

ORDER NO. 2586

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Notice of Market-Dominant
Price Adjustment

Docket No. R2013-10R

ORDER ESTABLISHING PROCEDURES ON REMAND
AND REQUESTING PUBLIC COMMENT

(Issued July 15, 2015)

On May 12, 2015, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *United States Postal Service v. Postal Regulatory Commission*, 785 F.3d 740 (D.C. Cir. 2015). The court denied in part and granted in part a Postal Service petition for review of the Commission's November 21, 2013 order denying implementation of the Full Service IMb requirements for failure to comply with 39 U.S.C. § 3622(d).¹ 785 F.3d at 744.

On July 8, 2015, the court issued its mandate remanding the case to the Commission. This order establishes procedures on remand and solicits comments on

¹ Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 21, 2013 (Order No. 1890).

the standard to be applied when considering whether mail preparation changes are changes in rates with respect to 39 U.S.C. § 3622(d).

Background. On September 26, 2013, the Postal Service filed notice of its planned priced adjustment for market dominant products.² The Postal Service's Notice and proposed rate increases failed to account for the planned implementation of the Full Service IMb requirements. Previously, on April 18, 2013, the Postal Service revised its Domestic Mail Manual to modify the eligibility requirements for mailers to qualify for automation First-Class, Standard, Periodicals, and Package Services rates. 78 Fed. Reg. 23137 (April 18, 2013). Full Service IMb was now required to qualify for automation rates, where previously mailers could qualify for automation rates by using either Full Service IMb or Basic IMb. This change in the mail preparation requirement for automation rates was scheduled to take place on January 26, 2014. *Id.* However, in its Notice, the Postal Service failed to adjust its billing determinants to account for the effects on the price cap calculation of the Full Service IMb requirements.

After considering the Postal Service's responses to information requests and comments from interested parties, the Commission issued Order No. 1890, finding that the Full Service IMb requirements "constitute a classification change with rate implications pursuant to 39 U.S.C. § 3622(d)(1)(A) and 39 C.F.R. § 3010.23(d)." Order No. 1890 at 2. Accordingly, as the Postal Service failed to account for the deletion and redefinition of rate cells as a result of the Full Service IMb requirement when adjusting its billing determinants for First-Class, Standard, and Periodicals, the Commission found that the proposed rate adjustments exceeded the price cap.³ As a result, the Commission gave the Postal Service the option either to defer implementation of the Full Service IMb requirements or to submit an amended notice of rate adjustment that included billing determinants adjusted to account for the effects of the new

² United States Postal Service Notice of Market-Dominant Price Adjustment, September 26, 2013 (Notice).

³ *Id.* at 5. The Postal Service made adjustments to the billing determinants to account for the effects of the Full Service IMb requirements on the price cap calculation for Package Services.

requirements. *Id.* at 36. The Postal Service chose to defer implementation of the Full Service IMb requirements and filed an appeal with the D.C. Circuit Court of Appeals.⁴

The court's opinion. On appeal the court affirmed the Commission's authority to determine when mail preparation changes affect the application of the price cap.

Specifically, the court found that

[t]he Commission's interpretation of the statute prevents the Postal Service from evading the price cap by shifting mailpieces to higher rates through manipulation of its mail preparation requirements. The Commission's interpretation is therefore consistent with the price cap's language and purpose, and the Commission's delegated authority to administer the cap. 785 F.3d at 751.

The court nevertheless concluded that the Commission's exercise of its authority was arbitrary and capricious for failing to "articulate a comprehensible standard for the circumstances in which a change to mail preparation requirements such as the one in this case will be considered a 'change in rates.'" *Id.* at 753. In the court's view, the Commission failed to properly explain the standard it was applying to determine when a mail preparation change constituted a price change. *Id.* at 754. Thus, it granted the Postal Service's petition in part and remanded the case to the Commission to "enunciate an intelligible standard and then reconsider its decision in light of that standard." *Id.* at 756.

Request for comment. As directed by the court, the Commission will proceed to enunciate the standard applied to determine when mail preparation changes have rate effects with price cap implications, based on its expertise and past decisions considering similar changes. The Commission requests comments to afford all interested persons an opportunity to provide input on the standard used by the Commission.

In conducting its analysis of whether a mail preparation change constitutes a rate change, the Commission will evaluate the following four factors: (1) whether the change

⁴ Response of the United States Postal Service to Order No. 1890, November 29, 2013.

alters a basic characteristic of a mailing, (2) the effect of the change on mailers, (3) the purpose of the change, and 4) whether the change results in a shift in volume of mail from one rate category to another. Each of these factors is weighed individually and the Commission intends to apply these factors to the Full Service IMb requirements in the decision on remand.

In assessing the first factor, whether a mail preparation change alters a basic characteristic of a mailing, the Commission considers the following characteristics: (a) whether the change modifies the size, weight, or content of eligible mail, (b) whether the change alters the presentation and/or preparation of the mailing in a substantial way, (c) regularity of the change (periodic vs. one-time), (d) magnitude of the change, and (e) the complexity of the change relating to mailer behavior.

For the second factor, the Commission evaluates the following components to determine the effect of the mail preparation requirement on mailers: (a) whether the change imposes fixed or variable costs, (b) the effect on high volume and low volume mailers, (c) the number of mailers affected, (d) the volume of mail affected, (e) the benefits to mailers, and (f) the timeframe for mailers to comply with the change.

In considering the purpose of the change, the Commission examines whether the change: (a) improves the expeditious collection, transportation, and/or delivery of the mail, (b) aligns with changes in the Postal Service's network and/or equipment, and (c) is intended to increase a price.

For the final factor, the Commission takes into account whether the change in mail preparation requirements causes a shift in volume of mail from one rate category to another. This factor considers whether the changes result in the *de facto* elimination of a rate category or the deletion of a rate cell.

These factors are intended to serve as a guide for a case-by-case analysis to determine whether a mail preparation change is a rate change with price cap implications. In the absence of explicit statutory definitions for determining when a mail preparation change constitutes a rate change with respect to 39 U.S.C. § 3622(d), commenters are invited to provide any views on whether the four factors listed above

(i.e., alter a basic characteristic of a mailing, effect on mailers, purpose of change, and shift volumes between rate cells) adequately set forth the parameters of mail preparation requirement changes to be examined to determine whether a change in mail preparation requirements has rate effects with price cap implications. Accordingly, to ensure that the Postal Service and other interested persons have an opportunity to provide input on the standard used by the Commission, the Commission solicits comments from interested persons on the four factors listed above and their components. Initial comments are due no later than August 3, 2015. Reply comments are due no later than August 14, 2015. All comments must be filed under Docket No. R2013-10R.

It is ordered:

1. The Commission establishes Docket No. R2013-10R to consider issues on remand.
2. Kenneth E. Richardson will continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Initial comments addressing the Commission's standard to determine when mail preparation changes have rate effects with price cap implications are due no later than August 3, 2015.
4. Reply comments addressing matters raised in initial comments are due no later than August 14, 2015.
5. All comments and other documents related to issues on remand must be filed under Docket No. R2013-10R.

6. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary