

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

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

**COMMENTS OF
MPA—THE ASSOCIATION OF MAGAZINE MEDIA,
ALLIANCE OF NONPROFIT MAILERS,
ASSOCIATION FOR POSTAL COMMERCE
AND DIRECT MARKETING ASSOCIATION, INC.
ON ORDER NO. 2089**

(July 28, 2014)

The undersigned parties respectfully submit these comments in response to Order No. 2089. The Order requested public comment on the June 2 report of the Postal Service on how it plans to rescind the 4.3 percent rate surcharge on market dominant products, approved in Order No. 1926, when the \$3.2 billion revenue cap is reached.

The Postal Service submitted the June 2 report only after the Commission twice ordered the Postal Service to do so. Order No. 1926 (Dec. 24, 2013) at 183 (directing USPS to submit report); Order No. 2075 (May 2, 2014) (denying 11th-hour USPS motion for stay but extending compliance deadline). The belated report is a non-response response. The Postal Service asserts that it “is not in a position to present a definite ‘plan’ at this time, irrespective of whether the requirement to implement such a plan withstands appellate scrutiny.” Report at 1-2. The Postal Service is still preparing “options” for “the Governors to consider at the appropriate time”; the “specifics of the

eventual plan” will not “emerge” until “a later date” because “the task of preparing a plan . . . involves a myriad of moving parts.” *Id.* at 2.

In fact, the requirements for removal of the exigent surcharge are clear.

(1) When the aggregate cap of \$3.2 billion in revenue is reached, the 4.3 percent surcharge must be rescinded, in its entirety, and by the same absolute amount for each rate cell as the exigent increase. Order No. 1926 approved the exigent increase only as a temporary surcharge, and decreed that the surcharge be rescinded once it generates \$3.2 billion in extra revenue. Order No. 1926 at 180-185. The cap on the surcharge reflected a Commission finding that any greater recovery would allow the Postal Service to recover amounts exceeding the losses that the Postal Service had shown to be “due to” the 2007-2009 recession, and hence would violate 39 U.S.C. § 3622(d)(1)(E). Accordingly, when the contribution/revenue cap is reached, continuing the surcharge on any rate cell would be *ultra vires* and unlawful.¹

(2) The Postal Service is free, when it so chooses, to file *other* rate changes, including CPI-based rate increases and revenue-neutral changes in the postal rate structure, under established Commission procedures to the extent that those non-exigent rate adjustments comply with the relevant requirements of Title 39 and the

¹ The Commission should give no weight to the Postal Service’s saber-rattling about the possibility that the \$3.2 billion cap on revenue might not be “upheld on appeal.” Report at 1, 2. The Postal Service has indeed challenged the cap in *USPS v. PRC*, No. 14-1010 (D.C. Cir.) (oral argument scheduled for Sept. 9, 2014). The mailers have likewise challenged the cap as excessive. *Alliance of Nonprofit Mailers et al. v. PRC*, No. 14-1009 (D.C. Cir.) (oral argument scheduled for Sept. 9, 2014). Until the Court of Appeals issues its decision, however, the \$3.2 billion cap is a binding constraint.

Commission's rules.² Moreover, the Postal Service should be encouraged to forego the regularly scheduled January 2015 price increase and instead implement such non-exigent rate changes simultaneously with the rollback of the exigent increase. Combining these rate changes in a single simultaneous set of adjustments to the Domestic Mail Manual and the Notice 123 Price List would have the benefit of reducing the transaction costs to mailers and mail service providers of dealing with multiple rounds of rate changes—particularly the costs of developing and implementing software updates to reflect the new rates. Frequent price changes are disruptive to mailers, mail service providers, and mailers' customers. The added price stability created by this suggested approach will enable postal customers to better plan and grow their mail campaigns. Ninety days advance notice to mailers of any such rate adjustments would provide an adequate lead time for this work.

(3) For purposes of Commission review, however, the Postal Service's compliance with the Commission's surcharge removal requirement should be documented by the Postal Service and reviewed by the Commission in a separate docket from any Postal Service request for other rate changes. In particular, the Postal Service's filing must include sufficient detail to allow the PRC to verify that the cumulative revenue generated from the exigent surcharge through the date of the rescission will not exceed \$3.2 billion. Separate filing, documentation and consideration

² Consistent with the temporary nature of the exigent surcharge, the rate base for a CPI-based rate increase, if any, implemented before the rescission may lawfully be applied only to the rates (without exigent surcharge) approved by the Commission in Docket No. R2013-10.

of these changes will make review of each set of changes for compliance with the applicable legal requirements more transparent and straightforward.

(4) Determining the specific date for rescission of the increases will necessarily require projections of the Postal Service's expected revenue and volume. The Commission thus will need to review actual data once available to ensure that the Postal Service has not overshoot the \$3.2 billion cap (and to make offsetting rate adjustments if over recovery has occurred).

(5) The Commission should resolve the above issues well before the exhaustion of the \$3.2 billion revenue cap. Leaving these issues unresolved would invite the 11th-hour brinkmanship that the Commission faced from the Postal Service in Order No. 2075 in this case, and in Order No. 1787 in the *GameFly* complaint case.³

Another illustration of why the Commission needs to resolve these issues sooner rather than later involves the Postal Service's proposed accounting for postage in the hands of the public ("PIHOP"). In the first periodic revenue collection report, the Postal Service stated that it had deducted \$119.39 million from the revenue attributed to the exigent rate increase on the ground that this amount represented the value of Forever stamps purchased before the effective date of the exigent increase but used for postage on mailings entered after that date.⁴ In response to the May 15 USPS filing, the Commission issued Presiding Officer's Information Request No. 13 on May 30, 2014.

³ Order No. 1787 in Docket No. C2009-1, *Complaint of GameFly, Inc.* (issued July 23, 2013) (denying USPS motion to stay Order No. 1763 (issued June 26, 2013), *aff'd*, *USPS v. PRC*, 747 F.3d 906 (D.C. Cir. 2014)).

⁴ Response of the USPS to Order No. 2075 (May 15, 2014) at 2-3.

Questions 1(c) and (d) asked the Postal Service how it intended to adjust for revenue in the opposite situation—i.e., revenue from the sale of Forever stamps that are purchased while the exigent rate increase is in effect, but are not used as postage until *after* the increase expires. The Postal Service responded that it intended to make no such adjustment. Response of the USPS to POIR No. 13, Question 1 (filed June 6, 2014). The Postal Service defended this heads-I-win, tails-you-lose approach on the theory that consumers will purchase fewer Forever stamps as the expiration date of the exigent increase approaches. *Id.* The Postal Service offered no data or evidence to quantify the supposed slowdown in the rate of Forever stamp purchases, let alone any reason to believe that *no* Forever stamps would be purchased before the expiration date but used as postage after that date.

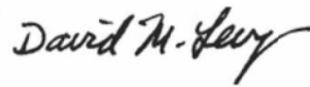
This inconsistent treatment is unacceptable. The Postal Service has been criticized before for relying on undocumented and internally inconsistent methodologies in accounting for PIHOP revenue and liabilities, and for lacking adequate controls in this area. USPS OIG Audit Report FT-AR-11-006, *Postage in the Hands of the Public Liability Estimate* (January 6, 2011) (www.uspsoig.gov/sites/default/files/document-library-files/2013/FT-AR-11-006.pdf). The Commission should either disallow the \$119.39 million deduction from the exigent surcharge revenue or require the Postal Service to make an offsetting upward adjustment to exigent surcharge revenue to account for Forever stamps purchased at exigent rates, but used after the expiration of the surcharge. The Postal Service should bear the burden of proving that the latter adjustment is smaller than the former and, if so, by how much. No adjustment should be approved unless supported by credible and verifiable data and analysis.

In this regard, the Postal Service should also be required to prove the validity of its implicit assumption that all Forever Stamps that were purchased before the exigent increase took effect, and will eventually be used for postage, will be used for postage before the increase expires.⁵ This assumption is at odds with the large number of Forever Stamps that were purchased in FY 2012 and previous years, but still remain unused. See POIR.13.Q.1.PIHOP.xls, Tab "Exigent Adjustment."

These issues should be resolved well before the \$3.2 billion revenue cap is exhausted.

⁵ See Docket No. R2013-11, Response of the USPS to Order No. 2075 (May 15, 2014) at 2 n.8 (stating that the USPS based its PIHOP adjustment on the number of Forever stamps that were purchased before January 26, 2014, and were not yet used, minus the projected number of those stamps that would never be used).

Respectfully submitted,



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July 28, 2014