

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

Treatment of Rate Incentives  
And De Minimis Rate Increases  
For Price Cap Purposes

Docket No. RM2014-3

**COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE**

The Association for Postal Commerce ("PostCom") hereby submits these comments in response to the Postal Regulatory Commission's ("Commission" or "PRC") Notice of Proposed Rulemaking ("NOPR"), Order No. 1879, regarding the treatment of rate incentives and *de minimis* rate increases for price cap purposes. PostCom thanks the Commission for hearing our request to open a docket to definitively establish criteria for evaluating the price cap treatment of promotions, incentives, and other forms of discount pricing.

In the past, the Postal Service's treatment of rate decreases, in particular discount and incentive rates established between annual rate adjustments, has been inconsistent. At times, the Postal Service has ignored the discounts in calculating the price cap, effectively treating the discount volume as if it had been mailed at full rates. At other times, the Postal Service has sought to create additional pricing authority along with the implementation of reduced rates. With the Technology Credit incentive, the Postal Service sought not only to create additional cap authority through the discount, but to use that additional authority in the next rate adjustment regardless of the first-in, first-out rule governing use of banked rate authority. Without definitive guidance from the Commission, mailers could not know in advance how a proposed incentive would be treated, and therefore could not assess whether the incentive simply represented a

temporary benefit in exchange for permanent rate increases. This uncertainty led to distrust between mailers and the Postal Service and created unnecessary barriers to the use of incentive rates. One of the central features of the Postal Accountability and Enhancement Act is that it provides the Postal Service with the pricing flexibility to offer discounts and incentives. But without clear standards about how the establishment of incentives would affect calculation of the price cap, mailers could not be sure that Postal Service would exercise this flexibility in a way that ensures the Postal Service's overall price structure remains equitable for all mailers and within the confines of the price cap.

The Commission's proposed rules are a significant step towards resolving these issues. By specifically addressing the treatment of rate decreases, the proposed rules provide needed certainty. PostCom commends the Commission for its effort to replace the current ad hoc and inconsistent treatment of discount and incentive rates with a rational and predictable system.

**I. THE PROPOSED RULES PROVIDE NEEDED CERTAINTY AND ESSENTIAL CLARIFICATIONS**

The proposed rules take several significant steps toward establishing rational standards to govern the price cap treatment of discounts and incentives. Simply by establishing the Type 1-C rate adjustment, the proposed rules eliminate uncertainty as to whether rate reductions have price cap implications and provide a standardized procedure for the Postal Service to follow in submitting discounts, incentives, and other rate reductions for the Commission's review.

Further, the proposed rules improve upon the rules initially proposed in Order No. 1678 in their treatment of promotional and incentive rates, specifically by limiting the Postal Service's ability to create additional cap authority to rate incentives of general applicability. By limiting the creation of cap authority to incentives associated solely with the characteristics of the mail in

question, the proposed rules help ensure that cap authority will not be created when an incentive rate is available to only a subset of mailers.

In contrast, when an incentive rate is not of general applicability, proposed rule 3010.23(e) requires the Postal Service to treat the rate as if it were an NSA rate and treat all volume mailed at the incentive rate as if it had been mailed at the full rate when calculating compliance with the price cap.. PostCom submits that this approach is correct, as such an incentive and an NSA rate are analogous. This approach properly prevents the creation of additional cap authority through an incentive rate available only to specified mailers.

PostCom also supports the approach to calculating unused rate adjustment authority associated with a Type 1-C rate adjustment set forth in proposed rule 3010.27. Importantly, proposed rule 3010.27(c) clarifies that unused rate adjustment authority created by such a price change shall, “[f]or purposes of § 3010.28 . . . be deemed to have been added to the schedule maintained under § 3010.26(f) on the same date as the most recent notice of Type 1-A or Type 1-B rate adjustment.” This proposed rule clarifies that any additional rate adjustment authority created through the establishment of a promotional price is subject to the first in, first out rule like any other banked rate authority.

## **II. ADDITIONAL CLARIFICATION IS NEEDED WITH RESPECT TO THE TREATMENT OF CERTAIN RATE INCENTIVES**

Although the proposed rules represent a significant improvement over the status quo, certain areas still require clarification, and the rules could be improved with further modifications. First, the definition of a rate of general applicability should be further clarified. Proposed Rule 3010.1(g) simply defines a rate of general applicability as “a rate applicable to all mail meeting standards established by the Mail Classification Schedule and the Domestic Mail Manual.” While this rule appears to place no restrictions on what standards could be established

in the MCS or DMM, it does state that a rate will not be considered generally applicable “if it benefits a single mailer,” if it “is only available upon the written agreement of both the Postal Service and a mailer or group of mailers,” or, most significantly, “if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies.”

This latter clause would seem to indicate that volume incentive rates would never be considered rates of general applicability, as the volume submitted by a mailer would be a “factor[] other than the characteristics of the mail to which the rate applies.” In fact, the Commission specifically explained that the Technology Credit promotion would not be a rate of general applicability as “[t]he volume of mail sent by a mailer in a previous year is not a characteristic of the mail that would be eligible for the” promotion. NOPR at 12. However, the Commission did not comment on other promotions which were specifically volume-based, such as the summer sales authorized in Order Nos. 219 and 439. While the NOPR acknowledges that the Public Representative argued in RM2013-1 that the summer sales should be treated as if they were not rates of general applicability, the Commission never specifically indicates how it would have treated the summer sales if they were implemented under the propose rules. NOPR at 10.

The other examples given by the Commission of promotions which would not be considered rates of generally applicability do not help in clarifying these issues. Eligibility for the Mobile Barcode promotions in Docket Nos. R2011-5 and R2012-6 turned primarily on the inclusion of a mobile barcode meeting specified parameters, yet the NOPR indicates, with no explanation, that these rates were not rates of general applicability. NOPR at 10 n.14. Likewise, the NOPR states the reduced rates for Standard Mail High Density Flats in Docket No. R2009-4 were not rates of general applicability even though the price reduction applied to all mail meeting the requirements for High Density Standard Mail Flats. *Id.*

The NOPR further confuses the issue when it points to the promotional rates established in Docket No. R2013-1 as examples of promotional rates of general applicability. The Emerging Technology promotion and the Mobile Coupon/Click-to-Call promotion included in this rate change were both specifically modeled on the earlier Mobile Barcode promotions. The Commission provides no explanation as to why these promotions would be considered rates of general applicability while the Mobile Barcode promotions would not be. It simply states the conclusion that they “met the proposed definition of rates of general applicability.” NOPR at 10.

The definition of a rate of general applicability is extremely important. PostCom has consistently taken the position that the Postal Service should not be able to create additional permanent cap space through the introduction of temporary promotions or incentives and that the default treatment of promotional rates should be akin to the treatment of NSA rates (*i.e.*, all volume sent at the promotional rates should be treated as if it was mailed at full rates when calculating permitted price increases under the cap). The proposed rules adopt this position for incentive rates which are not of general applicability. *See* Proposed Rule 3010.23(e). If the term “rate of general applicability” is narrowly construed, as the examples provided by the Commission suggest it should be, the proposed rules appear to protect against PostCom’s primary concern that allowing the Postal Service to create cap space through the introduction of promotional prices will result in a price schedule that is unfair to mailers as a whole. But without further clarification of this standard, PostCom and its members cannot be sure in advance whether a promotional price will be considered a rate of general applicability and whether the Postal Service will be permitted to create additional pricing authority through the introduction of that price. More immediately, without this clarification, the Postal Service will not be able to comply with the requirement in proposed rule 3010.12(a)(9)(i) that it provide

“sufficient information to demonstrate that the rate incentive is a rate of general applicability” when filing a Type I-C adjustment. At a minimum, in issuing final rules, the Commission should more clearly explain why each of the promotions identified in the NOPR would or would not be considered a rate of general applicability.

Ultimately, establishing a rule that provides that the majority of promotional and incentive prices will be treated like NSA rates supports the Commission’s stated goal in this rulemaking of providing “more certainty for the Postal Service and the mailing community as they make decisions that rely upon the Postal Service’s authority to adjust rates for market dominant products.” NOPR at 1- 2. Treating promotional volume as if it travelled at full rates eliminates the need to perform complicated calculations of rate adjustment authority. It establishes a simple rule that allows the Postal Service to focus on the operational and economic benefits of offering the promotion (*e.g.*, whether the promotion will increase mail volume), and it allows mailers to evaluate the promotion on its own merits. Whereas mailers, especially smaller mailers, are adept at evaluating whether a promotional price provides sufficient incentive to participate in the promotion, they may not have the tools or sophistication to make this same determination if they must also figure out how the promotion will factor into future price adjustments that may result in higher rates over the long term. Consequently, even if the Commission establishes true-up provisions and other protections, many mailers may decline to participate in promotions rather than undertake the time and expense to fully evaluate the potential benefits of the promotion. To the extent promotional prices are treated as rates not of general applicability, Proposed Rule 3010.23(e) simplifies the decision tree for mailers and will result in more effective promotions than a rule that allows the Postal Service to rely on the reduced promotional pricing to create additional price adjustment authority. But as long as there is confusion over whether a rate is of general applicability, these goals will not be met.

To the extent that the Commission’s final rules allow the Postal Service to create additional price adjustment authority through the establishment of mid-year promotional and incentive programs, the rules should clarify that any cap authority created should be applied only to those products which were eligible for the promotional or incentive rates. That is, the Postal Service should not be permitted to use any adjustment authority created to increase rates generally across a class. Instead, the additional adjustment authority should be tied to individual products. The Commission recognized this principle in Order No. 1541, allowing the Postal Service to account for revenue foregone from promotions only “so long as volumes are properly ascribed to the appropriate products.” Order No. 1541 at 18

Such a rule is necessary to ensure that promotional pricing does not unduly discriminate against mailers not eligible for the discounted rates. If the adjustment authority is applied to the class generally, mailers who were not eligible for the promotion may pay higher rates as a result of the promotion. While PostCom supports the introduction of promotional and incentive pricing, such pricing should be part of a strategy to grow volumes and overall contribution, not simply a discount that favors one set of mailers at the expense of others. Limiting any adjustment authority created to the products eligible for the promotional and incentive rates— and to the products and volumes actually sent at that rate through true-up provisions—will ensure that promotional and incentive pricing is non-discriminatory.

### **III. INCLUSION OF A TRUE-UP PROVISION WOULD FURTHER IMPROVE THE PROPOSED RULES**

To the extent the Commission’s proposed rules allow the Postal Service to create or bank price adjustment authority based on volume sent at promotional or incentive rates, the Commission should require the Postal Service to reconcile the volume sent at promotional rates with the adjustment authority it claims in its next scheduled price adjustment. The reasoning

behind creating such provisions is simple: the Postal Service should only be permitted to account for revenue foregone from promotional prices if it in fact foregoes that revenue. In Order No. 1541, the Commission expressed its concern that when including promotions in the price adjustment authority calculation, “if the volume weights used in the cap calculation are overstated, the price authority created would be overstated as well.” Order No. 1541 at 17. Accordingly, the Commission approved the Postal Service’s inclusion of revenue foregone from promotions in its price adjustment authority calculations only “so long as volumes are properly ascribed to the appropriate products.” *Id.* at 18. Because the Postal Service relied on historical volumes that were likely to be smaller than the volumes that would actually be mailed at the promotional rates in question, the Commission approved the Postal Service’s calculation. *Id.* at 17.

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

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

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

Respectfully submitted,

*/s/ Matthew D. Field*

Matthew D. Field  
Ian D. Volner  
Venable LLP  
575 7<sup>th</sup> Street, NW  
Washington, DC 20004-1601  
[ivolner@venable.com](mailto:ivolner@venable.com)  
[mfield@venable.com](mailto:mfield@venable.com)  
**Counsel for Association for Postal Commerce**

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