

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Rate Adjustment Due to Extraordinary  
or Exceptional Circumstances

Docket No. R2013-11

**INITIAL COMMENTS OF VALASSIS DIRECT MAIL, INC.**

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(November 26, 2013)

Pursuant to Order No. 1847 (September 30, 2013), Valassis Direct Mail, Inc. (Valassis) hereby submits initial comments on the Renewed Exigent Request of the United States Postal Service in Response to Commission Order No. 1059 (September 26, 2013) (Renewed Request).<sup>1</sup>

The legal standard governing the Renewed Request is set out in section 3622(d)(1)(E) of the Postal Accountability and Enhancement Act of 2006 (PAEA)--the so-called "exigency" provision--as authoritatively interpreted and applied by the Commission in:

Subpart E of the Commission's Rules of Practice, Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Adjustments) (39 CFR § 3010.60 *et seq.*);

Docket No. R2010-4, Order Denying Request for Exigent Rate Adjustments (September 30, 2010) (Order No. 547);

Docket No. R2010-4(R), Order Resolving Issues on Remand

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<sup>1</sup> The Renewed Request was filed by the Postal Service in Docket No. R2010-4(R), but Order No. 1847 redocketed this proceeding as No. R2013-11.

(September 20, 2011) (Order No. 864); and

Docket No. R2010-4(R), Order Addressing Motion to Supplement and Related Filing (December 20, 2011) (Order No. 1059).

The views of the Commission are also authoritatively stated in its Brief to the Court of Appeals in *United States Postal Service v. Postal Regulatory Commission*, D.C. Circuit (No. 10-1343), Brief for Respondent Postal Regulatory Commission (filed January 14, 2011).

## **I. THE POSITION OF VALASSIS**

Valassis supports the following positions in this proceeding:

- As explained in the Initial Comments of MPA *et al.* (filed this date), the Postal Service's econometric support for its claimed FY 2012 net loss in contribution due to the Great Recession is flawed, reasonably subject to conflicting interpretations, and unreliable. The Postal Service has not proved that its rate increase request is based solely on losses from exigent circumstances.
- The requested exigency increases are not related to the exigent circumstances, in that they were not designed to and are not necessary to address the effects of volume losses caused by the Great Recession. As the Postal Service candidly admits, the exigent increase request is intended to address other problems than recessionary volume loss, problems that were not caused by the Great Recession. It is therefore not a reasonable or necessary response to the exigent circumstances.
- Granting the Postal Service's Request would drive away mail volume, foster Administration and Congressional delay on needed postal reform, and damage the entire postal industry. It would undermine the force that has produced needed progress in Postal Service productivity in recent years: the price cap requirement.
- The Postal Service has not shown that its requested exigent rate increases are a "reasonable and equitable and necessary" response to the exigent circumstance or that they are necessary to its continued ability to provide the kind of postal services that the American people and the mailing industry require.
- The requested exigency increases are in fact an ill-conceived and ill-supported measure, for which the Postal Service itself can offer no

better rationale than to describe it as "a last resort"<sup>2</sup> that will provide the Postal Service with a little "breathing room,"<sup>3</sup> and which will, if approved, set the Governors' and the Commission's seal of acquiescence on a policy of drift, evasion of responsibility, resort to one stopgap or palliative measure after another.

## II. PROCEDURAL BACKGROUND

The proper starting point for consideration of the Postal Service's Renewed Request is the order of the Court of Appeals in *United States Postal Service v. Postal Regulatory Commission* ("*USPS v. PRC*"), 640 F.3d 1263 (D.C. Cir. 2011), denying in part and granting in part the Postal Service's petition for review of Order No. 547, and remanding the case to the Commission to determine "how closely *the amount* of the [exigent rate] adjustments must match *the amount* of the revenue lost as a result of the exigent circumstances." *Id.* at 1268 (emphasis added). The Court held that the Commission had erred in finding that the meaning of the requirement that the exigent rate increases must be "due to" exigent circumstances was in all respects plain. As the Commission explained in its Order Resolving Issues On Remand (Order No. 864), in addition to being plain in some respects,

[i]n the Court's view, "due to" in section 3622(d)(1)(E) is also ambiguous because the phrase can mean "due *in part* to" as well as "due *only* to."

Because "due to" has an additional, ambiguous meaning, the Court held that the Commission could not properly reject the Exigent Request based on a plain meaning interpretation of the

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<sup>2</sup> Letter to "Dear Postal Customer" from Mickey D. Barnett, Chairman of the Board of Governors, United States Postal Service (September 25, 2013), at 2 (hereinafter "Barnett Letter").

<sup>3</sup> Nickerson hearing (Tr. \_\_\_\_).

phrase. The Court therefore remanded the case to the Commission to “exercise its discretion to construe the ambiguous language of section [3622(d)(1)(E)], explaining the extent of causation the Commission requires the Postal Service to demonstrate *between the exigent circumstance’s impact on Postal Service finances and the proposed rate increase.*”

Order No. 864 at 9-10 (*quoting* 640 F.3d at 1264; internal citation and footnotes omitted; emphasis added).

The Commission explained in Order No. 864 that the only aspect of its Order Denying Request for Exigent Rate Adjustments that had been disturbed on review or remanded for reconsideration concerned the ambiguity of "due to":

In this Order, the Commission addresses only the legal issue specifically remanded by the Court, the causal nexus of “due to.”

*Id.* at 28. However, because the issues bearing on exigency requests are interrelated and must be resolved in a certain order, Order No. 864 necessarily ranges beyond the precise issue of the causal nexus of "due to." The Commission summarized the scope of Order No. 864 at its outset. In addition to "interpret[ing] the causal nexus of 'due to,'" the Order states:

[a]s preliminary matters, the Commission (1) reiterates its finding in Order No. 547 that the 2008-2009 recession and its impact on postal volumes constituted exigent circumstances; (2) defers ruling upon whether the Postal Service’s exigent request meets the “reasonable and equitable and necessary” tests of section 3622(d)(1)(E); and (3) defers ruling on whether new materials cited by the Postal Service and one other participant can be relied upon.

*Id.* at 2, 3.

With respect to the causal nexus of "due to," Order No. 864 adopted the resolution recommended in the comments of the Saturation Mailers Coalition and Valassis:

SMC/VDM argue that “taking into account the overall structure and intent of the [PAEA]...the only reasonable and practicable interpretation that makes sense within the context of the PAEA is that the amounts sought by the Postal Service must be limited to that ‘due *solely* to’ the exigent circumstance.” SMC/VDM concede that “[a]ny estimates of economic impact will necessarily involve some imprecision.” They nevertheless argue that the Postal Service “must provide a reasonable and supported estimate of the actual financial harm caused solely by the exigent circumstance, factoring out the impacts of other non-exigent conditions.”

*Id.* at 17-18 (internal citations omitted); *see also id.* at 48-51.

In adopting this resolution, the Commission hewed closely to the core principles that had informed its Order Denying the Postal Service's Request:

In interpreting the causal nexus of “due to,” the Commission reaffirms (1) its finding in Order No. 547 that the price cap is the cornerstone of the PAEA’s ratemaking system and is intended to provide clear incentives for the Postal Service to improve efficiency and reduce its costs; (2) its finding in Order No. 547 that the section 3622(d)(1)(E) provides a narrow exception to the price cap under the PAEA’s statutory scheme; and (3) its conclusion in Order No. 547 that the legislative history of the PAEA supports the central role of the price cap and the role of the section 3622(d)(1)(E) as a narrow exception to it.

*Id.* at 3-4.<sup>4</sup>

The Commission's decision to refer to the ambiguity it resolved on remand as "the causal nexus of 'due to'" may have occasioned some confusion, because the

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<sup>4</sup> At many points in its Order Resolving Issues On Remand, the Commission relies, quite properly, on analysis and conclusions from its pre-remand Order No. 547 that were untouched by the Court's opinion, which remanded only a single aspect of the "due to" requirement for the Commission's further consideration. *See, e.g.,* Order No. 864 at 30-35, 37-39; *see also* 32, n. 30 (approving citation of suggestion that "[T]he Commission should be mindful that its factual findings, expert judgments regarding testimony, careful recitation of relevant legislative history, and policy evaluations were left undisturbed by the Court's opinion").

intended objective of the definitional exercise was to arrive at *an acceptable quantification* of the causal nexus of "due to." It is clear in the Court's mandate and in all of the Commission's discussions that what was at issue was the *amount* of revenue that the Postal Service may seek in above-cap rate increases, in relation to "*the exigent circumstance's impact on Postal Service finances.*"<sup>5</sup> This fact is manifest in all of the definitions that the Commission provided for "the causal nexus of 'due to,'" e.g.:

[T]he Commission interprets the causal nexus of "due to" to mean that:

(1) Exigent rate adjustments are permitted only if, and to the extent that, they compensate for the net adverse financial impact of the exigent circumstances; . . .

*Id.* at 2.

An exigent rate adjustment may only be used to compensate for the adverse financial impacts of exigent circumstances that are over and above adverse impacts the Postal Service would encounter in the normal course of business. This ensures that an exigent rate adjustment defrays only those expenses that the Postal Service was not expected to recover under the price cap.

*Id.* at 45.

### **III. THE "EXIGENT CIRCUMSTANCE'S IMPACT ON POSTAL SERVICE FINANCES"**

Other parties have conducted a painstaking inquiry into the adequacy of the Postal Service's econometric evidence that its requested exigent rate adjustments in

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<sup>5</sup> Any resolution of the ambiguity that troubled the Court must, of course, also have qualitative and normative aspects. We do not suggest that the question remanded to the Commission was *merely* quantitative but rather that the ultimate test of the Commission's answer was whether it provided an acceptable way of quantifying the amount of revenue the Postal Service is entitled to seek in an exigency request.



this docket do not exceed the net negative impact of the exigent circumstance(s) on Postal Service finances in FY 2012, and they have also commissioned an independent study of the subject by a distinguished academic econometrician. See Initial Comments of MPA, *et al.* and Statement of Christian T. Lundblad (filed this date). As discussed further below in Section V.2, Valassis associates itself with the skepticism expressed in those comments regarding (1) the responsibility of the 2007–2009 recession for Postal Service volume losses in FY 2012; (2) continuing reliability of the Postal Service's econometric models; and (3) the adjustments it made to force the models to fit recent market conditions. We believe, as we have stated previously to the Commission, that the Postal Service has been underestimating the price elasticity of its products in general for several years, and that this has been especially so for saturation and advertising mail.<sup>6</sup>

#### **IV. THE "REASONABLE AND EQUITABLE AND NECESSARY" PROVISION**

The remainder of these comments is devoted chiefly to the "reasonable and equitable and necessary" clause of the exigency provision. The Commission stated in its Order Resolving Issues On Remand that "it was unnecessary for the Commission to determine whether the proposed adjustments met the 'reasonable and equitable and necessary' tests" when it denied the 2010 Exigent Request, and that "there is no need for the Commission to address these issues in this Order," although they "may yet arise after further procedures." Order No. 864 at 30. At the

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<sup>6</sup> See, e.g., Docket No. R2010-4, Initial Comments of the Saturation Mailers Coalition and Valassis Direct Mail, Inc. (August 17, 2010).

conclusion of that order, the Commission makes clear that the question of whether the requested rate increases are “reasonable and equitable and necessary” *must* arise before any request for exigent rate adjustments can be granted:

[T]he statutory requirement that an exigent rate adjustment be “reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States” reflects congressional intent to ensure that the justifications for exigent rate adjustments are carefully scrutinized. See 39 U.S.C. § 3622(d)(1)(E). Even if the Postal Service demonstrates that proposed adjustments are “due to” exigent circumstances, it may not obtain an exigent rate adjustment unless the proposed adjustments also meet the “reasonable and equitable and necessary” tests.

*Id.* at 51. Moreover, although the Commission has not had occasion to rule on whether a request meets the “reasonable and equitable and necessary” requirement, it has devoted considerable resources to reflection upon that requirement, to formulation of rules concerning it, and to discussion and analysis of it in the context of its orders evaluating the Postal Service’s 2010 Exigent Request.

**1. The significance of Rule 3010.61(a)(3)**

Section 3010.61(a)(3) of the Commission’s Rules of Practice states that a Postal Service request for exigent rate adjustments shall provide:

A full discussion of the extraordinary or exceptional circumstance(s) giving rise to the request, and a complete explanation of how both the requested overall increase, and the specific rate increases requested, relate to those circumstances.

The Commission makes clear at several points in Orders No. 547 and 864 that this rule flows from *both* the “due to” *and* the “reasonable and equitable and necessary” requirements. For example, Order No. 547 states:

[R]ates in excess of inflation may be authorized only upon a showing that the proposed rate adjustment is *both* due to the claimed extraordinary or exceptional circumstance, *and* a “reasonable and equitable and necessary” response to that circumstance. *Stated otherwise, as provided by the Commission’s rules, the relief requested must relate to the exigency claimed.*

Order No. 547 at 60 (emphasis added).

Moreover, although the Commission in Order No. 547 denied the Postal Service's Request because the Request failed to meet the "due to" requirement, *the Commission's discussion made it evident that the Commission believed the Postal Service also had failed to show, on the record as it then existed, that its requested rate increases were a reasonable and necessary response to the exigent circumstance.* Thus, Order No. 547 is replete with statements such as the following:

[T]he requested exigent rate adjustments *are not designed to respond to the recent recession, or its impact on mail volume [but] to address long-term structural problems not caused by the recent recession.*

The claimed exigency is not the cause of the Postal Service's liquidity problem. . . . The Postal Service can not resolve severe shortcomings in its business model by resorting to the exigent rate provision. The Postal Service filed its Request reluctantly (see Corbett Statement at 3) and it portrays the exigent rate provision as its only available option. Mr. Corbett puts it as follows: “Given the constraints under which the Postal Service must operate, an exigent rate filing is the one avenue [the Postal Service] can pursue under current law that stands the greatest chance of yielding sufficient revenues to help address the existing financial crisis.” *Id.*

*The Request is simply not focused on the specific effects of the claimed exigency.* Plainly, the Postal Service confronts a financial crisis, if not immediately, then in the not too distant future. However, the modern system of regulation adopted by the PAEA imposes a price cap on rates tied to inflation. It is designed to incent the Postal Service to reduce its costs and improve efficiency, while creating predictable and stable rates.

The exigent rate provision does not provide an all purpose exception to the price cap.

The inclusion of the planned exigent price increase as an element of a long-term plan to enhance Postal Service finances belies the notion that there is, in fact, an exigency which requires exceptional rate relief. The 4-month delay in filing a Request, and the deferral of the effective date of the proposed increase until January 2011, further suggest that the relief requested is not tied to the claimed exigent circumstances but to the broader, long-term liquidity issues.

The overall impression is that the Postal Service filing is not driven by its claimed exigent event, but rather a desire to address its existing financial condition. As understandable as that goal is, it is not what is contemplated under section 3622(d)(1)(E).

Order No. 547 at 3 (emphasis added), 63-64, 64 (emphasis added), 66 (footnote omitted), 68; see also *USPS v. PRC*, D.C. Cir., No. 10-1343, Brief for Respondent Postal Regulatory Commission (January 14, 2011), at 34 (Postal Service was required "to establish that the requested price increases *were designed to address the effects of the recession and associated volume declines, rather than to address other problems that did not stem from the recession*" [emphasis added]).

These statements are not about whether the amount of the requested increases was less than, more than, or equal to the financial impact of the exigent circumstance on the Postal Service, or was fairly compensatory for the financial loss due to the exigency, but rather whether the exigent increases were a reasonable or necessary *response* to the exigency, indeed, whether they were responsive to the exigency at all.

Because it found that the Postal Service's case had failed at an antecedent stage, by failing to show the financial impact of the exigent circumstance--volume

losses due to the 2009-2009 recession--on the Postal Service, the Commission did not deny the Postal Service's 2010 exigent Request on the basis of the statements just quoted. But neither has the Commission withdrawn or renounced these statements or, more importantly, the principles from which they derive.

In its Renewed Request, the Postal Service suggests otherwise. According to the Postal Service, Rule 3010.61(a)(3) is concerned exclusively with the "due to" clause, and the "due to" clause "has a narrow focus on identifying the 'net adverse financial impact of the exigent circumstances' to ensure that the requested increase does not exceed that impact." Renewed Request at 16. "[T]he 'necessary' clause," on the other hand, "plainly has an expansive scope." *Id.* So expansive in fact is its scope, in the Postal Service's view, that "necessity" is entirely unmoored from the asserted exigent circumstance. Thus, for example, according to the Postal Service, although "the Postal Service has made a reasonable determination that it will not seek additional price increases through this docket to cover all or part of [its Retiree Health Benefits Fund prefunding] payments, but rather will continue to urge Congress to address the issue . . . this does not mean that the opposite determination would have been precluded by the statute." *Id.* at 17. Or, stretching expansiveness toward the limits of elasticity:

The Postal Service does not expect to be able to rescind the requested increases until Congress makes fundamental changes to the postal business model that render the additional contribution provided by this increase no longer necessary. Therefore, a determination of whether and when to rescind the increases must be deferred until such time as Congress enacts comprehensive reform legislation.

*Id.* In other words, once we leave the realm of "due to," which governs only the gross revenues that the Postal Service may seek in the form of immediate exigent

rate increases, and enter that of "necessity," which governs carrying those increases forward, potentially in perpetuity, the upper limit equal to the net negative financial impact of the exigency disappears, and the Postal Service's permissible recoupment from the exigency becomes limitless.

What is the Postal Service's authority for these interpretations of the exigency provision? Apparently, it views them as consistent with the existing record in this proceeding. Thus the Renewed Request explains as follows why those many Commission statements to the effect that an exigent increase may not be granted for the purpose of addressing the Postal Service's general financial situation rather than dealing with the exigent event are not inconsistent with the Renewed Request.

Referring to Mr. Nickerson's Statement, the Renewed Request says:

[I]ts discussion of the Postal Service's overall financial situation is furnished solely to demonstrate why this increase is "necessary" under that aspect of the exigency provision. The Commission has previously made certain statements in this docket that, if read broadly, would seem to indicate that considerations of the Postal Service's overall financial situation are not relevant. However, *those statements were made in the context of interpreting and applying the "due to" clause, and did not purport to address the meaning of the "necessary" clause.*

*Id.* at 15-16 [footnotes omitted; emphasis added].

When it made this claim, the Renewed Request apparently overlooked pages 55-56 and 60-61 of Order No. 547. The following passages appears at 55-56:

If section 3622(d)(1)(E) did not include the phrase "due to", [*sic*] extraordinary or exceptional circumstance could conceivably be used to justify any proposed adjustment without regard to whether or how the proposed adjustment would address the consequences of the specific circumstances that had triggered the adjustment request. For example, an adjustment based upon an anthrax attack would then be possible without any showing that increased revenues generated by the adjustment would be needed to address costs

incurred because of the attack. In that case, revenues produced by an adjustment could be used for general corporate purposes unrelated to the attack.

Section 3622(d)(1)(E) does not, however, authorize such open-ended adjustments. *On the contrary, section 3622(d)(1)(E) requires that “such adjustment” (i.e., the adjustment “due to” the extraordinary or exceptional circumstances) be “reasonable and equitable and necessary.” This further requirement provides context for the statutory command that a proposed adjustment be “due to” an extraordinary or exceptional circumstance. [Emphasis added.] See Russello; Robinson; and Brown & Williamson, supra.* The imposition of the “reasonable and equitable and necessary” test also implicitly requires that the Postal Service demonstrate a causal relationship between the proposed adjustment and the extraordinary or exceptional circumstances relied upon. *For an adjustment to be “due to” an extraordinary or exceptional circumstance, the Postal Service must show that the adjustment is a “reasonable and equitable and necessary” way to respond to the circumstance.*

Order No. 547 at 55-56 (emphasis added).

At pages 60-61 of Order no. 547, the Commission points out that the place where the two requirements come together--i.e., the requirement of the "due to" clause that the amount of an exigency increase not exceed the net financial damage resulting from the exigent circumstance, and the requirement of the "necessary" clause that the exigent increases be necessary in order to respond to the exigent circumstance--is Rule 3010.61(a)(3):

The rules . . . do require “[a] full discussion of the extraordinary or exceptional circumstance(s) giving rise to the request, and a complete explanation of how both the requested overall increase, and the specific rate increases requested, relate to those circumstances[.]” 39 CFR § 3010.61(a)(3). In response to this requirement, the Postal Service cites the statements of Joseph Corbett and Stephen J. Masse. A review of those statements, including their oral testimony, fails to reveal how either the rate increases in general, or the specific rate increases proposed, relate to the extraordinary or exceptional circumstances that purportedly give rise to them. *Instead, the proposed rate increases are identified as part of a long-term*

*plan designed to address, among other things, liquidity issues.*  
Action Plan at 1 and 14.

*The failure to relate the proposed rate relief to the identified exigent circumstance can not be ignored. As discussed above, for market dominant products, the PAEA supplanted cost-of-service ratemaking with a price cap tied to the rate of inflation. While section 3622(d)(1)(E) provides an exception to the price cap, it is to be narrowly construed. It is not intended as a surrogate for cost-of-service ratemaking to be invoked by the Postal Service simply by demonstrating a need for revenues detached from the circumstances giving rise to that need and from the specific increases requested. Instead, rates in excess of inflation may be authorized only upon a showing that the proposed rate adjustment is *both due to the claimed extraordinary or exceptional circumstance, and a "reasonable and equitable and necessary" response to that circumstance. Stated otherwise, as provided by the Commission's rules, the relief requested must relate to the exigency claimed [emphasis added].**

The Postal Service has demonstrated that it faces a liquidity problem. There are many reasons for this, the most frequently cited and easily identifiable being the overly optimistic prefunding requirement of retiree health benefits. While the recession and volume declines may contribute to the problem, *it is incumbent on the Postal Service to demonstrate how the specific rate increases it proposes flow from the particular circumstances that it cites as exceptional. This it failed to do. Instead, it appears that recession-driven volume losses serve simply as an expedient for piercing the price cap in order to realign rates more closely with the cost of service.*

*Id.* at 60-61 (emphasis added).

Clearly then, the Renewed Request is simply mistaken in asserting that the Commission's statements about the irrelevance of the Postal Service's "overall financial situation" related exclusively to the "due to" clause and that they "did not purport to address the meaning of the 'necessary' clause." But even if every Commission statement observing that the requested increases were not designed to respond to the exigent circumstances *had* been made in the context of discussing



the "due to" clause, the issue that was the basis for the Commission's denial of the 2010 Request and that was remanded to the Commission for reconsideration was a different issue and concerned a different aspect of the "due to" clause: namely, "the closeness of the causal connection . . . between the amount of a requested adjustment and the exigent circumstances' impact on the Postal Service."<sup>7</sup> That is, even if one assumes *arguendo* that all such statements were made with exclusive reference to the "due to" clause, they plainly were not made with reference to "how closely the amount of the [exigent rate] adjustments must match the amount of the revenue lost as a result of the exigent circumstances" (650 F.3d 1268)--the "causal nexus of 'due to'"--but with reference to "how . . . the requested . . . increases . . . , relate to those circumstances" (Rule 3010.61(a)(3)), that is, to whether "the requested price increases were designed to address the effects of the [exigent circumstances], rather than to address other problems" (*USPS v. PRC*, Brief for Respondent PRC at 34). Nothing that occurred on review or on remand has undermined the status of the discussions quoted above, irrespective of whether they have reference to the "necessary" clause or the "due to" clause. The discussions are concededly dictum, but there can be no doubt that they are entitled to be given great weight.

The Postal Service's Renewed Request is not merely inadequately responsive to the Commission's extensive legal analyses of the exigency provision.

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<sup>7</sup> *United States Postal Service v. Postal Regulatory Commission* ("USPS v. PRC"), 640 F.3d 1263, 1267-68 (D.C. Cir. 2011,

It appears to alternate between flat misstatement of them, as just illustrated, and complete obliviousness to them.

An illustration of both can be found in the Postal Service's treatment of the potential argument that it delayed too long in filing its Renewed Request:

The Commission itself made suggestions in this regard in its original decision, noting that a "delay in pursuing its exigent rate relief raises additional questions about whether the Postal Service views its financial situation as an emergency", [sic] though it did not raise this issue in its Brief to the Court, and in fact noted that it stood "ready to entertain" a renewed request from the Postal Service, a position that it re-iterated following the remand.

Renewed Request at 39-40 (footnotes omitted). The Commission's statement about delay appears at page 66 of Order No. 547, three-quarters of the way through a pages-long recitation of the many ways in which the Postal Service's 2010 evidentiary presentation "lends credence to the conclusion that its pricing is not designed to address the specific exigency, but rather, more globally, the Postal Service's existing financial crisis" (*id.* at 64) That recitation:

- points out a statement by the Postal Service financial witness that the Postal Service filed its Request reluctantly as the only option available to it "under current law that stands the greatest chance of yielding sufficient revenues to help address the existing financial crisis" [*id.* at 63-64];
- concludes that "[t]here is no doubt that the Postal Service is attempting to address its current financial crisis," but also that "[t]he Request is peripheral" to the objectives of "[t]he Action Plan [that] represents the Postal Service's response to the current financial crisis, formulated '[t]o avoid potential insolvency'" [*id.* at 65];
- concludes that "absent the RHBF prefunding obligation, the Postal Service would not have a liquidity problem" [*id.* at 66];

- states that "the Postal Service announce[ment of] its intent to seek an exigent rate adjustment . . . when it revealed its long-term seven-point Action Plan designed to address fundamental issues affecting its finances . . . as an element of a long-term plan to enhance Postal Service finances [10 months before the proposed effective date of the exigent increases] . . . further suggest[s] that the relief requested is not tied to the claimed exigent circumstances" [*id.* at 66];
- rejects the Postal Service's position that it may be unable to roll back the exigent increase until its dire financial situation is repaired, stating: "*The overall impression is that the Postal Service filing is not driven by its claimed exigent event, but rather a desire to address its existing financial condition. As understandable as that goal is, it is not what is contemplated under section 3622(d)(1)(E).*" [*id.* at 68.]

It was therefore not "delay rais[ing] additional questions about whether the Postal Service views its financial situation as an emergency" which the Commission was speaking about in the passage quoted by the Postal Service. The issue was whether the requested price increases were designed to address the effects of the exigency, rather than to address other problems which did not stem from the exigency.

The five passages from Order No. 547 discussed immediately above, all of which appear within two pages of the statement about delay quoted by the Postal Service, demonstrate not only that the Postal Service's Renewed Request has misstated the point that the Commission was making about delay, but that the actual point, which somehow totally failed to register, was one that the Commission made

insistently, page after page, in its Order denying the Postal Service's earlier Request.<sup>8</sup>

The overall legal approach of the Renewed Request follows this same pattern of either misunderstanding or completely ignoring the Commission's views when they make a difference and readily acceding to them when they do not. Thus, in Order No 547, the Commission commented as follows on the Postal Service's refusal, under Rule 3010.61(a)(6), to say anything more about "when or under what circumstances, [it] expects to be able to rescind the exigent increases" than that it did not anticipate rescission "anytime soon":

An exigent circumstance is normally associated with a finite period and event. Even an abnormal recession does not continue indefinitely. . . . The Commission does not here suggest that such adjustments could never need to be

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<sup>8</sup> At one point or another, the Postal Service takes every conceivable position on the issue of delay. In the following passage, for example, it has no difficulty conceding (since the context is merely hypothetical) what, when the context is not hypothetical, it vehemently disputes:

Certainly, the passage of time from when an exigent circumstance occurs could, in certain cases, render an exigent increase inappropriate under the statutory requirements. In particular, it is possible that circumstances could have changed sufficiently from the occurrence of an exigent event such that the original "net adverse financial impact" of the event is no longer affecting the Postal Service, or an above-cap increase is no longer "necessary" in order to "maintain and continue" effective and regular postal services. In other cases, however, the opposite will be true, in which an exigent event has had an ongoing and persistent "net adverse financial impact" on the Postal Service, and the situation is such that addressing that impact remains "necessary."

Renewed Request at 40. If the exigent increases do not need to address the effects of the exigency but may address the Postal Service's "overall financial situation" (or Congress's ill-advised legislative mandates, or the Postal Service's flawed business model, etc.), why should it make any difference whether "the original 'net financial impact'" of an exigent event is still "affecting the Postal Service"?

permanent, but the case for a permanent \$3 billion a year revenue boost is not made by passing reference to “dire financial circumstances.” The overall impression is that the Postal Service filing is not driven by its claimed exigent event, but rather a desire to address its existing financial condition.

Order No. 547 at 67-68. In its Renewed Request, writing as if the above statement and the legal issue it raises pertained to some remote jurisdiction whose writ stops well short of L'Enfant Plaza, the Postal Service provides the following statement of compliance with Rule 3010.61(a)(6):

The Postal Service does not expect to be able to rescind the requested increases until Congress makes fundamental changes to the postal business model that render the additional contribution provided by this increase no longer necessary. Therefore, a determination of whether and when to rescind the increases must be deferred until such time as Congress enacts comprehensive reform legislation.

Renewed Request at 17. Yet where it makes no difference to its case, the Postal Service agrees readily enough with the Commission's analysis of the law. For example:

As noted above, 39 C.F.R. § 3010.61(a)(3) also requires an explanation of how “the specific rate increases requested, relate to those circumstances.” One can imagine exigent events that, perhaps due to being limited in nature or targeted in their effects, lend themselves to targeted rate increases. For example, a terrorist attack’s effects on the mail could conceivably be particular in nature.

*Id.* at 12.

In arguments before the Court of Appeals, the Commission strongly reiterated its view that exigent rate increases are required to address the effects of the exigency. It stood firmly by its analysis of the exigency provision in Order No. 547, including the position that much of the evidence presented by the Postal Service

concerning its financial condition had to do with matters that did not provide a basis for exigent rate increases:

Congress expected the Postal Service to address any financial issues not caused by exigent circumstances within the limits of the price cap, and conferred no general authority on the Commission to authorize price increases above the rate of inflation. . . . To the extent that the Postal Service believes that the management improvements Congress expected the price cap to foster are unattainable, such arguments would properly be addressed to Congress and not to the Commission.<sup>9</sup>

The Commission explained that the existence of financial problems that were not caused by the exigency need not be an impediment to an exigent rate increase, but that any exigent increase must be restricted to addressing the problems that were caused by the exigency:

The presence of additional factors that contributed to the Postal Service's financial situation does not necessarily preclude price increases based on the recession. *It simply requires the Postal Service to establish that the requested price increases were designed to address the effects of the recession and associated volume declines, rather than to address other problems that did not stem from the recession.* See Order 55 [JA 202]; Langley Concurring Op. 1 [JA 238]. In addition to flowing from the statute, this requirement is set out explicitly in the Commission's regulations, which require a request for an exigency-based price adjustment to include a "complete explanation of how both the requested overall increase, and the specific rate increases requested, relate to [the extraordinary or exceptional] circumstances." 39 C.F.R. § 3010.61(a)(3).

*Id.* at 34 (emphasis added).

The most extended example the Commission provides of the Postal Service's failure to recognize the difference between price increases "designed to address the

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<sup>9</sup> *USPS v. PRC*, D.C.Cir., No. 10-1343, Brief for Respondent Postal Regulatory Commission (January 14, 2011), at 40.

effects of the recession and associated volume declines" and price increases meant "to address other problems[,] that did not stem from the recession" (*id.*), had to do with the proposed rate increases for "underwater products":

The Service's Chief Financial Officer argued that "[r]elated to the need for a price increase is the fact that some products do not cover their costs," and that "aside from addressing the overall financial need, the exigent filing is an opportunity to begin resolving the cost coverage issues with dispatch." Corbett Statement 17-18 [JA 57-58]. But the statutory provision authorizing price adjustments due to either extraordinary or exceptional circumstances was designed to allow the Postal Service to address those specific circumstances, not to provide an "opportunity" to address issues "aside from" those caused by the financial need that was, itself, caused only in part by exigent circumstances.

The Postal Service's justifications for its specific pricing proposals underscore its misunderstanding of the proper role for exigency-based increases. As another Postal Service witness explained, "[p]eriodicals has been losing money as a class for years," and the "inflation-based price cap limitation at the class level has made it difficult to make significant progress in restoring Periodicals to complete cost coverage." Kiefer Statement 39 [Supp. App. 39]. The Postal Service thus saw this "price change" as a "unique opportunity to take some steps toward increasing Periodicals revenue and improving cost coverage." *Id.* Again, the authority to raise prices due to either extraordinary or exceptional circumstances was not designed to provide a "unique opportunity" to address problems that have persisted "for years."

*Id.* at 34-36.

**2. The meaning of "reasonable and equitable and necessary" is plainly committed to the Commission's judgment**

In Order No. 547 (at 21), the Commission acknowledges that

[c]urrent law does not specifically state who determines whether circumstances are "either extraordinary or exceptional." The Postal Service argues that the Board of Governors still has the authority to determine exigency, and some commenters have raised this issue as well.

The same cannot be said of the "reasonable and equitable and necessary" section of the exigency provision. Congress plainly committed the determination of whether requested exigent rate adjustments are "reasonable and equitable and necessary" to the Commission. Section 3622(d)(1)(E) of the PAEA states that

rates may be adjusted on an expedited basis due to either extraordinary or exceptional circumstances, *provided that the Commission determines . . . that such adjustment is reasonable and equitable and necessary* to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States[.] [Emphasis added.]

All of the language after "such adjustment" is carried forward nearly verbatim from § 3621 of the Postal Reorganization Act of 1970 (PRA) and is mirrored nearly verbatim in § 404(b) of the PAEA. PRA § 3621 "authorized" the Governors of the Postal Service "to establish" postal rates and classes and required that rates be

reasonable and equitable and *sufficient* to enable the Postal Service, under honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States. [Emphasis added.]

The sentence that followed what is quoted above defined *sufficient* as meaning that rates and fees should be set high enough to recover revenues equal to total estimated Postal Service costs, an objective which was known as "break-even."

PAEA § 404(b) is virtually identical to PRA § 3621, except that it inserts the words "best practices of" before "honest, efficient, and economical management" and omits the sentence which defines *sufficient* as *break-even*, leaving that word without an explicit statutory definition (since price caps have replaced the break-



even requirement). It is under the authority of § 404(b) that the Governors implement annual rate adjustments which the Commission has first reviewed under § 3622(d).

When nearly identical language appeared in the exigency provision of the PAEA, it had three new and distinctive features:

- the insertion of "best practices of" before "honest, efficient, and economical management";
- the first appearance in law of a concept of a level of postal rates and fees that is "necessary" to the maintenance and continuation of postal services adapted to the needs of the American people; and
- omission of a grant of power to the Governors "to establish" rates; in its place, insertion of a grant of discretion to the Commission "to determine" whether rate adjustments are "reasonable and equitable and necessary."

The Postal Service devotes nearly half of its Renewed Request (at 18-35) to the subject of "honest, efficient, and economical management," arguing that it was exercising best practices of honest, efficient, and economical management as of the issuance of Order No. 547 in September 2010 (at 21), has continued to do so since then (at 22-33), and plans to continue doing so in the future (at 33-35). Valassis does not in general take issue with those statements. But we think that the question which must determine the outcome of this proceeding is a different one. Are the proposed rate increases *necessary*, under these best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States?

If the Postal Service has taken large strides toward a more economical and efficient system in recent years, the correct lesson to draw is not that it should be allowed to raise its rates but that the price cap system has proved a success in its

central purpose of creating improved incentives for efficiency. The Commission cogently explained this point on brief to the Court of Appeals:<sup>10</sup>

The statutory text—“due to either extraordinary or exceptional circumstances”—explicitly requires that any above-inflation price increase relate to the exigency claimed as justification. Moreover, allowing price increases untethered to the claimed exigency would undermine the inflation cap, which requires the Postal Service to improve its management and efficiency in order to improve its bottom line. It is no answer to suggest that the Postal Service should be allowed to raise prices because it has also cut costs in recent years. Rather, any recent improvements reinforce the need to retain Congress’s incentive-based system, which has prompted the Postal Service to become more efficient.

The matters addressed in that passage are issues of high policy. In this instance, they are issues that have been entrusted unmistakably by Congress to the Commission's consideration. Moreover, the Commission's extensive analyses of the exigency provision, while not specifically addressing the issue of Commission authority, amply demonstrate the soundness of Congress's choice.

In evaluating the many strong claims made for and against exigent rate increases, the Commission has unfailingly kept at the center of its attention “the broader statutory context in which section 3622(d)(1)(E) appears and . . . the purposes for which the PAEA was enacted.” Order No. 547 at 56. It has been concerned to “protect[ ] the basic integrity of the rate cap system by preventing unnecessary rate increases that would exacerbate volume declines.” *Id.* It has repeatedly indicated that “the Postal Service can not resolve severe shortcomings in

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<sup>10</sup> *USPS v. PRC*, D.C.Cir., No. 10-1343, Brief for Respondent Postal Regulatory Commission (January 14, 2011), at 17.

its business model by resorting to the exigent rate provision" and that, although it "agrees that change is warranted regarding certain of the constraints cited by the Postal Service . . . [t]hose issues . . . must be decided in a different forum." *Id.* at 63, 65. The Commission's Order Resolving Issues On Remand "reiterates its finding in Order No. 547 that the price cap is the cornerstone of the modern system of ratemaking under the PAEA" and "reaffirms that the exigency provision is a narrow exception to the price cap," whereas "a broader interpretation of the exigency provision would undermine the purposes and policies of the PAEA." Order No. 864 at 33, 34, 35.

The Governors of the Postal Service have also had to make a decision about the necessity, or at least the desirability, of the requested exigent rate increases, since their resolution is what initiates a Postal Service request. The wellsprings of their decision are revealed in the public letter from the Chairman of the Board, issued the day before the filing of the Renewed Request, as well as in the Renewed Request itself. A comparison of the Chairman's letter with the statements by the Commission that we have reviewed regarding permissible uses of the exigency provision reveals a nearly total opposition between the views of the Commission and those of the Governors.

In addition to the statements we have examined, the Commission's Brief to the Court of Appeals contained the following statements about the Postal Service's 2010 Request:<sup>11</sup>

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<sup>11</sup> *USPS v. PRC*, D.C.Cir., No. 10-1343, Brief for Respondent Postal Regulatory

[footnote continues]

[T]he Postal Service properly identified the recent recession, and the resulting decline in mail volumes, as extraordinary or exceptional circumstances, but . . . sought to use its exigent rate request as an opportunity to address numerous other financial issues, such as structural problems with its business model, the increasing use of electronic mail, and its statutory obligation to prefund retiree health benefits.

To the extent that the Postal Service believes that the management improvements Congress expected the price cap to foster are unattainable, such arguments would properly be addressed to Congress and not to the Commission.

Nonetheless, the Chairman of the Board of Governors explained the Renewed Request as follows:

Our business model is inherently inflexible as we have limited ability to restructure to adapt to a changing marketplace. As a result, the Postal Service continues to contend with a systemic imbalance between revenues and costs.

Under current laws, the Postal Service simply lacks the authority to fully pursue financially responsible and appropriate strategies for controlling costs and generating new revenue that are far preferable to price increases.

As a result of these limiting factors and urgent financial needs, and in order to address the extraordinary and exceptional circumstances which have occurred, the Governors have directed the Postal Service to file pricing adjustment requests with the Postal Regulatory Commission.

[I]f these financial challenges were alleviated by the timely enactment of laws that close a \$20 billion budget gap, the Postal Service would reconsider its pricing strategy.

[W]ithout the legal authority to close the budget gap, the price adjustments announced today are necessary.

Barnett Letter.

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Commission (January 14, 2011), at 17, 40.

It is impossible to fault the Governors for having the concerns that they have, no matter how strongly one may believe that their decision to seek exigent rate increases is not in the best interests of the Postal Service. But it is possible to fault them for expecting the Commission simply to abandon a carefully considered and articulated analysis of the basic legal purpose and structure of its enabling statute that it has developed over a period of years, and to do so on the basis of no alternative analysis or even any comprehensible statement of policy or strategy.

One thing is clear: Congress has vested the determination of what "necessary" means in the exigency provision, and whether any particular requested rate adjustments are "necessary," in the Commission. This is a serious responsibility but one that the Commission is undoubtedly well suited for.

## **V. HOW SHOULD THE COMMISSION DETERMINE WHETHER THE REQUESTED EXIGENT RATE INCREASES ARE NECESSARY?**

### **1. The Commission is right to emphasize the purpose for which the exigency clause is invoked**

Just as was true of the previous request, the Renewed Request focuses not on dealing with the effects of the exigency but on other matters--the liquidity crisis, long-term problems of management structure and governance, etc. As the Commission has said before, and as its careful analysis of the legislative history of the exigency provision shows,<sup>12</sup> such matters simply are not what the exigency decision was designed for.

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<sup>12</sup> See Order No. 547 at 14-19; Order No. 864 at 37-39.

The Commission has emphasized this point in the past and has been right to do so. On the day that the Renewed Request was filed, DEAD TREE EDITION wrote:<sup>13</sup>

We can see what's coming: Congress members will continue nagging the Postal Service to be more businesslike while forcing it to do something very un-businesslike – raising prices in the face of increased competition and declining demand.

What we mailers see is not a one-time price hike but rather the first of many “emergency” increases that will increasingly thrust USPS into a death spiral. Congress will keep blocking meaningful action on the Postal Service. But USPS customers (and employees) will be the ones who are punished.

That is a vision of what the exigency clause may unloose if not restricted to the purposes it was designed for.

**2. Small sacrifices of principle will not save the Postal Service but simply become a habit that leads to the squandering of all chances to save the Postal Service**

The price-cap mechanism has worked extremely well to constrain USPS costs and impel management to take difficult measures to reduce unnecessary capacity. Allowing the exigency provision to be used to address problems other than extraordinary or exceptional circumstances, i.e., to operate as a general escape clause from the price caps, would undermine the fundamental structural mechanism of the PAEA.

The Postal Service claims that its efforts to reduce unnecessary costs, or to increase revenues by means other than exigent rate increases, have reached the limit of what is possible, but that price increases well above the rate of growth in the

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<sup>13</sup> DEAD TREE EDITION (September 26, 2013)  
<http://deadtreeedition.blogspot.com/2013/09/why-exigent-postal-rate-increase-will.html>

economy do not transgress the limit of what is bearable for its customers. Neither claim is believable.

The Chairman of the Postal Service Board of Governors informed the American "Postal Customer" on the day before the Renewed Request was filed that "[u]nder current laws, the Postal Service simply lacks the authority to fully pursue financially responsible and appropriate strategies for controlling costs and generating new revenue that are far preferable to price increases," and that "[o]f the options currently available to the Postal Service to align costs and revenues, increasing postage prices is a last resort that reflects extreme financial challenges."<sup>14</sup>

The same recession that has affected the Postal Service's business has affected the business of its customers as well, especially customers in the fields of advertising and publishing. Many of them have losses of volumes and revenues due to the Great Recession that are just as severe as those that have beset the Postal Service.<sup>15</sup> Many have been making concessions to their customers simply to retain current volumes. Just as volumes lost to the recession are probably a permanent loss to the Postal Service, volumes lost to excessive postage increases are likely to be a permanent loss to the advertising and mailing industries.

We must be frank. The assertion that the Postal Service has cut its unnecessary costs to the bone, to the point that it can claim a right to impose

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<sup>14</sup> See Barnett Letter at 2.

<sup>15</sup> See Response of Thomas Thress to POIR No. 1, Q. 4 (October 30, 2013).

"equitable," and "reasonable" and "necessary" rate increases of 6 percent on the entire nation, shows an appalling failure to grasp recent economic reality or the reality of the peril that the Postal Service may be in.

The deleterious effects of any exigent increases will be compounded by the fact that the price elasticities on which the Postal Service bases its predictions of increased contribution from higher rates are poorly estimated. The Initial Comments of MPA *et al.* (filed this date) explain how the USPS econometric models are curve-fitted to yield the best total prediction but with little in-depth conceptual support for the correct design and estimation of the individual independent variables used in those models. Although the models show that Postal Service volume growth has slowed over the past several years, they do not adequately recognize all the individual reasons for those changes. As noted by the Saturation Mailers Coalition and Association Commenters in their Initial Comments (filed this date), postage has taken an increasing bite out of advertising rates of return, gradually reducing the value of being in the mailbox. Moreover, mailers' markets have changed substantially as technology has improved and expanded competitive alternatives, again reducing the value of being in the mailbox. Advertising mail, in particular, now has numerous very competitive options, while advertisers themselves have become increasingly price sensitive. For example, private delivery operators, through improvements in technology, have become far more cost- and quality-competitive.<sup>16</sup>

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<sup>16</sup> See, e.g., Dockets No. MC2012-14 and R2012-8, Responses of Valassis Direct Mail, Inc. to Notice of Inquiry No. 1 (Q. 1, 3, 5) (June 29, 2012) and Reply Comments of Valassis Direct Mail, Inc. (June 1, 2012).



These changes cause increases in price elasticities as well as shifts in demand, but the USPS models cannot distinguish between them.

In sum, the USPS econometric models are based on data from a long historic period and have been crudely adjusted to generate the best prediction of the dependent postal volume variable. Some vague trend and intervention variables have been introduced to account for unexplained volume changes, but the models have not been restructured to recognize explicitly the individual causes for the demand changes due to relatively recent changes in market conditions. Thus, the demand elasticities estimated by the Postal Service are highly questionable. They cannot be used to provide reliable estimates of revenue and contribution generated from the above-CPI exigent rate increase. Mailer demands, especially with respect to advertising mail, have become far more elastic over the recent past -- both in the shorter and in the longer term.

**3. Postal Service management's recent actions, including filing its Revised Request, are sapping its ability to act effectively**

In current circumstances, raising rates substantially above the statutory price caps would be an act of both tactical and strategic weakness and imprudence on the part of Postal Service management. Many wise commenters from diverse points of view (John Potter, George Omas, Joe Lieberman) have warned that the Postal Service will be further damaged rather than sustained if it tries to use higher rates to prop up its outdated and excessively expensive system. Nor is there evidence that Postal Service management would reap anything from its proposed exigent increases other than to lower even further the esteem in which it is held by Congress and the postal unions. There is no reason to believe that Congress is likely to view

such increases as anything other than an excuse for moving serious postal reform even further toward the bottom of their list of priorities or that the postal unions would view any dollar of increased revenue from exigent rate increases as other than a dollar up for grabs in the next wage negotiations.

**4. Are the proposed exigent rate increases a reasonable or necessary means toward making possible the continuation and development of Postal Services of the kind and quality adapted to the American people?**

The Postal Service's answer to the above question, as we have seen, is narrow but thoroughly practical: "Yes, because the increases will postpone by 15 to 16 days the date when we run out of cash, and in the interim, as Mr. Micawber liked to say, something may turn up."<sup>17</sup>

Others, in answering or implying an answer to the question, have probed more deeply and also engaged the necessary antecedent question: what type of postal services will be of a kind and quality adapted to the American people? For example, a far more informative, even visionary, version of "yes"--one that we think comes closer to capturing what an exigency increase in current circumstances would really stand for--can be inferred from recent testimony of the Inspector General (IG) of the United States Postal Service to the Senate Committee on Homeland Security and Government Affairs (September 19, 2013) ("IG Testimony").<sup>18</sup> The IG gives a

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<sup>17</sup> See Dickens, C. *The Personal History And Experience Of David Copperfield the Younger* (London, 1850); for extension of liquidity by 15 to 16 days, see Nickerson hearing (Tr. \_\_\_).

<sup>18</sup> Testimony of David C. Williams. Inspector General, United States Postal Service, Hearing before the Committee on Homeland Security and Governmental Affairs, United States Senate (September 19, 2013).

vision of a future Postal Service under which the requested exigent rate increases unquestionably make sense. According to the IG:

Starting in 2007, the Postal Service was hit with rapid volume loss due to the economic downturn and to Internet diversion.

The decline in mail volume now appears to be slowing, and the financial crisis, though serious, is leveling off. The Postal Service has taken dramatic and successful actions to optimize its network to reduced demand.

IG Testimony at 1.

That sounds like good news for ratepayers, until the other shoe drops:

[T]he Postal Service's ability to generate needed revenue under the CPI price cap is largely dependent on unlikely increases in volume. . . . Mail volume was expanding significantly when the CPI cap was deployed. Also, at that time the monopoly – even with the universal service requirement – was a lucrative asset. . . . Sufficient revenue above inflation was unavailable under the price cap. . . . The price cap was intended to protect trapped monopoly customers, but the monopoly has lost much of its value, since there is powerful competition for each type of mail today – advertising, personal communications, business transactions, and parcels. Customers have alternatives, and the diminishing monopoly combined with the universal service requirement is now a growing liability. Our study suggested adjusting the CPI cap to take into consideration volume fluctuations and the revenue generated per delivery point. . . . We found that for moderate, predictable price increases, postal products generally have low price elasticity. . . . As prices are increased, some volume will leave, but the associated revenue loss will be more than offset by revenue from the price increase.

*Id.* at 1-2.

Here we find a remarkable concurrence of events. At the same time that the Postal Service has "optimize[d] its network to reduced demand," it has lost the ability to generate "[s]ufficient revenue," because it has too little volume. And at the same time that its monopoly has lost most of its value because there is "powerful competition for each type of mail," its products "generally have low price elasticity."

If trying to get those four points into equilibrium proves too challenging, at least there is no difficulty discerning the IG's general point, which is that if a regulated monopoly cannot support the universal service obligation, perhaps an unregulated monopoly might. It is not a point that bodes well for ratepayers.

If the IG's assessment is correct, and if the universal service obligation maintains the support of the American people (as we have no doubt that it does), then Congress should be looking into alternative means of funding it. But as our summary of the separate parts of the IG's analysis suggests, we think his assessment is far from persuasive.

A better answer to the question of what kind of postal services will be adapted to the American people going forward should begin by recognizing what is most beneficial to the nation as a whole--a healthy, thriving postal industry. That means one where a viable Postal Service can offer mailers the types of services they need at rates that properly match the value of those services. The price cap embodied by PAEA has been highly successful in moving in that direction. It has improved the Postal Service in many ways desired by Congress when it passed the law--not just price restraint. Prices have been kept within the rate of growth in inflation, but also rate increases have been regularized, litigation costs have been slashed, operational costs have been severely restrained, service quality has generally been maintained, new products have been introduced, infrastructure and workforce have been substantially reduced, and labor relations have not deteriorated. Nearly all of this is directly traceable in some substantial part to the existence of the price caps as the

mandatory, non-negotiable "cornerstone of the PAEA's ratemaking system." Order No. 864 at 3.

Unfortunately, we now face those who would effectively eliminate that cornerstone rather than address the true causes of the current crisis: the constraints and requirements within PAEA and the institutional intransigence and nonfeasance responsible for permitting the current situation to reach the dangerous point where it now stands.

What will happen if the Commission grants the Request? Will doing so make it more likely that Congress will put off doing anything? Of course. Merely filing the Renewed Request appears to have extinguished what little resolution Congress had to complete postal reform this year. Will granting the Request make it more likely that the Postal Service will come back again asking for further exigent increases when Congress fails to do anything? Of course. The fact that the Postal Service has carefully preserved that right, carefully built the evidentiary foundation for such subsequent exigency requests, and strenuously argued for a legal theory that would permit them--i.e., one that does not require that exigent rate increases have any use or purpose or need related in any way to the exigent circumstance--makes it seem all too probable.

Those things can happen only if the Commission "determines" that the requested increases are "reasonable . . . and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States." Valassis respectfully submits that the

Postal Service has made no such showing and that the facts warrant no such conclusion.

Respectfully submitted,

s/ \_\_\_\_\_  
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