

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268

Notice of Price Adjustment
(Technology Credit Promotion)

Docket No. R2013-6

**COMMENTS OF TIME INC. ON MARKET DOMINANT PRICE ADJUSTMENT
FOR TECHNOLOGY CREDIT PROMOTION**

(May 24, 2013)

Pursuant to Orders No. 1702 (issued April 18, 2013) and 1708 (issued May 1, 2013), Time Inc. hereby submits comments on the Postal Service's proposed Technology Credit Promotion.¹

**I. THE TECH CREDIT PROMOTION IS NOT A CHANGE IN RATES
WITHIN THE MEANING OF THE COMMISSION'S RULES OR THE
PAEA**

The Postal Service is insistent that the Tech Credit Promotion is a price change:

[T]he Postal Service hereby provides notice that the Governors have authorized the Postal Service to temporarily adjust the prices for several market-dominant products within First-Class Mail®, Standard Mail®, Periodicals, and Package Services®.

[I]f the Postal Service were to institute the Technology Credit Promotion in January 2014 concurrently with the next scheduled market-dominant price change, the Postal Service would be able to treat the amount of the promotion as a decrease in rates,

¹ United States Postal Service Notice of Market-Dominant Price Adjustment (Technology Credit Promotion) (April 16, 2013), *as corrected by* Corrections to Notice of Market-Dominant Price Adjustment (Technology Credit Promotion) – Errata (April 26, 2013) (hereinafter Notice).

and thus offset the amount of the promotion through rate increases. The Postal Service believes that it should likewise be permitted to treat the Technology Credit Promotion as a decrease in rates.

Obtaining pricing authority for a price reduction should not determine the timing of the price change.

As is the case with all promotions, the Technology Credit Promotion effectively results in a price decrease, thus implicating the Commission's price cap rules.

Notice at 1, 5, 5; Resp. to CHIR No. 1, Q.5.² Yet despite these apparently unambiguous statements, the prospect of supplying the information needed to support a rate change brings forth the self-contradictory admission that “new prices” are not really in the offing:

As the Postal Service is not presently implementing new prices, the information requested in subsections (b)(1), (b)(2), and (b)(3) [of § 3010.14 of the Rules of Practice] is not relevant.

Notice at 6.

For reasons that we will discuss in section II, Time Inc. does not think that the Tech Credit Promotion is a price decrease in any ordinary sense of that term. But let us assume for the sake of argument that there might be reasons to allow it to be treated as if it were a price decrease, and then ask the following: Is the Postal Service's proposed way of treating this "price decrease" consistent with either the Commission's rules or the PAEA's annual limitation and banking provisions?

² Responses of the United States Postal Service to Chairman's Information Request No. 1 (May 7, 2013).

a. The Postal Service response to CHIR No. 1, Q.6

In Chairman's Information Request No. 1, the Postal Service was asked in essence just that question. In explaining why it had failed to comply with Rule 3010.14(b), the Postal Service appeared to suggest that the Commission's rules simply failed to foresee, and thus made no place for, creations as exotic as the Technology Credit Promotion:

[T]he Technology Credit Promotion does not fit squarely within any of the Commission's existing rules. It is neither a Type 1-A rate adjustment nor a Type 1-B rate adjustment. Both of those rate adjustment types presuppose price increases, whereas here the Postal Service is not proposing price increases. The Postal Service has therefore offered a reasonable suggestion as to how the Commission should treat the promotion's price cap implications, in a manner that is consistent with the Postal Accountability and Enhancement Act (PAEA). . . .

The Postal Service does not state the basis for its assertion that Type 1-A and 1-B cases presuppose price increases. Whether or not that assertion is correct, it is not the case that the Commission's rules governing rate adjustments for market dominant products in general contain any such presupposition. Subpart C of the Rules for Market Dominant Products, "Rules for Applying the Price Cap," contains Rule 3010.23 (Calculation of percentage change in rates), which provides in part:

(a) The term rate cell as applied in the test for compliance with the annual limitation shall apply to each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. Thus, seasonal or temporary rates, for example, shall be identified and treated as rate cells separate and distinct from the corresponding non-seasonal or permanent rates.

Since all "seasonal or temporary rates" thus far have been decreases, limited in scope, it is obvious that Rule 3010.23(a) does not presuppose that all rate

adjustments will be increases. And as we discuss in detail in subsection b. below, the Commission's Proposed Rules in Docket No. RM2012-2 explicitly provide for the treatment of "temporary promotional rates and incentive programs [that] result in overall rate decreases" as ordinary rate adjustments that are subject to the usual procedural rules for rate adjustments, such as calculating percentage changes in rate levels, effects on the price caps, and effects on the amounts of unused price authority.

In apparent contradiction to the first paragraph of the response to Q.6 of CHIR No. 1, the second paragraph points to the rules as applying to price decreases and then notes that the Commission has also provided an alternative way, outside of the rules, of dealing with a particular type of price decrease:

Every promotion is a price change, and *under the Commission's rules, every price change results in the calculation of price cap authority, and such authority must either be used or banked*. Nonetheless, the Commission has previously exercised regulatory discretion in departing from those outcomes where warranted by special circumstances not contemplated in the Commission's rules.

(Emphasis added; footnote omitted.) The italicized words are correct as a description of the current rules. It is also correct that the Commission has exercised sound regulatory discretion in departing from those rules in a particular situation, and not applying the price-cap/pricing-authority/banking framework. The Postal Service provides two examples of such a situation in a footnote to the passage above, which we have not reproduced. But the Postal Service has stipulated clearly that the Tech Credit is not analogous to those situations and that it is not interested in pursuing the non-price-cap/non-pricing-authority/non-banking option.

Specifically, the two cases referred to in the Postal Service's footnote are Dockets No. R2011-5 and R2012-6. Both involved limited-availability discounts of two months' duration, in one case for "certain types of First-Class Mail and Standard Mail that contain a barcode readable by consumer smartphones" and in the other for "First-Class Mail and Standard Mail letters, flats, and cards . . . that contain a qualifying mobile barcode."³ In both cases the Postal Service expected the promotions to reduce revenue in the year in which they were offered. In both cases, the Postal Service proposed to "*exclude the effect of the price decrease on the price cap and price changes described in rules 3010.14(b)(1)-(4).*" Order No. 731 at 9 (emphasis added); *see also* Order 1296 at 6. And in both cases, the Commission found 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.*" Order No. 731 at 9; Order No. 1296 at 6 (emphasis added). In both cases, the Commission stated:

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.

Order No. 731 at 9; Order No. 1296 at 6 (emphasis added).

³ Docket No. R2011-5, Order Approving Market Dominant Price Adjustment (Order No. 731) (issued May 17, 2011), at 1; Docket No. R2012-6, Order Approving Market Dominant Price Adjustment (Order No. 1296) (issued March 26, 2012), at 1.

In the instant case, the Postal Service does not propose to "*exclude the effect of the price decrease on the price cap and price changes described in rules 3010.14(b)(1)-(4)*," but rather:

- (1) to recover "the effect of the price decrease on the price cap" by creating new pricing authority of equivalent value to the rate decreases when it implements the Promotion on June 1, 2013;
- (2) to exempt itself from Rule 3010.14(b)'s requirements to update the price cap and the amounts of banked pricing authority for each class of mail ((b)(1)-(2)) and to calculate the percentage change in rates for each class ((b)(3)), while complying with (b)(4)'s requirement to calculate "the amount, if any, of unused rate authority that will be generated by the rate adjustment";
- (3) exempt itself from the statutory Banking Rule and its FIFO provision (39 U.S.C. § 3622(d)(2)(C)(iii)(III)); and
- (4) on the date of its next annual rate adjustment (January 2014), use the new pricing authority referred to in item (1) for the purpose of charging higher rates than would otherwise be permitted by law to mailers who were ineligible for the Promotion "*based on the amount which otherwise would be banked from the program.*"

Theoretically, the entire amount of new unused pricing authority from the Tech Credit Promotion could be translated into rate increases for mailers who are not eligible for the Credit. Such things are impossible to trace.

Consequently, the Tech Credit Promotion is not, as are the cases which the Postal Service compares it, a *generally applicable rate adjustment that effectively lowers all rates implicated*. When one adds the impact of the new pricing authority to be exercised in the next annual rate adjustment, the overall impact on individual mailers, whether or not they are eligible for the Credit, is wildly various. The program would cause Time Inc. to experience a net loss of roughly \$454,000 (assuming that the pricing authority created by the Promotion is distributed

proportionately to the existing rate structure).⁴ Other mailers with large volumes would presumably experience large losses as well.⁵ And under the same assumption, all mailers who are *not* eligible for the Promotion, which includes mailers of all types, would nonetheless be required to help finance it.⁶

b. The significance of Docket No. RM2013-2's proposed price cap rules

In its Notice, the Postal Service did take account of the rules proposed by the Commission in Docket No. RM2013-2. Time Inc. agrees with the Postal Service that while those rules "are preliminary and have yet to be . . . finalized, they presumably reflect the Commission's updated interpretation of the existing price cap rules."⁷ We do not agree, however, that "[w]hile the Commission has proposed new rule language concerning temporary promotional rates and incentive programs, that language does not clarify how to assess the Technology Credit Promotion's effect on the price cap." *Id.* at 4-5. The language of the proposed rules appears to have been expressly designed to accommodate cases of temporary promotional rates or

⁴ This figure was determined by multiplying Time Inc.'s projected FY 2013 postage bill in each of the four classes by the Technology Credit Pricing Authority to be generated in each class, as shown in the Corrections to Notice of Market-Dominant Price Adjustment (Technology Credit Promotion) – Errata (April 26, 2013), and then subtracting \$5,000 to represent one Technology Credit. Time Inc. pays all of its postage through a single CRID.

⁵ Time Inc. mailed nearly 835 million pieces in Periodicals Class alone in FY 2012.

⁶ Time Inc. understands that there have been expressions of intention by Postal Service management to apply the new pricing authority created by the Tech Credit in other than an across-the-board fashion. But: (1) such decisions ultimately rest with the Governors; and (2) pricing authority, like money, is fungible, so that it is impossible to distinguish between the effects of pricing authority generated by annual growth in the CPI-U and pricing authority generated in any other way.

⁷ Notice at 4. Comments on the Proposed Rules were filed on May 16 and 17, 2013.

incentive programs that may appropriately be treated as "a decrease in rates, resulting in price authority" (*id.* at 5) and those that may not.

The Proposed Rules present the Postal Service with two clear alternatives: one of these, treating the Credit as a rate decrease and dealing with any resulting new price authority under the banking rules, has always existed under the Commission's rules; the other, not treating the Credit as a change in rates or as affecting price authority, codifies an approach used several times for special promotions, an approach expressly rejected by the Postal Service here.

As noted above, the Postal Service begins its response to Q.6 of CHIR No. 1 with the observation that the Credit "does not fit squarely within any of the Commission's existing rules," virtually quoting an observation of the Commission about temporary discounts for barcodes readable by consumer smartphones in Docket No. R2011-5.⁸ However, in the case of the temporary barcode discounts proposed in that docket, the Postal Service proposed "to exclude the effect of the promotion on the price cap calculation, forgoing the cap room it could bank based on the decrease," and therefore did "not submit[] a price cap calculation pursuant to rule 3010.14" but rather chose to "to treat the program in a manner mathematically analogous to past pricing incentive programs" and to "exclude the effect of the price decrease on the price cap and price changes described in rules 3010.14(b)(1)-(4)." Order No. 731 at 3, 7, 9.

The Commission found that "[i]n those limited circumstances" it was

⁸ See Order Approving Market Dominant Price Adjustment (Order No. 731) (issued May 17, 2011), at 17 (hereinafter Order No. 731).

"appropriate to allow the Postal Service to implement the adjustment without a price cap calculation," and also that "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." *Id.* at 9. It approved the Postal Service's proposal.

Although the Postal Service refers to Order No. 731 with approval in its response to Q.6, that order approved an approach to temporary discounts entirely unlike what the Postal Service proposes in this docket. It is curious that the Postal Service makes no allusion to a further statement in Order No. 731, at 7, that has a very obvious application to this docket:

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.*

Id. (emphasis added). The Commission has kept that commitment and has proposed rules that: (1) explicitly provide for "Temporary Promotional Rates and Incentive Programs" that do not require a price cap calculation, thus codifying the Commission's exercises of regulatory discretion in Orders 731 and 1296 (Proposed Rule 3010.23(e)); and (2) clarify the procedures for other temporary promotional rates and incentive programs (Proposed Rule 3010.23(f)).⁹

Specifically, Proposed Rules 3010.23(e) and (f) provide as follows:

⁹ Docket No. RM2013-2, Notice of Proposed Rulemaking Requesting Comments on Proposed Commission Rules for Determining and Applying the Maximum Amount of Rate Adjustments (Order No. 1678) (issued March 22, 2013) (hereinafter Order No. 1678 or Proposed Rule).

(e) *Temporary Promotional Rates and Incentive Programs.* The Postal Service 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.

(f) *Current Rate.* For purposes of this section, the current rate for a rate cell is the rate that corresponds to the billing determinants described in paragraph (d) for the rate cell. For rate cells that include a temporary promotional rate or incentive program that was previously excluded under paragraph (e), the current rate is the generally applicable rate for the rate cell at the time of the filing of the notice of rate adjustment, not the temporary promotional rate or incentive program rate in effect for the rate cell at such time.

Order No. 1678, Attachment at 9.¹⁰

These two provisions are fully consistent with the precedents in which, in the Postal Service's words, "the Commission has recognized[] [that] the PAEA allows for promotions[] and [that] it allows the Postal Service to recover the amount expended in promotions through new price cap authority." Resp. to CHIR No. 1, Q.6. The effect of these provisions is to inform the Postal Service that when it implements a

¹⁰ Proposed Rule 3010.23(d), which subsection (f) refers to, provides:

(d) The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants. The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. Whenever possible, adjustments shall be based on known mail characteristics. Adjustments to billing determinants may not be based on anticipated changes in mailer behavior. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

temporary incentive rate or promotional program that "result[s] in overall rate decreases," whether midyear or otherwise,¹¹ it has two options:

- 1) to "exclude [the program] from its percentage change in rates calculations," per subsection (e). I.e., no calculations relating to percentage changes in rates need be done at the time the program is proposed, or implemented.

Subsection (e) tells the Postal Service that it "may" exclude temporary promotional rates and incentive programs from its rate change calculations entirely. Subsection (f) explains that if it chooses to exercise this subsection (e) option, then the "applicable rate" for purposes of calculating percentage changes in rates when it makes its next annual rate adjustments is "not the temporary promotional rate or incentive program rate" but the rate established "at the time of the filing of the notice of rate adjustment." I.e., if the only thing the Postal Service does is to adopt temporary promotional rates and/or incentive programs under this option, no price adjustment occurs for rate cap purposes, no new pricing authority is created, and no question regarding the use or banking of new authority arises.

- 2) to include the program in its percentage change in rate calculations.

Since the word "may" is permissive, subsection (e) tells the Postal Service by implication that it is not *required* to exclude temporary promotional rates and incentive programs from its percentage rate change calculations, and that if it chooses not to exclude them, they will be treated

¹¹ See Rule 3010.23(a):

The term "rate cell" as applied in the test for compliance with the annual limitation shall apply to each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. Thus, seasonal or temporary rates, for example, shall be identified and treated as rate cells separate and distinct from the corresponding non-seasonal or permanent rates.

See also Order No. 43 (October 7, 2007), at 51-52:

The intent of rule 3010.23(a) is for each rate that is either current (even if it is not available at the time of year of the notice) or planned, or both, to be treated as a rate cell and thus included in the formula in rule 3010.23(c). . . . This is to be done without regard to the timing of the notice within a calendar year.

like any other rate adjustment. (This is codified by existing Rule 3010.23(a).) This means that the Postal Service must calculate the percentage change in rates (per proposed Rule 3010.12(b)(3)) and that, by implication of subsection (f), the "applicable rate" for purposes of that calculation is "the temporary promotional rate or incentive program rate." It also means that any new unused rate adjustment authority must be identified and accounted for (per proposed Rules 3010.12(b)(4) and 3010.26(f)) and that it must be banked and may subsequently be used only in accordance with the FIFO and 5-year expiration provisions of the banking rule (per proposed Rule 3010.27 and section 3622(d)(2)(C)(iii)(III) of the Act)."

In short, the Proposed Rules present the Postal Service with two mutually exclusive ways of treating temporary promotions and incentives that have the effect of a rate decrease. They do this by codifying an approach the Postal Service has advocated and by clarifying the relation of the mainstream cap-authority approach to that approach.

In Order No. 606, at 17, the Commission discussed the option that Proposed Rule 3010.23(e) & (f) would codify:

Limited availability rate discounts to stimulate volume growth have been approved in previous dockets, but until now, the Postal Service has not requested credit for what it views as a price decrease. In Docket No. R2009-2, the Postal Service introduced the Saturation Mail Volume Incentive Program. At that time the Postal Service did not include the discounts in the cap calculation for the Standard Mail class. Similarly, in recent cases, the Postal Service proposed to ignore the effect of any price decrease resulting from volume incentive programs on the price cap for both future and current prices In each of these cases, the Commission accepted the Postal Service's proposal Additionally, the Commission indicated that this was the proper treatment

In the instant proceeding, the Postal Service has stated that it does not find that option satisfactory. It asks the Commission to extend the exceptions to its rules by several long steps, explaining:

In the present docket, the Postal Service has proposed a temporary, mid-year promotion. Under the Commission's rules, a promotion is a price change. Strict adherence to those rules would necessitate that the Postal Service calculate the current CPI-U authority and any price cap authority created by the promotion now, and either use that authority now or bank it. However, as the Commission has recognized, the PAEA allows for promotions, and it allows the Postal Service to recover the amount expended in promotions through new price cap authority.

Resp. to CHIR No. 1, Q.6 (footnote omitted). But the word "However," which might more appropriately have been "Accordingly," fractures the logic of the Postal Service's explanation. It is precisely by "calculat[ing] . . . any price cap authority created by the promotion now, and either us[ing] that authority now or bank[ing] it" that the Postal Service is enabled "to recover the amount expended in promotions through new price cap authority."¹² It is fanciful of the Postal Service to blame that fact of life on any supposed requirement of "[s]trict adherence" to the Commission's rules. It is the unavoidable consequence of even a loose adherence to the banking provision of the PAEA.

¹² As discussed in a later section, Time Inc. does not think that the Tech Credit Promotion as now proposed constitutes a "decrease in rates" or a rate adjustment of any kind. Whether there exists, or ought to exist, outside the constraints of the price cap mechanism, an opportunity for recovering the costs of promotions of market dominant products that do not themselves take the form of market dominant rate adjustments, is a question that merits consideration, but on which Time Inc. currently has no suggestions to offer.

c. The Tech Credit would violate the statutory banking provision

Under §§ 3622(d)(1)(A) and (2)(A) of title 39, "an annual limitation on the percentage changes in rates" of CPI-U "over the most recent available 12-month period" applies to each class of mail, "[e]xcept as provided under" the banking provision. The banking provision, § 3622(d)(2)(C), provides in relevant part:

(C) Use of unused rate authority.—

(i) Definition.—In this subparagraph, *the term "unused rate adjustment authority" means the difference between—*

(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

II) the amount of the rate adjustment the Postal Service actually makes in that year.

(ii) Authority.—*Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.*

(iii) Limitations.—In exercising the authority under clause (ii) in any year, the Postal Service—

(III) *shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; . . .*

(Emphasis added.) Within the price cap framework, there is no other basis for the creation of pricing authority than the annual limitation and the banking provision.

Therefore, what the Postal Service proposes--the creation of new pricing authority at one time or over one period (here on June 1, 2013 or from June 1, 2013 through May 31, 2014) and simply adding it to CPI-U authority for the same or a future period (likely January 26, 2014 through January 25, 2015) without banking it or observing

the banking provision's FIFO rule--is not permitted under the statute. As the Commission stated in Order No. 606, at 15-16:

The annual limitation on price changes is a stand-alone calculation which is implemented by Commission rule 3010.21. . . . [I]nterim unused rate authority is not added to the annual limitation. They are separate calculations.

The PAEA provides for an annual limitation based on growth in the CPI-U for the previous 12 months, and for any unused rate authority to be banked and then used within specified limitations. There is no third category of pricing authority within the price cap framework. As the Commission has explained:

Unused rate adjustment authority is not an adjustment to the annual limitation. It is a separate and distinct reservoir of potential rate increases that is available for use for up to 5 years.

Order No. 606 at 6.

The Postal Service's real problem with Commission's rules, both current and proposed, is not that they are unclear but that they fail to provide a means of circumventing the statutory banking provision. And the source of the Postal Service's frustration with the statutory banking provision is the Commission's decision that negative pricing authority must be banked.¹³ Time Inc. takes no position on this issue, except to say that a frontal assault on that ruling might have a better chance of receiving a sympathetic hearing than an attempt, such as the current proposal, to evade its consequences.¹⁴

¹³ See Order No. 606, at 6-10.

¹⁴ Time Inc. is not unsympathetic to the quandary that the Postal Service is placed in by

[footnote continues]

d. The Tech Credit Promotion would plainly violate Proposed Rule 3010.12(c)

One of the Proposed Rules codifying the Commission's previous orders on temporary promotional rates and incentive rate discounts is conspicuous by its complete absence from the Postal Service's presentation. That is Proposed Rule 3010.12(c)(3), which would provide as follows:

(c) Whenever the Postal Service establishes a new discount or surcharge, it must include with its filing: . . .

(3) In the case of a discount, a certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

Thus in Order No. 606, at 17, when the Commission pointed out that in previous

the combination of the requirement to bank negative pricing authority, the FIFO rule, and its current financial troubles. But we think that the approach taken in the Tech Credit proposal does not merely stretch but breaks the law. PostCom got to the heart of the matter in its comments on the Proposed Rules:

PostCom does not understand why rate authority created by a mid-year promotion—authority that will by definition be “unused” during the year—should be treated any differently than rate adjustment authority available, but not used, during an annual price adjustment. In both cases, rate adjustment authority is available, but not used. It should, therefore, be added to the “bank” of unused rate adjustment authority and used on a first-in, first-out basis as directed by existing and Proposed Rule 3010.27.

Docket No. RM2013-2, Comments of the Association for Postal Commerce (May 16, 2013), at 6.

PostCom suggests that “[t]he Commission should consider clarifying its Proposed Rules to state that rate adjustment authority created by a mid-year promotional rate decrease should be treated like any other unused rate adjustment authority.” *Id.* That is Time Inc.'s understanding of the Proposed Rules as they currently stand. We have some concern that the suggested clarification could create a misimpression regarding the likelihood that a midyear promotional rate decrease will be an appropriate basis for creating unused rate adjustment authority.

dockets it had approved Postal Service proposals "to ignore the effect of any price decrease resulting from volume incentive programs on the price cap for both future and current prices," it explained that "[i]n each of these cases . . . this was the proper treatment 'because ineligible mailers will not be charged higher rates based on the amount which otherwise would be banked from the program.' Order No. 439 at 12." As we have seen, it followed the same reasoning in Orders No. 731 and 1296. In Order No. 606, it rejected the Postal Service's proposal that it be given "credit" in the form of additional rate adjustment authority on account of a temporary discount for Saturation and High Density Standard Mail, stating:

Mailers that are not eligible to participate should not have negative consequences resulting from the incentive. Moreover, increasing unused rate authority could encourage the Postal Service to offer incentives that are otherwise unlikely to improve its financial condition.

Order No. 606 at 19.¹⁵

¹⁵ Time Inc. has always disagreed with the rationale of this rule, which in its statutory form (39 U.S.C. § 3622(e)(4)(c)) and in the Commission's current Rules (§ 3010.14(c)(3)) applies only to Workshare Discounts, and which, if interpreted literally, would simply ban all new discounts that come within its purview. Given the nature of the postal rate structure and the ratesetting process, any rate decrease or increase for a grouping of mail almost necessarily produces the opposite effect for other mail in the same class, whether it is called a discount, an inflation-based rate adjustment, or something else. The fact that a reduction from an existing rate may be a more effective pricing strategy than, say, arriving at the same price from the other side by having restrained increases in the rate may have a great deal to do with marketing success and nothing whatever to do with the fairness of the rate to mailers who are not making use of it. The one method of arriving at the price may be no more likely to do them harm than the other. (In fact, whichever does the Postal Service more good will probably do more good for both mailers who can and cannot use the rate.)

The Postal Service's Notice no doubt fails to mention these holdings and the related proposed rule because the Tech Credit Promotion itself holds them in such defiance.

II. IN ANY ORDINARY SENSE OF THE TERM, THE TECH CREDIT IS NOT A PRICE DECREASE

The Postal Service asserts, as noted earlier:

As is the case with all promotions, the Technology Credit Promotion effectively results in a price decrease, thus implicating the Commission's price cap rules.

Resp. to CHIR No. 1, Q.5 (emphasis added). That assertion is belied by the difficulty of bridging the gap between the concept of a price and the nature of the promotions in earlier cases where the Postal Service argued that there were no price cap implications, and the Commission agreed. As discussed above, the Commission has now proposed rules that would codify its precedents treating certain promotions *not* as a price decrease and *not* as having price cap implications, at the Postal Service's option.

Let us first consider how the Tech Credit would fare under the Proposed Rules for promotions and discounts that *are* treated as rate decreases and so that *have* price cap implications:

- i. Since the Postal Service wishes to treat the Tech Credit Promotion as a rate decrease that creates new pricing authority, it cannot choose to “exclude [the Promotion] from its percentage change in rates calculations” under subsection 3010.23(e).
- ii. It follows that the Postal Service *must* include the Promotion in its percentage change in rates calculations.

- iii. Proposed Rule 3010.12(b)(3) requires that a "notice of rate adjustment shall be accompanied by"

(3) The percentage change in rates for each class of mail calculated as required by §3010.23. This information must be supported by workpapers in which all calculations are shown, and all input values including current rates, new rates, and billing determinants are listed with citations to the original sources.

- iv. Since the Postal Service has chosen to include the Promotion in its percentage change in rates calculations, Rule 3010.23(f) indicates that the correct rate to use in those calculations for the "rate cells that include [the] temporary promotional rate" is "the temporary promotional rate or incentive program rate."
- v. But there are no such rate cells and there is no such rate.

In its Order Reviewing Postal Service Market Dominant Price Increases in Docket No. R2009-2 (Order No. 191), at 12, the Commission discussed some of the central principles embodied in its rules for market dominant price adjustments:

PAEA pricing authority. In practice, applying the statutory limitation to a planned price adjustment and verifying the consistency of the planned adjustment with the limitation requires two calculations: one to determine the appropriate cap *and another to determine the change in rates.* [Emphasis added.] Commission rules address both calculations.

. . . Rule 3010.23(b) identifies a three-step method for calculating the percentage change in rates. 39 CFR § 3010.23(b). It provides that volumes needed for the calculation for each rate cell are to be obtained from the most recent available 12 months of Postal Service billing determinants, but allows reasonable adjustments to account for the effects of classification changes, such as the introduction, deletion, or redefinition of rate cells; however, the Postal Service must identify and explain all adjustments. 39 CFR § 3010.23(d).

When one asks, what are the rate cells that are affected or what are the rates that are lowered by the Tech Credit Promotion, the Postal Service has no answer. Or rather, it has new cells in its billing determinants with zeros in them, which stand

for rates that had no previous existence, that will be decreased from that level to negative numbers, and that are associated with numbers of dollars but not with any volumes of mail.

The eligibility requirements for the Tech Credit, and for cashing in the Tech Credit, are neither product-specific nor class-specific, as the proposed MCS language makes clear:¹⁶

a. To be eligible for the Technology Credit Promotion, a mailer must have mailed more than 125,000 pieces in any combination of automation-compatible First-Class Mail Presorted Letters/Postcards, First-Class Mail Flats, Standard Mail Carrier Route, Standard Mail Flats, In-County Periodicals, Outside County Periodicals, or Package Services Bound Printed Matter Flats between October 1, 2011 and September 30, 2012 (FY 2012).

d. The Technology Credit is automatically applied as a credit to postage for future mailings of First-Class Mail Presorted Letters/Postcards, First-Class Mail Flats, Standard Mail Carrier Route, Standard Mail Flats, In-County Periodicals, Outside County Periodicals, and/or Package Services Bound Printed Matter Flats where at least 90 percent of mailpieces within a mailing comply with Full-service Intelligent Mail requirements.

The Technology Credit is a single “credit to postage” to a CRID in a fixed dollar amount of either \$2000, \$3000, or \$5000 to be made sometime between June 1, 2013 and May 31, 2014 for 90%-IMb-qualified mailings of any combination of several products that cross all four classes, entitlement to the credit being based on mailings by the same CRID in FY 2012 of automation-compatible volumes of any

¹⁶ See USPS Response to CHIR No. 1, Q.8c (May 7, 2013).

combination of those products that meet a threshold of, respectively, 125,001, 500,001, and 2,000,001 pieces.

The Postal Service views the Tech Credit Promotion as a "price decrease" that occurs on June 1, 2013 and expires on May 31, 2014. Its calculation of the size of the alleged price decreases and its allocation of the new pricing authority created thereby are peculiar. First, it sums the total FY 2012 volume from each eligible product for each class. The volume from eligible products in First Class, for example, was 42.5 billion. Then, based on its data on the mailings of all CRIDs in FY 2012, it determines the total number of dollars for which it expects mailers to be eligible. At the time of its first revised spreadsheet, its estimate was \$66 million. It then multiplies this sum by the proportion that each class's eligible volume makes up of total eligible volume and distributes that amount back to the class. Thus, 42.5 billion pieces of eligible First Class equals 37.0% of all eligible volume. Therefore, 37.0% of \$66 billion, or \$24.3 million, was distributed to First Class as a "price decrease." To turn that \$24.3 million into new pricing authority, it is divided by the total revenue of all of First Class, giving the result of 0.084%.

A number of things about this procedure should be noticed. First, no rates appear anywhere in it, and no scheduled rate is different after the Program from what it was before the Program. Second, the only volumes that make an appearance are the total eligible volumes and the total volumes by class. Neither has anything whatever to do with how much money is distributed in credits, who is eligible to receive that money, how much they are eligible to receive, or whether or when they actually receive it. Third, the new pricing authority is: (1) permitted to be

used within each class with no restrictions whatever, to increase the rates of eligible and non-eligible mailers alike; but (2) distributed to each class on a narrower basis, the raw number of automation-compatible pieces in the eligible products from that class; while (3) eligibility for the "price decrease" on which the new pricing authority is based is vastly more restricted, to CRIDs that mailed at least 125,001 eligible pieces in FY 2012.

In short, putting aside the fact that non-eligible mailers will be exposed to rate increases, the link of authority to class is based on a series of arbitrary allocations. Mailers get rebate checks. The Postal Service gets new pricing authority. But the scheduled rates, the platform on which the Postal Service intends to add next year's new pricing authority, remain just where they were. It is apparent, for example, that an increase or a decrease in the volume of any specific product or class would have no predictable effect on the Credit. Under these conditions, no mailer can see his link to the CPI, much less understand the rate increase received. If we look again at the Postal Service's Notice, at 6, we find the disquieting statement: "As the Postal Service is not presently implementing new prices, the information requested in subsections (b)(1), (b)(2), and (b)(3) [of Rule 3010.14] is not relevant." And we wonder again how such a claim is consistent with the assertion that "the Technology Credit effectively results in a price decrease, thus implicating the Commission's price cap rules." Resp. to CHIR No. 1, Q.5.

Since the Credit is a one-time fixed-sum payment based on mailing more than a threshold volume of automation-compatible pieces in any combination of products across the four major classes over the period of a year, followed by an increase in

the rate cap in the following year in each class by an amount unrelated to the amount paid out to that class in credits, it is impossible to identify any particular rate cell or class whose rate has been lowered by any particular amount. This promotion cannot legitimately be called a rate decrease.

III. IF THE TECH CREDIT PROMOTION WERE A RATE DECREASE THAT GAVE RISE TO NEW PRICE ADJUSTMENT AUTHORITY, AN EQUAL AMOUNT OF PRICE ADJUSTMENT AUTHORITY WOULD BE NEEDED TO RESTORE RATES TO THEIR PREVIOUS LEVELS WHEN THE PROMOTION ENDS

Under the PAEA's statutory price cap scheme, only a decrease in rate levels that has the character of permanence can generate rate adjustment authority that has the character of permanence. If the Postal Service lowers rates temporarily and then raises them back to their previous levels, no net rate adjustment authority should be generated by the process or should remain after the process is complete, whatever the interval between the two actions. If one follows the logic of the process itself, and applies it to the Tech Credit Promotion as presented on the record in this docket, the following result emerges.

If it were possible to identify particular rates that were reduced by the Tech Credit Promotion, then all through the Promotion period, if nothing else happened during it, those rates would be at the level to which the Promotion had reduced them, not the level they were at before the Promotion began. Proposed Rule 3010.23(f) indicates that in calculating percentage changes in rates, as will have to be done during the Promotion period if an annual adjustment is to be implemented in January 2014, the current rate "for rate cells that include a temporary promotional rate" and that have not been excluded from rate change calculations under the

option provided by subsection (e) is "the temporary promotional rate." In the case of the Tech Credit, the rates before the Promotion goes into effect (which are purely notional, which no one ever has paid or ever will pay, which are for services that cannot be described because they have no existence) are all set at zero. After the Promotion's date of implementation, they become negative. They will therefore be negative when the Postal Service makes its next annual rate adjustment, in January 2014. In order to restore the *status quo ante* at the expiration of the temporary promotion in May 2014--to get these notional rates back to their original level of zero--the Postal Service plans, in its words, to "reverse [the Tech Credit Promotion] in the first annual price change subsequent to the expiration of the Promotion," i.e., in January 2015. Resp. to CHIR No. 1, Q.7. Doing that ought, under the logic of the scheme, to require the use of just as much pricing authority as the Postal Service was able to generate by "lowering rates" in the first place.

But all this raises an awkward question. Just what is it that the Postal Service said it was going to do with the new pricing authority that it will need in January of 2015? It said that it was going to *use it* in January of 2014:

The Postal Service requests that the Commission allow it to use the price adjustment authority generated by the Technology Credit Promotion in its next market dominant price increase. Because the authority is being created in the middle of the pricing year, it is akin to the inflation-based authority that is created during the course of the year, and as such can be added to the inflation-based authority.

Notice at 6.

[The Commission's rules] would necessitate that the Postal Service calculate the current CPI-U authority and any price cap authority created by the promotion now, and either use that authority now or bank it. . . . The Postal Service has therefore

asked the Commission to allow[] the Postal Service to implement a mid-year promotion and then recover the price cap authority created by the promotion in the Postal Service's next annual price change.

Resp. to CHIR No. 1, Q.6.

Clearly, the Postal Service cannot use any pricing authority generated by the Tech Credit Promotion for the purpose of making general above-cap rate increases in January of 2014, and then use that same pricing authority again for the purpose of raising the Promotional rates back up to their pre-Promotional level.

The following table illustrates the problem:

Tech Credit Pricing Authority: Actions & Implications			
Date	Action	Rates Implication	Price Cap Implication
June 1, 2013	Tech Credit Promotion begins	Promotional rates decreased	Tech authority generated
January 1, 2014	2014 annual rate adjustment	Rates in general increased above what CPI-U cap would otherwise permit	Tech authority used by subtraction from revenue in calculating price cap authority (CPI-U price cap is increased by the amount of Tech authority generated in June 2013)
May 31, 2014	Tech Credit Promotion ends	Promotional rates increased to pre-Promotion levels	Requires use of rate adjustment authority equal to amount of Tech authority created when rates were decreased
January 1, 2015	2015 annual rate adjustment	Rates in general raised by less than CPI-U price cap would otherwise permit	Addition to revenue in calculating price cap authority of "same amount" as was subtracted in Jan. 2014 (CPI-U price cap is reduced by amount of Tech authority generated in June 2013)

The Postal Service's response to CHIR No. 1, Q.7 is apparently unequivocal, and is certainly correct, in indicating that the Technology Credit Promotion cannot result in the production of any net new pricing authority if the annual price

adjustment in the year subsequent to the Promotion's expiration is taken into account. But it is far from clear how the Postal Service envisages the technical aspects of that adjustment working out in practice, or whether its own judgment that its procedures would be "consistent with the Commission's rules and methodologies" and that its "calculations will be clear and transparent" will prove any more accurate than would a similar judgment of the Tech Credit Proposal as a whole.

Question 7 and the Response are as follows:

Question 7

The Postal Service appears to propose the creation of permanent price cap authority. Notice at 6. However, the Technology Credit Promotion is proposed as a temporary, one-time offer. How does the Postal Service intend to reflect the expiration of the Technology Credit Promotion in subsequent Type 1-A or 1-B rate adjustments?

RESPONSE:

The price cap authority created by the Technology Credit Promotion will automatically reverse in the first annual price change subsequent to the expiration of the Promotion, consistent with the Commission's rules and methodologies for calculating price cap authority. In brief, revenue forgone from the Technology Credit Promotion for each class of mail will be subtracted from revenue in calculating price cap authority in the upcoming annual price change, and then *the same amount will be added back to revenue in calculating price cap authority in the subsequent annual price change.* [Emphasis added.] The Postal Service assures the Commission that these calculations will be clear and transparent.

It is unclear whose point of view the Postal Service is adopting when it says that "price cap authority created by the . . . Promotion will automatically reverse" in the first annual price change after the Promotion ends. It is not apparent to Time Inc. that "price cap authority" is the kind of thing that, by its nature, is capable of being reversed once it has been used. In creating price cap authority, the Postal

Service may be highly constrained by the characteristics of different categories of mail within a class, but it is not possible to place similar constraints on its use of price cap authority, once created, because "under section 3622(d)(2), . . . rate cap limitations apply to a class of mail and not a rate category." Order No. 606 at 19.

But the more essential point remains that the only way the Postal Service could "reverse" the creation of a given amount of pricing authority is by the use of an equivalent amount of pricing authority. We strongly hope that by "reverse," the Postal Service does not merely mean "use." Nothing could be more obvious than that these are not the same thing. To reverse a thing is to undo it, to remove its influence from the world. When one looks carefully at the second sentence of the Postal Service's response to Q.7, one is not reassured on this point. This second sentence reveals that the first sentence concerns only how "[t]he price cap authority created by the Technology Credit Promotion" will "reverse" *from the Postal Service's point of view*. If you consider the Tech Credit Promotion from the point of view of the amount of "*revenue foregone . . . for each class of mail* [that] will be subtracted . . . in calculating price cap authority in the upcoming annual price change, . . . *the same amount will be added back to revenue . . . in the subsequent annual price change.*" (Emphasis added.)

What does this tell the user of First-Class Mail, who has been informed that the Tech Credit will generate approximately 0.084% in First-Class price authority, about how much higher his rates might be on account of the Tech Credit in the year following the next annual adjustment--Jan. 2014--Jan. 2015-- or about how much of that increase might be reversed in the following year? Nothing. Since price cap

authority applies to classes, not to categories within classes, all of the new First-Class price authority generated by the Tech Credit could be applied in the Jan. 2014 annual rate adjustment exclusively to raising the rates of a single category within First Class for reasons unrelated to the Credit, and the "reversal" authority expended in the year after that could be applied to reducing the rates of still a different category within First-Class Mail for still other reasons unrelated to the Credit.

Nothing just described would be inconsistent with the Postal Service's assurance that "[t]he price cap authority created by the Technology Credit Promotion will automatically reverse"--if all that the Postal Service means is that "revenue foregone" in one year will be recouped in the next and that "price cap authority created" in one year and used in the next will be reversed in the third, *without causing percentage increases in classwide rates after the entire process is completed.*

There is much more here that the Postal Service should have been more specific about. When it describes the process by which "the Technology Credit Promotion will automatically reverse," it states that "revenue forgone . . . for each class of mail will be subtracted from revenue in calculating price cap authority in the upcoming annual price change, and then the same amount will be added back to revenue in calculating price cap authority in the subsequent annual price change." Presumably, the subtraction from revenue in the upcoming annual price change in January 2014 will constitute *use of* the new pricing authority (accomplishing an addition to the CPI-U price cap). Presumably also, the addition to revenue when calculating price cap authority in January 2015 will require the use of an equivalent

amount of authority, which will, unless it is available from some other source, have to be taken from the pool of CPI-U regular price cap authority. This means that either the price caps will be lower in the January 2015 price adjustment than they would otherwise have been, or that the principle that no new net pricing authority should be created by the Tech Credit Promotion will be violated.

CONCLUSION

Before the Commission approves the Tech Credit as a rate adjustment with price cap implications, it should consider how little is actually promised by the Postal Service's response to Q.7 of CHIR No. 1, and in particular that nothing at all is promised with respect to how the burdens of the Tech Credit Promotion, or of its "reversal," will be distributed within individual classes.

If the Commission does approve the Tech Credit Promotion, it should map out how any reconciliations will be handled in the annual increases to be effective in January 2014, such as the possibility that the amount of credit actually used (which seems at this point to be a projection) will turn out to be less than the amount of additional price authority claimed.

However, the absence of any discernible relation between the design of the Tech Credit Promotion and the process for setting postal rates, as evidenced both by the absence of any understandable incentive structure in the operation of the Tech Credit and the multiple absences of congruity between the Tech Credit and the Commission rules, strongly supports the view that the Tech Credit is not a rate adjustment in any sense that is cognizable under the PAEA.

Finally, the Postal Service's proposed alternative treatment clearly does not comply with the annual limitation and banking provisions of the PAEA in combination. Time Inc, is therefore respectfully of the view that the Commission cannot approve the Technology Credit Promotion as it is currently formulated.

Respectfully submitted,

s/ _____
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