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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

SUPPLEMENTAL COMMENTS OF THE NATIONAL POSTAL POLICY COUNCIL, THE AMERICAN BANKERS ASSOCIATION, THE AMERICAN CATALOG MAILERS ASSOCIATION, THE AMERICAN FOREST & PAPER ASSOCIATION, THE ASSOCIATION FOR MAIL ELECTRONIC ENHANCEMENT, THE ASSOCIATION FOR POSTAL COMMERCE, THE ASSOCIATION FOR PRINT TECHNOLOGIES, THE ENVELOPE MANUFACTURERS ASSOCIATION, THE GREETING CARD ASSOCIATION, THE MAJOR MAILERS ASSOCIATION, THE NATIONAL RETAIL FEDERATION, MPA – THE ASSOCIATION OF MAGAZINE MEDIA, THE NATIONAL ASSOCIATION OF PRESORT MAILERS, THE NEWS MEDIA ALLIANCE, THE NATIONAL NEWSPAPER ASSOCIATION, THE PARCEL SHIPPERS ASSOCIATION, PRINTING UNITED ALLIANCE, AND THE SATURATION MAILERS COALITION

(July 6, 2020)

The undersigned parties hereby respectfully urge the Commission to consider the implications of the COVID-19 pandemic on the Postal Service and the enactment of the CARES Act on the proposals in Order No. 5337 ("*Revised NPRM*").

In particular, the volume and revenue changes experienced by the Postal Service during the pandemic differ materially from the backdrop against which the Commission drafted the proposals in the *Revised NPRM*. Deep declines in market-dominant mail, but large percentage increases in higher per-unit contribution packages, have reduced Postal Service volumes substantially, but had a far milder effect on its revenues. Indeed, the May data indicates that the Postal Service's operating revenue that month *exceeded* plan by 9.6 percent despite total volume being below plan by 18.6 percent.

These volume and mix changes – and their revenue implications – during the COVID-19 pandemic constitute so substantial a changed circumstance that the Commission must reconsider its proposals.[1] This is particularly true as to the proposed density factor, as discussed below.

Finally, a provision of the recently enacted CARES Act materially changed the law applicable to the Postal Service's financial liquidity, a consideration also highly relevant to the Commission's conclusions in this docket which undergird the proposals in the *Revised NPRM*.

I. POSTAL VOLUMES DURING THE PANDEMIC DIFFER GREATLY FROM THOSE IN THE PERIOD UPON WHICH THE PROPOSALS IN THE *REVISED NPRM* WERE BASED

The *Revised NPRM* offered proposals developed against a background of 12 years of Postal Service operation under PAEA. Those years, and particularly the past six, were characterized by a gradual decline in market-dominant volume, partly offset by growth in Competitive products that was sizable when measured as a percentage but comparatively small in absolute volume. The Commission received extensive responses to its *Revised NPRM*, approximately 166 initial and nine reply comments on those proposals. None of those comments addressed the implications of the current pandemic on the *Revised NPRM* or on the Postal Service.

In FY2006, the Postal Service delivered 213.1 billion pieces. Its volumes have declined persistently since then, with 142.570 billon pieces delivered in FY2019. *USPS*

[1] The Commission may prefer to await the passing of the pandemic and cancellation of the national emergency before reassessing in order to determine whether the changes in current volumes are permanent or whether volumes will return to pre-pandemic levels.

FY19 Annual Report to Congress at 12. That is a decline of 33 percent, or an average of *2.22* percent per year. The Postal Service's Integrated Financial Plan, prepared before the pandemic, projected a decline in total volume in FY2020 to 138.1 billion pieces, or about 3.14 percent. *USPS FY2020 Integrated Financial Plan* at 1. It also anticipated a small reduction in Shipping and Packages volume from 6.2 billion to 6.0 billion pieces. *Id*. at 4.

Neither the Postal Service nor the Commission, nor virtually everyone else, anticipated the COVID-19 pandemic, and the declaration of a national health emergency on March 13. Unsurprisingly, postal volumes – particularly First-Class Mail and USPS Marketing Mail -- have plummeted since March. Volumes fell by 7.2 percent in March (year-over-year), when the pandemic first appeared.[2] The trend accelerated in the following months. Total volume fell, compared to the same period in FY2019, by 27.2 percent in April and by 25.4 percent in May.[3] At the class level, First-Class Mail volumes fell (compared to SPLY) in April by nearly 9 percent and in May by 13.9 percent, and Marketing Mail fell by 45 percent (April) and 40.6 percent (May), again compared to the same months of 2019.[4]

Despite these overall numbers, package volumes, spurred by e-commerce resulting from stay-at-home orders, have grown significantly. For example, the net 27.2 volume decline in April consisted of a 29.4 percent tumble in market-dominant volume

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2 *USPS March 2020 Monthly Financial Report to the PRC* at 2.

3 *Id*.; *USPS Financial Information (Unaudited) May 2020* at 2.

4 *Id*. The substantial declines in First-Class and Marketing Mail are consistent with factors in the Postal Service's demand equations, which use, *inter alia*, Employment and Private Investment as explanatory factors for First-Class Letters and Marketing Mail, respectively. *See USPS Econometric Demand Equations for Market Dominant Products as of January 2020* at 19, 28, 68, 74, 76, 80, & 87.

(3,338.6 million pieces) offset only in small part by a 34.9 percent increase in Competitive volume (154.8 million pieces).[5] In May 2020, Competitive volumes rose 61.1 percent over May 2019.[6] However, because the volume of packages (and Competitive Products overall) is quite small compared to market-dominant volumes, even large percentage increases in packages are dwarfed by the decline in the absolute number of market-dominant mail pieces, resulting in a significant net decline in total volume.

But revenues have a much stronger effect on Postal Service finances than volumes. Because packages are higher priced, this volume surge has helped soften the revenue impact of the pandemic.

These sharp changes in volumes and mail mix are far outside the range of recent experience.[7] Only time will tell whether they are temporary or whether the Postal Service will see a more permanent change in demand for, and the mix of, postal products after the pandemic subsides.[8] If the changes in demand are permanent, the Commission must reevaluate its proposals in light of those changed circumstances. Whatever their merits when first offered, proposals must be reassessed if circumstances change materially.

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5 *USPS Financial Information (Unaudited) April 2020* at 2.

6 *USPS Financial Information (Unaudited) May 2020* at 2.

7 Even volume declines during the Great Recession were smaller, the largest of which was a 17 percent decline in marketing mail in 2009.

8 Although postal volumes continued to decline as the economy recovered from the Great Recession, the rate of decline in total volume was slower than during the recession itself.

On April 15, Postmaster General Brennan told representatives of mailer organizations that the Postal Service at that time was forecasting a 35 billion piece decline in volume, compared to the IFP, in the remainder of FY2020. This would put total FY2020 volume at about 103 billion pieces. She also stated that the Postal Service was then anticipating that the 35 billion piece decline would likely be permanent, a decline that would amount to nearly 25 percent of postal volume. And, more importantly, the Postal Service has at different times issued several estimates of the financial effects of the pandemic, but they have varied widely.

At present, it is too early to know whether Postmaster General Brennan's prediction is accurate, although total volumes have fallen severely from March through May, continue to do so, and year-end totals will very likely be significantly below plan. Even were First-Class Mail volumes to stabilize for the remainder of the postal year at 10 percent below the same period last year and Marketing Mail stays at about 35 percent below SPLY, total volumes may end up closer to 120 billion pieces. In either case, however, these numbers are far below the 138.1 billion pieces the Postal Service forecast in its financial plan.

Among the many unknowns that will affect whether the steep declines in First-Class and Marketing Mail volumes and the increases in Competitive volumes are permanent are the long-term effects of the pandemic on employment, business investment and marketing, the rate at which the economy reopens, and whether consumers' shift to e-commerce instead of bricks and mortar stores is permanent. Another is whether a "second wave" of COVID-19 will occur later in the year, and what effects that might have on volumes.[9] The future mail mix, and thus the revenue effect, is unknown as well.

In sum, the proposals in the *Revised Notice* emerged from a dramatically different postal environment than the one in which we find ourselves now. Although the final parameters of the demand for postal services for the remainder of this year and into the next year are unknown,[10] there is no evidence that demand will return to the *status quo ante*. As a matter of administrative law, the Commission must take into account these dramatically changed circumstances and reassess its proposals in light of the new environment. *Williams Natural Gas Co. v. Federal Energy Regulatory Commission*, 872 F.2d 438, 450 (D.C. Cir. 1989) (stating that issuance of a notice of proposed rulemaking in no way requires the agency to promulgate a final rule if circumstances change).

II. THE COMMISSION MUST CONSIDER THE IMPLICATIONS OF THESE DEVELOPMENTS ON THE PROPOSED DENSITY FORMULA

The substantial volume changes during the last three months also highlight one of the most problematic items in the *Revised NPRM* -- the structure of the proposed

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[9] The Postal Service's responsiveness to its customers would also have an effect. Many smaller mailer groups have urged the Postmaster General and the Commission's Chairman to institute a temporary emergency five-cent reduction in market-dominant postal rates, defer collection of postage payments from mailers with CAPS or EPS accounts, revive summer promotions, and no July increase in Competitive outbound international rates. *See* Letter to Megan Brennan & Robert G. Taub from Mark Pitts, Maynard H. Benjamin, Xenia "Senny" Boone, Kate Muth, Rita D. Cohen, Leo Raymond, Michael Plunkett, Paul Boyle, Jody Berenblatt & Donna Hanbery (Mar. 27, 2020).

[10] Indeed, the Postal Service has acknowledged to stakeholders that there are so many unknowns concerning the impact of COVID-19 on society and the economy that it is difficult to have any substantial confidence in forecasts of mail and packages, no matter how well researched.

density supplemental authority.[11] That proposal would allow the Postal Service to exceed the statutory price cap to recover "lost" unit contribution per delivery point due to volume declines despite the fact that contribution changes do not track volume changes. *RNPRM* at 70. The factor would consist of a formula that multiplies the ratio of institutional costs to attributable costs by the year-over-year change in pieces delivered per delivery point. *RNPRM* at 71-72.[12] If the number of pieces per delivery point declines, the proposed factor would generate additional rate authority.

The comments and reply comments have already addressed that proposal extensively.[13] However, the Commission should take into account that, as the volume mix changes during pandemic highlight, because the proposed factor treats every letter, magazine, catalog, and package equally (completely ignoring unit revenue and contribution), the density factor can generate rate authority having no seeming relationship to the contribution the Postal Service is actually receiving from the mailstream. That is because, as proposed, nothing matters other than volume changes. Most importantly, *the actual financial performance stemming from the changes in volumes and mail mix is utterly irrelevant*.

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11 Signatories hereto maintain their positions on other the other proposals in the *Revised NPRM* for the reasons stated in their comments and reply comments. The decline in mail volume and revenues coupled with the increase in package volumes and revenues has not ameliorated those concerns.

12 The density rate authority would be calculated twice, once using the change in density based on total volume and, separately, using the change in density based on market-dominant volume alone. The *Revised NPRM* proposed to apply the smaller calculation to market-dominant products.

13 Some of the issues noted in comments were that: (1) the density formula is highly inconsistent with price cap theory by eliminating Postal Service incentives to cut costs; and (2) it would grossly over-recover non-volume variable delivery costs. *See First-Class Business Mailers Comments* at 30-33; *Willig Declaration* at 3; *see also ANM et al. Comments* at 44 & 49.

Postal Service data from March through May illustrates this point. The Postal Service's net financial performance is much better than its volume performance because the mail mix has shifted to include more higher-priced packages that have larger unit contributions than market-dominant mail.

This has two potential consequences: (1) the proposed density rate authority formula could be profoundly harmful to the mailing industry and thus to the Postal Service if applied to the volumes generated by the pandemic without regard to contributions per piece; and (2) by not taking into account unit revenue and contribution, the density factor is unlikely to generate accurate levels of rate authority to maintain contribution per delivery point, and could even fail to generate any revenue under plausible scenarios in which contribution falls while density increases. As a proposal intended to improve the financial condition of the Postal Service, the factor's failure to take revenue and contribution into account is arbitrary.

As background, the *Revised NPRM* (Tables IV-1 and IV-2) calculated that the density rate authority that would have been generated had the formula been in effect since 2013 would have averaged about 1.23 percent per year. Those were years characterized by relatively stable rates of total volume declines. The *Revised NPRM* seems to assume that such stability would be the norm. Whatever the merits of increases of that magnitude in those years, however, applying the proposed density formula in periods of economic stress would produce more drastic increases. For example, had the formula been in effect in FY2009 during the Great Recession, it alone would have generated a rate authority 5.38 percent without taking any other sources of rate authority into account.[14]

This year would be worse. Based on the Postal Service's actual results through May 2020, and with reasonable projections for the balance of the postal year derived from Postal Service data, the density rate authority alone could be **above 7 percent** based on market-dominant volume, and **above 6.5 percent** based on total volume, for FY2020 alone. Both figures exceed the increase that the density factor would have generated during the Great Recession. And these estimates would be *in addition to* all other sources of rate authority that might be available to the Postal Service under the law or the Commission's proposals. The Commission must evaluate whether creating an automatic formula that would allow the Postal Service to raise rates by these amounts during times of economic distress is wise, prudent or in the public interest.

As noted in the previous section, the recent substantial percentage increase in package volume does not prevent this from occurring because the absolute number of packages is small compared to the much larger volumes of First-Class and USPS Marketing Mail. Compare the following volumes and revenues in FY2019:[15]

Class	Volume (in 000's)	Revenue (in 000's)
First-Class Mail	54,943,277	$24,434,279
USPS Marketing Mail	75,690,047	$16,407,116

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[14] *Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement*, Docket No. RM2017-3, at 37 (Feb. 3, 2020).

[15] Docket No. ACR2019, PRC FY19 Summary LR-1 (Tab Market Dominant Mail Summary & Tabs Package Services & Competitive Mail Summary). Although unclear, it appears that recent Postal Service public reports on "package" volumes may be limited to Competitive products. However, the small number of packages still classified as market-dominant are presented here for completeness.

with the Postal Service's package volumes:

Product	Volume (in 000s)	Revenue (in 000's)
Total M-D Package Servs	621,696	$842,420
Domestic Priority Express	26,163	$716,187
First-Class Package	1,398,204	$4,466,212
Domestic Priority Mail	1,085,277	$9,463,723
Total Ground	2,997,115	$7,270,789

Total FY2019 First-Class Mail and Marketing Mail volumes sum to 130,633,324 pieces (in 000s). The cumulative volume of the package services in the second table is merely 6,128,455 pieces (also in 000s). In other words, First-Class and Marketing Mail combined had more than *21 times* the volume of packages.

To illustrate the effect of these relevant volumes on the proposed density factor, assume that full-year FY2020 First-Class Mail volume declines by 10 percent compared to FY2019 and Marketing Mail by 33.3 percent. In pieces, those would amount to declines of 5,494,327,700 and 25,230,015,667, respectively, or 30,724,343,367 in total. That total alone is *five times* the total volume of *all* Postal Service package services in FY2019. If the density formula were adopted as proposed, the Postal Service would have to *quintuple* its package business volume to offset the declines in First-Class and Marketing mail volumes and maintain the current density per delivery point. Although the Postal Service has experienced remarkable growth in package services during the COVID-19 pandemic, it has yet even to double its FY2019 performance.

But taking unit contribution into account paints a different picture. The following table presents the unit contributions by class (using FY2019 data):

	Unit Contribution
First-Class Mail	$0.22
Marketing Mail	$0.061
Periodicals	-$0.145
Package Services	-$0.042
Competitive	$1.40

One Competitive package on average offsets the contribution lost from about 6.3 pieces of First-Class Mail, or from nearly 23 pieces of Marketing Mail.

A density adjustment that considers only pieces and not contribution is unreasonable.

Consider again the example above of a 10 percent drop in First-Class volume in FY2020 from FY2019. Using the average unit contributions, the same 10 percent drop in First-Class Mail volume would cause a loss of $1,208,752,094 in contribution. To offset that contribution loss per delivery point, Competitive product volume would need to grow by 863,394,353 pieces.[16] That is about a 14 percent volume increase in Competitive products, a much more likely possibility than the quintupling that would be required under the formula as proposed. Larger, but still feasible, increases in Competitive product volume would be required if Marketing Mail volumes are included.

16 $1,208,752,094/$1.40 contribution per piece.

This can be generalized. If one holds mail mix within products, delivery points, and institutional cost share constant, as long as the volume of Competitive mail increases by more than 8.5 percent of the amount by which market-dominant volumes decrease, the Postal Service would actually increase contribution for the year. That is because the FY2019 unit contribution of Competitive products was $1.40 and that of market-dominant mail was $0.119, which is 8.5 percent of $1.40. Even if absolute volume declined (which would always generate supplemental rate authority under the proposal), it is readily possible for net contribution to increase anyway.

Furthermore, the changes in the mailstream during the pandemic bring to the forefront possible scenarios in which the proposed formula could actually fail to achieve its goal. For example, suppose in FY2021 First-Class and Marketing mail volume both increased by 500 million pieces, while Competitive product volumes were to decline by 500 million pieces.[17] This would be a net financial loss to the Postal Service but would yield no density rate authority because the "density" per delivery point would increase. This failure to achieve the intended result means that the formula is not reasonably designed.

This scenario is certainly plausible. Given the precipitous volume declines observed in the past few months, a rebound in market-dominant mail is readily foreseeable as the economy recovers, while some consumers may return to brick and mortar stores. For example, financial card companies may issue more credit cards and

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[17] For simplicity, the density calculations herein all assume no change in the number of delivery points.

retailers and restaurants may resume advertising. The pandemic makes the one-sidedness of the proposed approach appear even more arbitrary.

Compounding the importance of this issue is that, as previous comments addressed,[18] the proposed density factor would work in only one direction – to increase rate authority when density declines. It would not reduce rate authority if density increases. Thus, any additional rate authority due to the density factor based on FY2020 volumes would remain permanently in the rate base even if density increased in FY2021 or thereafter.

Finally, the Commission also should consider the price elasticity implications of permanent increases of the magnitude that the density factor would allow. Previous comments in this proceeding have pointed out that it is unknown whether the Postal Service's current price elasticity estimates would have any accuracy at potential price increases much above inflation, because increases of that magnitude would far exceed the historical range upon which the Postal Service's demand model estimate is based.[19] The alarming volume declines that the Postal Service has seen in the past three months magnifies the importance of having a solid understanding of the potentially harmful volume consequences of rate increases driven by the density formula.

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[18] *Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement*, Docket No. RM2017-3, at 38-39.

[19] *Id*. at 23. The Postal Service's demand models have used a real price increase of essentially zero, because rate increases under the statutory price cap have tracked inflation except for the period of the exigent surcharge. It should be noted that the Postal Service was surprised by unexpected volume declines in FY2017, although that was the first year in which strategies implemented by mailers to avoid the effects of the exigent surcharge took effect. Those volumes have not returned to the mailstream.

Whatever its merit as a proposal designed during a period of slow but steady declines, the density factor would have permanent negative consequences on the Postal Service and the mailing industry if applied to a much different postal volume mix and if unadjusted for unit contributions**.** The Commission should take the current changed circumstances into account before making changes to the system for regulating market-dominant rates.

III. THE COMMISSION NEEDS TO REEVALUATE THE PREMISE OF THIS PROCEEDING IN LIGHT OF THE CARES ACT

The CARES Act became law on March 27, 2020, after the comment period closed in this proceeding. The Act included the most significant legislation affecting the Postal Service since the PAEA. In the CARES Act, Congress made available to the Postal Service $10 billion in additional borrowing authority, on terms to be negotiated with the Department of the Treasury. This post-comment development is directly relevant to the Commission's conclusions regarding liquidity and the Commission should take this changed circumstance into account.

The availability of these funds undercuts a premise of the proposals in the *Revised NPRM*, as well as in Order No. 4257, which provides the premise for the Commission's proposals to revise the current system. *See, e.g., Order No. 4257* at 176-178 (Dec. 1, 2017). The availability of this newly granted liquidity obligates the Commission to reevaluate its conclusions in light of this significant changed circumstance.[20]

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[20] Indeed, the Commission has indicated that it would reassess its regulations if Congress enacts legislation affecting the Postal Service. *See RNPRM at 243.* Although the Commission in Order No. 5469 (at 3) "decline[d] to take official notice of the CARES Act," the Commission cannot fail to consider a duly enacted change in the law that directly pertains to an issue that its proposals are intended to address

As of this writing, the Postal Service has not requested those funds, so the actual terms are yet to be known. But $10 billion of liquidity is now available to the Postal Service that was not available when the Commission issued Orders Nos. 4357, 4359, and 4337. It would be arbitrary for the Commission to ignore this change in the law governing the Postal Service finances. The Commission should not proceed before seeing whether, and on what terms, the Postal Service accesses this additional $10 billion in liquidity, and without reconsidering its initial conclusions in Order No. 4357 in light of this material new change in the law.

IV. CONCLUSION

The Postal Service and Commission's approach to nearly every problem in recent years has been to raise rates. But the economic turmoil and precipitous volume declines observed in the past two months and recent legislative action demand a fresh look. The Commission should not consider adopting proposals that would discourage mailers of market-dominant products from returning either during or after the pandemic.

Accordingly, the undersigned parties respectfully, but strongly, urge the Commission to take into account the significant changes in the mailstream since the issuance of the *Revised NPRM*, including its implications on the proposed density factor, and the enactment of the CARES Act, and consider these supplemental comments.

– the Postal Service's liquidity. *E.g., United States Sugar Corp. v. Environmental Protection Agency*, 830 F.3d 579, 606 (D.C. Cir. 2016). Furthermore, the current Congress is likely to consider relief for the Postal Service in any further responses to the pandemic.

Respectfully submitted,

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