Postal Regulatory Commission
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United States Senate

WASHINGTON, DC 20510–1904

October 18, 2013

Ms. Shoshana Grove
Secretary
Postal Regulatory Commission
901 New York Avenue, Suite 200
Washington DC 20268-0001

Re: Docket No. R2013-11, *Rate Adjustment Due To Extraordinary Or Exceptional Circumstances*

Dear Ms. Grove:

I am writing to comment on the Postal Service's recent attempt to revive in this docket the above-CPI ("exigent") rate increase that the Postal Service initially sought in 2010. For the reasons I summarize here, 39 U.S.C. § 3622(d)(1)(E), which was added to Title 39 by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), does not authorize rate increases to recover losses caused by electronic diversion of communications from mail to the Internet. As the author of the PAEA, I can speak to the congressional intent of this provision.

Section 3622(d)(1)(E) was intended to allow above-rate increases to recover losses only to the extent that the losses are "due to either extraordinary or exceptional circumstances." During the 2007 rulemaking process for the exigent rate case authority, Senator Tom Carper and I sent a letter to the Postal Regulatory Commission (PRC) explaining that the exigent rate authority in the PAEA was intended to be used sparingly (Attached). Specifically, the letter clearly detailed that the "extraordinary or exceptional circumstances" required to initiate an exigent rate case under the PAEA exist only if "terrorist attacks, natural disasters, and other events … cause significant and substantial declines in mail volume or increases in operating costs that the Postal Service cannot reasonably be expected to adjust to in the normal course of business." This underscores that the central purpose of the ratemaking provision in PAEA is to incentivize the Postal Service to improve its business model and realize maximum efficiencies and cost savings and to provide predictability in rates which is important to many of the Postal Services major customers.

Electronic diversion of mail has been a foreseeable and an ongoing problem for the Postal Service. Raising rates in such a significant manner, as the Postal Service has proposed, will only drive more customers away from the mail system at a more rapid pace. In 2011, the PRC and the Court of Appeals acknowledged that the weak economy could justify an exigent rate increase. They further concluded that the Postal Service had not shown this factor warranted an increase at the time. This still holds true. Electronic diversion and other structural problems have been an ongoing concern of the Postal Service for more than a decade, showing that these predictable circumstances are less than exceptional. An increase in rates is an attempt at an easy out by the Postal Service, rather than maximum efficiencies and cost savings, and will do nothing more than drive customers out of the Postal Service faster than they are already departing.

As the author of PAEA, I certainly did not intend that the provision would be used to recoup revenue lost as a result of electronic diversion and similar long-term trends. Congress was well aware when enacting PAEA in 2005-2006 that electronic diversion was a looming problem for the Postal Service, and could very well explode in the next few years. The authors of PAEA were also well aware of the threat to the Postal Service from electronic diversion. The 2004 Senate committee report on the Senate version of the bill that became PAEA stated:

> "It is highly likely that, as Americans become more comfortable conducting commercial transactions over the Internet, the Postal Service will continue to see declines in First Class mail volume….The electronic diversion of mail and its impact on the Postal Service are among the reasons why the Postal Service has been on the Government Accountability Office's (GAO) ''high-risk'' list of troubled federal programs in need of reform since 2001." [1]

Likewise, the House committee report noted the challenges faced by the Postal Service from "decreasing volume, insufficient revenue, mounting debts, and electronic communications alternatives such as Internet advertising, electronic bill payments, emails and faxes."[2]

Both the Commission and the Postal Service acknowledged during the 2010-2011 exigent rate case that electronic diversion does not qualify as an extraordinary or exceptional circumstance under Section 3622(d)(1)(E).

> "The Postal Service is not claiming that either the volume loss attributable to electronic diversion or any statutory provision, including its obligation to prefund the RHBF, qualifies as an extraordinary or exceptional circumstance."[3]

Likewise, the Commission stated during the reopened phase of Docket No. R2010-4R in 2011:

> "When quantifying the net adverse financial impact of the exigent circumstances, the Postal Service must factor out the financial impact of non-exigent circumstances, such as the continuing effects of electronic diversion. This process

[1] S. Rep. No. 318, 108th Cong., 2d Sess. (2004) pg. 3.
[2] H.R. Rep. No. 66, 109th Cong., 1st Sess. (April 28, 2005) pg. 42.
[3] Order No. 547 (September 30, 2010) at 62 n. 50 (citing USPS Reply Comments at 17).

ensures that an exigent rate adjustment is limited to the adverse effects of the exigent circumstances as opposed to other, non-exigent factors."[4]

I am therefore troubled by the Postal Service's latest request for approval of an above-CPI rate increase. While the Postal Service claims that the increase is justified by the 2007-2009 recession, it appears that virtually all of the losses claimed by the Postal Service result from the effects of electronic diversion in Fiscal Year 2012. The outcome of this decision will have significant effect on the $1 trillion mailing industry, which supports approximately 7.5 million jobs nationwide. The proposed rate increases would impose substantial costs on the mailing industry, would hurt small businesses and local newspapers, and undoubtedly would accelerate further decline in mail volume and revenues. The Postal Service will permanently lose business from catalog companies, publishers, and others. Some small newspapers may be forced to completely abandon their relationship with the Postal Service because of the increased costs, coupled with the possible decline in service proposed by the Postal Service.

The PRC's approval of an exigent rate increase under these circumstances would be inconsistent with the law. The Postal Service is apparently asserting that this electronic diversion was caused by the recession, but seems to offer no evidence of such a causal link. To allow recovery of diversion-related losses in FY 2012 because the Postal Service *asserts* that the 2007-2009 recession caused them would be at odds with ongoing changes in Americans' use of technology. Allowing the rate increase to go forward would undermine the intent of PAEA to provide predictability and stability in postal pricing.

I appreciate your careful review and consideration of this proposed increase in rates.

Sincerely,

Susan Collins

Susan M. Collins
United States Senator

cc: The Honorable Ruth Goldway, PRC Chairman
The Honorable Robert G. Taub, PRC Vice Chairman
The Honorable Marc Acton, PRC Commissioner
The Honorable Nanci Langley, PRC Commissioner
The Honorable Tony Hammond, PRC Vice Chairman

[4] PRC Order No. 864 (September 20, 2011) pg. 48.

Attachment 1.

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 6, 2007

The Honorable Dan C. Blair
Chairman
Postal Regulatory Commission
901 New York Avenue, NW
Suite 200
Washington, D.C. 20268

Dear Chairman Blair:

We write as the co-authors in the Senate of the Postal Accountability and Enhancement Act (Public Law 109-435, the Act) to provide comments on the ratemaking portion of that bill in response to the Advanced Notice of Rulemaking that the Postal Regulatory Commission (the Commission) issued on January 30, 2007.

In hearings and in discussions with postal management, postal employees, the mailing community, and other stakeholders, we learned that the current rigid and overly litigious rate-setting process limits the Postal Service's ability to adjust rates as needed and to adapt postal prices and products to a changing marketplace. We also heard from the mailing industry about the importance of predictability and stability in pricing. Predictability and stability, we were told, allows mailers to better plan their mailing and could allow them to increase the amount of business they do with the Postal Service. It was of primary importance to us in drafting the Senate version of the Postal Accountability and Enhancement Act and negotiating the final bill that the President ultimately signed that the new rate system offer the Postal Service maximum pricing flexibility while requiring, for Market-Dominant products, that they live within a tight, inflation-based rate cap.

The section of the Act calling for the creation of a new system for regulating the Postal Service's Market Dominant products lays out the nine major objectives of the new system. It also lists fourteen factors that the Commission should consider when developing the new system. The primary requirement, however, is the requirement that, for at least ten years, the system "include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers." We intended the objectives to supersede the factors in issues affecting the system's design.

In drafting the rate-setting section of the bill, we did choose to allow the Postal Service to carry unused rate authority over into future years, even if using such authority may result in a breach of the Consumer Price Index cap. We also chose to call for the development of a mechanism whereby the Postal Service may raise rates above the cap under "extraordinary or exceptional circumstances" that may hinder the Postal Service's ability to fulfill its universal service obligation or its ability to provide high quality service standards. We intended for this mechanism to be used sparingly, however.

In our view, the "extraordinary or exceptional circumstances" referenced in the language may include terrorist attacks, natural disasters, and other events that may cause significant and substantial declines in mail volume or increases in operating costs that the Postal Service cannot reasonably be expected to adjust to in the normal course of business. We expect that, in accordance with the requirement written into the bill, the Commission will closely examine any request from the Postal Service for permission to raise rates above the cap and hold public hearings in which the public may comment.

So long as a rate change put forward by the Postal Service is within the Consumer Price Index cap, it was our intention that the Postal Service should have significant flexibility to price their products in the manner they deem most appropriate to meet their needs and the needs of the mailing public. The 45-day period that the Act gives the Commission to review rate filing is largely intended to be used to determine whether or not a rate filing is within the rate cap.

Sincerely,

Susan Collins

Susan M. Collins
Ranking Member

Tom Carper

Thomas R. Carper
Chairman
Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security