

Before the
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Rate Adjustment Due to :
Extraordinary or Exceptional : Docket No. R2013-11
Circumstances :

REPLY COMMENTS OF THE GREETING CARD ASSOCIATION
ON EXIGENCY RESCISSION PLAN

The Greeting Card Association (GCA) files these Reply Comments pursuant to Order No. 2089.

I. BACKGROUND

GCA's Initial Comments¹ focused on the necessity of strict separation between the removal of the exigency surcharge and any CPI-based rate adjustments under 39 U.S.C. sec. 3622(d)(1). Because of that focus, and because the mailing community GCA represents does not generally face problems of reconfiguring software and price lists on account of rate changes, we said little about the way in which these two exercises might be combined into one "ratemaking event" without violating the legal and theoretical basis of the exigency surcharge or the rules governing CPI-based price changes.²

A number of other commenters, however, did emphasize the desirability of a single ratemaking event comprising both surcharge removal and any applicable CPI adjustment. GCA believes that such an arrangement could be devised

¹ Initial Comments of the Greeting Card Association on Exigency Rescission Plan (July 28, 2014).

² We did make one suggestion regarding a mechanism to prevent "yo-yo-ing" of rates if the two were carried out at different times. *Id.*, pp. 11-12.

without sacrificing the proper character of the exigency mechanism and the remedy the Commission provided under it in this Docket.

In this connection, it is significant that commenters supporting the idea of a combined adjustment also insist on maintaining separation between the removal of the surcharge and any inflation-based price adjustment. For example, MPA et al. state:

When the aggregate cap of \$3.2 billion in revenue is reached, the 4.3 percent surcharge must be rescinded, in its entirety, and by the same absolute amount for each rate cell as the exigent increase. . . . 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.^[3]

MPA et al. go on, however, to advocate combining surcharge removal with a (postponed) CPI-based adjustment, citing reduced transaction costs from updating software only once, and improved price stability and ability to plan mail campaigns. Valassis makes similar arguments, for similar reasons, and suggests an alternative style of combined ratemaking event in which the surcharge would continue to be collected and the excess revenues banked for application in the January 2016 price adjustment.⁴ But Valassis also cautions that “[t]he exigent surcharge and the scheduled CPI increase are two different and separate rate adjustments and should be treated as such.”

It seems clear, therefore, that mailers who advocate a single, combined ratemaking event are not therefore supporting the Postal Service’s suggestion that as to some products the surcharge might be “folded into” the base rate, while

³ 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 (“MPA Comments”), p. 2 (fn. omitted). MPA et al. suggest forgoing the presumptive January 2105 CPI adjustment and combining it with surcharge removal later in the year.

⁴ Comments of Valassis Direct Mail, Inc., pp. [1-2].

others received the benefit of its removal. In our Initial Comments, we argued at length that no such “folding in” procedure would be legally permissible. In what follows, accordingly, we assume that, in any combined ratemaking event, removal of the surcharge would be kept entirely separate from evaluation and approval of a CPI increase.

II. CPI-BASED ADJUSTMENT BEFORE SURCHARGE RESCISSION

The first case to be considered is that of a CPI-based rate adjustment occurring before the surcharge has recovered the full \$3.2 billion allowed by Order No. 1926 – i.e. (assuming continuance of the now customary schedule), in January 2015.

The scheme proposed by the Public Representative in his initial comments is well adapted to this situation.⁵ The process would start with the un-surcharged rates (i.e., those instituted in Docket R2013-10). The CPI-determined adjustment would be applied to them; all further adjustments required by applicable provisions of sec. 3622 would be performed; and only then would the surcharge be added back to arrive at a final rate result. This procedure would be carried out rate cell by rate cell, so as to preserve the surcharge exactly as it was imposed. The result would be consistent with the Commission’s objective⁶ of “permit[ting] rates subject to the price cap to be administered independently.”

III. SURCHARGE RESCISSION

The principles underlying the approach just described for administering a CPI adjustment while the surcharge is in place also govern the removal of the

⁵ Public Representative Comments Addressing Notice and Order on the Postal Service’s Exigent Surcharge removal Plan, pp. 7 et seq., 13.

⁶ Order No. 1926, p. 181.

surcharge itself, once the prescribed \$3.2 billion recovery is clearly within reach. If the interim CPI adjustment has been carried out as described above, the surcharge component of each new rate will be identical to that originally imposed. It should be removed on the same basis.⁷

This is true whether the surcharge is removed in a separate proceeding or, as several commenters advocate, in combination with a CPI adjustment. In the latter situation, it is likewise true regardless of how the two adjustments are made to coincide in time. If the effective removal of the surcharge from the rates being charged is postponed to the date of the next CPI adjustment, the surcharge revenue collected between the time at which the authorized \$3.2 billion has been recouped and the new CPI-adjusted rates become effective should be counted as a form of unused rate authority⁸ and applied, product by product and as nearly as possible rate cell by rate cell, before any further inflation-determined increase is imposed.⁹

An alternative treatment (proposed, e.g., by MPA et al.¹⁰) would be to postpone the next CPI adjustment to the time at which the surcharge is due to be removed, and to make these changes separately.¹¹ Choosing between the “postponed surcharge removal” and “postponed CPI adjustment” approaches may involve a number of factors not so far prominent in the discussion. These include the effect of the choice on the Postal Service’s liquidity position, the

⁷ GCA’s Initial Comments presented several arguments showing why removal on this basis is necessary, to which the Commission is respectfully referred.

⁸ We call it “*a form* of unused rate authority” to make clear that we are not suggesting that the Service should be free to apply it differentially within the class concerned; it should be applied product by product and, if possible, rate cell by rate cell, as originally proposed and approved.

⁹ Such a solution has been proposed by Valassis and, in a slightly different context, by GCA (Initial Comments, pp. 11-12).

¹⁰ MPA Comments, p. 3.

¹¹ Presumably the CPI adjustment, occurring, as it would, more than 12 months after the preceding one, would be governed by 39 CFR sec. 3010.21(b), (c).

potential volume and revenue effects of a rate change immediately before PQ 1, which includes the holiday mailing season, and – under the latter option – any possible difficulties resulting from a potential further CPI adjustment in early 2016.¹²

Perhaps the best response to these suggestions by commenters would be for the Commission – assuming it decides that a combined ratemaking event is desirable – to prescribe the procedures for removing the surcharge and accomplishing the CPI adjustment, as completely separate processes, under both the “postponed surcharge removal” and “postponed CPI adjustment” scenarios. That said, however, GCA would argue that the “postponed surcharge removal” approach, as outlined above and in our Initial Comments, would offer some advantages over the alternative. Our main concern in this connection is avoidance of public confusion over rate levels, particularly just before the holiday mailing season.

IV. CONCLUSION

For the reasons set out above, GCA respectfully urges the Commission to prescribe a surcharge removal procedure which – first and most important – preserves complete separation between removal of the surcharge and any associated CPI increase, so that the surcharge is removed, product by product and as far as feasible rate cell by rate cell, as originally authorized. If the Commission finds it appropriate to combine surcharge rescission and a CPI increase into a single ratemaking event, we suggest that favorable consideration be given to an approach which postpones actual removal of the surcharge, requires banking of surcharge revenues in excess of the prescribed \$3.2 billion recovery, and application of the banked amounts in the next annual adjustment,

¹² Any such difficulties would seem to stem from the need to reconfigure software and price lists, since the amount of the increase would be controlled by 39 CFR sec. 3010.22.

in such a way as to preserve the characteristics of the surcharge as approved in Order No, 1926, before any CPI-based increases are imposed.

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Respectfully submitted,

GREETING CARD ASSOCIATION

David F. Stover
2970 S. Columbus St., No.1B
Arlington, VA 22206-1450
(703) 998-2568
(703) 998-2987 fax
E-mail: postamp@crosslink.net