

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

PERFORMANCE INCENTIVE MECHANISM

Docket No. RM2021-2

**MOTION OF THE UNITED STATES POSTAL SERVICE TO
HOLD PROCEEDING IN ABEYANCE**

(June 24, 2021)

This proceeding concerns whether to provide performance-based incentives atop a foundation of the supplemental rate authority provided by the Commission pursuant to Order No. 5763, which is currently the subject of four petitions for review before the U.S. Court of Appeals for the District of Columbia Circuit. Now that the principal briefs have been filed in those review proceedings, it is clear that the propriety and amount of the supplemental rate authority, and thus the foundation for any further performance-based incentives, is hotly contested. For this reason, commenters likewise lack a clear foundation on which to construct arguments and proposals for additional rate authority.

Performance incentive mechanisms exist in the context of utility rate regulation, and it is universally presumed that a regulated utility is achieving positive net income – profits – in the first instance. After all, if a universal service provider is fundamentally insolvent, then its future as a going concern is at risk, and withholding revenue can only make matters worse. Indeed, the Commission's interest in a performance incentive mechanism coincided with its original proposal of supplemental rate authority aimed at covering the Postal Service's total costs: thus, the performance incentive mechanism would have affected retained earnings, and not merely the relative depth of the Postal

Service's insolvency.¹ However, the Commission acknowledges that the rate authority in its final order would not "allow the Postal Service to raise rates to a level sufficient to cover all of the Postal Service's costs."² Regardless of whether that decision was justified, which is a topic of the pending petitions for judicial review, it certainly impacts the foundation for a performance incentive mechanism and the underpinnings of any pricing authority explicitly aimed at producing retained earnings.

Given the pending petitions for judicial review of Order No. 5763, no one can say for certain whether that order, which establishes the foundation upon which any performance incentive mechanism would rest, will be upheld, reversed, or modified following the court's review. Any of those outcomes would affect the basis for evaluating any further pricing authority, including the propriety (and contents) of a performance incentive mechanism. By way of example, if the Court of Appeals were to uphold the additional forms of rate authority that the Commission provided in Order No. 5763, but remand the case for consideration of the extent to which market-dominant rates must reasonably ensure positive net income, commenters' and the Commission's perspectives on still other potential rate authority and a conditional mechanism would be very different than if the Court of Appeals were simply to affirm the Order. It would therefore be a much more efficient use of Commission, Postal Service, and other stakeholder resources to wait until after the judicial-review proceeding is resolved before discussing how any further pricing authority should be structured.

¹ 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 39–55.

² *Nat'l Postal Policy Council et al. v. Postal Regulatory Comm'n*, Nos. 17-1276, 20-1505, 20-1510, & 20-1521, Initial Brief for Resp. at 52 (D.C. Cir. filed June 14, 2021).

Accordingly, the Postal Service respectfully urges the Commission to hold this proceeding in abeyance until the resolution of the pending appeals of Order No. 5763.

The Postal Service anticipates that no party will be prejudiced in the meantime.

Respectfully submitted,

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