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

NOTICE OF PRICE ADJUSTMENT	Docket No. R2013-10

COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE

The Association for Postal Commerce ("PostCom") hereby submits these comments in response to the United States Postal Service's ("Postal Service") Notice of Market-Dominant Price Adjustment ("Notice"), filed September 26, 2013, and Commission Order No. 1842, establishing this docket and requesting comment. PostCom believes that the proposed price adjustments generally comply with the Postal Accountability and Enhancement Act ("PAEA"), in that the proposed rate increases appear to be consistent with the Postal Service's price cap authority. PostCom submits these comments to direct the Commission's attention to aspects of the Postal Service's notice which highlight the need for the Commission to complete its project, begun in Docket No. RM2013-2, of updating and revising its rules regarding market-dominant price changes and compliance with the price cap. Specifically, the Commission should open a docket to definitively establish criteria for evaluating the price cap treatment of promotions, incentives, and other forms of discount pricing. Additionally, PostCom notes that the Residual First-Class Mail Price established by the Postal Service in this docket does not resolve the ambiguity which led the Commission to reject mail classification changes associated with this price in Docket No. MC2013-30. Until the Postal Service provides MCS language implementing this price, it is impossible to determine whether the Postal Service has resolved the concerns PostCom raised in that docket.

I. TREATMENT OF PROMOTIONS AND INCENTIVES

In Order No. 1786, the Commission "recognize[d] the need for certainty for the mailing community and the Postal Service" with regard to the treatment of promotional rates under the price cap and pledged to "open a separate docket to consider the treatment of promotional rates and incentive programs." Docket No. RM2013-2, Order No. 1786 at 33. To date, no such docket has been established.

In the instant Notice, the Postal Service has requested approval of eight promotions and one pricing incentive during calendar year 2014. Order No. 1842 at 6. While the Postal Service has not requested any changes in cap space on the basis of these discounted rates, it does seek to preserve the cap space - $9 million in First-Class Mail and $24 million in Standard Mail – the Commission approved in Docket No. R2013-1 for mobile technology promotions and the Earned Value Reply Mail promotion. *Id.* at 7. While PostCom does not object to this request, the maintenance of this cap space highlights the need for the Commission to enact rules to address the treatment of promotions and incentives.

This reserved cap space raises several issues that the Commission should address in its promised rulemaking. First, the Postal Service is treating its incentive programs inconsistently. Some create cap space, while others have no effect. While there might be reasons for different programs to be treated differently, if so, the Commission should set standards guiding the Postal Service, and informing mailers, as to when a promotional or incentive price will increase cap space and when it will not. Such guidance—and the consistency it provides—is a hallmark of reasoned oversight.

Second, the persistence of this cap space illustrates the need for true-up provisions, as PostCom argued in its comments in Docket No. RM2013-2. The reasoning behind creating such provisions is simple: the Postal Service should only be permitted to account for revenue foregone from promotional prices if it in fact foregoes that revenue. In Order No. 1541, the Commission expressed its concern that when including promotions in the price adjustment authority calculation, "if the volume weights used in the cap calculation are overstated, the price authority created would be overstated as well." Docket No. R2013-1, Order No. 1541 at 17. Accordingly, the Commission should require the Postal Service to reconcile the volume sent at promotional rates with the adjustment authority it claims in its next scheduled price adjustment.

Requiring the Postal Service to true-up volumes sent at promotional rates in calculating its price adjustment authority during its next scheduled rate change would ensure that any changes in price adjustment authority reflect only volumes that actually travelled at promotional or incentive rates and that these volumes are attributed to the appropriate products. In doing so, it would protect against overstating the price authority created through promotions and incentives. *See* Order No. 1541 at 17.

Third, the persistence of this cap authority highlights the need to restrict any price cap authority created by a promotional or incentive price to the product to which the promotion or incentive applies. That is, the Postal Service should not be permitted to use any adjustment authority created by pricing incentives to increase rates generally across a class. Instead, the additional adjustment authority should be tied to individual products.

As PostCom explained in its comments in Docket No. RM2013-2, such a rule is necessary to ensure that promotional pricing does not unduly discriminate against mailers not eligible for the discounted rates. If the adjustment authority is applied to the class generally, mailers who were not eligible for the promotion may pay higher rates as a result of the promotion. While PostCom supports the introduction of promotional and incentive pricing, such pricing should be part of a strategy to grow volumes and overall contribution, not simply a discount that favors one set of mailers at the expense of others. Limiting any adjustment authority created to the products eligible for the promotional and incentive rates— and to the products and volumes actually sent at that rate through true-up provisions—will ensure that promotional and incentive pricing is non-discriminatory.

While the Commission has generally followed this approach, including with respect to the additional cap authority created by the promotions at issue here,[1] it has done so on an ad hoc basis, and it has not definitively stated how such promotions will be treated in the future. Further, there are situations the Commission may be presented with on which it has not yet had a chance to rule. In Order No. 1541, for instance, the Commission recognized that "[t]he proper allocation of revenue forgone from promotions that involve more than one product may be explored further and refined in a separate docket." Order No. 1541 at 8 n.14. The Commission should establish such a docket to address these issues.

Finally, regardless of whether and how true-up provisions are implemented, anytime the Commission allows the Postal Service to increase available cap space on account of revenue foregone due to promotions or incentives, that additional cap space becomes permanent, allowing the Postal Service to implement greater rate increases in the future even after the promotional prices have expired. A true-up provision would not eliminate the cap authority created by a promotional price; it would just ensure the accuracy of the amount of authority created. Once that authority has been created, it is essentially "baked-in" for future price

[1] *See* Order No. 1541 at 18 (allowing the Postal Service to account for revenue foregone from promotions only "so long as volumes are properly ascribed to the appropriate products.")

changes, as the CPI-U index will be applied to the higher rates permitted by this additional authority. Consequently, PostCom continues to hold the opinion expressed in its comments in RM2013-2 that the most appropriate approach for the Commission to take is to establish a default rule requiring the Postal Service to exclude temporary promotional rates and incentive programs from its percentage change in rates calculations unless it demonstrates good cause to account for promotional and incentive programs in another manner.

II. RESIDUAL FIRST-CLASS MAIL

In Docket No. R2013-1, the Commission approved a new price for residual letters presented as part of a presort mailing. That docket established a price of 48 cents for residual pieces weighing up to 2 ounces. Subsequently, the Postal Service filed Mail Classification Schedule language to implement this price in Docket No. MC2013-30. That language, however, (1) applied the price only to mixed mailings of residual one-ounce and two-ounce letters, and (2) indicated that if residual one-ounce letters were separated from the two-ounce letters, single-piece prices would apply to the residual mailing. Docket No. MC2013-30, Order No. 1661 at 4. In response to a Chairman's Information Request, the Postal Service further modified its proposed MCS language, eliminating the initial proposal's requirement that the price table apply only to mixed residual mailings, but indicating that a residual consisting solely of two-ounce pieces accompanying a mixed one- and two-ounce presort mailing would be required to pay the retail single-piece price for a two-ounce letter. *Id.* at 6. Ultimately, the Commission rejected this MCS language, as it effectively changed the price approved in Docket No. R2013-1, which applied the 48-cent price to *all* residual pieces up to two ounces. *Id.* at 10-11.

In the instant docket, the Postal Service has not modified the price table for residual single piece FCM—it appears exactly as it did in Docket No. R2013-1. *Compare* Docket No. R2013-1, United States Postal Service Notice of Market Dominant Price Adjustment (October

11, 2012) at Attachment A, p. 4 *with* Docket No. R2013-10, United States Postal Service Notice of Market-Dominant Price Adjustment (September 26, 2013) at Attachment A, p. 4). Nevertheless, it has indicated that it is changing the price structure for residual letters such that "residuals from uniform 1-ounce presort letter mailings will pay the 1-ounce metered rate of 46 cents; residuals from uniform 2-ounce presort letter mailings will pay the 2-ounce metered rate of 66 cents; and residuals from mixed mailings will pay the Residual rate of 48 cents." Order No. 1842 at 9.

While PostCom does not object to this revised price structure, it is unclear at this time how the new price structure accords with the price table in Attachment A of the Postal Service's Notice, which appears to apply to all Single-Piece Residual Machinable Letters. Further, in light of the problems created by the implementation of these prices earlier this year, PostCom asks the Commission to urge the Postal Service to work closely with mailers to develop rational implementing regulations and MCS language. The Commission should also be prepared to take a close look at any MCS language the Postal Service files to implement these prices to ensure that the language does not modify the prices approved in this docket. Any such language should clarify that mailers always enjoy the right to mail one-ounce letters at one-ounce single-piece rates if they are willing to enter those pieces on a separate mailing statement.

Respectfully submitted,

/s/ Matthew D. Field

Matthew D. Field
Ian D. Volner
Venable LLP
575 7th Street, NW
Washington, DC 20004-1601
idvolner@venable.com
mfield@venable.com
Counsel for Association for Postal Commerce

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