Postal Regulatory Commission
Submitted 5/16/2013 4:18:25 PM
Filing ID: 86991
Accepted 5/16/2013

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

Review of Commission's Price Cap Rules **Docket No. RM2013-2**

COMMENTS OF THE NATIONAL ASSOCIATION OF PRESORT MAILERS

(May 16, 2013)

Pursuant to Order No. 1678, the National Association of Presort Mailers (NAPM) hereby respectfully submits these comments in opposition to proposed rule 3010.23(e) and proposed rule 3010.23(f).

NAPM membership includes 75 company members representing 143 mailing sites mailing in 36 states. NAPM represents mail owners preparing their own mail and mail service providers that commingle client mailings. Membership ranges from some of the largest mailers in the industry to many small business mailers providing services to their communities.

Our members interact with, and collect mail from, tens of thousands of mail consumers and combine their mail together to present it as a single mailing to the Postal Service so that the client can receive the benefits of workshare postage discounts with minimal involvement with the complex mailing standards required by the Postal Service. Collectively, NAPM represents approximately 40 percent of the total First-Class Letter Mail volume. We are committed to ensuring this mail remains profitable and in the Postal system. We are true partners with the Postal Service: NAPM members sell Postal Service products, our members' customers are its customers, and just like the Postal Service, without mail our members don't have a business.

In Docket R2013-1 the Postal Service, for the first time, sought to recover revenues forgone from its promotional incentives in the price cap calculation. Numerous parties noted that this was a fundamental change and raised a variety of legal, equitable, policy, and technical (price cap) concerns. *See* NAPM Comments at 5-6 ("change raises equitable and policy concerns as well as technical issues regarding price cap calculations that must be fully explored by the Commission"); NPPC Comments at 20 (recovering revenue forgone from promotions "shifts the risk of failed discounts and overestimates of usage from the Postal Service to other mailers. It is, in fact, troubling precedent, and one for which NPPC believes some reconsideration is in order."); Pitney Bowes Comments at 8 (change in approach would "set an important precedent, and raises several policy questions," Commission should approve "while reserving on the technical and policy issues presented . . . for more thorough examination in separate proceeding."); PR Comments at 6 ("The Commission should open a rulemaking on the price cap handling of temporary promotions intended to encourage demand."); ValPak Comments at 44 ("Given the short amount of time for consideration of the pricing changes noticed by the Postal Service, this docket is not the appropriate forum to consider policy changes such as permissibility of including revenue forgone in the price cap calculation.").

Notwithstanding the concerns raised by interested parties, the Commission approved the Postal Service's request with only a brief discussion of the cap calculation issues and no discussion of the legal or policy issues raised by the parties. See Dkt. No. R2013-1, Order No. 1541 at 18.

The Commission now proposes to amend its price cap rules to allow the Postal Service to include temporary promotional rates and incentive programs in the calculation of the percentage change in rates when those programs resulted in overall rate decreases. The Commission offers no discussion of the legal, equitable, or policy issues that were raised in the last rate adjustment proceeding. Nor does it not offer any explanation as to why the Commission is departing from its past practice. The narrative justification for the proposed rule changes is as follows:

> *Temporary promotional rates and incentive programs*. Paragraphs (e) and (f) of proposed rule 3010.23 reflect past Postal Service practice concerning the inclusion of temporary promotional rates and incentive programs in the calculation of percentage change in rates. In past rate cases, the Postal Service chose not to include temporary promotional rates and incentive programs in the calculation of percentage change in rates when those rates and programs resulted in overall rate decreases. Order No. 1541 at 18. Proposed rule 3010.23(e) states the Commission's approval of this practice. Proposed rule 3010.23(f) explains how the Commission expects rates to be calculated in cases where the Postal Service chooses to begin to include a temporary promotional rate or incentive program in a calculation of percentage change in rates after previously excluding the rate or program from the calculation pursuant to proposed rule 3010.23(e).

Order No. 1678 at 10-11.

The statement that the proposed change to rule 3010.23 reflects past Postal Service practice and the Commission's approval of that practice is not accurate. The established practice of the Postal Service and the Commission prior to Docket No. R2013-1, was to exclude promotional pricing incentives from the cap calculation. *See* ValPak Comments at 42-44 (*citing* Dkt. No. R2009-3; Dkt. No. R2009-5; Dkt. No. R2010-3; Dkt. No. R2011-1; Dkt. No. R2011-5; Dkt. No. R2012-6; and Dkt. No. R2012-

9). The reason so many parties raised objections in the last rate adjustment proceeding is because the proposal to include revenue forgone from the promotion in the cap calculation was a substantial departure from past practice.

In its prior decisions the Commission consistently held that promotional programs should be treated as analogous to negotiated service agreements (NSAs); and, thus, as having no impact on the price cap calculations. That treatment is reasonable and equitable. In adopting rule 3010.24, governing NSAs the Commission stated:

> The proposed rules exclude the effects of negotiated service agreements from the calculation of percentage change in rates. The foundational argument in support of negotiated service agreements is that they can be structured to benefit the participating mailer and the Postal Service, while not harming (and hopefully, benefiting) non-participating mailers. . . . including negotiated service agreements in the test for compliance with the rate cap may lead to rates for non-participating mailers that exceed the rate cap. This would undermine the rationale for permitting negotiated service agreements.

Dkt. No. RM2007-1, Order No. 26 at 36.

The same considerations apply to promotional prices. If the promotional incentives are intended to increase revenue and contribution, there is no justification for recouping the discount as revenue foregone. And mailers that are not eligible to participate in promotional pricing initiatives should not be forced to pay higher prices because the Postal Service offers an incentive that fails to improve its financial condition.[1]

[1] The recent experience with the Intelligent Mail barcode (IMb) Tech Credit promotion provides a useful illustration. As a prelude to an IMb mandate that will impose substantial costs and increased compliance risk on all mailers, a subset of mailers that cannot qualify for the tech credit will also face increased prices to recoup revenue forgone.

Because the rationale for treating NSAs and promotional pricing is the same, and because the Commission has not provided a reasoned basis for departing from its past practice, NAPM opposes the proposed rule 3010.23(e) and proposed rule 3010.23(f).

In light of the recent experience, however, NAPM agrees that the Commission's rules regarding the price cap implications of promotional incentives should be clarified. To ensure consistency with current rule 3010.24, NAPM suggests proposed rule 3010.23(e) is revised as follows:

> (e) Temporary Promotional Rates and Incentive Programs. The Postal Service shall ~~may~~ exclude temporary promotional rates and incentive programs from its percentage change in rates calculations if the temporary promotional rates and incentive programs result in overall rate decreases.

NAPM further suggests that proposed rule 3010.23(f) and the related narrative be withdrawn.

NAPM appreciates the Commission's consideration of these comments.

Respectfully submitted,

___/s/__Robert Galaher______
Executive Director and CEO
National Association of Presort Mailers
PO Box 3552
Annapolis, MD 21403-3552
www.presortmailer.org
E-mail: bob.galaher@presortmailer.org
Phone: (877) 620-6276