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American Bankers Association

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Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCES	Docket No. R2013-11

COMMENTS OF AMERICAN BANKERS ASSOCIATION

(November 26, 2013)

The American Bankers Association (ABA),[1] on behalf of its member banks, is pleased to provide the following comments to the U. S. Postal Regulatory Commission (PRC) in response to the United States Postal Service's (Postal Service) renewed request for a rate increase due to extraordinary or exceptional circumstances (exigent increase).[2] Banks are one of the largest customers of the Postal Service, accounting for a significant amount of mail volume and revenue annually. The ABA and its member banks highly value the Postal Service and its services, and are aware of the current financial pressures faced by the Postal Service.

However, the ABA is concerned that the proposed exigent rate increase would create significant uncertainty for financial services mailers and send dangerous economic signals that could lead to further electronic diversion from the mail stream. Further, the Postal Service's proposed exigent rate increase is sought over four years after the end of the Recession and has no defined endpoint, increasing uncertainty for businesses that utilize the Postal Service. Finally, the requested exigent rate increase will not solve the financial problems faced by the Postal Service.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its 2 million employees.
[2] Renewed Exigent Request of the United States Postal Service in Response to Commission Order No. 1059, Docket No. R2010-4R (revised to R2013-11) (Sept. 26, 2013).

We believe that an increase of this magnitude would hurt the Postal Service both in the medium and long term, by driving volume to electronic alternatives. To address these matters, the ABA respectfully requests that the PRC deny the Postal Service's request for an exigent rate increase of 4.3% and offers the following comments for consideration by the PRC.

Background and Procedure

On September 9, 2013, the ABA wrote to the Postal Service Board of Governors expressing concerns with the proposal to seek an exigent rate increase, arguing that "a significant postage rate increase to the additional costs already assumed by banks and mailers, in various work share agreements, will cause banks and other mailers to consider other options for continued contacts with customers."[3] The Postal Service filed its Renewed Exigent Request on September 26, 2013, seeking a rate increase of 1.6% up to the Consumer Price Index for All Urban Consumers (CPI) as authorized by 39 U.S.C. § 3622(d)(1),[4] and also filed a renewed request for rate adjustment due to extraordinary and exceptional circumstances seeking a 4.3% above CPI exigent increase. Together, the rate increases equal a total rate increase of 5.9%, a rate spike 3.7 times greater than inflation.

The Postal Service is asking the PRC to approve the exigent increase, in addition to the CPI increase that was granted, with conditions, on November 21, 2013,[5] in an effort to provide additional revenue to offset continued financial losses the Postal Service faces. While it is understandable that the Postal Service would consider an exigent rate increase in light of the economic downturn during the Recession, the Postal Service's filing does not pass the legal hurdles that it must for the PRC to approve it, specifically the required causal connection between the extraordinary and exceptional circumstances of the Recession and the size of the exigent rates increases requested, particularly in light of the current economic recovery.

[3] Letter from Kenneth J. Clayton, Executive Vice President and Chief Counsel, Office of Legislative Affairs and Chief Counsel, American Bankers Association, to Mickey D. Barnett, Chairman, Board of Governors, United States Postal Service (Sept. 4, 2013).
[4] *See* United States Postal Service Notice of Market-Dominant Price Adjustment, Docket No. R2013-10 (Sept. 26, 2013).
[5] Press Release, Postal Regulatory Commission, PRC Approves Annual CPI-based Postage Rate Increase; Concurrent Implementation of Full Service IMb Remanded (November 21, 2013).

I. Increasing Rates Above the CPI Cap Increases Uncertainty for Businesses that Utilize the Postal Service and Could Impact Future Use.

It is settled that the Postal Accountability and Enhancement Act[6] (PAEA) did not envision electronic diversion as an exigent circumstance warranting an exigent rate increase.[7] Congress enacted the PAEA to reform the postal laws to address challenges faced by the Postal Service at the time including "decreasing volume, insufficient revenue, mounting debts, and electronic communications alternatives such as Internet advertising, electronic bill payments, emails and faxes."[8] The Senate Committee on Government Affairs addressing the legislation also argued that the PAEA was necessary to address problems at the Postal Service stemming from "the combination of an economic recession, terrorism and poor mail volume."[9] The Senate specifically focused on electronic diversion as one of the reasons for adjusting the regulatory structure for addressing market-dominant products, noting that "electronic and other alternatives to mail have the potential to significantly reduce Postal Service mail volumes; volume reductions are already being seen."[10]

In the previous incarnation of this case, the PRC ruled that the Recession constituted "extraordinary and exceptional circumstances" for the purposes of seeking an increase above the CPI cap.[11] Significantly, upon remand, the PRC determined that "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."[12]

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[6] Pub. L. No. 109-435, 120 Stat. 3198 (2006).
[7] *See*, Letter from Senator Susan Collins to Shosana Grove, Secretary, Postal Regulatory Commission, Oct. 18, 2013, at 1.
[8] House Committee Report on H.R. 22, H. Rep. 109-66 Part 1,at 42.
[9] Senate Committee Report on S.2468, S. Rep. 108-318, at 2.
[10] *Id*. at 7.
[11] PRC Order No. 547, Order Denying Request for Exigent Rate Adjustments, PRC Docket No. R2010-4 (Sept. 30, 2010), at 50.
[12] PRC Order No. 864, Order Resolving Issues on Remand, PRC Docket No. R2010-4R (Sept. 20, 2011), at 50-51.

The Postal Service argues that but for the Recession mail volume today would have been greater than mail volume in 2007.[13] Amazingly, as part of that argument, the Postal Service argues that there are long-term, continuing negative effects of the Recession on mail volume losses that continue to impact the Postal Service even after the Recession ended in 2009.[14] Further, the Postal Service argues that rates should increase to compensate for those loses, loses that Postal Service witness Thomas E. Thress admitted during the PRC hearings on this request could go on for a very long time, if not on to infinity.[15]

The Postal Service has suggested that virtually all of the volume losses since 2007 are attributable to the Recession.[16] This is an overzealous estimation and one that seemingly ignores that fact that electronic diversion has been one of the largest drivers of mail volume decline since 2001, and was a driver that continued during the years of the Recession, independent of the Recession.[17] Reports from our members indicate that increased electronic diversion during and after the Recession are generally due to reasons other than the Recession, contrary to the Postal Service's assertion.

One of the major goals of the PAEA was to create rate stability and predictability. The CPI cap was meant to allow mailers and businesses "to accurately budget for rate increases," and this mechanism has "reduced disruption to mailer operations and permitted mailers to plan their mail programs with regular reliability."[18] As an escape valve to be used *only* in extraordinary circumstances, the PAEA ratemaking provisions allowed the Postal Service, in rare circumstances, to seek from the PRC reasonable and equitable price increases above the CPI cap, based upon extraordinary and exceptional circumstances. This provision "has guarded customers

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[13] *See*, Further Statement of Thomas E. Thress on Behalf of the United States Postal Service, PRC Docket No. R2010-4R (Sept. 26, 2013) at 7.
[14] *See*, National Bureau of Economic Research, Business Cycle Expansions and Contractions *available at* http://www.nber.org/cycles.html.
[15] *See*, Public Hearing on R2013-11, Before the Postal Regulatory Commission, Questions Posed to Thomas E. Thress, Nov. 19, 2013.
[16] *See*, Renewed Exigent Request, *supra* note 2, at 11.
[17] *See*, S. Rep. 108-318, *supra* note 9, at 3.
[18] *Outside the Box: Reforming and Renewing the Postal Service, Part I – Maintaining Services, Reducing Costs and Increasing Revenue Through Innovation and Modernization, Before the S. Comm. on Homeland Security and Gov't Affairs*, 113th Congress (Sept. 19, 2013) (written statement of Ruth Y. Goldway, Chairman, U.S. Postal Regulatory Commission, at 9).

from unwarranted exigent price increases."[19] It is clear that Congress intended the extraordinary and exceptional circumstances provision to be a narrow exception to the CPI cap, and the PRC has adhered to this view.[20] However, the current exigent increase sought by the Postal Service in this matter goes beyond a narrow exception to the CPI cap, and undermines certainty and predictability to the ratemaking process.

If the PRC were to grant this exigent rate request of 4.3%, (which would be in addition to the recently approved 1.6% CPI rate increase), the cost-benefit calculation made by mailers of all sizes, including many large and small banks across the United States, would necessarily be altered. The banking industry is a large overall mail volume industry in part because it is a convenient and cost-effective way for banks to communicate with their customers. A 5.9% total increase will change that for some banks, and drive them out of the system. With the advances in technology and security that have occurred even since passage of the PAEA, consumers more often use electronic means to conduct banking and other financial transactions for ease, speed, and convenience. Innovations in smart phones, tablets, and mobile internet communications have facilitated growth in electronic platforms and are increasingly becoming the standard for banking transactions. A rate increase more than three times the size of inflation will accelerate this standard and create yet another new norm.

While the PRC, quite appropriately, has sought to limit the exigent rate increase by requiring the Postal Service to factor out non-exigent circumstances such as electronic diversion, the Postal Service does not offer convincing proof that the Recession sped up the diversion from mail to electronics, and offers no reason to conclude that the Recession was responsible for rapid electronic diversion that was already occurring from 2001-2007.

For the reasons stated above, the Commission should not accept the Postal Service's proposed 4.3% exigent rate increase.

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[19] *Id.*
[20] *See* PRC Order No. 864, Order Resolving Issues on Remand, PRC Docket No.R2010-4R (Sept. 20, 2011), at 3.

II. The Postal Service's Proposed Exigent Rate Increase Is Sought over Four Years after the End of the Recession and Has No Defined Endpoint.

The exigent rate increase requested by the Postal Service comes nearly four years after the National Bureau of Economic Research determined the Recession ended and does not define a formal endpoint for when the increase will end.[21] This violates PRC Rule 3010.61(a)(6), which instructs the Postal Service to provide an explanation of when or under what circumstances the Postal Service would rescind exigent rate adjustments. The Postal Service argues that its decision not to seek an exigent rate increase immediately following the issuance of PRC Order 1059 and the passage of time before filing the renewed request does not necessitate the dismissal of the current exigent increase request.[22] The Postal Service also argues that there is a distinction between what the PAEA allows and requires when granting an exigent rate increase.[23]

While the PAEA does not contain explicit language requiring exigent increase requests to be sought by a certain date, language in the statute and regulation, along with the legislative history of the PAEA, requires that use of the extraordinary and exceptional circumstances provision should be done "on an expedited basis."[24] Seeking an exigent rate increase four years after the occurrence of the extraordinary and exceptional circumstances is not something done on an expedited basis and suggests that the asserted exigency is merely a guise to address more fundamental problems at the Postal Service.

The legislative history of the PAEA indicates that the purpose of the exigent provision was to address instances where circumstances require "the potential need for rapid changes to the postal rate structure in the event of a national emergency."[25] The PRC's own regulations adopted to address exigent rate increases states "requests under this subpart seek rate relief required by extraordinary and exceptional circumstances and will be treated with expedition at every

[21] *See*, National Bureau of Economic Research, *supra* note 14.
[22] Renewed Exigent Request, *supra* note 2, at 39.
[23] *Id*. at 40.
[24] *See* 39 U.S.C. § 3622(d)(1)(E) (2006); S. Rep. 108-318, *supra* note 9, at 11.
[25] S. Rep. 108-318, *supra* note 9, at 10-11.

stage."[26] Taken together, these provisions indicate that Congress and the PRC both envisioned an exigent rate increase request to occur rapidly following the extraordinary or exceptional circumstance impacting the Postal Service, which was not done in this case.

We are especially concerned that the Postal Service's renewed exigent request fails to add a defined endpoint for the proposed exigent rate increase. PRC regulations require the Postal Service to provide "an explanation of when, or under what circumstances, the postal Service expects to be able to rescind the exigent increases in whole or in part."[27] The absence of a defined endpoint for an exigent increase meaningfully raises the level of uncertainty for business mailers and will further accelerate the adoption of electronic means of communication at the expense of postal services.

The absence of a defined endpoint also calls into question whether the extraordinary and exceptional circumstances are in fact a one-time occurrence or a continued ongoing change to the Postal Service business model warranting structural change as opposed to an exigent rate increase. If businesses are now required to factor in the possibility of an exigent rate increase, or continued extensions of an exigent rate increase, years after an extraordinary or exceptional circumstances, businesses would have little certainty about what their costs would be, year over year and it would undermine the integrity of the regulatory price cap.

Therefore, even if the PRC were to include a defined endpoint as part of the exigent increase, the PRC should deny the exigent rate increase because the extraordinary and exceptional circumstances occurred years ago and the Postal Service failed to file the renewed exigent increase request in a timely manner.

[26] 39 C.F.R. § 3010.64 (2013).
[27] *See*, 39 C.F.R. § 3010.60(a)(6) (2013).

III. The Requested Exigent Rate Increase Will Not Solve the Financial Problems Faced by the Postal Service.

The financial difficulties the Postal Service currently faces can be attributed to a number of factors. Legacy costs including excess capacity issues, health care prefunding requirements and pension obligations are primary cost drivers that must be addressed by Congress.[28] Congress has been engaged in this process for several years and is working on a constructive solution. Understandably, the PRC cannot rely on the mere fact that Congress may act to address the financial difficulties the Postal Service faces. However, even if the PRC were to grant this exigent rate request, it would raise approximately $1.78 billion,[29] which is significantly less than the $5 billion in losses that the Postal Service faced in FY2013.

While an exigent rate increase would provide some revenue offsets to the current losses, the size of the increase and the fact that there is no defined endpoint to the length of the increase could negatively impact mail volume and hurt overall postal operations. Any exigent rate increase is not going to be a silver bullet that miraculously solves all the Postal Service's problem. Instead, the Postal Service should continue to work with Congress to obtain in an effort to achieve long term cost reduction and reform that would not have the potential impact on volume that could occur as a result of an exigent rate increase.

Conclusion

In closing, the ABA respectfully requests that the PRC deny the Postal Service request for an exigent rate increase of 4.3%. The exigent rate increase comes on the heels of a 1.6% CPI increase. The impact of the two must be taken together. ABA values the Postal Service and stands ready to work with the Postal Service to discuss legislative solutions that continue to maximize the efficiency of the Postal Service while continuing to stabilize rates. However, ABA respectfully objects to the size for the exigent rate increases requested and the use of the exigent rate provision under the current circumstances. ABA is also concerned about the precedent that

[28] *See*, Renewed Exigent Request, supra note 2, at 13.
[29] *Id.*, at 10 (arguing that the increase sought will recover only $1.78 billion a year).

would be set by granting the exigent increase and for the foregoing reasons requests the PRC deny the exigent request.

Respectfully Submitted,

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