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UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Dan G. Blair;
Tony L. Hammond; and
Nanci E. Langley

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

Docket No. R2011-5

ORDER APPROVING MARKET DOMINANT PRICE ADJUSTMENT

(Issued May 17, 2011)

I. INTRODUCTION

A. Overview

On April 12, 2011, the Postal Service filed a notice of price adjustment to temporarily reduce the prices for certain types of First-Class Mail and Standard Mail that contain a barcode readable by consumer smartphones in or on the mailpiece.[1] The adjustment is planned to take effect on July 1, 2011 and expire on August 31, 2011.

[1] United States Postal Service Notice of Market-Dominant Price Adjustment, April 12, 2011 (Notice); *see also* United States Postal Service Notice of Errata to Notice of Market-Dominant Price Adjustment, May 16, 2011.

This adjustment represents a new way the Postal Service is exercising its pricing flexibility under the Postal Accountability and Enhancement Act of 2006 (PAEA). Previous temporary price adjustments offered by the Postal Service were designed to increase volume and revenue over a specified time period.[2] The Postal Service does not claim this adjustment will increase mail volume, and expects it to reduce revenue. The Postal Service explains that the primary objective of the adjustment "is to increase awareness of how integrating technology increases the value of mail."[3]

B. Procedural History

In Order No. 715, the Commission established Docket No. R2011-5 to consider the Postal Service's filing, set May 2, 2011 as the date for interested persons to submit comments on the price adjustments, and appointed a Public Representative to represent the interests of the general public in this proceeding.[4]

On April 19, 2011, the Public Representative filed a motion for the Commission to issue an information request to obtain more information from the Postal Service concerning details of the adjustment.[5] On April 22, 2011, Chairman's Information Request No. 1 was issued.[6] The Postal Service responded to the Public Representative's motion on April 26, 2011, contending that the issuance of CHIR No. 1 rendered the motion moot.[7] The Postal Service responded to CHIR No. 1 on April 29, 2011.

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[2] *See* Docket No. R2009-3, United States Postal Service Notice of Market-Dominant Price Adjustment, May 1, 2009; *see also* Docket No. R2010-3, United States Postal Service Notice of Market-Dominant Price Adjustment, February 26, 2010.

[3] *See* Response of the United States Postal Service to Chairman's Information Request No. 1, April 29, 2011, at 9 (Response to CHIR No. 1).

[4] Notice and Order Concerning Market Dominant Price Adjustment for First-Class Mail and Standard Mail, April 14, 2011 (Order No. 715).

[5] Public Representative Motion for Issuance of Information Request, April 19, 2011.

[6] Chairman's Information Request No. 1, April 22, 2011 (CHIR No. 1).

[7] Response of the United States Postal Service to Public Representative Motion for Issuance of Information Request, April 26, 2011.

Chairman's Information Request No. 2 was issued on May 6, 2011.[8] The Postal Service responded to that information request on May 11, 2011.[9]

II. PROPOSED ADJUSTMENT

A. Postal Service Filing

The proposed rate adjustment will temporarily reduce prices for certain types of First-Class Mail and Standard Mail. Notice at 1. Specifically, the adjustment will reduce prices by 3 percent for all letter- and flat-shaped commercial Standard Mail and presort First-Class Mail pieces that include a two-dimensional barcode, readable by a smartphone, inside or on the mailpiece. *Id*. at 1-2. Other than the full-service IMb discount, the mailpieces would be ineligible to receive any other incentive if taking advantage of this proposed 3 percent discount. *Id*. at 3. The Postal Service adds that the barcode must be used for consumer interaction, and may not be used for "internal corporate operational processes, or for postage evidencing…" to be eligible for the discount. *Id*. The Postal Service requires that all mailing[10] documentation must be submitted electronically in one of several formats. *Id*.

The Postal Service proposes to exclude the effect of the promotion on the price cap calculation, forgoing the cap room it could bank based on the decrease. *Id*. Therefore, the Postal Service has not submitted a price cap calculation pursuant to rule 3010.14.

In discussing the objectives and factors set forth in 39 U.S.C. 3622, the Postal Service notes that the promotion "does not substantially alter the degree to which First-Class Mail and Standard Mail prices already address these objectives [and factors]…." *Id*. at 4-7.

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[8] Chairman's Information Request No. 2, May 6, 2011 (CHIR No. 2).

[9] Response of the United States Postal Service to Chairman's Information Request No. 2, May 11, 2011 (Response to CHIR No. 2).

[10] For the purposes of this promotion, the Postal Service considers a "postage statement" to be a "mailing." The incentive applies to each "mailing."

The Postal Service contends that the promotion will not impact workshare discounts, and will not have enough participation to impact the differential between commercial and nonprofit prices in Standard Mail. *Id*. at 8.

The Postal Service included, as an appendix to the Notice, the draft Mail Classification Schedule (MCS) language for the promotion.

B. Chairman's Information Requests

CHIR No. 1 sought to clarify details of the promotion's basis, implementation, and administration. Specifically, it requested information on how the promotion impacts the compliance of the Standard Mail Flats product, consistent with direction in the Commission's FY 2010 Annual Compliance Determination (ACD).[11] It also sought information on the promotion's impact on workshare discounts, the exclusion of nonprofit pieces, the treatment of the promotion for the price cap and rules governing rate filings, and the administration of the program.

In its Response to CHIR No. 1, the Postal Service acknowledged that the promotion would have the short-term effect of lowering Standard Mail Flats postage revenues and would not further the goals of cost coverage and reduced subsidy. Response to CHIR No. 1 at 2. The Postal Service states that the promotion is a long-run effort to increase revenues by "expand[ing] the dimensions of mail usage…." *Id*. at 3. The Postal Service also contends that excluding Standard Mail Flats from the promotion would be counterproductive because "Carrier Route and Standard Flats are mailed by the same customers." *Id*. at 4. Further, for program administration, the 3 percent discount is offered on the entire postage statement; thus, all pieces on the statement must be eligible. *Id*.

The Postal Service did not provide an estimate of any increased volume based on the promotion, but did provide a financial impact estimate, based on low, medium,

[11] *See* Docket No. ACR2010, FY 2010 Annual Compliance Determination, March 29, 2011 (2010 ACD).

and high adoption scenarios. *Id.* at 5-6.[12] The Postal Service states that the promotion "does encourage increased mail volume…," but does not expect an immediate increase in mail volume during or after the promotional period. Notice at 7; Response to CHIR No. 1 at 5.

The Postal Service states that it excluded nonprofit mail from the promotion because the multiplier effect that may take place by integrating this technology is "more likely to take place in the context of the commercial marketplace…." *Id*. at 9. Further, the Postal Service contends that it would be easier and less costly to administer if it were limited to commercial entities, and that nonprofit mail pays reduced rates as a result of statutory preference. *Id*. The Postal Service states that if the results of the promotion are positive, it may expand the discount to nonprofit mailers in the future. *Id*.

CHIR No. 2 sought to confirm that the Postal Service expects the promotion to reduce contribution in the range of ($1.54 million) to ($4.63 million). It also questioned how the Postal Service contends the promotion will enhance postal functions. Finally, the request sought information on how the promotion will be administered and whether it could be administered at the product level rather than at the postage statement level. CHIR No. 2.

The Postal Service, in response to CHIR No. 2, confirmed that the promotion was likely to reduce revenue in a range from ($1.54 million) to ($4.63 million), and expects the reduction to be "at the higher end of the initial estimate." Response to CHIR No. 2 at 1.

The Postal Service states that in its view, the promotion is not a special classification and therefore not subject to 39 U.S.C. 3622(c)(10)(A)(ii). *Id*. at 2. The Postal Service also confirmed the promotion would apply to cards and provided information on the administrative changes necessary on mailing statements to account for the promotion. *Id*. at 3.

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[12] Including the associated Excel workbook "MB fin.xls."

C. Comments

The Commission received eight comments on the proposed adjustment.[13] One party submitted reply comments and a motion for leave to file those comments on May 11, 2011.[14]

The majority of the comments support the Postal Service's barcode promotion. PostCom states that it is "an innovative approach for promoting and testing the integration of direct mail with mobile technology." PostCom Comments; *see also* ACMA Comments at 3, ANM Comments at 1, L.L. Bean Comments at 1, Quad/Graphics Comments at 2.

Several parties suggest specific alternatives for the current or any future promotions of the same kind. Hugh David Tolson encourages the Postal Service to allow Postal Wizard users to submit more than 9,999 pieces using that software. Tolson Comments. ACMA and Quad/Graphics encourage the Postal Service to provide more lead time for future promotions. ACMA Comments at 1; Quad/Graphics Comments at 3.

The Public Representative comments that the Postal Service should ensure that the discounts it offers are a "'win-win'" for itself and for mailers, and since this promotion is not, that the Commission should not approve it. PR Comments at 4.

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[13] Comments of the Association for Postal Commerce (PostCom Comments); Letter Received from Hugh David Tolson, EMCM Manager, Mailing Service (Tolson Comments), both filed on April 28, 2011; Comments of the American Catalog Mailers Association (ACMA) (ACMA Comments), April 29, 2011; Comments of L.L.Bean, Inc. (L.L.Bean Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on the United States Postal Service Notice of Market-Dominant Price Adjustment (Valpak Comments); Public Representative Comments in Response to the United States Postal Service Notice of Market Dominant Price Adjustment (PR Comments); Comments of Alliance of Nonprofit Mailers (ANM Comments), all filed on May 2, 2011; Comments of Quad/Graphics, Inc. (Quad/Graphics Comments) filed out of time on May 3, 2011. The Commission accepts the comments filed 1 day out of time.

[14] Motion of the Saturation Mailers Coalition and Valassis Direct Mail, Inc. to Submit a Reply to Comments of the Public Representative (SMC/Valassis Motion); Reply Comments of the Saturation Mailers Coalition and Valassis Direct Mail, Inc. to Comments of the Public Representative, both filed May 11, 2011. Reply comments of this nature are not provided for in the Commission's rules for price adjustment proceedings due to the compressed timeframe for decision. The SMC/Valassis Motion is denied.

Valpak and ANM express concern with the scope of the promotion.

Specific issues raised in the comments are summarized and addressed in section III.

III. COMMISSION ANALYSIS

39 CFR part 3010. The Postal Service represents, in conformance with the notice requirements of 39 CFR 3010.14(a)(3), that it will issue a press release announcing the pricing, as well as publish *Federal Register* and *Postal Bulletin* notices. Notice at 1-2. The Postal Service identified an official available to respond to Commission inquiries pursuant to 3010.14(a)(4). *Id*. at 2.

Rule 3010.14(b)(9) requires the Postal Service's notice to include every change to the product descriptions within the MCS necessitated by the planned price adjustments. The Postal Service presented proposed changes for the promotion in Appendix A to the Notice, based on draft MCS language developed by the Commission in cooperation with the Postal Service.

The rate adjustment proposed by the Postal Service does not fit well within the definition of any rate adjustment under the current Commission rules. *See* 39 CFR part 3010. However, it is clear that title 39 does not prohibit the Postal Service from lowering prices, provided that it does not unduly discriminate against or favor any mailer. The Commission will institute a rulemaking to amend its rules for general rate adjustments to add provisions directly applicable to the creation of promotional rates that do not require a price cap calculation.

Workshare discounts. The Postal Service states that the promotion will not impact current workshare discounts. *Id*. at 8. The Commission finds that the promotion will have a slight impact on workshare discounts, but that it will, with one exception,[15]

[15] A base rate that is not subject to the discount (in one case, the single-piece rate) when a linked workshared rate is subject to the discount would increase the passthrough. In this case, the passthrough between single-piece and Automation Mixed AADC Letters would increase slightly for the discounted volume. The Commission does not expect this impact to be large enough to have a material impact.

shrink the discounts, keeping those with passthroughs of 100 percent at or under 100 percent. The promotion will reduce passthroughs that are over 100 percent.

The promotion reduces the base rate and the workshared rate, both by 3 percent. The passthrough is reduced because 3 percent of the base rate is greater than 3 percent of the workshared rate, while the cost avoided remains constant. Given the limited amount of volume and revenue at stake in the promotion, the Commission does not expect the impact on workshare discounts to be material.

Preferred rates. The Postal Service planned to exclude nonprofit mailers from the promotion, but did "not expect enough participation to cause a material impact on the differential between commercial and non-profit prices in Standard Mail." *Id*. In response to CHIR No. 1, the Postal Service provided an explanation as to why it excluded nonprofit mailers, including the likelihood of a multiplier effect, ease of administration, and the fact that nonprofit rates were already discounted. Response to CHIR No. 1 at 5.

ANM contends that the exclusion of nonprofit mailers from the promotion violates 39 U.S.C. 403(c) citing *National Easter Seal Society for Crippled Children and Adults, et al. v. USPS*, 656 F.2d 754 (D.C. Cir. 1981). ANM Comments at 1. ANM states that the Postal Service has not met the requirement of providing "reasonable ground for differential treatment." *Id*. at 2 (citations omitted). ANM notes that despite the discriminatory impact of the promotion, the brief lead time and duration of the current promotion essentially preclude nonprofit mailers from participating in the promotion. *Id*. at 3. For these reasons, ANM suggests that the discrimination issue is likely to be moot. ANM states, however, that nonprofits should be included in future promotions. *Id*.

The Public Representative contends that nonprofit mailers should be included as the Postal Service has not provided sufficient reason for them to be excluded. PR Comments at 6-7.

The Commission finds, consistent with the *Easter Seal* case, that the Postal Service has not articulated a rationale to justify the differential treatment of nonprofit mailers in this promotion. 656 F.2d at 761. The Commission directs the Postal Service to make the discount available to nonprofit mailers that comport with all the other program requirements. The Commission understands that the impact of the inclusion of nonprofit mailers may be negligible, given the short lead time before the promotion, but reiterates the principle that the Postal Service must provide sufficient justification, pursuant to 39 U.S.C. 403(c), to exclude nonprofit mailers from a discount or rate on a product that has a nonprofit rate. *Id*. at 760-61.

Impact on the price cap. Rules 3010.14(b)(1)-(4) require price adjustments to comply with the price cap limitations in the PAEA. The Postal Service intends to treat the program in a manner mathematically analogous to past pricing incentive programs. *See* 39 CFR 3010.24. It would exclude the effect of the price decrease on the price cap and price changes described in rules 3010.14(b)(1)-(4). Notice at 3. No opposition has been raised to this approach. The Public Representative endorses the Postal Service's treatment of the initiative, so far as the price cap is concerned. PR Comments at 3-4.

The Commission finds that the proposed treatment is reasonable as ineligible mailers will not be charged higher rates based on the amount which otherwise would be banked from the program. It is also reasonable given the uncertainty over the number of mailers that will utilize it. The Commission views this limited duration adjustment as a generally applicable rate adjustment that effectively lowers all rates implicated. In those limited circumstances, it is appropriate to allow the Postal Service to implement the adjustment without a price cap calculation.

Products that do not recover costs. The Postal Service included Standard Mail Flats in the promotion, despite the product's failure to cover its costs. The Postal Service did not address the Commission's direction, in the most recent ACD, to report, "[i]n subsequent notices of Market Dominant Price Adjustments," on how the proposed prices will move the Flats product toward a cost coverage of 100 percent and how the proposed prices will reduce the subsidy of the Flats product. 2010 ACD at 107; *see also* PR Comments at 2.

ACMA states that Standard Mail Flats should be included in the promotion because they are sent together with Carrier Route Flats volume in the same mailing. ACMA Comments at 2. ACMA contends that excluding Standard Mail Flats would effectively remove an entire customer segment, that mails both products, from the promotion. *Id*. at 3.

Valpak notes that the promotion's 3 percent reduction for Standard Mail Flats would be inconsistent with "any plan that the Postal Service possibly could conceive." Valpak Comments at 4. Valpak contends that "it would be unconscionable to provide new discounts to a product which has been found by the Commission to be in violation of PAEA and is hemorrhaging money…." *Id*. at 5.

The Public Representative states that any price adjustments that include Standard Mail Flats should attempt to increase the product's cost coverage. PR Comments at 5-6. The Public Representative claims that since the promotion would reduce Standard Mail Flats revenue, further exacerbating cost coverage and subsidy issues, it should not be included in the promotion. *Id*. at 6.

Quad/Graphics contends that the Commission should allow Standard Mail Flats to remain in the promotion because the 3 percent discount will encourage more volume by reducing the mailing cost for catalog mailers, and increasing the density so that more catalogs can be mailed at the carrier route level. Quad/Graphics Comments at 2-3.

The Postal Service points out that mailers of the Standard Mail Flats product also simultaneously mail Carrier Route Flats, which are profitable, and exclusion of Standard Mail Flats would have the effect of precluding mailers of Carrier Route Flats from participating in the promotion. Response to CHIR No. 1 at 3.

The ACD required the Postal Service to submit its plan for bringing Flats into compliance by June 27, 2011. 2010 ACD at 107. This Order does not alter that requirement or the finding leading to that requirement. However, in considering the merits of this proposal, the Commission takes a broad view. In the ACD, the Commission did not impose a specific schedule for eliminating the Standard Flats intra-class cross-subsidy. While it was and is the Commission's expectation that the inequity should be eliminated as promptly as practicable, the Commission recognized that the problem of Standard Flats cost coverage could not be resolved overnight.

The Postal Service encourages the Commission to take a long-term view of the promotion, contending that the promotion is designed to increase the long-term value of the mailstream and the profitability of all mail, including Standard Mail Flats. Notably, L.L. Bean, which in Docket No. ACR2010 recognized the need for gradualism in moving Standard Flats to full cost coverage, unequivocally endorses the promotion, “confident” that it will lead to increased volumes. L.L. Bean Comments at 1.

The Commission’s decision not to eliminate Standard Flats from the promotion is strongly influenced by the program’s relatively short duration. The promotion may inform the Postal Service’s long-term plans. This potential benefit outweighs any short-term considerations related to the promotion. To bring Standard Flats into compliance, the Postal Service must exercise its flexibility and innovation in pricing and cost control.

It is imperative that the Postal Service develop and implement a long-term solution to this persistent issue. The instant proposal can be characterized as a step in that process. The Commission will permit the Postal Service to explore an innovation that may assist the long-term solution to the problems facing the Standard Mail Flats product.

Estimated financial impact. The Postal Service did not provide any information in its initial Notice concerning the estimated financial impact of the promotion.

The Public Representative contends that the Commission should require the Postal Service to provide the type of financial analysis required for Negotiated Service Agreements (Type 2 rate adjustments). PR Comments at 1-2. The Public Representative notes that temporary pricing incentives that are only available to a certain group of mailers should be treated as special classifications. *Id*. at 3.

As discussed previously, the Commission requested, and the Postal Service provided, an estimate of the financial impact it expected from the promotion. The Postal Service provided a range of ($1.54 million) up to ($4.63 million), and subsequently stated that based on conversations with mailers, the reduction would likely be closer to the latter figure.

Given the speculative nature of how many mailers will elect to utilize the discount, transparency requires that the short-term financial implications of the promotion be measured. As such, the Commission directs the Postal Service, no later than 90 days after the close of the promotion period (currently scheduled for August 31, 2011), to provide a table with information on the discounted volume and the gross amount of discount provided, for each type of eligible mail listed below. The following table is an example of the format of the report.

			Discounted Volume		Discount
			(Pieces in Millions)		($ in Thousands)
First Class					
	Presort Letters				
	Presort Flats				
	Presort Cards				
Standard Mail					
Commercial					
	Letters				
	Flats				
	Carrier Route				
	High Density and Saturation Letters				
	High Density and Saturation Flats				
Nonprofit					
	Letters				
	Flats				
	Carrier Route				
	High Density and Saturation Letters				
	High Density and Saturation Flats				

Objectives and factors. The Postal Service states that the program does not substantially alter the degree that First-Class Mail and Standard Mail prices already address the objectives and factors in 39 U.S.C. 3622. Notice at 5-7. Specifically, the

Postal Service notes that the promotion is an example of pricing flexibility (objective 4); encourages profitable mail volume that enhances the financial position of the Postal Service (objective 5); encourages increased mail volume (factor 7); and does not imperil the ability of First-Class Mail or Standard Mail to cover attributable costs (factor 2). *Id*.

The Commission finds that the promotion is unlikely to materially alter the degree to which First-Class Mail and Standard Mail prices comply with the objectives and factors of 39 U.S.C. 3622.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the proposed market dominant price adjustment set forth by the Postal Service in its Notice dated April 12, 2011, subject to the inclusion of nonprofit categories as discussed in this Order.

2. The Postal Service obligations established in the 2010 Annual Compliance Determination are unchanged.

3. The Postal Service shall report, no later than 90 days following the close of the promotion period, on the volume of and gross discount awarded to each category of mail identified in the sample data collection report in the body of this Order.

4. All outstanding motions not specifically addressed in the body of this Order are hereby denied.

By the Commission.

Shoshana M. Grove
Secretary

Concurring Opinion of Commissioner Blair

I support the Commission's decision to approve the Postal Service's short-term promotional proposal for reduced prices for mail that contains a barcode readable by smartphones. However, under the circumstances of this case, I question the need to expand eligibility to include nonprofit mailers.

The Postal Service indicated that it did not expect the exclusion of nonprofit mailers from the promotion to have a material impact on the differential between commercial and non-profit prices in Standard Mail. Notice at 8. Further, the record shows that the only comments from the nonprofit community included a general objection to the exclusion of nonprofit mailers, but indicated that the issue (for purposes of this proceeding) was moot because of the brief lead time and duration of the promotion. ANM Comments at 3.

Given these specific facts, allowing the proposal to proceed as filed by the Postal Service would be preferable.

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Commissioner Dan G. Blair