Postal Regulatory Commission
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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-001

Exigent Request, 2010	:	**Docket No. R2010-4**

COMMENTS OF THE AMERICAN BANKERS ASSOCIATION

(August 17, 2010)

I. Introduction

In its Notice and Order Concerning Rate Adjustment For Extraordinary or Exceptional Circumstances (Order), issued July 8, 2010, the Postal Regulatory Commission (Commission) solicited comments pursuant to its determination schedule. Specifically the Commission asked that comments address, among other things, (1) the sufficiency and justification for the increase; (2) the adequacy of the justification; and (3) whether the adjustments are reasonable and equitable.[1]

The American Bankers Association (ABA) welcomes the opportunity to provide comment on the USPS proposal requesting an exigent rate increase in market-dominant products. The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

[1] Notice and Order Concerning Rate Adjustment for Extraordinary or Exceptional Circumstances, Order No 485, July 8, 2010, 7.

Congress provided for Postal rate exigency increases as an exception and not as an easily available remedy. As such, the Commission should clearly identify the standard of review of exigency cases, and further establish the level of scrutiny by which future cases will be deliberated. It is the ABA's position that the proposed rate strategy does not comply with the requirements of 39 U.S.C. 3622, and that First-Class Bulk Mail and Standard Letter Mail places an unusual inequitable burden on its member banks.

Additionally, the ABA believes that even if the Commission were to find in favor of exigency, the proposed remedy would not provide the USPS with the revenue it requires, notwithstanding the holistic strategy proposed by the USPS in it official request. In fact the rate increases will cause significant mail diversion resulting in less revenue and not more. Finally, the Commission should urge the Postal Service to exhaust all remedies immediately available, including funding issues connected to health and retirement benefits.

It is the ABA's position that the proposed rate strategy does not comply with the requirements of 39 U.S.C. 3622, and that recommended pricing increases to First-Class Bulk Mail and Standard Letter Mail place an unusually inequitable burden on ABA member banks. Additionally, the ABA believes that if the Commission were to find that exigent circumstances do in fact exists, the proposed remedy would not provide the USPS with the revenue that it requires, notwithstanding the holistic strategy proposed by the USPS in it official request. In fact the rate increases are likely to cause significant mail diversion resulting in less revenue, and not more. Finally, the Commission should urge the Postal Service to exhaust all remedies that are immediately available, including funding issues connected to health and retirement benefits.

II. Discussion

A. An Exigency Finding Requires Significant Analysis With Reliance on Existing Statutory Authority, Including the Requirement that the Remedy Provide the Postal Service with the Revenue it Needs to Operate Efficiently

According to 39 U.S.C.3622 (d)(1)(E), a determination of exigency is made following a multi-prong analysis.[2] While the present exigency rate increase request filed by the USPS presents a case of first impression for the Commission, it (the Commission) is not without some guidance from the statute and regulations as to how to proceed. Pursuant to the statute, if there is a situation in which there is not sufficient unused rate authority, rates can be adjusted on an expedited basis, "due to extraordinary and exceptional circumstances."[3] Rate adjustments are to achieve a number of objectives, including the need to provide the Postal Service with adequate revenue, and to ensure that institutional costs are appropriately allocated between market dominant and competitive products.[4] Furthermore, the Commission must adhere to the established factors that govern the rate regulatory system.[5] It is the ABA's position that these factors are not excepted under an exigent rate increase analysis.

Neither the statute nor accompanying regulations define the terms "extraordinary," "exceptional," or "exigency," nor is it clear upon what standards the Commission will rely in making its determination. An analysis of these terms under common meaning would indicate "[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures."[6] The USPS in its official request cites the unprecedented drop in

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[2] 39 U.S.C. 3622 does not use the term "exigency" but instead the phrase "extraordinary and exceptional circumstances." The term "exigency" is first used in 39 C.F.R. 3010.60, but is not defined.
[3] 39 U.S.C.3622 (d)(1)(E)
[4] 39 U.S.C. 3622 (b) (5) and (9)
[5] 39 U.S.C. 3622 (c)
[6] Black's Law Dictionary, 260, 2004, defining exigent circumstances.

mail volume, economic conditions, and subsequent loss of revenue as the cause for the requested exigent response.[7]

The ABA urges the Commission to be mindful of the extraordinary step it will take should it find that exigent circumstances exist based on the facts proposed by the USPS. Congress established the CPI rate cap as a basis for pricing increases to ensure that a predictable and reasonable standard would be in place for the general public, the Commission and the USPS. Only when circumstances develop that are so outside the usual and customary environment should a rate increase outside the CPI cap be considered. In that this is the first exigent increase ever considered by the Commission, what it does here sets the precedent for all future requests.

The ABA agrees with the comments of others that if the Commission is not prudent in its approach, a granted request could have the end result of effectively obliterating the statute's CPI rate increase provisions, thus allowing the USPS to seek rate increases via the safety valve of exceptional and extraordinary circumstances. For example, one could foresee a situation where, due to poor management and planning, the USPS failed to properly use or take advantage of the management tools within its authority to properly keep its books in balance, only to come to the Commission after the twelfth hour claiming that exceptional circumstances necessitate the use of exigency relief.[8] It is precisely for this reasons that the ABA requests that the Commission articulate in its decision that exigency as a remedy is purely the exception and not a default due to poor management or planned strategy. Equally important, the ABA urges the Commission to expressly outline the standard of review and the level of scrutiny it will

[7] Exigent Request of the United States Postal Service, Docket No. R2010-4, 2-3
[8] The ABA does not take the position that the current Postal administration planned the present outcome to rely on exigency relief, nor does the ABA opine as to the present management strategy of the USPS.

give to this and future requests, thus effectively guiding the general public, the Commission, and the USPS.

The above notwithstanding, a finding of exigency is only the first step in a multi-prong analysis for the Commission. In addition to finding that extraordinary and exceptional circumstances exist, the Commission must conclude that the proposed rate adjustment is reasonable, equitable and necessary "under best practices of honest, efficient and economical management, to maintain and continue the development of the Postal Service…"[9] This second part of the analysis places a burden on the Commission to ensure that the action of rate increases outside of the normal procedure outlined in 39 U.S.C. 3622 creates the desired end of providing the Postal Service with what it needs to operate efficiently, or in other words, ensure that that the exigent remedy does not place the USPS in a worse fiscal position.

B. The Proposed Pricing Adjustments Are Unreasonable and Inequitable and Will Harm Small Banks that Heavily Rely on Full First-Class Mail Rates

It is clear that the proposed rate increase will harm banks of all sizes with a distinct impact on smaller institutions that pay the full First-Class rate. According to the USPS exigent request, full rate First-Class postage will increase 4.5 percent. The ABA's experience has been that smaller institutions – community banks with assets of less than $100 million – are heavy users of First-Class Mail but frequently do not take advantage of available pre-sorting discounts.

The proposed increases come at a time when banking regulatory costs are also rising. On top of the requested postal increases, many community banks will be hit hard by recently enacted regulatory standards imposed by the Dodd-Frank Wall Street reform legislation,

[9] 39 U.S.C. 3622 (d)(1)(E)

requiring them to expend additional revenue to adhere to the new regulatory regime. Small banks operate from a much smaller footprint and absorb pricing and regulatory cost increases differently than their larger counterparts, and cannot easily spread additional expenses over the operational structure or pass on costs to customers. Community banks are small business institutions, not unlike many other small businesses in towns across America, and the additional cost burdens in the present economic climate could force closure of the company.

While transforming mail operations to include automation and mail diversion could alleviate the additional postal expense burden, doing so is not without expense and revenue considerations for the small bank. The use of capital to transform a bank's postal and regulatory structure inevitably results in less available capital for lending and community investment purposes. Absent the ability to effectively lend and invest, coupled with increased operational expenses due to postal and other regulatory changes, community banks are left vulnerable. These banks will have few choices should the exigent rate increase, as proposed, be granted, and will experience immediate and significant harm.

C. The Proposed Pricing Adjustments Are Unreasonable and Inequitable and Will Harm Large Bank Mailers that Rely on Bulk First-Class Mail[10]

The proposed price increases for First-Class Mail letters are unreasonable and unjustified, and will result in significant additional costs for large banks. Generally speaking, the present price of single-piece First-Class Mail is 44 cents, with the USPS having identified its

[10] James M. Kiefer in his *Statement on Behalf of the United States Postal Service* uses the term presort instead of Bulk when discussing this category of mail. See Kiefer at 16. The Postal Regulatory Commission also uses the term presort in its *Annual Compliance Determination* when itemizing cost, contribution and cost coverage by product of various mail categories. See Annual Determination at 67.

actual cost for processing this mail at 26 cents, allowing for an 18 cents profit.[11] When pricing First-Class Bulk Mail, the USPS does not start with its actual costs, but discounts based on cost avoidance, which is about 5-9 cents, which is subtracted from the full price of single-piece First-Class, or 35-39 cents. However, the Postal Service, by its own calculations acknowledges that its actual cost for processing First-Class Bulk Mail is about 12 cents, allowing for profits from bulk customers of about 23-27 cents. If the USPS were to base pricing on bulk similar to First-Class single-piece (actual cost of processing plus profit), allowing for the same or comparable profit margin, then the price of this mail would be closer to 30 cents. In essence, insured banks and others that use First-Class Bulk regularly are presently paying more than their fair share and likely subsidizing other mail categories.

As proposed, First-Class Bulk Letter Mail prices could increase by as much as 6.3 percent, with an overall average increase for First-Class Bulk Letter Mail of 5.9 percent. The proposed after-rates cost coverage for First-Class Bulk Letter Mail letters would be 311.3 percent.[12] Part of the reason for the above-average increases in First-Class Mail letters is that the Postal Service cannot exercise its full pricing flexibility because it cannot price Single-Piece and First-Class Bulk Letter Mail as separate products.

The ABA has previously filed comments expressing its view that Single-Piece and bulk First-Class Mail letters are appropriately considered separate products.[13] They have distinct cost differences and distinct price sensitivities.[14] They are perceived as distinctive products by ABA members and they are listed as separate products under the Mail Classification Schedule. The concern previously raised by ABA, manifest in the current exigency proposal, is that to the

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[11] *Postal Regulatory Commission Annual Compliance Determination of U.S. Postal Service Performance*, Fiscal Year 2009, 67.
[12] See Statement of Stephen J. Masse on Behalf of the United States Postal Service Attachment 11.
[13] See Docket No. RM2009-3, Initial Comments of the Bank of America Corporation, Discover Financial Services, J.P. Morgan Chase & Co., and the American Bankers Association (May 27, 2009).
[14] See USPS-R2010-4/8, Revenue and Volume Forecast Materials, Tab "Elasts."

extent the workshare-related cost avoidances are measured across distinct products, it will restrict the Postal Service's pricing flexibility and force the Postal Service to impose disproportionate pricing increases on the Postal Service's most profitable products.

In the USPS exigent request, it acknowledges that rate increases are not equitable and that some categories may remain under priced.[15] While the rationale for establishing rate inequality is understood to prevent mail diversion in selected categories, the end result is that First-Class Bulk mailers are not treated equitably. Should the USPS be granted its exigent request, the Commission should take into consideration first the current methodology for setting bulk prices, and second the inequitable pricing that results, and require the USPS to establish rates that do not unusually burden a category of mailers. Doing so would satisfy requirements under 39 U.S.C. 3622 (b)(1), (5) and (9) to maintain appropriate price allocation between market dominant and competitive products, in addition to considering the impact of an increase on business mailers.

D. The Proposed Pricing Adjustments Are Unreasonable and Inequitable and Will Harm Banks of All Sizes that Use Standard Mail Letters

The relative pricing increases for Standard Mail letters are also unreasonable and inequitable. Many ABA members use large volumes of Standard Mail letters for marketing purposes. These members have many competing marketing alternatives and postage prices matter. Successful marketing mailings drive additional, highly-profitable First-Class Mail letter volume (e.g., statements). The proposed after rates cost coverage for Standard Mail letters is

[15] See *Statement of James M. Kiefer on Behalf of the United States Postal Service*, "[the] 8 percent increase will not be sufficient in itself to restore both Periodicals products to full cost coverage in FY 2011." 39

nearly 200 percent.[16] In contrast, the proposed after rates cost coverage for Standard Mail flats – a product that is not currently covering its costs – is still only 90.6 percent.[17] Yet the Postal Service proposed essentially the same price increase for both Standard Mail letters and flats. The pricing proposal is inconsistent with the Commission's prior findings and the statutory requirements for an exigency filing. In its FY2008 Annual Compliance Determination the Commission stated:

> In Docket No. R2008-1, the Postal Service proposed below-average increases for flats and above average increases for letters. Further, the Postal Service placed a disproportionate share of the burden of institutional cost on letters. The unit contribution made by letters was 9 cents in FY 2008 compared with negative 2 cents per piece from flats. This is inconsistent with 39 U.S.C. § 3622(b)(5) and 39 U.S.C. §3622(c)(2).
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> *The Postal Service should either decrease the disparity between letters and flats in future rate increases or provide the Commission with empirical evidence that the market characteristics of letters and flats or other non cost factors justify the unequal treatment.*[18]

The proposed pricing increases for Standard Mail letters are particularly inequitable where, as here, USPS has failed to provide an adequate plan showing how and when Standard Mail flats will cover their costs as required by the Commission.[19]

The Commission should take into consideration the current methodology for setting Standard Mail letter prices and the relative profitability of this class of mail. Consistent with 39 U.S.C. 3622 (b)(1), (5) and (9), and section 3622 (c)(2), the Commission should reject the proposed pricing adjustments for Standard Mail letters as unreasonable and inequitable.

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[16] See Statement of Stephen J. Masse on Behalf of the United States Postal Service, Attachment 11.
[17] See id.
[18] See FY 08 Postal Regulatory Commission Annual Compliance Determination, 62 (emphasis in original).
[19] See FY 09 Postal Regulatory Commission Annual Compliance Determination, 86-87.

E. The Proposed Pricing Adjustments for First Class Mail and Standard Mail Letters Will Accelerate Mail Diversion, Undermining the Ability of the Postal Service to Efficiently and Economically Provide Mail Services

If banks continue to abandon traditional mail for less costly means, the Postal Service is likely to experience additional mail drop-off resulting in further revenue deterioration, potentially more than what is presently occurring. Mail diversion has long been a concern of the USPS and the Commission, as identified by James Kiefer, USPS economist. In his statement in support of the requested increase, Kiefer writes, "[p]resorted letters is the Postal Service's most profitable mail category…[and]… it is highly vulnerable."[20] Kiefer continues that customers who use presort are increasingly looking to non-mail alternatives as a result of price increases and may respond not simply by mailing fewer pieces, "but by abandoning hard copy mail altogether."[21]

Keifer's conclusions should concern the Commission and the USPS, in that a large number of financial industry mailers have already severely curtailed presort (bulk) mailing and are relying on other methods such as electronic communications. The chances of recapturing this segment of the market that has successfully diverted from hard mail may be difficult for the USPS if business practice suggests equal or better return on the investment for the mailer. Indeed the Commission and the USPS should be attempting to identify every available means to recapture this market, and not drive it further into mail diversion. When companies transfer from paper to electronic communications, the savings can be substantial. In addition to postage, the company is saving on paper, production, and other costs associated with preparing hard mail.

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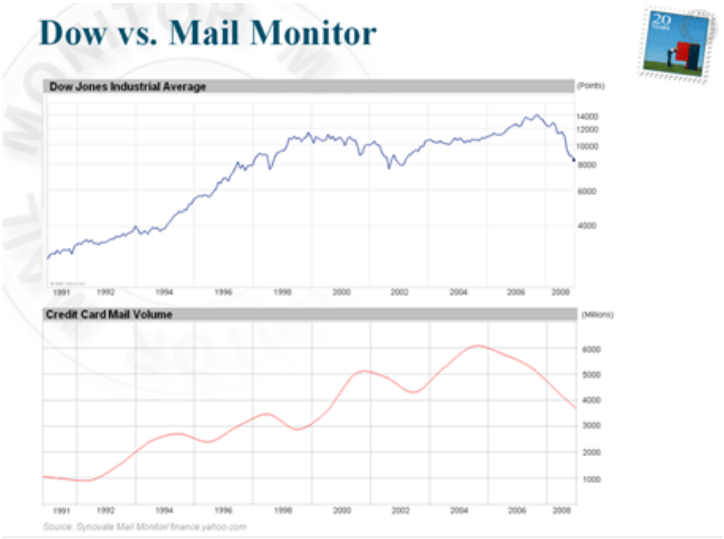
[20] *Statement of James M. Keifer, On Behalf of the Unites States Postal Service*, 17.
[21] id.

From 1991 through 2008, there is a corresponding increase and decrease in mail volume for credit card mailers (many using Standard Mail letters) based on movement of the Dow.[22]



In January 2009, Synovate reported that there was a 27 percent decrease in mail offerings by credit card companies compared to 2008 figures, representing a change of 1.4 billion pieces from the 5.2 billion mailed in 2007.[23] Should exigency rates be granted, it is unlikely that mail volume will continue to track the Dow in post recessionary cycles, with mail volumes declining precipitously due to the large number of mailers who will opt for mail diversion.[24]

In an analysis of selected member banks, the ABA has learned that a number of financial institutions have already made significant changes from hard mail to electronic communication. In April 2009, the American Banker reported that one ABA member was set to

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[22] Synovate.com, *US credit card mail volume declined to 3.8 billion in* 2008, http://www.synovate.com/news/article/2009/01/us-credit-card-mail-volume-declined-to-3-8-billion-in-2008.html.

[23] id.

[24] Historically, Credit card marketing mail was done via First Class bulk but today is predominantly conducted through Standard mail, though some mailers continue to use First Class for targeted mailings.

eliminate paper statements for millions of its corporate card holders.[25] The ABA has further learned from a selected few within its membership that should the exigent rate increase be granted, mail diversion is estimated to be well over 250 million pieces.

Some diversion is inevitable, but the proposed pricing increases, which represent disproportionate pricing increases for bulk First-Class Mail and Standard Mail letters, will accelerate the trend. In the current economic environment, banks of all sizes and other business mailers are increasingly sensitive to the relative cost of postage. For many ABA members electronic substitution is the primary means to manage postage pricing increases. For every bulk First-Class Mail letter that is diverted to an electronic communication USPS loses 23 cents in contribution. Within the physical mail channel, for every marketing piece that is converted from a First-Class Mail to a Standard Mail, the Postal Service loses 14 cents.

The exigent rate increase may also cause a loss of revenue from community banks, that rely on full rate First-Class postage. Community banks like large financial institutions will heavily invest in long-term technology wherein they can more easily predict pricing and return, including alternatives to hard mail, as a response to increases in postal rates, along with other rising regulatory costs. Additionally, community banks that predominantly rely on full rate First-Class, may turn to Standard Mail and automation discounts, again lessening revenue achieved by the USPS.

The ABA believes that an exigent rate increase, as proposed, would place the USPS in a worse position than what it is in today, further limiting the ability of the Service to operate efficiently. As stated by its own economist, rate increases have the potential of causing losses instead of revenue gains. According to Kiefer, if presort (bulk) mailers "respond by leaving the

[25] *American Banker*, April 24, 2009, 1, 12.

mail, large volumes of mail will disappear, ***most likely permanently, threatening the ability of the Postal Service to offer cost-effective universal service***."[26]

To avoid the negative result of rate increases, exigent or otherwise, the Commission should seriously review the recommended rates for bulk mail and Standard Mail letters, further ensure that any pricing decrease in these categories does not raise rates above that which have been recommended for "status quo" mailers, and that other rates are appropriately allocated among market dominant and competitive products. Such a review is well within the Commission's authority, as 39 U.S.C. 3622 (d) does not prohibit the Commission from recommending alternative rate structures nor does it prohibit the Commission from requiring the USPS to revise an exigent rate proposal.

III. Conclusion

It is the ABA's position that exigency cases must be the exception and not a default strategy, and that the Commission in establishing its findings, regardless of outcome, must clearly define the standard of review and scrutiny by which this and future exigency requests will be deliberated, thus providing notice to the general public and the USPS as to when such cases are appropriate. Further, should the Commission find in favor of exigency, the ABA urges the Commission to also find that the rate strategy proposed by the USPS is not in accordance with 39 U.S.C. 3622 and that First-Class bulk and Standard Mail letter rates in particular do not meet the standards of appropriate and equitable rate-setting. Additionally, in the event of an exigency finding, the ABA requests that the Commission also find that exceptional and extraordinary circumstances notwithstanding, that the proposed rate structure will not provide the Postal Service with the relief required to enable the USPS "under best practices of honest, efficient,

[26] *Statement of James M. Kiefer on Behalf of the United States Postal Service*, emphasis added, 17.

and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States." [27] Indeed the Commission should find that the proposed remedy will cause significant mail diversion resulting in a more rapid decline of mail volume and postal revenue, causing more harm than good.[28] Finally, the ABA would urge the USPS and Commission to exhaust all remedies immediately available, including collecting reimbursement due from contributions to the Civil Service Retirement System and a permanent fix to pre-funding of benefits.

The ABA is concerned about the current financial condition of the Postal Service and how mailers in general may be impacted, and remains open to working with the USPS and Commission in identifying fair and equitable pricing structures that equally benefit and burden all categories of mailers. While the ABA is also open to other solutions the USPS might employ to resolve its fiscal issues, as the trade association representing the majority of the nation's banks, the ABA remains opposed to any alternative proposal that includes the Postal Service competing directly or indirectly with commercial banks.

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[27] (12 U.S.C. 3622 (d)(1)(E).

[28] See also, *Statement of James M. Kiefer on Behalf of the United States Postal Service*: "If [presort First-Class Mail customers] respond by leaving the mail, large volumes of mail will disappear, most likely permanently threatening the ability of the Postal Service to offer cost-effective universal service." 17.

The ABA thanks the Commission for the opportunity to provide comments on the request for exigency relief filed by the USPS. The ABA is available for further comment should the Commission deem appropriate.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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