Postal Regulatory Commission
Submitted 5/24/2013 3:24:02 PM
Filing ID: 87049
Accepted 5/24/2013

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

NOTICE OF PRICE ADJUSTMENT (TECHNOLOGY CREDIT PROMOTION)	Docket No. R2013-6

COMMENTS OF THE NATIONAL POSTAL POLICY COUNCIL, THE MAJOR MAILERS ASSOCIATION, THE NATIONAL ASSOCIATION OF PRESORT MAILERS, AND THE ASSOCIATION FOR MAIL ELECTRONIC ENHANCEMENT
(May 24, 2013)

The National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement ("Joint Commenters") respectfully submit these comments on the Postal Service's Notice of Price Adjustment to allow for a Technology Credit Promotion related to the implementation of Full Intelligent Mail barcodes.[1]

The Joint Commenters appreciate that the Technology Credit *per se* is well-intended. The Postal Service is offering the credit to acknowledge (albeit only in part) the costly burdens that the pending mandated conversion to full IMb will impose on mailers. The Joint Commenters do not oppose the offering of a modest credit intended to defray the costs of converting to full IMb and encouraging more use of the full IMb, but only on the condition that the Postal Service not be permitted the new price cap authority it has requested.

[1] *United States Postal Service Notice of Market-Dominant Price Adjustment (Technology Credit Promotion)* (April 16, 2013) ("USPS Notice"), *noticed* Order No. 1702 (April 18, 2013); comment period extended Order No. 1708 (May 1, 2013) & Order No. 1717 (May 16, 2013).

Although well-intentioned, the maximum amount of $5,000 per Customer Registration ID ("CRID") means that the Technology Credit will have little meaningful value except to some small and medium-sized mailers and perhaps some mailing services providers. Neither the Postal Service nor the Commission should have any illusion that for larger mailers the proposed credit is anything other than a *de minimis* gesture.[2] Most importantly, it is no substitute for the existing IMb rate incentive, upon which large mailers continue to rely as a means of recouping the otherwise uncompensated requirements necessary for full IMb.

Furthermore, the proposed Technology Credit – which the Postal Service styles a "promotion" – should not create new cap space on even the temporary one-year basis that the Postal Service now seeks. A promotion should be paid by reduced postal costs or by new volume. Here, for example, the Postal Service can reasonably expect to recoup far more than the total amount of the discount through its highly-touted savings in its operational costs.[3]

In contrast, adding the amount of the promotion into the cap, as the Postal Service proposes, would merely shift its cost either to the same mailers later, or to other mailers. Recovering that cost from Presort mailers would be unreasonable, as many of them are already paying for their *own* conversion to

---

[2] *See Public Representative Comments* at 19 (May 6, 2013) (stating that the Technology Credit may be insufficient to justify adoption of Full-Service IMb"); *see also* USPS-OIG, Report No. MS-AR-11-006, "Effects of Compliance Rules on Mailers" at 3 (August 24, 2011) (stating that "The Postal Service did not prepare a cost-benefit analysis to determine whether the benefits of IMb exceeded total mailing industry and Postal Service costs").

[3] The Postal Service summarized some of the cost savings it expects from Full IMb in its final rule establishing IMb requirements. 78 *Fed. Reg*. 23138 (April 18, 2013). These include the ability to identify operational bottlenecks, to improve resource allocation, and more efficient mail acceptance procedures.

IMb and should not be asked to subsidize other mailers' costs as well. Nor should the cost be recovered from mailers that do not use the full IMb barcode. Neither would be just or reasonable.

I. THE TECHNOLOGY CREDIT PROMOTION IS NOT A SUBSTITUTE FOR THE CURRENT IMb RATE INCENTIVE

The proposed Technology Credit would at most amount to $5,000 per CRID. The Joint Commenters recognize that this amount may offer some help for small mailers and mailing services providers, and have no objection to that aspect of the Postal Service's proposal.

But the Postal Service and Commission should recognize that for large mailers the Technology Credit, while appreciated in spirit, is essentially a meaningless gesture. A promotion of $5,000 per CRID cannot be considered a serious effort to compensate large mailers for the extensive costs – running from the several hundred thousands of dollars to 7- and even 8-figure investments in some instances -- they have incurred to convert to full IMb with little visible benefit. This is especially so when to date the primary benefit from full IMb appears to be flowing to the Postal Service rather than mailers.

Instead, for larger mailers, the current per piece IMb incentive is far more appropriately tailored to help defray the very significant expenses that they have incurred to meet full IMb requirements. Even with that incentive, many of the companies represented by the Joint Commenters do not expect to see a return on their investment in full IMb for at least another five to seven years. In short, a one-time Technology Credit in no way substitutes for the currently established IMb rate incentive, upon which mailers have relied in making very substantial investments. Nothing about the Technology Credit should affect the existing IMb rate incentive.

II. A ONE-TIME TECHNOLOGY CREDIT PROMOTION SHOULD NOT INCREASE FUTURE CAP SPACE OR SHIFT THE COST TO LARGER MAILERS

The Postal Service seeks to recover the approximately $61,000,000 cost of the promotion through increased cap authority in the next market-dominant rate adjustment (presumably to be filed in October). The Joint Commenters have several concerns with this plan:

- First, the "business-like" way for the Postal Service to recoup its promotion is through either reduced operating costs or increased business incentivized by the credit or both, not through higher rates on mail already in the system;

- To the extent that it characterizes the promotion as a price cap change, the Postal Service's filing appears procedurally defective, ignores the mail classification requirements, and lacks a proper procedural basis for adjusting the cap;

- Third, by trying to recover the $61 million next year through a "temporary" increase in the cap, the Postal Service would convert what it calls a "promotion" into a loan. The "loan" would likely be repaid primarily not by those benefitting directly from the credit, but proportionally and substantially by other mailers who are either already bearing their own substantial costs of converting to IMb, or will never use IMb themselves. Either way would constitute an unnecessary and improper cross subsidy.

- Fourth, although the Joint Commenters do not believe that the Technology Credit should justify any increase in price cap authority, the Postal Service is correct that any such increase – if allowed at all -- should be temporary.

A. The Postal Service Should Recoup Its Promotion Through Lower Costs And New Business, Not Higher Rates On Existing Mail

In the business world, a business that offers a promotion generally does so in the hopes of recouping its outlay through stimulating greater business or by inducing customers to shift to products that save the business money. The promotion seeks to encourage existing or new customers to purchase more cost-efficient products or to generate sufficient expanded and/or new business to recover the cost of the promotions and, hopefully, earn greater profits.

Since the Postal Service is intended to "operate as a business," it should follow this approach in offering promotions. The business-like approach to a postal promotional incentive would be to identify the nature of the initiative – cost savings or new volume – and recover the outlay accordingly. Promotional credits or discounts should not be repaid by any current volume in the mail.

Full IMb is an operational initiative of the Postal Service intended to enable it to better manage and reduce its operational costs. As mailers convert to full IMb, the Postal Service increasingly has an opportunity to reduce its operational costs by improved mail management enabled by the use of full-service data. Indeed, the improved data flowing to the Postal Service may already have enabled it to reduce its costs aggressively. A small credit per CRID would appear to be a safe investment with a high probability of return through cost savings alone.

It is also possible that the Technology Credit promotion could also generate additional mail volume as mailers become familiar with full-service IMb and the benefits that the Postal Service claims will accrue to mailers that use it.[4] There are no estimates on the record of any potential volume effects from the promotion, but to the extent mailers convert to full-service IMb sooner rather than later some such effects may be expected. Not only would such incremental volume presumably inflict lower costs on the Postal Service than its current counterpart mail today, but it would generate new revenues that could offset the cost of the promotional credit.

B. The Postal Service's Filing Is Procedurally Defective

The Postal Service characterizes its promotion as a market-dominant rate adjustment and seeks offsetting price cap authority. It concedes that it has not followed the Commission's rules governing such filings. Nor has it followed the Commission procedures applicable to new mail classifications, which as the Public Representative has noted would appear to apply.[5]

To be fair, the Postal Service contends in its response to Question 6 of Chairman's Information Request No. 1 that its proposal does not fit within existing Commission procedural rules (although it continues to ignore the procedures governing mail classification changes). The Joint Commenters agree, and believe any open questions regarding how those rules should be adapted or applied to interim filings must be resolved before the Commission can approve an increase in cap authority in any case, including this one specifically. Thus, the Joint Commenters submit that the Commission should not create cap

---

[4] *See* 78 *Fed. Reg.* at 23138.

[5] *Public Representative Comments* at 5-10.

space on a one-off basis in this docket. Instead, the currently pending Docket No. RM2013-2 is the appropriate forum to address and resolve if and when the Postal Service may obtain offsetting cap authority in interim filings. On the record in this proceeding, the Commission does not appear to have the procedural grounds on which to approve an offsetting cap adjustment and therefore should not create such space.

C. Raising The Cap Would Shift The Cost To Other Mailers – Many Of Whom Already Have Incurred Substantial Expenses To Attain Full-Service IMb Capability

The conversion to full IMb capability is a cost of compliance imposed on mailers by the Postal Service. Conversion requires expensive investments over and above any prices paid at the time of mailing. An incentive to induce that compliance and ease the burden of making those investments should not be repaid from existing mail generally. Otherwise, what the Postal Service surely intends as a positive effort becomes, in fact, illusory, misleading, and in the end a net zero in terms of helping mailers meet this expensive cost of compliance.

The Postal Service has not identified in any formal filing which mailers will thus be asked to cross-subsidize the smaller mailers that receive the Technology Credit. The Joint Commenters do not believe that the cost should be borne by the larger mailers, who have their own, generally very steep, conversion costs to recover which the credit will do next to nothing to offset. However, that will be the case if the Postal Service is allowed to recover the $61,000,000 through higher future prices that are paid on a per piece basis, as by definition the larger mailers pay for more pieces.

Shifting the cost of a promotion meant to encourage the adoption of full IMb from future new mail to existing mailers who already have incurred very substantial costs of their own to convert their own systems to full IMb would constitute an unjustifiable subsidy of the former by the latter. Doing so would not result in a just and reasonable rate schedule, as required by 39 U.S.C. §3622(b)(8).

The Joint Commenters are aware of a recent report in the trade press suggesting that the Postal Service intends to recover the $24 million in promotional discounts in First-Class Mail either from Single-Piece mail or from non-Automation Presort mail.[6] It is not at all clear how the Postal Service would do so, given that the Commission's policy of tying Presort discounts to Single-Piece rates effectively eviscerates any real pricing flexibility in First-Class Mail.

Even if the Postal Service could design First-Class rates to do so, however, the effect would simply be to shift the part of the cost of conversion to mail that will not use IMb. The Postal Service has not explained why a *de minimis* promotional credit should justify an increase in cap authority that would result in other mailers subsidizing the recipients of the credit. The Commission should deny the Postal Service's request for additional cap authority.[7]

---

[6] *PostCom Bulletin* 21-13 at 4 (May 17, 2013).

[7] The Public Representative's Comments (at 12-15) also raise an important question about how the January 2014 Full-Service IMb mandate should be factored into price cap calculations when the Postal Service files for a general market-dominant rate adjustment, presumably in October. Under the Commission's current rules the answer is clear. Pieces that currently qualify for automation rates, but not the Full-Service IMb discount, will pay nonautomation rates next year. Thus, the substantial price increase that these pieces will face must be counted against the price cap. Because historical billing determinants are available to quantify the amount of mail that will fall back from automation to nonautomation rates, no adjustments to these figures should be allowed. If the Postal Service believes an alternative approach is appropriate (*e.g.*, if it believes

D. The Postal Service Agrees That Any New Cap Authority Would Last For One Year Only

Even assuming that the Commission were to allow the Postal Service the extraordinary relief of recouping its Technology Credit loan in a future year, any cap adjustment must be temporary. The Postal Service has agreed. *See United States Postal Service Response Chairman's Information Request No. 1*, Question 7 (filed May 7). There, the Postal Service has pledged that the additional price cap authority that it requests would "automatically reverse" in the first annual price change subsequent to the expiration of the promotion. The Joint Commenters agree that a one-year promotional Technology Credit of $61,000,000 should expire, rather than create a perpetual cap space of $61,000,000 annually.[8]

"Temporary" rate hikes should not be permanent, and should be limited to the stated purposes. That has not always been the case in recent years. Indeed, mailers have been burned once by permanent rate hikes to satisfy short-term costs.

In particular, mailers have paid more than $3 billion annually ever since the completion of Docket No. R2005-1, which approved an across-the-board rate increase approved of $3.1 billion annually for extra costs. At first, that increase was intended to fund an escrow related to the Postal Service Civil Service

---

that it should be allowed, contrary to the PRC's rules, to adjust these historical billing determinants for anticipated changes in mailer behavior), it should request that the Commission initiate a separate proceeding or technical conference to address how the cap treatment of the IMb mandate will be handled well in advance of its rate adjustment filing..

[8] *Accord Public Representative Comments* at 11.

Retirement System. *See generally Opinion and Recommended Decision*, Docket No. R2005-1 at ¶3001 *et seq*. (Nov. 1, 2005). The Postal Accountability and Enhancement Act redirected those escrowed funds to be a partial prepayment of the Postal Service's retiree health benefit premiums. Pub. L. 108-18, §3; 5 U.S.C. §8906(g)(2)(A). Those rates have never been rescinded; therefore, since the enactment of PAEA, mailers *annually* have paid and continue to pay at least $3.1 billion expressly earmarked for the retiree health benefit fund. The Postal Service has simply pocketed that amount in the past few years when it did not make the statutorily-required payment.

Elimination of any new cap authority created to offset the "promotional credit" must be mandatory in order to avoid a windfall to the Postal Service. Preventing such an unwarranted windfall will require careful Commission scrutiny. If the Commission is to allow the Postal Service to convert its promotion into a loan in which large mailers subsidize smaller mailers, it must be vigilant to ensure that the cap authority is rescinded promptly.

III. CONCLUSION

For the foregoing reasons, the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement do not oppose the promotional Technology Credit, provided that the Commission does not allow the Postal Service additional cap space to pay for it, and thereby convert the promotion into a loan through higher future rates which either would be paid by the credit's recipients or subsidized by other mailers. Absent the foregoing proviso, the Joint Commenters oppose the credit and request that it be denied.

In the event that the Postal Service is permitted additional cap authority, the Joint Commenters submit that such authority must sunset promptly after one year and urge the Commission to direct that result.

Respectfully submitted,

MAJOR MAILERS ASSOCIATION
Mury Salls
DST Mailing Services
3531 Kilpatrick Lane
Snellville, GA 30039
MLSalls@dstmailingservices.com

Arthur B. Sackler
Executive Director
NATIONAL POSTAL POLICY COUNCIL
750 National Press Building
529 14th Street, N.W.
Washington, D.C. 20004
Telephone: (202) 955-0097
E-Mail: asackler@postalcouncil.org

Robert Galaher
Executive Director and CEO
NATIONAL ASSOCIATION OF PRESORT MAILERS
PO Box 3552
Annapolis, MD 21403-3552

William B. Baker
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006-2304
Telephone: (202) 719-7255
E-Mail: wbaker@wileyrein.com

Counsel to NATIONAL POSTAL POLICY COUNCIL

John A. Sexton
President,
ASSOCIATION FOR MAIL ELECTRONIC ENHANCEMENT (AMEE)
Director, Postal Process Development and Integration
Pitney Bowes Presort Services
202-270-6550
john.sexton@pbpresortservices.com