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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Notice of Price Adjustment (Technology Credit Promotion)	)	Docket No. R2013-6

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
COMMENTS ON THE UNITED STATES POSTAL SERVICE
NOTICE OF MARKET-DOMINANT PRICE ADJUSTMENT
(TECHNOLOGY CREDIT PROMOTION)**
(May 24, 2013)

BACKGROUND

On April 16, 2013, the U.S. Postal Service filed a Notice of Market-Dominant Price Adjustment (Technology Credit Promotion) ("Notice") with the Postal Regulatory Commission pursuant to 39 U.S.C. section 3622 and the Commission's rules promulgated thereunder (39 C.F.R. §§ 3010.1, *et seq.*). It notices fixed credits that will be provided to some mailers with mailings that qualify for and employ Full-Service Intelligent Mail barcodes (IMb), impliedly claiming that credit to be a price change.

On April 18, 2013, the Commission issued Order No. 1702 opening this docket and setting May 6, 2013 as the deadline for public comment. That deadline subsequently was extended three times until May 24, 2013.[1] These comments are filed jointly on behalf of Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak").

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[1] *See* Order Nos. 1708, 1710, and 1717.

COMMENTS

I. GENERAL COMMENTS ON THE TECHNOLOGY CREDIT PROMOTION

A. The Promotion Is Poorly Designed to Achieve Its Stated Objective of Early Adoption.

The Technology Credit Promotion ("Promotion") would give credits to mailers with qualified Customer Registration IDs ("CRIDs") once they begin to submit Full-Service IMb mailings during the period June 1, 2013 to May 31, 2014. According to the Postal Service Notice:

> The purpose of the Technology Credit is to offset a portion of the investment by mailers in the hardware and software changes necessary to support Full-Service mailings. **For mailers who have not yet converted to Full-Service IMb, it is hoped that the availability of the Technology Credit will induce them to convert.** [*Id.*, p. 3 (emphasis added).]

Apparently, few mailers have responded to the existing small per-piece discount, which is almost surely why the Postal Service has promulgated new regulations requiring Full-Service IMb after January 1, 2014 for eligibility for automation discounts.[2] Further, the Notice fails to even mention this new requirement, which then will give mailers a strong incentive to adopt Full-Service IMb.

This Promotion is designed to accelerate adoption of Full-Service IMb. As the Notice explains:

> The Postal Service has determined that the Technology Credit Promotion would be **useful in inducing** mailers to adopt Full-Service IMb technology. However,

[2] Neither the Notice nor the Postal Service response to the Chairman's Information Request No. 1 indicates that the Postal Service has any knowledge (other than, perhaps, anecdotal information) as to why so many mailers have been so reluctant for so long to adopt Full-Service IMb.

> **delaying the promotion until January 2014 would be counterproductive,** as the Postal Service needs to **encourage adoption** of the technology **now**, so that mailers have enough time to adopt the technology before the Postal Service implements other changes relating to Full-Service IMb, such as requiring the use of Full-Service IMb for all automation letters and flats, which will be detailed in a forthcoming Federal Register notice. [*Id.*, p. 5 (emphasis added).]

Therefore, success of the Promotion should be measured by the number of mailers adopting Full-Service IMb **prior to January 1, 2014**. Yet for most mailers this inducement for early adoption appears weak, and it would be surprising if the Promotion achieves appreciable early adoption.

What monetary rewards do mailers receive for adopting Full-Service IMb this year rather than after January 1, 2014? The short answer is: **virtually none.** The way the Promotion is structured, delaying adoption of Full-Service IMb until after December 31, 2013 presents a mailer with two rather negligible disincentives:

- Some of the potentially available credit conceivably might be lost (not likely); and
- Assuming that the full credit is received, electing to obtain it after December 2013 could involve an implicit interest cost on account of the delayed rebate.

The regulations requiring Full-Service IMb after January 1, 2014 for automation discounts will be a far stronger incentive than the Promotion.

The Promotion is not well structured to encourage **early** adoption, because after January 1, 2014 almost every mailer will be able to claim the **one-time** credit up to the full amount available (see below).[3] Any mailer that receives the full amount in 2013 cannot get a

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[3] The Postal Service Notice explains that it "will grant the Technology Credit to any qualifying CRID on mailings that contain **pieces of which 90 percent or more are Full-**

further credit in 2014. Conversely, any mailer that does not switch to Full-Service IMb and consequently receives no credit in 2013 can receive the full amount subsequently in 2014 (after making the required changeover).

To illustrate the trivial nature of the incentive, assume that the average price was $0.20 per piece. The available amount of a Technology Credit is based on a CRID's eligible FY 2012 dollar volume as shown here in Table 1.

Table 1

Technology Credits for Annual Postage
(Hypothetical)

FY 2012 Postage at $0.20/piece	Amount of Credit
$25,000 to $100,000	$2,000
$100,001 to $400,000	$3,000
More than $400,000	$5,000

Table 2 translates the annual postage amounts shown in Table 1 into average monthly amounts, and computes the time needed to achieve the full amount of the credits shown in Table 1 (assuming daily or weekly mailings that reflect the monthly average).

Service. The Technology Credit will automatically be applied, **once**, in full, as a postage credit to the postage statement upon the submission of an eligible mailing. However, if the Technology Credit amount is greater than the total postage on the postage statement, then only a partial credit will be applied, in the amount of the total on the postage statement, with the remainder available for a subsequent mailing. Any unused Technology Credit amounts will expire at the close of May 31, 2014." *Id.*, p. 3 (emphasis added).

Table 2

Technology Credits for Annual Postage
(Hypothetical)

Average Monthly FY 2012 Postage at $0.20/piece	Average Time Needed to Earn Full Amount of Credit
$2,083 to $8,333	1 month to 1 week
$8,333 to $33,333	1.5 weeks to 3 days
More than $33,333	4.5 days or less

In FY 2012, mailers in the lowest category paid, on average, monthly postage of between $2,083 and $8,333. Thus even those mailers in the lowest category can delay adoption of Full-Service IMb until after January 1, 2014 and still expect to receive the full amount of available technology credit early in 2014, after they make the required change. Those who mail more than 2 million pieces per year may be able to receive the full amount of any available technology credit with their first mailing in 2014.

Those mailers who have not yet adopted Full-Service IMb have abstained for their own reasons, and it is difficult to perceive that they will hasten to do so in the next few months because of the economic incentives built into the Promotion as currently structured.

B. The Postal Service Has Not Been Clear about which Standard Mail Qualifies for the Promotion.

The Postal Service's Notice states: "The Technology Credit applies to … Standard Mail Carrier Route, Standard Mail Letters, Standard Mail Flats…." The obvious implication is that the other three Standard Mail products — High-Density and Saturation Letters, High-Density and Saturation Flats and Parcels, and Parcels — are not included in the promotion.

The Chairman's Information Request ("ChIR") along with the Postal Service's response confused the matter further. Question 1 presented proposed Mail Classification Schedule ("MCS") language which included Standard Mail Carrier Route and Standard Mail Flats, but omitted the other four Standard Mail products. The Postal Service did not correct that language, thus adding to the confusion.

Valpak primarily uses the High-Density and Saturation Letters product, but has been assured by the Postal Service that it qualifies for the tech credit. This is confirmed on the materials for the promotion on the Postal Service's website for the promotion.[4]

Yet again, the Postal Service must be asked to clarify the scope of its request.

C. The Proposal Poses Serious Issues of Fairness and Equity.

No mailer with FY 2012 volume less than 125,000 pieces will receive any credits under the Promotion, yet approving the requested increase in price cap authority could require those smaller mailers to help pay for credits given to other mailers under this promotion, which is inequitable. Likewise, any larger mailers not qualifying for credits under the Promotion face the same inequity. The Postal Service request for increased price cap authority does not hold non-participating mailers harmless, which raises an issue of fairness and equity.

Many mailers incurring no cost to comply with the program will receive a credit of anywhere between $2,000 to $5,000, and perhaps an even larger credit if they mail from

[4] https://ribbs.usps.gov/intelligentmail_latestnews/documents/tech_guides/techcredit/techcredit.htm.

multiple locations. *See* letter from Stephen Colella, Calmark Group (filed May 23, 2013). The question of who will pay for these undeserved credits likewise raises an issue of fairness and equity.

At the same time, large mailers may need to customize their software at a cost well in excess of the maximum $5,000 rebate. *See* USPS Response to Chairman's Information Request No. 1, Question 9.[5] Allowing an increase in price cap authority could force those mailers who incur costs far in excess of $5,000 also to pay for credits given to other mailers, which adds insult to injury. This situation too raises issues of fairness and equity.

Furthermore, CHIR No. 1, Question 11, asked the Postal Service to explain its rationale for including certain **underwater products** in the promotion. In response, the Postal Service admits that "in designing the Technology Credit Promotion, the Postal Service did not differentiate between products that cover their attributable costs and products that do not."

The Postal Service also did not differentiate between underwater **Standard Flats** whose next rate increase is pre-announced to be limited to 5.0 percent of CPI over the price cap, and profitable Standard Mail products which enjoy no such limit. Under these circumstances, Standard Flats — which already fails to cover its costs by a wide margin — will not be required to share any of the extra price increases allowed by these Technology Credits. If the Commission approves the Postal Service request for expanded rate cap authority while exempting Standard Flats from any such increase, it sanctions a profoundly unfair scenario, violating statutory principles of fairness and equity.

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[5] "[A]s mail volume rises, costs increase somewhat, and at high volumes (i.e., over 2,000,000), customers often require customized software, which further increases costs."

The fairness and equity issues discussed above will certainly not be solved by allowing the Postal Service to use higher rate cap authority due to revenue forgone by this scheme. Many parties have filed comments opposing such a plan. For example, Pitney Bowes, in its comments in Docket No. RM2013-2, observed that:

> Under proposed rules 3010.23(e) and 3010.23(f), the Postal Service is held harmless for a failed promotional program; but the nonparticipating mailers pay. This is inequitable.... [*Id.*, p. 3.]

The National Association of Presort Mailers argued, Initial Comments in Docket No. RM2013-2, p. 4:

> In its prior decisions the Commission consistently held that **promotional programs should be treated as analogous to negotiated service agreements** (NSAs); and, thus, as having **no impact on the price cap calculations**.....
>
> **The same considerations apply to promotional prices.** If the promotional incentives are intended to increase revenue and contribution, there is no justification for recouping the discount as revenue foregone. And mailers that are **not eligible** to participate in promotional pricing initiatives **should not be forced to pay higher prices because the Postal Service offers an incentive that fails to improve its financial condition.** [Docket No. RM2013-2, NAPM Initial Comments, p. 4 (emphasis added).]

In Docket No. RM2013-2, the Association for Postal Commerce made similar Initial Comments (p. 2).

Finally, the Postal Service's preliminary calculation of the proposed impact on the price cap is an increase to the Standard Mail cap of 0.231 percent, based on tech credits for Standard Mail of $38.4 million. In exercising its unsupervised, unaccountable pricing flexibility, the Postal Service may choose to apply this extra, above-annual limitation, pricing authority in its next price adjustment on the products where it makes the least sense. Indeed, the Postal Service has given the Commission no assurances from what products it intends to recapture the revenue given in the credits. Moreover, even if it did specify the products on which it would impose this burden, mailers would have no way of knowing if that promise was kept, and since the Commission virtually always defers to the Postal Service's pricing flexibility, it seems extremely unlikely that the Commission would ever enforce such a promise.

For example, a mailer might enter about 500 million mailpieces annually. Such a mailer would qualify for a tech credit of $5,000, but if the increased pricing authority resulted in its prices going up by the smallest increment — $0.001 — it would face an increase in its postage bill of $500,000 to help pay the Postal Service to recoup its revenue forgone of $38 million. The only product that would be seemingly immune from the proposed increased pricing authority is the one product which should receive it most — Standard Mail Flats.

D. Anticipated Cost Savings Resulting from the Technology Credit Promotion Argue for a Reduction in the Rate Cap, Not an Increase.

The Postal Service does not detail how much of its money adoption of Full-Service IMb will save, but this result is strongly implied. For example:

> The use of Full-Service IMb provides significant **operational benefits** to the Postal Service. Full-Service mailings, featuring Intelligent Mail barcodes and data submitted via eDoc, allow the Postal Service **to automate acceptance processes**.... [Notice, p. 2 (emphasis added).]

> The Technology Credit Promotion is directly connected to the thirteenth factor, as it encourages the adoption of intelligent mail technology. It also accords with the seventh and twelfth factors, as it is designed to lead to **a mailstream that the Postal Service can process more efficiently.** [*Id.*, p. 10 (emphasis added).]

> The Postal Service believes that use of Full-Service IMb provides it with **significant operational benefits.** [Response to Chairman's Information Request No. 1, question 11 (emphasis added).]

Automation of any process, including the acceptance process, should result in ongoing cost savings. Similarly, mailstream efficiencies and "operational benefits" imply "lower unit cost." The Postal Service thus implies that the Promotion, along with the pending requirement for Full-Service IMb to qualify for automation discounts, will result in permanent, continuing cost savings. In this respect, the Promotion is quite unlike prior promotions that aimed to increase volume, revenue, or contribution. If the Postal Service benefits from additional work done by mailers, those mailers should obtain a **reduction** in the price cap, not an increase, reflecting the full amount of the discounted present value of those savings.

II. THE POSTAL SERVICE SHOULD NOT BE GIVEN INCREASED PRICE CAP AUTHORITY FROM THE TECHNOLOGY CREDITS.

A. The Technology Credit Is Not a Price Change.

Only price changes can be banked under the price cap, and the tech credit is not a price change. The Postal Service's Notice discusses **how** to apply the price cap to the tech credit promotion — where it is implemented in a partial year between two annual price changes and where it is a price decrease. Yet what the Postal Service fails to address is **why** this particular promotion should have any impact on the cap.

Chairman's Information Request No. 1, question 5, focuses on the issue of why by asking the Postal Service to "confirm that the Technology Credit Promotion has rate cap implications due to **changes in prices**." The essence of the question is whether this promotion is in fact a price change. The Postal Service did not answer a Commission question directly. Obfuscating, it replied, "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."

Postal Service Response to ChIR No. 1, question 5 (emphasis added). The essence of the Postal Service's response is that the Tech Credit is really not a change in prices, but it has an effect on the Postal Service's revenue.

The Postal Service references "all promotions," but all other promotions under PAEA have been in fact reductions in established prices, not merely "effectively result[ing] in a price decrease." Although the other promotions were actual price changes, in all but one docket were they treated as having no impact on the price cap, even though they "effectively result[ed] in a price decrease."

As the Public Representative's comments correctly stated, "The Tech Credit is not a decrease in prices, as no prices in effect in the prior year will change as a result of the credit" and:

> because the Tech Credit promotion is temporary, it is more akin to a Negotiated Service Agreement (NSA) or experimental product rather than a Type 1-A or Type 1-B rate adjustment. Accordingly, the Tech Credit should be treated as an NSA or market test for price cap purposes and **excluded from price cap calculations.** [*Id.*, p. 15 (emphasis added) (filed May 6, 2013).]

The "modern system for regulating rates and classes of market-dominant products" set forth in 39 U.S.C. § 3622 is specifically for setting rates.[6] The annual limitation in section 3622(d) is "on the percentage changes in rates," and "the Postal Service may adjust rates not in excess of the annual limitations." 39 U.S.C. § 3622(d)(1)(A) and (D). The ratesetting

[6] PAEA and the Commission's regulations refer to "rates," but the Commission and the Postal Service refer to "prices." It should be understood that "rates" and "prices" are synonymous.

process **does not apply to every program that reduces revenue** and using any revenue that is forgone for any reason to inflate the price cap perverts the process.

The credits being made available are based on FY 2012 volume, but they are neither retroactive nor automatic. Some mailers will not receive any technology credit. Further, any mailer that does have such a credit available to it but opts not to begin submitting Full-Service IMb mailings during the period June 1, 2013 to May 31, 2014 will receive nothing. Thus the credits being made available cannot in any way be viewed as a "retroactive price change." Nor can the credits given to mailers during the promotion period be viewed as either a current or prospective "price change" in any accustomed sense of the term. The Postal Service Notice does not indicate any change in any published tariff, and any relationship between credits received and prices paid is, at best, highly speculative.[7]

Inasmuch as no changes occur in any published tariff, the issue becomes how a non-change in any price can be classified as either a Type 1-A or Type 1-B price change without

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[7] To illustrate the conundrum, consider the following hypothetical. A mailer is eligible for the $2,000 credit (the lowest tier), and assume that the mailer presents a Full-Service IMb mailing of 200,000 pieces with average postage of $0.20 per piece. Total cost of the mailing (before any credit) would be $40,000, but the mailer receives a credit of $2,000, bringing cost of the mailing down to $38,000. Note, though, that the first 100,000 pieces, with postage at $0.20 per piece, or $20,000 total, also would have been eligible to receive the same $2,000 credit. Did the mailer realize a "price reduction" of 5.0 percent ($2,000/$40,000) on the entire mailing, or a "price reduction" of 10.0 percent ($2,000/$20,000) on the first 100,000 pieces and no reduction on the other 100,000 pieces? Note too that (i) no prices in the general tariff schedule were changed during the prior year in which entitlement to the credits were accumulated, (ii) the amount of credit made available to each mailer is related only remotely to the volume mailed in the prior "qualifying" year, (iii) receipt of the credit is related only remotely to volume mailed during the period June 1, 2013 to May 31, 2014, and (iv) there is no change in any published price, either current or prospective, that when multiplied by each individual mailer's volume would produce the amount of credit given to each mailer.

doing gross violence to every principle of statutory construction. The Postal Service itself acknowledges the existence of a "slight" problem here:

> As the Postal Service stated in its Notice, at page 4, the 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.** [*Id.*, Response to question 6 (emphasis added).]

It is a reduction in revenue achieved through means other than changing any price of any product — *i.e.*, it is not a "price change."

The relationship between volume and implicit price in each of the three tiers covers a wide range. For example, in Standard Mail the lowest tier, with a credit of $2,000, consists of those who entered between 124,001 and 500,000 pieces in FY 2012. The retroactive credit ranges from a low of $0.004 (for 500,000 pieces mailed) to a high of $0.016 (for 125,001 pieces mailed). Mailers with the lowest qualifying volume in this tier thus receive a credit that, on a per piece basis, is four times the credit received by a mailer with the highest qualifying volume.[8] It is small wonder that the Postal Service cannot explain the extent of the "price change" on either a percentage or a per piece basis, or any other basis related to any mailer's volume. The Postal Service attempts to defend the wide range in rebates, which it nevertheless chooses to call "price changes," as follows:

> Based on these findings, the Postal Service settled on the $2000, $3000, and $5000 tiers as reasonable, **though necessarily imprecise**, reflections of the

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[8] A similar result holds in the next tier: a $3,000 credit for those who mailed between 500,001 and 2,000,000 pieces. At the end-points, the retroactive credit ranges from a low of $0.0015 (for 2,000,000 pieces mailed) to a high of $0.006 (for 500,001 pieces mailed). On a per-piece basis, a mailer with an FY 2012 volume of 501,000 pieces thus gets a larger rebate than a mailer whose volume was 499,000 pieces.

> varying costs of implementing Full-Service IMb technology. [*Id.*, Response to question 9 (emphasis added).]

The underlying issue is whether any reduction in revenue from a selected group of mailers resulting from a Postal Service initiative — whether that reduction in revenue is in the form of credits, rebates, direct cash payments, or whatever and however "paid" — can be both a "promotion" and (i) a "reduction in price" or (ii) a "negative price change," and whether the Postal Service can use these highly distorted definitions to request an increase in pricing authority equal to the estimated reduction in revenue. Simply put, revenue forgone is **not** synonymous with "negative price change." Allowing the Postal Service unrestrained authority for any and all such initiatives will do violence to the concept of a rate cap that protects mailers and open the door wide to a range of potential abuses that could be fraught with mischief.

The fact that the tech credit promotion is not a true price adjustment is reason enough to reject the Postal Service's request to increase the price cap above the annual limitation based on the technology credit promotion, either now or in the future.

B. The Commission Has an Established Policy of Not Allowing Temporary Discounts to Affect the Price Cap.

Previously, the Postal Service and the Commission treated temporary promotions as having no impact on the price cap. Because the Commission's price cap rules do not directly address the issue of a temporary promotion, the Commission repeatedly found that promotions are analogous to Rule 3010.24, governing negotiated service agreements ("NSAs").

- In **Docket No. R2009-3**, the first "Summer Sale," the Postal Service treated the program "in a manner mathematically analogous to the procedure described in Rule 3010.24," and "essentially intends to ignore the effect of the price decrease resulting from the program on the price cap for both future and current prices." Docket No. R2009-3, Notice of Market-Dominant Price Adjustment (May 1, 2009), p. 8. The Commission determined that this analysis was "reasonable," as "[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." Docket No. R2009-3, Order No. 219, p. 10. Using the same rationale, the Commission sanctioned this approach consistently in **two subsequent dockets** involving discounts for special promotions.[9]

- In **Docket No. R2011-1**, the Postal Service proposed several discounts, including "Reply Rides Free" for First-Class Mail and a Saturation and High Density incentive. The Postal Service presented price cap calculations for the discounts, intending that the revenue forgone from the discounts could be banked for use in a general price adjustment at a later time. *See* Docket No. R2011-1, Notice of Market Dominant Price Adjustment (Nov. 2, 2010), pp. 7-9. The Commission specifically rejected the Postal Service's proposed price cap approach, again validating its and the Postal Service's original treatment of the prior incentives, observing:

  > 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, p. 19.]

- Subsequently, in **three other promotions dockets**, the Postal Service and the Commission treated the discounts as having no impact on calculation of the price cap. *See* Docket No. R2011-5, Order No. 731, p. 9; Docket No. R2012-6, Order No. 1296, p. 6; Docket No. R2012-9, Order No. 1424, p. 7.

Agencies are permitted to change position on a particular issue, but only with adequate explanation. The U.S. Supreme Court affirmed the principle that "An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis...." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 57 (1983), quoting Greater Boston Television

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[9] *See* Docket No. R2009-5, Order No. 299, p. 9; Docket No. R2010-3, Order No. 439, p. 12 ("The Commission finds the proposed treatment is reasonable because ineligible mailers will not be charged higher rates based on the amount which otherwise would be banked from the program.").

Corp. v. FCC, 444 F.2d 841, 852 (1970) (footnote omitted), *cert. denied*, 403 U.S. 923 (1971). However, the Commission failed to do just that in Docket No. R2013-1. Although the Commission acknowledged "the established practice of not allowing inclusion of revenue forgone in the price cap calculation," it determined that "the Postal Service demonstrate[d] compliance." Order No. 1541, pp. 16-17. But the Commission provided no further explanation, much less "reasoned analysis" for changing course.

In this pricing docket, the Commission should return to its long-established practice and not permit revenue forgone from the promotion to be included in the price cap calculation.

C. The Commission Should Not Permit Any Promotion to Affect the Price Cap Until after Completion of Its Rulemaking in Docket No. RM2013-2.

The Postal Service acknowledges that the Commission has a pending rulemaking "to update the rules pertaining to the price cap." Postal Service Notice, p. 4. Indeed, on March 22, 2013, the Commission issued Order No. 1678 to consider, *inter alia*, amendments to its rules with respect to temporary promotional prices. The Commission stated, "In past rate cases, the Postal Service chose **not to include** temporary promotional rates and incentive programs in the calculation of percentage change in rates when those rates and programs resulted in overall rate decreases. Order No. 1541 at 18. Proposed rule 3010.23(e) states the Commission's approval of this practice."

The proposed rules fell short of prohibiting promotional prices from affecting the price cap, but several commenters, including Valpak, recommended that the Commission modify the rules to do just that. Reply comments are due in one week, May 31, 2013, and it may take another Notice of Proposed Rulemaking before the Commission finalizes the amended rules.

The Postal Service filed its notice in this docket on April 16, 2013, after the Commission had issued Order No. 1678 in Docket No. RM2013-2, but before it had been published in the *Federal Register*. Such publication took place the same day, April 16, 2013,[10] triggering the comment deadline in that docket.

Although the Postal Service takes the proposed rules into account, it concludes that "that language does not clarify how to assess the Technology Credit Promotion's effect on the price cap." Notice, p. 5. The Postal Service recognized other problems its request in the instant docket presents, stating:

> The Postal Service has … asked the Commission to recognize that the circumstances in this docket are not contemplated in the existing rules, and to address the apparent gap in the rules by allowing 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. [Postal Service Response to ChIR No. 1, question 6.]

The Postal Service might have needed to rush the proposal to increase the price cap due to the timing of its planning implementation of the tech credit. However, it is particularly poor timing in light of Docket No. RM2013-2. It puts the Commission in the position of having to decide whether to allow the tech credit to impact the price cap within a compressed timeframe, while the Postal Service can take its own time to decide how much the cap authority ultimately will be impacted. *See* Postal Service Response to ChIR No. 1, question 8.a. ("A final calculation of price cap authority will be included as part of the Postal Service's upcoming annual price change filing, presently scheduled for October 2013."). Because of the timing problem as well, the Commission should reject the Postal Service's proposal to allow the

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[10] *See* 78 *Fed. Reg.* 22490 (Apr. 16, 2013).

revenue forgone from the tech credit to be used as the basis for increasing the price cap authority.

III. IF PRICING IS BANKED, IT MUST INCLUDE THE CURRENT CPI CAP AVAILABLE.

If, despite the foregoing discussion, the Commission somehow determines that the tech credit is a price change and then determines that it affects calculation of price cap authority, then the Commission must determine how it will apply the price cap rules.

The Postal Service advises against "strict adherence" which "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 or bank it." Postal Service Response to ChIR No. 1, question 6. The Postal Service applies rules strictly only when it benefits them; but when it doesn't like the result, not so much. Either the tech credit promotion does not have an impact on the price cap (including no banked authority from the revenue forgone as a result of the promotion) or there must be a proper price cap calculation as required by section 3622(d) and the Commission Rule 3010.14(b)(1)-(4).

The fact that it would be a partial year calculation does not mean that a calculation cannot be done. For example, Docket No. R2012-3 was for a partial year increase as the Postal Service moved to a different pricing timeline. Obviously, since the Postal Service is not using any of the available CPI authority, it will be banking it.

PAEA clearly requires the oldest unused rate authority to be used first (*see* 39 U.S.C. § 3622(d)(2)(C)(iii)(III)), so the Postal Service will lose access to this authority for several years because of the negative unused pricing authority currently available. The Postal Service recognized the possibility of this outcome in its Notice, where it stated 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…." Notice, p. 5 n.3. That is the situation the Commission now faces. And a clear reading of PAEA and the regulations require a regular cap calculation if the tech credit promotion is determined to have a price cap impact.

CONCLUSION

While Valpak does not object to the concept of a Postal Service Full-Service Intelligent Mail Barcode Technology Credit Promotion, this Promotion was not well designed, the reasons for including underwater products in the program are unpersuasive, and there is no justification whatsoever for making any adjustment to the price cap.

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