

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

Notice of Price Adjustment
(Technology Credit Promotion)

Docket No. R2013-6

COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE

Pursuant to Commission Order Nos. 1702 and 1717, the Association for Postal Commerce ("PostCom"), on behalf of the Association of Marketing Services Providers ("AMSP"), the Association of Magazine Media ("MPA"), and the Direct Marketing Association ("DMA"), hereby submits these comments to the Postal Service's Notice of Market-Dominant Price Adjustment ("USPS Notice") proposing to temporarily adjust the prices for several market-dominant products as part of the Full-Service Intelligent Mail Barcode Technology Credit Promotion ("Technology Credit Promotion"). For the reasons set forth below, PostCom urges the Commission to reject the Postal Service's proposal.

I. INTRODUCTION

PostCom was a major supporter of the Postal Service moving forward with offering compensation to mailers for the time, energy, and investment they have made into the Intelligent Mail program. The Postal Service, however, has taken an incentive designed

to compensate mailers and help offset investment costs and turned it into a loan with a one-time price cap adjustment. PostCom cannot support such efforts by the Postal Service and calls for the Commission to reject the Postal Service's filing.

II. ONE TIME CREDIT SHOULD NOT BE TURNED INTO PRICE CAP AUTHORITY

a. The Proposed Rate Adjustment Authority Calculation Eliminates the Benefit Supposedly Provided by the Technology Credit Promotion

The USPS is offering a one-time credit to mailers adopting Full Service Intelligent Mail Barcodes that it estimates to be worth a total of \$62 million. In isolation, this initiative is an admirable effort to encourage mailers to adopt Full Service Intelligent Mail prior to its mandatory implementation in January 2014 and reward them for doing so. But in contrast to how it has treated previous discount and incentive programs implemented between regularly scheduled market dominant price changes,¹ the Postal Service is taking the one-time \$62 million investment offset and building it into a price cap adjustment, thereby creating additional rate authority that erases its value to mailers. That is, this additional rate authority will be available in the scheduled January 2014 rate adjustment, leading to increases in 2014 rates that are higher than what they would have been without the incentive program. Thus, any value a mailer receives from claiming the Technology Credit Promotion will be eliminated in the next rate adjustment. The “incentive” provided by the Postal Service is at best a loan, and will place mailers in no better position than if the Postal Service had offered no credit whatsoever. Depending on

¹ See, e.g., Order No. 219, Docket No. R2009-3 at 9 (“The Postal Service proposes to treat the Summer Sale program, for purposes of its effect on the price cap, as if all the discounted incremental volume paid the applicable full postage . . . analogous to the way Negotiated Service Agreement (NSA) volume is treated for purposes of the price cap.”); Order No. 439, Docket No. R2010-3 at 12 (finding reasonable the Postal Service’s decision to “exclude the effect of the price decrease on the price cap for both future and current prices” where “[t]he effect on the price cap is as if all the discounted incremental volume paid applicable full postage.”)

how the Postal Service accounts for the price cap authority it claims, certain mailers may in fact be worse off with the promotion than without it.

b. Neither The Commission's Current Nor Proposed Rules Support the Postal Service's Proposed Treatment

The Postal Service claims that “under both the existing rules and the rules proposed in Docket No. RM2013-2, if 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, and thus offset the amount of the promotion through rate increases.” USPS Notice at 5. It is not plain that the Postal Service would have such authority under either set of rules, whether it instituted the Technology Credit Promotion concurrently with the next scheduled rate change or as a mid-year promotion.² As described below, the workpapers supplied by the Postal Service do not plainly demonstrate that the Postal Service's request meets the criteria set forth by the Commission in R2013-1. Consequently, existing Commission precedent would not permit the treatment the Postal Service proposes even if it instituted the Technology Credit Promotion concurrently with the next scheduled rate change.

Moreover, the Postal Service's proposed price cap treatment of the Technology Credit Promotion is not supported by the Commission's existing rules. As the Commission suggests in CHIR No. 1, Question 6, the Technology Credit Promotion appears to be a Type 1-A rate adjustment. Contrary to the Postal Service's contention in response to this

² The timing of this notice of rate change has no bearing on whether the Postal Service can treat the Technology Credit Promotion as proposed. The Summer Sale promotions were not instituted concurrently with a regularly scheduled notice of rate change. Further, contrary to the Postal Service's contention in response to CHIR No. 1, Question 6, nothing in the Commission's rules “presuppose[s] that all promotions will occur as part of larger price changes, rather than on their own between annual price changes.”

question, Rule 3010.3, which defines Type I-A rate adjustments, does not “presuppose price increases.” It refers simply to a “rate adjustment” and acknowledges that such adjustment may be “less than . . . the annual limitation.” Rule 3010.3(b). A rate decrease would result in an adjustment that is “less than . . . the annual limitation.” Rule 3010.3(c) states that an adjustment that is less than the annual limitation of rate adjustment authority results in unused rate authority, which must be accounted for and used pursuant to Rules 3010.26 and 3010.27. A promotional price therefore can fit squarely within the definition of a Type 1-A rate adjustment, requiring the Postal Service to submit the information required by Rule 3010.14(b). The Postal Service, however, has rejected this interpretation in its filing because it “does not wish to ‘bank’ the amount of the authority if such banked authority could be used only after it uses all authority banked previously, because the sum of previously banked authority and the new authority would be negative, and is likely to remain so until 2016.” USPS Notice at 5 n.3.

The Commission rules are flexible in one respect—where, as in the Summer Sale dockets, the Postal Service does not propose to treat a promotional rate as a decrease in rates, there is no need to submit the information required by Rules 3010.14(b) and 3010.26(b). *See* Order No. 439 at 12 (accepting the Postal Service’s failure to make “the calculations of cap and price changes described in rule 3010.14(b)(1)-(4)” where the Postal Service decided to “exclude the effect of the price decrease on the price cap for both future and current prices.”). But where, as here, the Postal Service decides to treat a promotional price as a rate decrease for purposes of calculating price cap authority, it must submit the information required by the Commission’s rules. Its failure to do so is grounds in itself for rejecting the proposal.

Likewise, the Commission’s proposed rules in Docket No. RM2013-2 would not necessarily permit the Postal Service to treat the promotion as a decrease in rates providing additional price cap authority. In the preamble to these rules, the Commission notes that “[i]n 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.” Notice of Proposed Rulemaking Requesting Comments on Proposed Commission Rules for Determining and Applying the Maximum Amount of Rate Adjustments, Docket No. RM2013-2, at 11 (“Proposed Cap Rules”). The Commission is here referring to the treatment of the Summer Sale promotions in Docket Nos. R2009-3 and R2010-3, where it approved the Postal Service’s decision to “exclude the effect of the price decrease on the price cap for both future and current prices.” Order No. 439 at 12; *see also* Order No. 219 at 9. Under that approach, “[t]he effect on the price cap is as if all the discounted incremental volume paid applicable full postage.” Order No. 439 at 12.

Proposed Rule 3010.23(e) applies to “Temporary Promotional Rates and Incentive Programs” and specifically endorses the approach taken in Order Nos. 219 and 439, stating, “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.” Proposed Cap Rules at Attachment C, p. 9 (Proposed Rule 3010.23(e)). The proposed rules only account for the inclusion of a promotional rate in the price cap calculation for rate cells “that include a temporary promotional rate or incentive program that was previously excluded under paragraph (e)” —that is, that was not included in the cap calculation—and do not address

a situation, like here, where the Postal Service proposes to create cap authority simultaneously with the introduction of an incentive program. Thus, there is little basis for concluding that the Postal Service's proposed treatment of the Technology Credit Promotion would be acceptable if only it had introduced the program as part of its annual rate change.

In fact, the treatment of temporary promotions and incentives under the price cap is a significant point of contention in Docket No. RM2013-2. *See, e.g.*, Docket No. RM2013-2, Comments of the Association for Postal Commerce at 2-7; Comments of Pitney Bowes Inc. at 3-4; Comments of the National Association of Presort Mailers at 2-5; Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Notice of Proposed Rulemaking at 3-6. It would be inappropriate for the Commission to accept the Technology Credit Promotion and the Postal Service's novel treatment of the rate authority it claims this promotion creates while rules governing this very scenario are being debated in Docket No. RM2013-2. Instead, the Commission should adhere to the accepted, conservative, and uncontroversial approach to temporary promotions it adopted in Order Nos. 219 and 439. Because the Technology Credit Promotion does not conform to the principles laid out in those orders, the Commission should reject the Postal Service's filing.

c. The Proposed Treatment Is Not Justified by Previous Commission Decisions

Even where the Commission has allowed the Postal Service to account for revenue foregone in calculating price cap authority created by promotional rates, it has required assurances of the Postal Service that are not present on the record in this docket. In Docket No. R2013-1, the Postal Service took a similar approach to the current docket

and sought “to recover some of the revenue forgone from . . . promotions by factoring the lost revenue into the price cap calculation.” Notice of Market-Dominant Price Adjustment, Docket No. R2013-1 at 9. The price cap calculation in question did not apply to future comprehensive price adjustments, but to the regularly scheduled adjustment that was at issue in that case and in which the Postal Service had proposed the promotional rates. The Commission approved this request only “so long as volumes are properly ascribed to the appropriate products.” Order No. 1541 at 18. Further, the Commission explained that “the concern with including promotions in the cap calculation is that if the volume weights used in the cap calculation are overstated, the price authority created would be overstated as well.” *Id.* at 17.

In the present case, it is unclear how the Postal Service calculated the estimated value of the Technology Credit to be \$66 million (since adjusted to approximately \$62 million in response to CHIR No. 1, Question 2). The source within the filing says “Payment Technology Group.” It is not clear how the Postal Service derived this figure and then how it connected who receives that credit (via CRID) with the eligible pieces within each class of mail to calculate the price adjustment for each class. The Commission therefore cannot be sure that the Postal Service has in fact ascribed volumes to the appropriate products.

Additionally, the Commission approved the price cap treatment of promotions in Docket No. R2013-1 in part because the Postal Service relied on historical volumes in its price cap calculation. *See* Order No. 1541 at 17. The Commission was assured that these volumes likely understated the volume of mail that would be subject to the promotions in that docket because the volumes used were based on one promotion, rather than the three

promotions for which the Postal Service was then computing cap authority. *Id.* In the instant case, however, the Postal Service has no historical volumes to rely on, and it admits that its price adjustment authority calculation is “preliminary” as “at the time of the next market-dominant price change filing, there will be new billing determinants available for conducting the calculation.” USPS Notice at 6. Further, the Commission noted in Order No. 1541 that “the Postal Service does not rely on forecasts of expected volume to establish the volume weights in the cap calculation.” Order No. 1541 at 17. Here, the Postal Service is essentially forecasting volume to develop its \$62 million figure. The actual volume of mail that receives a credit under the Technology Credit Promotion may prove to be significantly different than the Postal Service’s expectations, and its preliminary price adjustment authority calculation may overstate the volume receiving the credit. While the Postal Service has promised to update its volume figures as more data becomes available, this approach is distinct from that taken in Order No. 1541, where a conservative baseline of actual historical volumes could be established.

d. The Additional Price Adjustment Authority Created by the Technology Credit Promotion Will Be Used

Finally, although the Postal Service likely will point out that this additional pricing authority does not have to be used and that it is just “available” to them, the Postal Service’s theoretical restraint provides no solace to mailers. PostCom, the Commission, and the industry generally are acutely aware of the fiscal instability facing the Postal Service. PostCom recognizes that the Postal Service needs to make business decisions that ensure the delivery of its products six-days a week to every household and business. These decisions include using every available percentage point of cap authority available to it when making pricing decisions. How else can it go before Congress saying it is

using every available mechanism under the Postal Act of 2006 (PAEA) and still needs congressional intervention? For the foreseeable future, if the authority is available, it will be used.

III. THE PROPOSED PRICE CAP TREATMENT OF THE TECHNOLOGY CREDIT PROMOTION IS DISCRIMINATORY

The USPS Notice describes a Technology Credit Promotion that temporarily adjusts prices for several market-dominant products, limited to First-Class Mail Letters & Cards, First-Class Mail Flats, Standard Mail Carrier Route, Standard Mail Letters, Standard Mail Flats, In-County Periodicals, Outside-County Periodicals, and Bound Printed Matter Flats. USPS Notice at 3. The proposed price cap adjustment, however, is not limited to the products eligible for the promotion. Rather, the USPS is proposing a price cap adjustment for each class of mail, suggesting that authority can be spread across any of the products within the class. In other words, on the face of the filing, even though the credit will only be paid to mailers using certain products within each class, the recovery of the cost of the credit will be from mailers using the class, regardless of whether the specific product they mail was eligible for the credit.

The Postal Service has sought to assure mailers in off-the-record communications since the filing of this notice that that future price increases to recover the credit will apply only to products eligible for the credit and the mailers who receive the credit. For instance, in a webinar on May 14, the Postal Service described how it plans to administer the additional price cap authority across various products. These statements were meant to assure mailers that the recovery of the lost revenue from the promotion will not harm mailers not eligible for the promotion. The Postal Service, however, has not expressed this intention on the record in this proceeding. In fact, in response to CHIR No. 1,

Question 11, the Postal Service explained that “if the promotion creates price cap authority by class, *as requested*, the promotion should not result in lower cost coverages.” (emphasis added). This statement indicates that the Postal Service intends the price cap authority created by the promotion to apply at the class level, not just to products and mailers eligible for the promotion. Thus, on the record before the Commission, the Postal Service has not provided any protections against the discriminatory increases in prices that could result from the Technology Credit Promotion.

In approving the Summer Sales in 2009 and 2010, the Commission specifically noted that the Postal Service’s decision to treat all mail sent at incentive rates as if it had been sent at full price for purposes of cap compliance was reasonable because it ensured that mailers who were not eligible for the discounts would not be forced to pay for the discounts through higher prices in the future. *See* Order No. 219 at 10 (finding the approach reasonable because “[i]t shields mailers not eligible for the program from being charged higher rates based on the amount which otherwise would be banked from the program”); Order No. 439 at 12 (reaching the same conclusion because “ineligible mailers will not be charged higher rates based on the amount which otherwise would be banked from the program.”) Recovering the tech credit discount through increased cap authority risks causing exactly the discriminatory result the PRC was concerned about.

The Commission’s Proposed Cap Rules are instructive on this point. Not only does Proposed Rule 3010.23(e) endorse the approach taken with respect to the Summer Sale promotions, but Proposed Rule 3010.12(c)(3) would require the Postal Service to provide “competent analyses that the discount will not adversely affect . . . the rates . . . of users of postal services who do not take advantage of the discount.” Proposed Cap

Rules at Att. C, p. 6.³ Likewise, the proposed rule governing the treatment of Negotiated Service Agreements states that “[m]ail volumes sent at rates under negotiated service agreements are to be included in the calculation of percentage change in rates . . . as though they paid the appropriate rates of general applicability.” Proposed Cap Rules at Att. 6, p. 10 (Proposed Rule 3010.24(a)). These proposed rules codify the Commission’s previous recognition of the potential discriminatory impact of providing discounts to one set of mailers that will ultimately result in higher prices for other mailers. There is no reason for the Commission to treat the volume eligible for the Technology Credit Promotion any differently than volume that mails at a discount under an NSA.

IV. TIMING OF PROMOTION IS TIED TO MANDATED ACTION

The Technology Credit Promotion is scheduled to take place from June 1, 2013 through May 31, 2014. The adjustment will provide mailers with a **one-time** credit toward their mailings that employ Full-Service IMb. According to the USPS, “[t]he purpose of the Technology Credit Promotion is to encourage the adoption of Full-Service IMb technology, by offsetting a portion of the investment in hardware and software changes necessary for mailers to employ Full-Service IMb.”

At the same time, the Postal Service is making Full-Service IMb mandatory for automation discounts as of January 2014. This is the same time frame as the Postal Service is offering this credit, while it is essentially proposing a permanent price increase by driving mail that does not meet Full-Service IMb requirements from automation to non-automation rates. It is difficult to see how mailers benefit from the credit as they

³ Unlike existing rule 3010.14(c)(3), which contains identical language to the proposed rule, the proposed rule is not limited in scope to “workshare discounts.” *Cf.* Rule 3010.14(c), 39 C.F.R. § 3010.14(c), *with* Proposed Rule 3010.12(c).

must comply with Full Service IMb with or without the credit. And the Postal Service is getting the added benefit of the price-cap busting mechanism to raise rates.

V. CONCLUSION

The Postal Service is offering this Technology Credit Promotion in its own best interest. It said that this promotion is to not only incentivize others to become Full-Service mailers, but to reward early adopters. Yet these same early adopters—not to mention mailers of products ineligible for the discount within the same class—are being provided with only an ephemeral benefit, and will be penalized with an above CPI price increase. For these reasons, and because the Postal Service’s proposed price cap treatment of the promotion does not comply with Commission precedent or the rules governing Type 1-A price adjustments, PostCom, again, asks that the Commission reject this price cap busting mechanism.

Respectfully submitted,

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