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POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Notice of Price Adjustment) Docket No. R2013-1

PUBLIC REPRESENTATIVE COMMENTS ON UNITED STATES POSTAL SERVICE RESPONSE TO ORDER NO. 1541

(December 4, 2012)

I. INTRODUCTION

In Order No. 1541, the Commission found the Postal Service's planned price adjustments for Standard Mail Flats, effective January 27, 2013, for market-dominant postal products, filed pursuant to 39 U.S.C. §3622 and 39 CFR part 3010, do not satisfy the Commission's prior directives in its FY 2010 Annual Compliance Determination (ACD).[1] Consequently, the Commission ordered the Postal Service to submit amendments to its filing to achieve compliance with that determination. The Postal Service responded on November 26, 2012.[2] Pursuant to Commission Notice and Order,[3] the Public Representative hereby comments on the Postal Service's Response.

[1] Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 16, 2012 (Order No. 1541). The Public Representative previously filed Comments on the price adjustment. Public Representative Comments in Response to United States Postal Service Notice of Market dominant Price Adjustments, November 1, 2012 (PR Comments).

[2] United States Postal Service Response to Order No. 1541, November 26, 2012 (Response).

[3] Notice and Order on Planned Rate Adjustments and Classification Changes for Market Dominant Postal Products, November 27, 2012.

II. DISCUSSION

A. Revised Standard Mail Flats Prices

In Order No. 1541, the Commission specifically determined that "the proposed rates for Standard Mail Flats are in conflict with the [Commission's] directive of the FY 2010 ACD," and that "the Postal Service has failed to follow or adequately justify its deviation" from the remedy for a violation of the applicable statute. Order No. 1541 at 48-49. The Commission further stated, "In the FY 2010 ACD, the Commission directed the Postal Service: to increase cost coverage for the Standard Mail Flats product through a combination of above-average price adjustments and cost reductions…." *Id*. at 35.

1. The revised cost coverage is minimal and not responsive to Order No. 1541

In Order No. 1541, the Commission found that the proposed price increases for Standard Mail Flats "are below the class average." Order No. 1541 at 34. Consequently, the Postal Service was directed "to submit amendments that achieved compliance with the FY 2010 Annual Compliance Determination directives, statute, and applicable regulations." *Id*. at 81, Ordering paragraph 2.[4]

As stated by the Commission in Order No. 1541, "In its FY 2010 ACD, the Commission found that Standard Mail Flats prices violated 39 U.S.C. 101(d) and directed the Postal Service to take specific remedial actions to address the persistent and worsening intra-class cross-subsidy. Order No. 1541 at 33. That is, the rates were not "fair and equitable" as prescribed by section 101(d). The rates proposed by the

[4] The Commission ordered remedial action directing the Postal Service *to increase Standard Mail Flats cost coverage with above-average price adjustments* to begin with the next market dominant price adjustment after March 29 2011, and to submit a schedule of future above-CPI price increases for that mail within 90 days. *Id*. at 106-107.

Postal Service should therefore eliminate that violation or adequately explain a process that will, in due time, eliminate that violation.

Review of the revised Standard Mail Flats prices indicates that while they *may* technically increase the rates above the class average for Standard Mail (based on the rate cap selected without resorting to its banked rate adjustment authority), the proposal is, at best, disingenuous, and, at worst, a deliberate attempt to ignore the Commission and to make light of the regulatory process and the efforts expended in reviewing the Commission's decision in the Court of Appeals to correct unlawful rates determined to be unfair and inequitable. The Postal Service claims management flexibility to adjust rates as it finds necessary, but where it has been provided the opportunity several times to ease its violation and continues to ignore the spirit of outstanding directives, the Commission may again remand the matter or, alternatively, title 39 provides for appropriate Commission remedial action pursuant to section 3653, including now ordering unlawful rates to be adjusted to lawful levels.

The Commission need not necessarily wait until the next ACD to order the implementation of lawful rates. The Commission previously determined in an ACD that rates are unlawful, and the Postal Service has failed to implement the Commission's directives. Section 3662 does not include any time limitation for remedial Commission orders pursuant to Commission determination of unlawful rates not yet remedied. Thus, the Commission has continuing authority under sections 3653 and 3662 to act pursuant to its prior determination in the FY 2010 ACD. As previously proposed by the Public Representative, the Commission should "take a longer view to reach 100 percent compliance by directing reasonable rate increases for Standard Mail flats over a measureable time frame of, for instance, 3, 5 or 7 years." PR Comments at 17.

Analysis of the price adjustment now submitted by the Postal Service for Standard Mail Flats indicates how miniscule is the adjustment proposed. It amounts to a 0.046 percent increase in the initial proposal. That is, the Postal Service attempts to remedy the proposed unfair and inequitable rates with an additional increase of only 0.046 percent. The Postal Service claims its new proposal to increase Standard Mail Flats rates by a total of 2.617 percent is sufficient to eliminate, or demonstrates sufficient progress toward eliminating, the unfair and inequitable rates. Response at 3.

To be more specific, the Postal Service is effectively suggesting that by increasing the Standard Mail Flats rate by less than 5 ten-thousandths parts of the current rate would eliminate the unfair and inequitable rates that the Commission specifically found in Order No. 1541 would otherwise continue. The proposal simply does not comply with the spirit of the Commission's mandate, and essentially retains unfair and inequitable rates to the same extent the Commission previously determined was unacceptable. To put the result in perspective, the Postal Service points out that its revised rate adjustment would raise only $4 million in additional revenue, which "all else equal," may have a slight positive effect.[5] Response at 4-5. However, other documents in the Response indicate the additional revenue will only be approximately $1.1 million.[6] This minimal amount must be compared to the Standard Mail Flats shortfall below 100

[5] Presumably, the $4 million positive effect does not account for any own-price elasticity of Standard Mail Flats which would lower that positive amount.

[6] The Standard Mail Flats revenue would increase by only $1,097,079 from $2,379,956,710 to $2,381,053,789., which is a .046% increase. *See* CAPCALC-STD-R2013.xls and CAPCALC-STD-R2013 Order 1541.xlsx, Worksheet: LFP Revenue@New Prices,Cell D155.

percent cost coverage for FY 2011 of $643.2 million. FY 2011 ACD at 112, Table VII-11.

The Table below shows the minimal impact of the Standard Mail Flats rates proposed in response to Order No. 1541.

Impact of USPS' Response to Order 1541 on Coverage*						
	2008	**2009**	**2010**	**2011**	**2012 Proposed**	**2012 Revised**
Cost/pc (cents)	38.87	44.75	44.81	46.60	51.21	51.21
Revenue/pc (cents)	36.69	36.87	36.69	36.80	38.78	38.80
Coverage (%)	94.4%	82.4%	81.9%	79.0%	75.7%	75.8%
* Assumes revenues increase by .048% with constant volumes and costs						

Sources: ACD FY2008, FY2009, FY2010, FY2011, CAPCALC-STD-R2013.xls and CAPCALC-STD-R2013 Order 1541.xlsx

Thus, there is no possibility the deficiency will be reduced in any meaningful amount by the Postal Service's approach.[7]

Even the Postal Service's estimated *de minimis* impact on cost coverage will be reduced further by future increases in unit costs for Standard Mail Flats. As Valpak's Comments pointed out, from FY 2008 through FY 2011, the unit cost of Standard Mail Flats increased by 2.5 cents.[8] Normal future unit cost increases will further lessen any projected improvement in Standard Mail Flats cost coverage. The Postal Service has not explained how normal future unit cost increases (even in the face of cost cutting

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[7] It must be remembered that the fall-back panacea of future cost savings does not satisfy the Commission's directive to offer meaningful rate adjustments that will move toward 100 percent cost coverage as the directive to amend rates was issued in light of the estimated cost savings.

[8] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on the United States Postal Service Notice of Market-Dominant Price Adjustment, November 1, 2012 at 37.

measures) will impact its directive to achieve the increase in cost coverage toward the goal of 100 cost coverage.

The Public Representative's Comments calculated several annual rate adjustments for Standard Mail Flats in order to reach 100 percent cost coverage over a measurable and reasonable period of years. For instance, annual price increases over periods of 3, 5, and 7 years amounting to 5.373 percent, 3.190 percent and 2.268 percent, respectively, would reach the goal 100 percent cost coverage. PR Comments at 17, Table 5. The Postal Service's proposals do not proposes a plan to achieve compliance.

The Postal Service justifies maintaining minimal price increases for Standard Mail Flats on the theory that increased prices for those Flats would reduce contribution relative to Standard Mail Letters. Valpak's Comments provided a detailed explanation disproving that myth and demonstrates the Postal Service has failed to maximize potential Standard Mail contribution by failing to recognize that reducing money losing Flats volumes is more beneficial than reducing other Standard Mail Letter volumes that contribute less than is lost on Standard Mail Flats volume. Valpak Comments at 15-36. In addition to other shortcomings in the price amendment, the Postal Service's efforts fail to recognize the value of maximizing contribution.

Moreover, the Postal Service does not attempt to comply with the suggestions of the Commission in Order No. 1541, nor does it follow any other alternative course to comply with the directive. The Postal Service claims it has made two primary changes and, in one case, followed the Commission's suggestion in Order No. 1541 to reduce the prebarcoding discount by 2 cents (from 7.5 cents to 5.5 cents) between automation and non-automation Flats. Response at 3-4, *see* Order No. 1541 at 49 n.66. A second change merely corrects an error in the initial filing. The Postal Service also made several minor technical modifications. These changes produce very modest results.[9] While the adjustments are, as the Postal Service asserts, "largely based on Commission recommendations," they only accept part of the Commission's recommendations, without more, and so are insufficient on their face. Response at 4.

The Postal Service accepted only part of the Commission's suggestion which "would permit the Postal Service to comply with the FY 2010 ACD directive." Order No. 1541 at 49 n.66. While the Commission said that reducing the discount "now would result in prices that comply with the directive" the Commission carefully conditioned its suggestion and continued that if the price adjustments "minimally exceed the price cap (2.570 percent)," then banked authority available from previous dockets could be used. *Id*. As explained above, the price adjustments exceed the price cap by only a minimal amount. It cannot be reasonably contended that the amended increase of 0.046 percent, and the one-tenth of a percent increase in cost coverage, is anything other than a minimal amount. Thus, where the price cap is minimally exceeded, one additional necessary remedy should have been to use banked amounts as the Commission suggested. Yet, the Postal Service neither accepted this suggestion nor adopted any other approach to adjusting the rate above a minimal amount over the price cap.

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[9] The Postal Service reduced the prebarcoding discount between automation and non-automation Flats, corrected the avoided cost for Automation 3-Digit Flats and made several other technical modifications. These corrections had minimal impact as seen in the above Table. This increase does not suggest the Postal Service made a *bona fide* effort to relieve the continuing violation.

Again demonstrating its continued lack of initiative in following the Commission's FY 2010 ACD directive, the Postal Service claims it does not understand how to apply those banked amounts despite having before it and citing to the Commission's explicit detailed explanation and guidance in Order No. 606. Response at 3-4 n.10.[10] The Postal Service makes no attempt to utilize the Commission's careful explanation in Order No. 606 and makes no attempt to apply the banked amounts here. *Id*. at 6-11. Indeed, the Postal Service does not attempt even to explain the source of its "uncertainty" which it could have raised on its own motion in the period since Order No. 606 or in this case as well.[11] Rather, without noting the basis of its uncertainty, the Postal Service suggests clarification "will facilitate" use of the banked amount "in subsequent rate adjustments." Response 3-4 n.10. Note that it would not apply the clarification to this case but to a future case. The Postal Service has failed to comply with the Commission's long-standing directive twice in the same case.

Finally, if the Postal Service utilized its available Standard Mail banked authority of 0.038 for this rate adjustment, without also further amending the Standard Mail Flats rate, the amended Standard Mail Flats rate adjustment would barely exceed the average adjustment for Standard Mail. The difference would be only 0.01 percent (2.617 percent less 2.607 percent), substantially less than the minimal 0.048 above average increase currently being proposed.

[10] Docket No. R2011-1, Order Approving Market Dominant Classification and Price Changes, and Applying Price Cap Rules, December 10, 2010.

[11] When indicating the Postal Service was not utilizing available banked authority in this case, no mention was made of its uncertainty about applying the banked amounts. Postal Service Notice at 3-4.

2. The Postal Service Does Not Explain How the Proposed Prices Move Standard Mail Flats Cost Coverage Toward 100 Percent and Reduce the Subsidy of the Standard Mail Flats product.

Order No. 1541 also directed the Postal Service to provide the Commission with an explanation of how the proposed prices would move Standard Mail Flats cost coverage toward 100 percent and to estimate the reduction in the subsidy of the Standard Mail flats product. . Order No. 1541 at 35-36.

The Postal Service's response is minimal. It claims a lack of time "to assess the full impact of the revised price increase" and so cannot provide a "comprehensive explanation" of why the revised price adjustment will move toward a 100 percent cost coverage. The Public Representative proposes that additional time would not yield any more information because such a minimal increase would not move Standard Mail flats toward a 100 percent cost coverage. However, as noted above, "[all] else equal" the Postal Service foresees a $4 million annual increase in additional revenues from Standard Mail Flats, yet only $1.1 million additional revenues result from applying the 0.046 percent rate increase to its originally proposed Standard Mail Flats revenues of $2,379,956,710.[12] Response at 4-5. In other words, the revised price adjustment, for all practical purposes, will not move the Flats cost coverage towards 100 percent and will not reduce the Standard Mail Flats subsidy.[13] As before, the Postal Service does not establish that its prices will reduce the intra-class cross-subsidy.

B. The Postal Service Does Not Indicate a Time Period for Phasing in its Nonprofit Standard Mail presort discounts

[12] See note 7, above.

[13] The Postal Service's assertion that the Commission has overstepped its authority is another attempt to revisit the primary issues disposed of on its appeal of the FY 2010 ACD.

The Commission requested the Postal Service to "provide a justification as to why it views the different levels of discounts to Standard Mail consistent with the PAEA and not contrary to *National Easter Seal Society*." Order No. 1541 at 51. The Postal Service responds that *National Easter Seal Society v. USPS*, 656 F.2d 754 (D.C. Cir. 1981) determined that the Postal Service would not discriminate against non-profit mailers when it phased in the non-profit discount over time, while immediately instituting the corresponding Commercial discount, provided it offered a reasonable rationale for phasing in the non-profit discount. Response at 6. The Public Representative finds the Postal Service's rationale to be reasonable.

However, the Postal Service does not discuss what time period it will utilize as a phase-in period which the court in *National Easter Seal Society* implicitly recognized is necessary. The Commission should either establish a reasonable phase-in time period or establish criteria to determine a reasonable time period to phase in these non-profit discounts to insure they are fair and equitable vis a vis the Commercial Standard Mail presort discounts.

C. High-Density Plus Discount for Letters and Flats

The Postal Service says that it does not consider Saturation, High Density Plus, or High Density to involve worksharing because these "mailings do not involve work avoided by the Postal Service because of mailer activity." Response, Appendix C at 1. Nevertheless, the Postal Service says it will participate in a rulemaking to discuss this issue when the Commission opens a proceeding to consider this issue at a later date. The Public Representative is heartened to hear that "although the Postal Service does not view High Density Plus as "worksharing," it will participate in the Commission's docket to consider this issue further…." Response, Appendix C at 2.

The Public Representative's Comments previously expressed concern that the Postal Service seems to be drifting from adherence of Efficient Component Pricing (ECP)-based pricing principles. PR Comments at 12-13. The Public Representative fully supports the Commission's plan to clarify the meaning of worksharing. The Public Representative recognizes that a discount based on volume increases is the incentive that motivates the mailer for the above-mentioned services. The incentive is a reward for activity, just as a discount is a reward for activity. The question is whether the effort that a mailer takes to increase route volume allows the Postal Service to avoid some cost it would otherwise incur. The Public Representative also currently believes that a coverage increase on a route will modestly reduce the Postal Service's delivery costs, helping it to avoid some costs. The Public Representative is reserving judgment on this issue, but currently believes mailers of High Density, High Density Plus, and Saturation Mail do receive worksharing discounts.

III. CONCLUSION

The Public Representative submits the foregoing Comments on the Postal Service's Response to Order No. 1541 for the Commission's consideration.

Respectfully submitted,

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