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POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Notice of Market Dominant Price Adjustment for First-Class Mail and Standard Mail

Docket No. R2011-5

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO THE UNITED STATES POSTAL SERVICE NOTICE OF MARKET DOMINANT PRICE ADJUSTMENT

(May 2, 2011)

I. INTRODUCTION

On April 12, 2011, the United States Postal Service (Postal Service) filed a notice with the Postal Regulatory Commission (Commission) stating that the Governors have authorized a temporary adjustment to the prices for its market dominant products, First-Class Mail and Standard Mail.[1] The adjustment will provide commercial mailers an upfront three percent discount on prices for First-Class and Standard Mail letters and flats that include a two-dimensional mobile barcode. *Id.* The Postal Service clearly states that the price cap rules should not be applied in this instance. *Id.*

The Public Representative has two primary concerns regarding the Postal Service's Notice. First, the Postal Service explains that it intends to ignore the effect of the price decrease, therefore it did not make the calculations described in Rules 3010.14(b)(1) through (4). *Id* at 3. Since the Postal Service has chosen not to apply

[1] United States Postal Service Notice of Market Dominant Price Adjustment, April 12, 2011. (Notice).

the price cap rules, the rules applicable to Negotiated Service Agreements (Type 2 rate adjustments) should be applied.

Second, the Postal Service's proposal will result in a rate decrease for Standard Mail Flats that apply a mobile barcode. The Commission recently found Standard Mail Flats out of compliance with section 101(d) of title 39.[2] Initially, the Postal Service filed no support identifying how the proposed price adjustment is responsive to the Commission's directive to eliminate the intra-class cross subsidy.

Other minor concerns are discussed below.

II. BACKGROUND

The Postal Service describes the mobile barcode discount as a short-term summer incentive program. It will be offered for two months (during July and August 2011).

The essence of the promotion is a three percent discount for certain commercial First-Class and Standard Mail pieces that carry a two-dimensional barcode for marketing, advertising or educational purposes, that is placed on — or inside — the mailpiece. The application or inclusion of a two-dimensional barcode will allow smart phone users access to web sites for more product or service information; thus, this promotion offers the promise of a more immediate and more interactive consumer experience than conventional mail and fosters the Postal Service's interest in promoting integration of newer technologies.

To better understand the Postal Service's proposed price adjustment, the Public Representative filed a motion for issuance of an information request on April 19, 2011. On April 22, 2011, the Commission filed Chairman's Information Request No.1 (CHIR No. 1), which echoed the Public Representative's questions. The response to CHIR No. 1 was filed on April 29, 2011, one business day before comments are due.

[2] 2010 Annual Compliance Determination at 106.

III. APPLICATION OF COMMISSION RULES

The Postal Service's proposed initiative is an attempt for the Postal Service to exercise its pricing flexibility. The Postal Service's pricing flexibility must be balanced with the Commission's regulations for price adjustments that are designed to meet all of the requirements of section 3622 of Title 39. Temporary initiatives, that are only available to a certain group of mailers, should be treated as special classifications. This will ensure that the initiative benefits participating mailers through discounted prices, and the Postal Service and nonparticipating mailers, through increased contribution. The remainder of this section will discuss why applying the price cap is not appropriate, why applying the rules pertaining to negotiated service agreements is appropriate, and how the proposed initiative is different from previous initiatives.

A. Price Cap Compliance

The Postal Service states that the proposed price adjustment is consistent with previous limited-availability discounts, and therefore should be excluded from the First-Class and Standard mail price-cap calculations. Notice at 3. The Postal Service has not provided sufficient volume data to apply the Commission's price cap rules pursuant to 39 CFR 3010 Subpart C.[3]

The Public Representative does not advocate applying section 3010 Subpart C (price cap rules) in this instance. Given the temporary nature of the discount, and its limited availability, not applying the price cap rules will protect mailers who are ineligible for the initiative from receiving higher rate increases in the future. Applying the price cap rules in this instance would result in unused rate adjustment authority being generated for the First-Class Mail and Standard Mail classes, which could be used to increase other prices, such as single-piece prices, at the time of the next general rate adjustment.

[3] If the Postal Service did decide to apply the price cap, the Public Representative calculates that it would be eligible for a partial year limitation of 0.657 percent.

B. Applicability of Negotiated Service Agreement Rules

Since the price cap rules should not apply in this instance, the Postal Service should apply the Commission's rules for Type 2 rate adjustments, which are in section 3010 Subpart D. Type 2 rate adjustments are used to evaluate special classifications pursuant to 39 U.S.C. Section 3622(c)(10).

39 U.S.C. 3622(c)(10) and the Commission's Rules are clear that special classifications must either (1) improve the net financial position of the Postal Service or enhance performance, and not cause unreasonable harm to the market place. The Public Representative views the mobile barcode initiative as a special classification, and therefore the Postal Service should comply with this section of the law.

The Postal Service does not explicitly apply the Subpart D rules, but it claims that the initiative is likely to increase volume. In order to correctly apply the section 3010 Subpart D rules, the Postal Service should haven taken the additional step of calculating the financial benefit to the Postal Service as a result of the initiative. The Postal Service completed this calculation in response to CHIR No. 1 question 4, which requested that the Postal Service calculate the net financial benefit of the initiative. The analysis provided by the Postal Service includes a sensitivity analysis that shows the impact on contribution assuming the initiative has low, medium and high initiative adoption rates. The analysis assumes that there will be no additional volume resulting from the initiative. In the end, the analysis shows that the program is expected to reduce the revenue per piece of participating mailpieces, and therefore reduce the unit contribution of participating pieces. The analysis does not demonstrate the initiative's consistency the requirements of section 3622(c)(10) or section 3010 Subpart D.

The Postal Service should ensure that all pricing discounts offered are "win-win" for itself and mailers, as section 3622(c)(10) requires. Since the Postal Service does not demonstrate any financial or operational benefit to itself, the initiative is not in the best interest of the Postal Service, and therefore the instant initiative should not be approved. In general, if initiatives (special classifications) do not improve the net financial position of the Postal Service, the result could be costly to mailers, including single-piece mailers, who may be burdened with recovering Postal Service loses.

C. Previous Incentive Programs

The Postal Service compares the instant discount to previous “limited-availability” discounts, including the Standard Mail Volume Incentive Pricing Programs, and the First-Class Volume Incentive Pricing Program.[4] To be eligible for the previous initiatives mailers had to meet certain requirements and increase their overall volume above a certain threshold. The Postal Service believed that the result of the sales would be an increase in overall contribution to institutional costs. For example, in the 2010 Incentive Program the Postal Service stated “[t]he expected net effect of the program is a net contribution change of -$3.5 million to +$25.4 million”.[5] In Docket No. R2009-3, the Commission concluded that “a positive contribution from the program is likely.” Order No. 219 at 15. While the application of section 3622(c)(10), or section 3010 Subpart D, was not explicit in the review of these initiatives the intent appeared to be to increase contribution, as section 3622(c)(10) and the Commission Rules require.

In previously approved initiatives, the Postal Service’s proposals attempted to increase volume and create additional contribution. Therefore, waiving the price cap rules, and indirectly following the requirements of section 3622(c)(10), was reasonable. However, in the instant docket, the Postal Service has not provided any data that indicates that offering the mobile barcode discount will provide any financial or operational benefit to the Postal Service. Therefore, treating this initiative like previous initiatives is not appropriate.

IV. STANDARD MAIL FLATS

The Postal Service’s initial filing made no mention of the effect the mobile barcode discount would have on Standard Mail Flats. In light of the Commission’s

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[4] *See* Docket Nos. R2009-3, R2009-5, and R2010-3.

[5] Docket No. R2010-3 United States Postal Service Notice of Market-Dominant Price Adjustment, February 26, 2010 (2010 Incentive Program).

recent compliance determination regard Standard Mail Flats, it is important that any price adjustments for Standard Mail Flats attempt to increase its cost coverage.

In response to CHIR No. 1 the Postal Service explains that it has until June 27th, 2011 to respond to the Commission directive to reduce the Standard Mail intra-class subsidy. Response to CHIR No. 1 at 2. The Postal Service also notes that "strictly speaking, the immediate effect of the discounts does not further the goals of cost coverage and reduced subsidy that the Commission outlined." *Id.* However, the Postal Service states that the discount has the potential to "further the financial interests of the Postal Service." *Id* at 3. In addition, the Postal Service explains that the discount is given off of the entire postage statement, therefore if Standard Mail Flats were excluded from the promotion, mailers who use a combination of Carrier Route Flats and Standard Mail Flats would be excluded from the program. *Id*. This appears to be a flaw in the design of the program.

Because the Postal Service has not provided support that demonstrates that the proposed initiative will improve the cost coverage of Standard Mail Flats, this product should be excluded from the initiative. If the overall initiative is approved, the Commission should require the discount to be on a per piece basis, rather than a per postage statement basis, to ensure profitable Carrier Route Flats are not undeservedly excluded from the program. Applying the discount on a per piece basis will also benefit mailers who mail Carrier Route, High Density and Saturation Parcels, which are excluded from the initiative, but pieces could be included on a mailer's postage statement.

V. EXCLUSION OF NONPROFIT MAILERS

In its initial filing, without explanation, the Postal Service excluded nonprofit mailers from the mobile barcode discount. Without a sound rationale as to why this group of mailers should be excluded from the mobile barcode discount, these mailers should eligible for the discount

In response to CHIR No. 1 the Postal Service explained that it excluded nonprofit mailers from the discount because it expects there to be a "significant multiplier effect… in the context of the commercial marketplace". *Id* at 9. Given that the Postal Service is unaware of the volume impact as a result of the mobile barcode discount, there is not a sufficient reason to exclude nonprofit mailers. *See* Response to CHIR No. 1 question 3. Also, if the initiative is approved, and a goal of the initiative is to combine the mail with other technologies, such as smart phones, nonprofit mailers should be given the same financial incentive as commercial mailers to incorporate those technologies into their mailings.

VI. CONCLUSION

The Postal Service's proposed initiative attempts to show mailers that traditional direct mail campaigns can be an effective part of a modern marketing mix. However it is important that the initiative be beneficial to the Postal Service, beneficial to the participating mailers, and not harmful to nonparticipating mailers. While it is clear that participating mailers will benefit from the proposed initiative, it is unclear if the proposed initiative will benefit the Postal Service, and not harm nonparticipating mailers. Therefore the proposed initiative should not be approved, unless the Postal Service is able to convincingly demonstrate that the initiative meets the requirements of section 3622(c)(10). In addition, if the initiative is approved Standard Mail Flats should be excluded, as discussed above. The Public Representative respectfully submits the preceding Comments for the Commission's consideration.

Respectfully submitted,

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