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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 MOTION FOR STAY PENDING JUDICIAL REVIEW
(January 4, 2021)

On December 28, 2020, a group of mailing-industry associations (collectively, "Mailers") asked the Commission to stay the effective date of Order Nos. 4257 and 5763 pursuant to 5 U.S.C. § 705 while their petition for judicial review is pending.[1] A stay is not warranted here, however, and so the Commission should deny the motion.

I. THE STANDARD OF REVIEW

In evaluating motions to postpone an effective date pending judicial review pursuant to 5 U.S.C. § 705, the Commission has adopted the four-part preliminary injunction test articulated in *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958), because the test "is consistent and overlaps with the factors the Commission has historically considered when determining whether a stay is appropriate." Order No. 2075, Order Denying Stay and Establishing Schedule for Reporting Requirements, PRC Docket No. R2013-11 (May 2, 2014), at 8. Specifically, the Commission considers: (1) the movant's likelihood of success on the merits of the

[1] Motion for Stay Pending Judicial Review by the Alliance of Nonprofit Mailers, the Association for Postal Commerce, MPA–The Association of Magazine Media, National Postal Policy Council, Major Mailers Association, and the American Catalog Mailers Association, PRC Docket No. RM2017-3 (Dec. 28, 2020) [hereinafter "Motion"].

appeal; (2) the irreparable harm to the movant without a stay; (3) the irreparable harm to other parties if a stay is granted; and (4) the public interest. *Id.* at 7-9.

As the moving party, the Mailers bear the burden of persuasion and must make a clear showing that all four factors weigh in favor of an injunction. *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014). Because injunctive relief is an extraordinary "intrusion into the ordinary processes of administration and judicial review," it "accordingly is not a matter of right, even if irreparable injury might otherwise result." *Nken* v. *Holder*, 556 U.S. 418, 427 (2009) (internal quotation marks and citations omitted).

The D.C. Circuit has treated the first factor (likelihood of success on the merits) as "a key issue – often the dispositive one," *Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dep't of Hous. & Urban Dev.*, 639 F.3d 1078, 1083 (D.C. Cir. 2011) (citing *Munaf v. Geren*, 553 U.S. 674, 690 (2008)), and a "foundational requirement," *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 10 (D.C. Cir. 2019), and accordingly has declined to consider the remaining three factors if a party cannot demonstrate a likelihood of success on the merits. *See id.* (citing *Arkansas Dairy Coop. Ass'n v. United States Dep't of Agric.*, 573 F.3d 815, 832 (D.C. Cir. 2009)); *Greater New Orleans Fair Hous. Action Ctr.*, 639 F.3d at 1088.

As explained below, the Mailers have failed to demonstrate that they are likely to succeed on the merits, much less carried their burden on the remaining factors. Accordingly, the Commission should deny the Motion.

II. THE MAILERS' PETITION FOR REVIEW IS UNLIKELY TO SUCCEED

The Mailers proffer two merits arguments: that the Commission misconstrued Section 3622(d)(3) as empowering it to modify or replace the initial price cap and

thereby exceeded (what the Mailers allege to be) its statutory authority, and that the Commission acted arbitrarily in deciding that above-inflation pricing authority was warranted. Both arguments should fail on the merits.

A. Section 3622(d)(3) Expressly Authorizes Modification or Replacement of the Initial Price Cap

The Mailers continue to assert their incorrect statutory interpretation of Section 3622, which has continually, and appropriately, been rejected by the Commission. The plain language of Section 3622(d)(3) clearly demonstrates both that the current price cap structure is within the scope of the "system" that the Commission is to review, and that the Commission is broadly authorized to replace the current price cap structure with whatever regulatory structure it deems necessary to achieve the objectives. *See generally* U.S. Postal Serv., Rebuttal of White Paper Concerning Commission Authority Under 39 U.S.C. § 3622(d)(3), *filed as* Comments of the United States Postal Service, PRC Docket No. RM2017-3 (Mar. 20, 2017) [hereinafter "USPS 2017 Comments"], app. A.

Moreover, only by ignoring most of the Commission's textual analysis can the Mailers reduce it to an observation that Section 3622(d)(3) follows paragraphs (d)(1) and (2). *See* Motion at 3 (claiming that the initial price-cap limitation was discarded "simply because" of this point, and citing Order No. 5763, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, PRC Docket No. RM2017-3 (Nov. 30, 2020), at 42-43). In fact, the point about the statutory paragraphs' sequence consists of three sentences amid a much larger discussion on the plain meaning of the words used in paragraph (d)(3), both on their own terms (as evidenced by dictionary definitions) and in contrast with Section 3622(a). Order

No. 5763 at 40-46.[2] The point about sequence is but one (relatively minor) point among many that the Commission articulates in finding clear statutory support for its authority to modify the price cap.

The Mailers' other textual arguments are unavailing. The Mailers' purported contrast between Section 3622(d)(3) and (d)(1)(E), Motion at 3, fails to account for the two provisions' markedly different functions: one is a safety valve from the CPI-only price cap during the initial period when that cap was statutorily mandated, and the other delegates broader authority to the Commission to modify or replace the entire ratemaking system (price cap and safety valve alike). *See Ass'n of Oil Pipe Lines v. FERC*, 281 F.3d 239, 244 (D.C. Cir. 2002) (distinguishing such a safety valve from the prospect of "systemic errors" in the default price cap). And as the Commission has already explained, the lack of a sunset date for the CPI-only price cap is not telling, but only logical, given that the Commission's authority encompassed, in theory (albeit under a different set of facts), the possibility of maintaining the legacy price cap. *Compare id.* at 4 *with* Order No. 5763 at 50; Order No. 5337, Revised Notice of Proposed Rulemaking, PRC Docket No. RM2017-3 (Dec. 5, 2019), at 40-41.

Because the Mailers' arguments about legislative history and constitutionality depend on their mistaken reading of paragraph (d)(3)'s plain language, those arguments likewise fall with their flawed premise. Far from "overrid[ing] the statutory text," Motion at 4, the floor statement of a key Congressional sponsor explaining the

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[2] Moreover, the Commission's point is not "simply" that paragraph (d)(3) follows (d)(1) and (2) and that sequence should matter as a general proposition. It is that the specific structure of subsection (d) as a whole is cumulative: paragraph (d)(2) builds upon and modifies paragraph (d)(1), and so – in addition to the other textual cues apparent within paragraph (d)(3) – it stands to reason that paragraph (d)(3) further builds upon and modifies both paragraphs (d)(1) and (2). Order No. 5763 at 43.

nature of the legislative compromise underlying Section 3622 agrees with the properly understood plain meaning of the text (or, at the very least, further supports a reasonable construction of ambiguous text). Order No. 5763 at 36, 61-65; Order No. 5337 at 45-47; Order No. 4258, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, PRC Docket No. RM2017-3 (Dec. 1, 2017) at 22-23.[3] And the Commission is not unconstitutionally rewriting a statute, *see* Motion at 4, but effectuating Congress's intent in expressly charging the Commission with modifying or replacing the initial price-cap system as necessary to achieve objectives specified by Congress. *See* Order No. 5337 at 54-57; Order No. 4258 at 24-25.[4] There is nothing remarkable, much less unconstitutional, about Congress having given the Commission such authority.

B. The Mailers Present No Valid Reason to Doubt the Need for Above-Inflation Pricing Authority

In trying to portray the Commission's orders as arbitrary and capricious, the Mailers present arguments that are unsupported, inapposite, and self-contradictory. The Mailers assert that the Commission "failed to establish that the Postal Service

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[3] Only by the narrowest literalism can the Mailers assert that Senator Susan Collins's floor statement "did not claim that section (d)(3) could abrogate" the CPI-only price cap. Motion at 4. While she did not utter those precise words, her understanding to that exact effect is nonetheless clear. *See* 152 Cong. Rec. S11,674, S11,675 (daily ed. Dec. 8, 2006) (statement of Sen. Collins) (referring repeatedly to the new statute's provision of a CPI-only price cap for ten years, followed by a Commission review and decision as to whether "to continue with a CPI rate cap in place" or whether it should "expire[ ]," subject to Congressional reimposition).

[4] The Mailers also object that Section 3622(d)(3) does not permit the Commission to "ignore" the factors in subsection (c) and the workshare ceiling and exceptions in subsection (e). Motion at 4. The basis for this assertion is not clear. The Commission has accounted for subsection (c)'s factors (which is all that paragraph (d)(3) requires) in its interpretation and application of the objectives, *see generally* Order No. 4257, Order on the Findings and Determination of the 39 U.S.C. § 3622 Review, PRC Docket No. RM2017-3 (Dec. 1, 2017), and the new rules preserve subsection (e)'s ceiling and exceptions. *Compare* 39 U.S.C. § 3622(e) *with* Order No. 5763 at 200, 224 & att. at 51-58. Whatever the Mailers' specific concern may be regarding the Commission's treatment of subsections (c) and (e), they fail to articulate it, let alone carry their burden of persuasion.

suffers from a revenue problem rather than a cost control problem." Motion at 5. Nothing in Section 3622(d)(3) requires the Commission to satisfy such a burden, however. Rather, revenue adequacy is expressly part of the statutorily-required analysis.

Section 3622(b) requires consideration of whether the ratemaking "system" failed to "assure adequate revenues, including retained earnings, to maintain financial stability" (Objective 5) and to maintain "reasonable" (i.e., compensatory) rates (Objective 8). And that stands to reason: net losses are a function of both revenues and costs, and so it is "overly facile," Order No. 5763 at 341, to insist on binary categorization as a "revenue problem" or a "cost control problem." If revenues are less than costs, it is no truer that costs are too high than that revenues are too low.

To the extent that costs are part of the statutory analysis, it is in terms of whether the ratemaking system "maximize[d] incentives to reduce costs and improve efficiency" (Objective 1), taking into account the numerous legal constraints on the Postal Service's control over its costs (Factor 14). Paradoxically, the Mailers claim both that the legacy "strict" CPI-based price cap "was designed to encourage" efficiency – supposedly more so than the revised price cap – and also that the unbroken (and continuing) streak of multi-billion-dollar losses since the Great Recession is somehow solely a "cost control problem." Motion at 5, 6. Leaving aside its debatable premises, the Mailers' own logic leads inexorably to two potential conclusions, either of which wholly undercuts their arguments: (1) the legacy price cap must have failed colossally at encouraging efficiency, or (2) the Postal Service's financial woes happened despite, not because of, its cost-control efforts, and so revenue insufficiency must play a role after all. If the

supposed incentives of a "strict" cap have thus far drastically outstripped the Postal Service's ability to make good on those incentives, it is difficult to see how perpetuating such austerity could somehow achieve the opposite result, rather than the more predictable result of further deepening a history of red ink.

In arguing against compensating for even cost drivers clearly outside of the Postal Service's control, the Mailers do not (as they cannot) dispute the fairness or reasonableness of doing so or its consistency with established principles of price-cap regulation; rather, they seek austerity for its own sake, as if to somehow finally wring blood from a stone. Motion at 6. This sort of argument is not one likely to succeed, to say the least. *Ass'n of Oil Pipe Lines*, 281 F.3d at 244 (observing that the existence of a price cap, and not its specific level, is what theoretically incentivizes cost control, and rejecting the "lower is better" justification because it "seems to have no end and little connection to any stated purpose."). In any event, cost-control incentivization is not the sole object of Section 3622 rate regulation. Rather, rates must also be adequate to cover costs and to provide financial stability, 39 U.S.C. § 3622(b)(5), (b)(8), which they patently are not, as the Commission rightly concluded.

Moreover, the record disproves the Mailers' sole attribution of Postal Service losses to a "cost-control problem." Independent experts engaged by both the Postal Service and the Commission reported that remaining cost-savings opportunities are far too slim to close the gap in the Postal Service's finances. Order No. 5763 at 340-41. Not only do the Mailers fail to contend with this record evidence, they do not (and

cannot) point to any record evidence demonstrating the availability of cost-savings opportunities large enough to negate the need for additional revenue from pricing.[5]

Finally, the Mailers' specific challenge to the density rate authority appears to be based on a misunderstanding of how the density rate authority works. The density rate authority is not based merely on "unit cost increases in market dominant products without concern for the Postal Service's overall financial condition." *See* Motion at 6. Under the very conditions described by the Mailers – market-dominant volumes are falling while competitive volumes are rising (or perhaps eventually falling more slowly) – the density rate authority would, in fact, be based on both market-dominant and competitive volumes, thereby reflecting both trends' influence on average unit costs across the entire mail system. Order No. 5763 at 78, att. at 27. And although it does not capture changes in the mail mix's overall ability to cover costs by accounting for revenue or contribution, the formula implicitly accounts for at least one measure of the differing weight due to market-dominant and competitive products, in terms of their relative cost elasticities. *Id.* at 94-95, app. A at 10.[6] Whatever other flaws and

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[5] The Mailers also suggest that additional revenue is not needed to fund efficiency-improving capital investments, because "the Postal Service [is] now sitting on nearly $25 billion in liquidity." Motion at 6. As discussed in section IV below, this is both false and immaterial. Forty percent of that figure – the $10 billion in theoretical borrowing authority under the CARES Act – is not yet available and cannot be used to fund capital investments in any event. More broadly, under the Commission's rubric in Order No. 4257, liquidity is relevant only to the Commission's metric for "short-term financial stability," which it deemed the legacy system to have satisfied. *See* Order No. 4257 at 163-65. The Objective 5 problem to be solved relates to net income and retained earnings, neither of which is a function of liquidity. *See id.* at 165-71. And in any event, maintaining an adequate cushion of liquidity is necessary for purposes beyond capital investment, particularly for an organization with severe financial difficulties.

[6] It is surprising that the lack of revenue- or contribution-weighting should feature in the Mailers' case for judicial review, given the Mailers' silence on the issue during multiple comment opportunities – even as the issue was discussed by other commenters and the Commission. *See* Opposition of the United States Postal Service to Motions for Late Acceptance of Supplemental Comments, PRC Docket No. RM2017-3 (July 13, 2020), at 6-7. As such, the Mailers are unlikely to succeed on that argument because they have waived it. *E.g.*, *Lake Carriers' Ass'n v. EPA*, 652 F.3d 1, 7 (D.C. Cir. 2011).

deficiencies the density rate authority may have, the Mailers' particular critique is off-base and therefore unlikely to succeed.

III. THE MAILERS HAVE NOT CARRIED THEIR BURDEN AS TO THE REMAINING FACTORS

Under the D.C. Circuit precedent discussed above, the Mailers' failure to demonstrate any likelihood of success on the merits, let alone to a clear and persuasive degree, should prove fatal to extraordinary relief. Nor is there any other basis for exceptional relief here, since the Mailers have failed to carry their burden as to any other factor.

A. The Mailers Have Not Clearly Shown a Degree of Injury Sufficient to Warrant a Stay

The Mailers' irreparable-harm argument depends entirely on the eventuality that the new rules may be invalidated and that any price changes under those rules may be declared unlawful. Motion at 7-8. As related in the previous section, however, that eventuality is unlikely to materialize. Furthermore, the Mailers' concern for "severe price spikes" "devastating . . . businesses and organizations," *id.* at 8, is entirely speculative. It is accompanied by no quantitative indication of the relative role of postage expenses in mailers' budgets, such as might enable an evaluation of impact. Even then, of course, the exercise would remain speculative, as it would be based on sheer supposition about specific Postal Service pricing decisions relating to authority that the Commission has not yet even determined. *See id.* at 11 (acknowledging the need for a Commission determination of pricing authority, a Governors' decision about prices, and further Commission proceedings before any price increase can take effect, and predicting that this would not happen before this summer). The Mailers are not harmed,

let alone irreparably, by the Commission's rules themselves or the computation of the pricing authority available under those rules.

Moreover, this line of argument runs headlong into the Mailers' simultaneous speculation that any new prices would be in effect for, at most, only a "limited" matter of "months" before a court ruling. *Id.* at 11. It is hard to see how the same period of overlapping price increase and judicial review could be short enough to avoid material harm to the Postal Service, yet long enough to drive mailing businesses and organizations to ruin. As discussed in the next section, the speculation about a short overlap period is questionable, but the burden of persuasion belongs to the Mailers, and the point here is simply that their self-contradictory Motion falls far short of carrying it.

B. The Motion Fails in its Effort to Downplay the Harm of a Stay

The Motion asserts two bases for supposing that a stay would cause minimal harm: the Postal Service is supposedly resting on ample liquidity, to the tune of $25 billion, and a stay would merely delay a price increase by a few months. *See* Motion at 9-11. Neither argument is persuasive.

First, "the nearly $25 billion in liquidity the Postal Service [supposedly] now holds," *id.* at 10, includes $10 billion that the Postal Service does not actually hold. Section 6001(b) of the CARES Act, Pub. L. No. 116-136 (2020), permits the Postal Service to borrow up to that amount only upon terms and conditions agreed to by the Department of the Treasury ("Treasury").[7] The Postal Service and Treasury have not yet agreed on the terms and conditions of borrowing. *See* U.S. Postal Serv., FY2020

[7] In other words, the notion that access to the borrowing authority is solely a function of the Postal Service's assessment of its ability to fund operating expenses, Motion at 10 n.4, is demonstrably false.

Form 10-K at 48. As such, the Postal Service has not yet been able to use any, let alone all, of the potential borrowing authority. That Congress recently abolished the need to repay any eventual loans does nothing to make the money more available in the first place, nor did it alter the statutory limitations on the use of those funds. *See* H.R. 133, 116th Cong. div. M, § 801 (2020). As such, even if the Postal Service were able to access that money, it could not be counted among resources with which to "fund major improvements." *Compare* Motion at 10 *with* Pub. L. No. 116-136, § 6001(b)(1)(A) (permitting CARES Act funds to be used only for operating expenses).

As for liquidity actually available as of the turn of the fiscal year, even that is overstated in the Motion. The $14.4 billion start-of-year cash balance amounts to little more than two months of operating expenses,[8] an amount far below the level that uncontroverted record evidence attested should provide a reasonable cushion for an organization like the Postal Service. *See* Evercore, United States Postal Service: Defining Financial Stability (2017), at 44-46, *filed as* USPS 2017 Comments, app. B. The inadequacy of current liquidity is all the more palpable in light of the Postal Service's comparably distressed financial state and outlook, its cost-control and revenue constraints, and the fact that it has preserved even this scant liquidity only by accumulating a far greater backlog of unpaid bills. And the cushion would only become smaller if the Postal Service were to accelerate capital spending, as the Mailers suggest. *Compare* Motion at 10-11 *with* U.S. Postal Serv., FY2020 Form 10-K at 51 (announcing planned capital spending of only $2.0 billion in FY2021 and an average of

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[8] *See* U.S. Postal Serv., FY2020 Form 10-K at 45 (average daily liquidity of $13.2 billion in FY2020 amounted to 66 days of operating expenses).

$2.5 billion over FY2022-FY2025), *and* Postal Regulatory Comm'n, Financial Analysis of United States Postal Service Financial Results & 10-K Statement, Fiscal Year 2019 (May 7, 2020), at 30 ("The Postal Service continues to limit its capital expenditures to necessary safety, customer support, and high-return investments.").[9]

The Mailers go on to downplay the duration of any stay, portraying any period between a potential price increase and resolution of judicial review as "limited" to "only" "several months." Motion at 11. On its face, whether "several months" qualifies as "limited" is subjective. As noted earlier, the Motion contradicts itself in portraying the same revenue shift during the same period as at once mild and drastic, depending on whose harm is at issue. That said, there is no guarantee as to how long the court may take to resolve cases filed by multiple parties on an administrative record spanning four years and thousands of pages.[10]

Even if judicial review is concluded expeditiously, a stay could cause real, lasting harm to the Postal Service and the public. Importantly, the Mailers are asking for a stay not of whatever price increase the Postal Service may eventually file, but of the rules themselves. If the rules did not take effect for another year, then the Postal Service very well could miss out on an entire year of additional rate authority – a loss made all

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[9] Detracting further from the Mailers' credibility is the fact that its representation of "historical levels" of capital spending is based on FY2011-FY2015, the precise period when such spending was at its lowest ebb as the Postal Service began cancelling and deferring capital improvements to conserve liquidity. *Compare* Motion at 10-11 *with* USPS 2017 Comments at 89. *See also* U.S. Postal Service Off. of the Inspector Gen., RARC-WP-16-009, Peeling the Onion: The Real Cost of Mail (2016), at 2, 4-5, 14-16 (finding that FY2015 capital expenditures were one-half of 2006-2007 levels, well below UPS and FedEx's inflation-adjusted capital expenditures, and lagging behind depreciation and amortization of the Postal Service's assets).

[10] As a point of comparison, in January 2014, the Postal Service and various of the Mailers filed cross-petitions for review of the Commission's December 2013 order in the so-called exigent case. The court did not issue its decision until seventeen months later. *See generally Alliance of Nonprofit Mailers v. Postal Regulatory Comm'n*, 790 F.3d 186 (D.C. Cir. 2015).

the more acute by the fact that, without density rate authority based on FY2020, the acceleration in average unit-cost increases due to COVID-related volume declines would remain uncompensated.[11] The Commission held four years ago that the legacy CPI-only price cap failed to assure adequate revenues for "medium-" and "long-term" financial stability, despite the Postal Service having managed to sustain operations (per the Commission's notion of "short-term" financial stability). Order No. 4257 at 163-71. Regardless of whether Order No. 5763 is adequate to correct that problem, that is no reason to further defer any effort at correction. A patently noncompliant ratemaking system has already forced the Postal Service to suffer nearly fourteen years of net losses, insufficient investment, and mounting unpaid bills, with consequential harms to the American public's confidence in and financial stability of its postal system. With the harms long since recognized and a partial remedy now in hand, there is no reason to allow those harms to persist into the future without any effort to address them.

C. A Stay Would Not Serve the Public Interest

By now, it should be clear that the Commission has not "exceeded its statutory authority." Motion at 13. To the contrary, the statutory scheme would be offended by further, unwarranted delay in enacting measures "necessary to achieve the objectives" that the legacy ratemaking system has failed to achieve. 39 U.S.C. § 3622(d)(3).

[11] Even if the request were not to stay the rules, but only to stay price increases under them, the Postal Service would still suffer significant harm. The retirement rate authority cannot be banked; rather, after twelve months of disuse, it lapses and all future increments of retirement rate authority are forfeited. Order No. 5763, att. at 29-30, 37. Even if the Commission were to waive those constraints allow the Postal Service to use all FY2020-based rate authority at a lag, the Postal Service would still have missed out on the accrual of incremental revenue from this and other new forms of pricing authority during the interim. That incremental revenue is valuable not only because of the time-value of money, but also because it would result from the application of the same percentage pricing authority to a higher volume base (because market-dominant volumes can reasonably be expected to be lower in the future, when a deferred price increase might take effect).

And the Mailers' account of harm to postal users who may eventually have to pay higher prices, Motion at 13, is too nebulous to be cognizable. Undetermined at this time is whether, when, and by what amounts postal prices would increase under the new rules. Here, too, the Mailers' argument amounts to "lower is better," an argument that "seems to have no end" and is therefore arbitrary. *Ass'n of Oil Pipe Lines*, 281 F.3d at 244. If the current, artificially low rates harm mailers less than higher rates, then even lower rates would be even less harmful to mailers, and so on, until the only truly harm-avoiding option is to make mail free for all. The problem with this entire slippery slope is that the postal system is not cost-free; someone must pay for it. Absent public funding, the only other option is precisely what Congress provided: a ratemaking system that is reasonably compensatory and adequate to provide for the postal system's current and future needs. 39 U.S.C. §§ 404(b), 3622(b)(5), (b)(8).

Seen properly in this light, the public is not harmed by correcting unlawfully and unfairly low rates. To the contrary, failing to do so would harm the mailing and taxpaying public by prolonging the Postal Service's financial instability, and it would continue to unfairly privilege current ratepayers at the expense of future postal users who would benefit from the sort of investments that a more stable Postal Service could make. Although the new forms of ratemaking authority will not be sufficient to achieve the objective of financial stability, they will help to mitigate further worsening of the problem. Conversely, a stay would perpetuate and deepen the harm that the American public has already suffered from a financially troubled postal system and would continue to put the future financial stability of the Postal Service at risk.

IV. CONCLUSION

The Motion presents no arguments that are likely to succeed on the merits. The Mailers fail to make a clear, persuasive showing of irreparable injury and misstate the risk of harm to the Postal Service and the general public. For these reasons, the Commission should deny the motion.

Respectfully submitted,

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