The Association of Magazine Media, the American Catalog Mailers Association, The Direct Marketing Association of Washington, The Nonprofit Alliance, the Envelope Manufacturers Association, the Saturation Mailers Coalition, the Continuity Shippers Association, The Association of Free Community Publications, Independent Free Papers of America, Florida Media Association, Midwest Association of Free Community Papers, Southeastern Advertising Publishers Association, Free Community Papers of New York, Community Papers of New England, Pacific Northwest Association of Want Ad Papers, Wisconsin Community Papers, and Mid-Atlantic Community Papers Association.

National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.² The period between reply comments and this writing has seen state and local governments issue shelter in place orders; businesses ordered to close; a massive growth in telework; stock markets experiencing once-in-a-generation sell-offs; state and federal courts canceling or postponing trials and oral arguments and limiting courthouse access,³ and coronavirus stimulus packages worth trillions of dollars move through Congress, with more disruptions likely to come. In short, the world on March 23, 2020 looks significantly different than the world on March 4.

The postal industry, of course, is not immune to these disruptions. The Postal Service, as an essential service, is fully engaged in managing this crisis and ensuring American households receive critical supplies and information, while at the same time preparing for the impact of a significant economic downturn.⁴ Mail service providers, including PostCom members, are currently focused on maintaining operations to support critical postal operations as state and local governments issue shelter-in-place and closure orders. Mail owners likewise are focused on maintaining continuity of operations and preserving their customer bases. Nonprofit mailers play an increasingly crucial role in disseminating

² See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

³ Most pertinent to this docket, the U.S. Court of Appeals for the District of Columbia Circuit has issued a standing order suspending all in-person oral arguments pending further order of the court. See *In re: Court Operations in Light of the COVID-19 Pandemic*, Order (D.C. Cir. Mar. 17, 2020).

⁴ See “USPS Statement on Coronavirus,” Mar. 17, 2020 (“[T]he Postal Service is an essential service for purposes of its compliance with state or municipality shelter-in-place orders or other social distancing restrictions. The Postal Service delivers medications, social security checks, and is the leading delivery service for on-line purchases.”) available at <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm>.

information, facilitating vote-by-mail in elections, and fundraising for charitable purposes. Periodicals mailers may be adjusting publishing schedules,⁵ and the Postal Service is working closely with the industry to accommodate the rapidly changing state of affairs.⁶

In other words, industry resources are currently fully devoted to managing the COVID-19 public health emergency and its impacts, and the industry cannot put further resources toward this docket at this time. While there are no deadlines currently pending, interested parties could be required to respond to further procedural motions or requests for other relief in the coming weeks. But more concerning is the possibility that the Commission would issue either a revised proposed rule, calling for further comment, or a final order, beginning the statutory timeline for an appeal,⁷ in the near future. Doing so would put the industry in an untenable position, forcing it to choose between devoting significant resources to this proceeding that would be better served being used toward maintaining operations or abstaining from further involvement in a docket of crucial importance to the industry.

In a recent statement urging the Federal Energy Regulatory Commission to use caution when issuing orders that are not statutorily mandated, Commissioner

⁵ See USPS Industry Alert, Coronavirus (COVID-19) – Periodicals Publishing Frequency (Mar. 17, 2019), available at <https://postalpro.usps.com/node/7817>.

⁶ See, e.g., USPS Continuity of Operations Update (Mar. 19, 2020), available at <https://about.usps.com/newsroom/service-alerts/pdf/usps-continuity-of-operations-03-19-2020.pdf>.

⁷ See 39 U.S.C. § 3663 (requiring parties aggrieved by a Commission order to file petitions for review with the United States Court of Appeals for the District of Columbia Circuit within 30 days after the order becomes final).

Richard Glick expressed similar concerns.⁸ Noting that the issuance of certain orders triggers a mandatory 30-day period in which parties may request rehearing that FERC cannot waive, Commissioner Glick urged FERC to, where possible, “refrain from acting to allow parties who are otherwise dealing with the pandemic to avoid putting resources toward seeking rehearing of a [FERC] order.” This Commission should take similar concerns into account to avoid triggering the 30-day period in which petitions for review must be filed under 39 U.S.C. § 3662.

In addition to these procedural concerns, the current emergency is creating substantive issues that cannot be adequately addressed on the current record in this proceeding. No one can predict the impacts the COVID-19 emergency will have on the Postal Service, mailers and the mailing industry, and the economy in general—much less the social changes that might arise. It has already been over two years since Order No. 4257 was issued; each day that the current emergency persists, the more outdated the Commission’s analysis of the existing ratemaking system grows. Further, it is reasonable to think that Congress may take action in the coming weeks that could impact the Postal Service’s operations and finances in ways that render the premises of Order No. 5337 and the proposals therein obsolete.

We do not mean to suggest that the Commission would take rash action during these uncertain times, and we acknowledge the Commission is under no

⁸ See Commissioner Richard Glick Statement, “Statement on COVID-19 and FERC Orders,” Mar. 20, 2020, available at <https://www.ferc.gov/media/statements-speeches/glick/2020/03-19-20-glick.asp#.XnUJ7lhKg2x>.

statutory deadline to act in this proceeding. We would expect the Commission would exercise its judgment and not issue an order ill-suited to current events. But all stakeholders in this docket would benefit from formal assurance that final action will be delayed until the Commission, the Postal Service and its customers, the mailing industry, and the public generally can better assess the impacts of the COVID-19 emergency. Accordingly, the below signatories respectfully ask the Commission to formally hold this docket in abeyance until that time.

Respectfully submitted,

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