

Time Inc. believes that the Commission has consistently taken positions in earlier stages of this proceeding, both before and after the D.C. Circuit's remand of Order No. 547, that categorically exclude the possibility of accepting the Public Representative's and Valpak's arguments that relative exigent rate levels should be set without reference to the exigent circumstances. The Commission made it clear that the "due to" clause requires more than merely a gross quantitative equivalence between the total financial harm caused by the exigent circumstance and the total revenue recouped by the exigent rate adjustments:

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. . . .

USPS v. PRC (D.C. Cir., No. 10-1343), Brief for Respondent Postal Regulatory Commission (January 14, 2011), at 34.

To make the point as concrete and as directly relevant to the issue at hand as is possible, we need only quote the Commission's arguments to the Court on the appeal of Order No. 547:

The Postal Service never satisfied this requirement, and its attempts to do so illustrate the deficiencies in its request. 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." 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 thus saw this “price change” as a “unique opportunity to take some steps toward increasing Periodicals revenue and improving cost coverage.” 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 34-35 (internal citations omitted). It is a very short step to say that rates which are not legally permissible under the exigency provision, *a fortiori*, cannot be “reasonable” or “equitable” under the exigency provision.

Assuming that the Commission does not reject the Renewed Request outright, Time Inc. submits that an across-the-board approach to its requested exigent increases is reasonable and equitable, for the reasons that the Postal Service offers. Although that approach may appear to diverge from the Commission's emphasis on the impact of the exigent circumstances on Postal Service finances, we think it does so for good reasons. We do not think that the approach deserves the imputations of oversimplification or evasion to which it has been subjected. Rather, as was said of a certain form of government, it appears to Time Inc. to be the worst possible approach, until compared to all of the alternatives.

I. THE COMMISSION HAS WISELY REJECTED OPPORTUNISTIC MISUSES OF THE EXIGENCY PROVISION

The Commission's rejection of attempts to seize upon the exigency as an opportunity to “fix” longstanding problems unrelated to it by raising rates to levels that would otherwise be illegal is based on a consistent set of principles that it has developed and explained over the stages of this proceeding--in Order No. 547, Order Denying Request for Exigent Rate Adjustments, Docket No. R2010-4 (September 30, 2010); in its Brief in the D.C. Circuit defending Order No. 547 on

appeal; and in Order No. 864, Order Resolving Issues on Remand, Docket No. R2010-4(R) (September 20, 2011). These principles include the following:

- that the "centerpiece" or "cornerstone" of the PAEA "is a price cap limiting increases to the rate of inflation which ensures rate stability and predictability for the nation's mail users, and provides incentives for the Postal Service to reduce costs and operate efficiently" (Order No.547 at 1; Order No. 864 at 33);
- that "the integrity of the price cap is indispensable if the incentive to reduce costs is to remain effective" and that "[t]herefore, it would undermine the basic regulatory approach of the PAEA if the Postal Service could pierce the price cap [based on] economic event[s] that should be considered normal," such as "[d]eclines in volume that arise from the normal life cycle of a product, or set of products" (Order No. 547 at 49-51; Order No. 864 at 35);
- that the "due to" clause therefore prohibits "exigent rate adjustments [that] are not designed to respond to" the exigent circumstance or that "represent an attempt to address long-term structural problems not caused by" the exigent circumstance or problems that "would have occurred whether or not the [exigent circumstance] took place" (Order No. 547 at 3; Order No. 864 at 42, 44);
- that in imposing such a prohibition, "[t]he 'due to' requirement in the law prevents a bona fide extraordinary or exceptional circumstance from being misused as a general revenue enhancement mechanism that circumvents the price cap" (Order No. 547 at 3; Order No. 864 at 35).

The Commission revisited those matters in an extensive substantive discussion in its Order Resolving Issues On Remand. It acknowledged the arguments for a different view. At a time when the Postal Service faced serious financial difficulties and no clear route to financial health, the Commission acknowledged that "[a]n exigency provision that is readily available could enable the Postal Service to use an exigent rate adjustment as a way to generate revenues."

Order No. 547 at 35. It summarized the Postal Service's arguments for a view of the hierarchical ranking of the PAEA's provisions quite different from its own:

The Postal Service asserts that a strict interpretation of the causal nexus "is fundamentally at odds with the statutory scheme." Postal Service Comments at 7. It supports this assertion by arguing that in the statutory scheme the exigency provision is just as important as the price cap because the exigency provision "effectuates objectives of the law that are co-equal in importance to the objectives underlying the price cap." *Id.* at 8. The objectives referred to by the Postal Service are the objectives set forth in section 3622(b). *Id.* at 10.

Id. Among the specific "objectives referred to by the Postal Service" were, of course, section 3622(b)(3), "To maintain high quality service standards," (4), "To allow the Postal Service pricing flexibility," and, preeminently, (5), "To assure adequate revenues . . . to maintain financial stability."

There is undeniable appeal in the candid, if reductive, argument that unless the exigency clause is read liberally, the Postal Service may go broke, and if it goes broke because the clause was read narrowly, the consciousness of having upheld the integrity of the price cap will not provide the Commission with much in the way of consolation. But that view is not an appeal to the meaning of the law, or even to the best interests of the Postal Service or the people that it serves, but merely to a caricature of the law's purpose and an appeal to a general human readiness to believe that what is expedient is also likely to be right and prudent. The same sort of appeal is found in the insistent urgings that the opportunity presented by the exigent rate request to do what the law ordinarily forbids, i.e., to raise rates for certain underwater products well above the cap levels, simply must not be passed up.

In its Order Resolving Issues On Remand, the Commission fully reaffirmed the principles and conclusions it had announced in Order No. 547. It enumerated

the issues it had addressed "in depth, including the primary purposes and development of the PAEA, the importance of the price cap and the role of the exigency provision, and the legislative history of section 3622(d)(1)(E)." The Commission reaffirmed its conclusions that "[T]he exigency provision is limited to 'either extraordinary or exceptional circumstances' [and] is . . . intended . . . as a narrow exception to the price cap." It stated that the price cap "serves as the primary source of discipline over the Postal Service's expenses," and that it "acts as the single most important safeguard for mailers by providing rate stability and predictability." *Id.* at 32-33 (internal citations omitted). It rejected the Postal Service's argument that "the exigency provision's role in the statutory scheme is more expansive than the role described by the Commission in Order No. 547." *Id.* at 33. It stated:

The Commission reaffirms that the exigency provision is a narrow exception to the price cap and that rate adjustments may exceed the price cap only under limited circumstances. Order No. 547 at 13, 54. This interpretation of the exigency provision effectuates the purposes and policies of the PAEA by maintaining incentives for the Postal Service to improve efficiency and control costs. By contrast, a broader interpretation of the exigency provision would undermine the purposes and policies of the PAEA.

Id. at 64.

The Commission also rejected the Postal Service's argument that the Commission's strict interpretation of the "due to" requirement made it impossible to assure that the objectives of § 3622(b) were achieved when an exigency request was implemented. The Commission responded:

[T]o be given effect, the objectives of section 3622(b) need not be incorporated into the "due to" clause by relaxing the causal nexus as suggested by the Postal Service. Those objectives

can be given effect in applying the “reasonable and equitable and necessary” tests in a manner analogous to the way in which those objectives are given effect under the price cap. This latter interpretation preserves both the integrity of the price cap and the exigency provision, while giving effect to the objectives of section 3622(b). For these reasons, the Commission concludes that its interpretation of the causal nexus of “due to” is consistent with the purposes and policies of the PAEA, including the role of the exigency provision in the statutory scheme.

Id. at 36-37.

This is a difficult passage, but that is not to say it is unclear. If one looks, as the Commission advises, at the way the objectives of § 3622(b) are ordinarily "given effect under the price cap" and considers how this "preserves . . . the integrity of the price cap" and "is consistent with the purposes and policies of the PAEA," the force of the analogy becomes readily apparent.³ As soon as one interprets the "due to" requirement narrowly, to mean that the rate adjustments must be "due to" the exigent circumstance, then the "due to" requirement slips very comfortably into the role usually occupied by the price cap in the hierarchy of statutory commands. In an exigency proceeding, the objectives of § 3622(b) may legitimately be pursued within the confines of the "due to" requirement, but not by transgressing it, just as within an ordinary rate adjustment proceeding they may legitimately be pursued within the confines of the price cap, but not by exceeding it.

³ A key to understanding the Commission's meaning in this passage may be found in Order No. 536, the Commission's most comprehensive explanation of the statutory hierarchy comprised by the various provisions of § 3622 of the PAEA. See Order No. 536, Order Adopting Analytical Principles Regarding Workshare Discount Methodology, Docket No. RM2009-3 (September 14, 2010), at 23-37.

The exigency provision waives the price cap *because of an extraordinary or exceptional circumstance*. It is obvious, as the Commission has repeatedly pointed out, that it would be an abuse of that provision to interpret it, after it had been invoked on legitimate grounds, as if it provided for a waiver of the price cap for some other reason. It is not an abuse, however, to apply otherwise applicable statutory requirements within the scope of rate adjustments permitted by the exigency provision. Thus, the exigency provision waives the price cap constraint of § 3622(d)(1)(A) and (C) for a certain purpose, but it does not waive the workshare discount constraints of § 3622(e). The conclusion follows that the Postal Service is not free to disregard § 3622(e) in proposing exigent rates, but nor is it free to exceed the scope of the price cap waiver justified by the exigent circumstance in order to achieve more perfect conformance with § 3622(e).

Having gone this far, it is extremely difficult to go further in the absence of a live controversy. The following discussion of the matter is probably the best that could be hoped for, in terms of suggesting what will or will not qualify as "limited to," or "caused by," or "addressed to," or "related to" the "impact" or "adverse effects" of the exigent circumstances:

[S]ection 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. *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.

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.

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.

Order No. 547 at 60-61.

II. THE POSITION OF THE PUBLIC REPRESENTATIVE AND VALPAK ON EXIGENT RATE DESIGN

The Public Representative and Valpak both take an opportunistic approach to the question of how compensatory revenue for the harm caused by exigent circumstances should be distributed to postal classes and products.⁴ Although they adopt various rationales for their position--the current necessity of profit maximization;⁵ the alleged creation of unfair and illegal cross-subsidies when "[t]here are mailpieces in the system entered at prices that are too low to cover costs";⁶ the responsibility not of the recession but of the Postal Service's allegedly inefficient pricing decisions for the liquidity problem which it hopes to use the exigency rate increases to alleviate;⁷ and the unique opportunity that an exigent increase offers to give underwater classes or products "a price increase that is greater than [that of] other market dominant products"⁸--the conclusion is always the same: "[T]he Postal Service should have taken this opportunity to give Periodicals an above average increase in order to improve its cost coverage" (PR Initial Comments at 46); "Periodicals rates should have been adjusted higher as the Postal Service proposed in Docket No. R2010-4" (Valpak Initial Comments at 87).

⁴ The Public Representative uses the word "opportunity" seven times in the course of a 6-page discussion of exigent rates for underwater products. See PR Initial Comments at 39-45.

⁵ See PR Initial Comments at 39; Valpak Initial Comments at 93.

⁶ PR Initial Comments at 42; Valpak Initial Comments at 60.

⁷ Valpak Initial Comments at 87-88.

⁸ PR Initial Comments at 46.

It is hardly open to argument that the rate increases recommended for Periodicals class by the Public Representative and Valpak have no relationship to the volume losses caused by the Great Recession. Periodicals class cost coverage and institutional cost contribution were negative in every year from 2007 through 2012. See FY 2012 ACD at 93. In FY 2012, the year on which the Postal Service bases its asserted exigent losses in this proceeding, Periodicals class cost coverage, as measured by the Postal Service, was 72.1%, and its institutional cost contribution was minus \$670 million, or -9.9¢ per piece (*id.* at 93-94); its volume lost to the Great Recession in FY 2012 was 1.6 billion pieces.⁹ Consequently, Periodicals class volume lost due to the Great Recession in FY 2012 *saved* the Postal Service approximately 1.6 billion pieces x 9.9¢ = \$158 million. To be faithful to the view of Periodicals class that they urge on the Commission (and that Valpak has espoused in every case since passage of the PAEA),¹⁰ the Public

⁹ Further Statement of Thomas E. Thress on Behalf of the United States Postal Service, Docket No. 2010-4R (redocketed as R2013-11) (September 26, 2013), at 4.

¹⁰ We mean the view that periodical publications in the mail are, on the whole, a detriment to the Postal Service. See, e.g., Docket No. ACR2007, Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on the United States Postal Service FY 2007 Annual Compliance Report (February 13, 2008), at 13:

[I]n order for the new, modern ratesetting process to comply with PAEA, the Commission will need to insure that rate increases for Periodicals [*sic*] are targeted in a manner designed to elicit supply side effects sufficient to eliminate the shortfall between revenues and costs. . . . A reduction in Postal Service losses by virtue of money-losing magazines ceasing publication can be described as the "supply" side effect. . . . Since the time of the "founding fathers," countless publications that depended largely on distribution through the mail have come and gone.

Compare Tr. 1/20, 21 (Taufique):

[footnote continues]

Representative and Valpak would have to concede that, if the Postal Service suffered financial harm as a result of volume losses caused by the recession, that harm was mitigated by the financial benefit it received as a result of losses of underwater volumes also caused by the recession.¹¹

Valpak and the Public Representative must therefore say (1) that the "due to" requirement *does not* require any causal relationship between the exigent circumstance and the rate adjustments requested, but only a relationship between the exigent circumstance and *the total revenue to be recovered in the exigency proceeding*, and (2) that judgments about whether an exigent rate increase for a product or class is "reasonable" and "equitable" need not be informed by any consideration of the exigent circumstance or its impact on Postal Service finances.

That view could not be more clearly contradictory to the holding of Order No. 547:

The order under review involves the application of an exception to the inflation cap, which allows price increases above the rate of inflation "due to either extraordinary or exceptional circumstances." The Postal Service seeks to use this limited

Our goal, at least since I've done pricing at the Postal Service for the last 17 years, at least in my case I have never priced to drive products out of the mail stream.

[I]f you price mail out of the mail stream we cannot make it profitable, so keeping it in the mail stream is important and especially the mail that is valued by the customers, by the recipients of the mail and mail that generates other classes of mail also.

¹¹ Vice-Chairman Taub asked Taufique how, "if [he] were to . . . deal with the underwater products and try to undertake differing prices to address that[, he] would . . . explain those differing prices being linked to the cause of the great recession." And he added, "Is that possible?" It is not possible, and Taufique was unable to answer the question. See Tr. 1/23.

exception to justify price increases designed to mitigate financial difficulties largely attributable to factors other than the claimed exigency. But Congress expected the Postal Service to address those issues through improved management and efficiency, and not through monopolistic price increases.

USPS v. PRC (D.C. Cir., No. 10-1343), Brief for Respondent Postal Regulatory Commission (January 14, 2011), at 21.

III. THE POSTAL SERVICE'S ACROSS-THE-BOARD APPROACH IS SOUND

The Postal Service's spokesman on pricing, Altaf Taufique, stated that an "exigent increase of 4.3 percent over and above the CPI increase of approximately 1.6 percent is a reasonable increase" and that spreading this increase "equally to all classes of mail and, as much as practicable, to all products and even to each rate cell [is] clearly equitable."¹²

Taufique's reasons may appear to be merely *ad hoc*, practical, and commonsensical. But Taufique analyzes the reasonableness of the proposed exigent rate increases in terms of concerns that reflect his experience as a Postal Service analyst: what the law permits; how much it is possible to increase Postal Service contribution; and what effects the price changes may have on customers, volumes, market shares, etc. He concludes that "[t]he harm created by the Great Recession would warrant a higher Exigent increase," but that "[i]n light of the slow . . . recovery [and the] concern[] that the accelerated electronic diversion caused by this recession could be exacerbated by an increase larger than the one proposed," and

¹² Statement of Altaf Taufique on Behalf of the United States Postal Service, Docket No. 2010-4R (redocketed as R2013-11) (September 26, 2013), at 10, 11. (Taufique Statement.)

the importance of retaining business customers in the mail to the maximum extent possible, "the 4.3 percent across-the-board adjustment is reasonable" (Taufique Statement at 10-11).

In response to a POIR, Taufique elaborated further. Asked how the fact that "[f]rom FY 2008 to FY 2012," the Postal Service had "lost \$7.5 billion on products that did not cover cost . . . figure[d] into the development of his R2013-11 prices," he responded: "The purpose of R2013-11 was to increase revenue for the Postal Service," the implication being that greater attention to the question of cost coverage by product would have been a diversion from the proper objective of the exigency request, to recover "the lost contribution associated with the volume declines from the 2008-2009 recession" (Order No. 864 at 45).¹³

Clearly, Taufique paid careful attention to the following conclusion in Order No. 864, and followed it both in letter and in spirit:

[T]o be given effect, the objectives of section 3622(b) need not be incorporated into the "due to" clause by relaxing the causal nexus as suggested by the Postal Service. Those objectives can be given effect in applying the "reasonable and equitable and necessary" tests in a manner analogous to the way in which those objectives are given effect under the price cap. This latter interpretation preserves both the integrity of the price cap and the exigency provision, while giving effect to the objectives of section 3622(b).

¹³ Responses of the United States Postal Service to Questions 1-13 of Presiding Officer's Information Request No. 11 (November 29, 2013): Taufique Response to Q.6. See *also* Taufique Response to POIR No. 11, Q. 2 ("The principal purpose of the filing was to recover some of the contribution lost because of the unprecedented volume declines caused by the Great Recession"); see *also* Tr. 1/16 (Taufique: "[T]he whole idea is to get enough money for the Postal Service to remain in operation, and other controversial issues -- this is not a panacea for all of the perceived ills in the various relationships, in pass-throughs, in cost coverage issues.").

Order No. 864 at 36-37.

Taufique points out in defense of an across-the-board approach that the Great Recession affected and continues to affect many of the Postal Service's business customers in the same way it affected and continues to affect the Postal Service,¹⁴ and that an overall rate increase of 6% will be a considerable shock for mailers who are expecting rate increases that are constrained by the CPI limitation; he argues that these are powerful reasons for limiting the impact of the exigent increase on mailers to the 4.3% average rather than proposing a schedule of highly differentiated price changes under which many mailers would receive percentage rate increases that deviate significantly from the mean and reach well into the teens (see, e.g., Taufique response to POIR No. 11, Q. 1f, 3, 8b, 9).¹⁵

Reasoning along similar lines, Taufique argued that when the price cap is removed and an exigent increase substantially above CPI is contemplated, an

¹⁴ See Statement of Taufique at 10, 35-36; Renewed Request at 35; Taufique response to POIR No. 11, Q. 9e; and Tr. 1/10-11 (Taufique).

¹⁵ Indicating the size of the rate increase that would be required to "solve" the Periodicals class cost coverage problem, Taufique stated:

I don't think it's a good long-term strategy to give periodicals a 25 percent increase . . . There are significant impacts. You talk about 30, 40 percent increases for small periodicals, and I'm not exaggerating at all in this case I don't think.

But, like I said, a 25 percent increase would be totally -- it would cause a big chaos in the industry, which there is still volume loss every year that we see and would cause a lot of small publications, those publications that provide the ECSI value, the educational, cultural, scientific, informational value, to these particular types of mail would be significant I think.

Tr. 1/39-40.

across-the-board approach preserves some of the stability that is ordinarily provided by the cap:

The Postal Service considers that the outstanding characteristic of Docket No. R2013-11 is (temporary) removal of the §3622(d)(1)(A) price cap. This has the effect of somewhat undermining one of the primary purposes of the cap, rate “predictability and stability.” §3622(b)(2). An across-the-board pricing approach, with no mailer experiencing a significant deviation from the mean, can help mitigate this effect. While this may sacrifice some “productive efficiency,” the attempt to redress the impact on the §3622(b)(2) pricing “objective” renders the proposed rates reasonable and equitable.

Response to POIR No. 11, Q. 1.f.

Time Inc. believes that Taufique's statements show a thoughtful, balanced, practical, and fair consideration of the challenging array of factors that must be taken into account.

The Commission puts a greater emphasis on the direct impact of the exigent circumstance on Postal Service finances than does Taufique. As we have demonstrated, if direct impact were the sole consideration, products that were underwater when the recession hit would receive no rate increase at all, because the decline in their volume helped instead of hurt the Postal Service.

Time Inc. is not suggesting that the Commission should consider using such an approach or arguing that, if it grants an exigent rate increase, the percentage should be lower for underwater classes or products than for other mail on the grounds that the decline in their volumes inflicted no harm on the Postal Service.

Rather, we think that Taufique has made a persuasive argument against setting exigent prices for classes or products in this proceeding according to an assessment of the various impacts produced by the exigent circumstance on the net

revenues they produce for the Postal Service (or on their costs to the Postal Service). If the procedure is to give the largest increases to the classes and products whose declines in volumes produced the greatest contribution loss, then money-losing products are exempt from exigent rate increases by definition, and the higher a product's cost-coverage, the more vulnerable it is to the possibility of an exigent increase. That outcome appears to be inequitable and lacking in any rationale as a market strategy. On the other hand, if the procedure is to give "the largest increase to the mail classes that had the most volume declines," then it is a form of "punishing the survivors," i.e., raising the rates most on the industries that have already been hit the hardest by the recession. Tr. 1/47; *see also id.* at 14. That is also both manifestly inequitable and bad market strategy for the Postal Service.

In the context of an exigent circumstance that itself affects the Postal Service and the national economy (and thus mailers) more or less broadly and indiscriminately, such as the Great Recession, Taufique's argument that "everybody benefits from the Postal Service remaining in operation so everybody pays an equal share of the burden" (Tr. 1/47-48) is a sounder standard. It is more likely to be seen and accepted as equitable, merely by virtue of being equal. And it follows two principles of prudence by avoiding subjecting any mailer to an extreme rate adjustment in circumstances where the justification for doing so is especially questionable, and avoiding reaching the merits of a number of subsidiary issues where both the need and the propriety of doing so are in much doubt.

But the difference between the Postal Service and the Commission on this record as it stands thus far is not one of principle but merely of emphasis. In Order

No. 547, the Commission explained how the “reasonable and equitable and necessary” test and the “due to” requirement work in conjunction with one another to insure that the exigency provision is not “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” or “used for general corporate purposes unrelated to” the exigent circumstance. Order No. 547 at 55-56. The Commission gave several examples of considerations based on the conjoined intent of these two provisions that would influence its decision whether to grant a request for exigent rate adjustments. One of these was whether “unnecessary rate increases . . . would exacerbate volume declines,” thus threatening the Postal Service’s long-term welfare (*id.* at 56).

Another was that

a number of mailers have identified hardships that they believe will flow from the proposed rate adjustments. Among those predicted hardships are: a reduction in mailings; a reduction in the size and circulation of publications; employee salary freezes; employee salary and benefit reductions; employee terminations; employee furloughs; a delay in staff recalls; an increase in the speed and scope of internet diversions; reduced advertising; decreased purchases from suppliers; the termination of senior discount programs; and actual business closings.

Id. at 57 (footnote omitted). Another was that “the same ‘extraordinary or exceptional circumstances’ that have affected the Postal Service have also affected the mailers opposed to the requested rate adjustments” (*id.*). All of these concerns, the Commission said, have to do with “the importance of preserving the protections built into the PAEA by the rate cap system.” *Id.* They are the same concerns that Taufique cites in support of the decision to request an across-the-board exigent

price increase. Unlike the concerns that the Public Representative and Valpak consider paramount, they are centered on fulfilling the exigency provision's purpose while "protecting the basic integrity of the rate cap system" (*id.*).

Pricing is an area in which the PAEA intends that the Commission should accord deference to the judgment of the Postal Service (see § 3622(b)(4) and (c)(7)). Time Inc. believes that the Postal Service's across-the-board approach, in the circumstances of the particular exigency on which its request in this proceeding is based, is both reasonable and equitable. If the Commission grants the Postal Service's request for exigent rate adjustments, Time Inc. urges that it adopt an across-the-board approach.

Respectfully submitted,

s/

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