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

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

OPPOSITION OF
THE GREETING CARD ASSOCIATION AND THE
THE NATIONAL POSTAL POLICY COUNCIL TO MOTION TO STRIKE
(July 14, 2015)

The Greeting Card Association ("GCA") and the National Postal Policy Council ("NPPC") respectfully oppose the Postal Service's Motion To Strike a portion of their reply comments filed on July 6, 2015.[1] A motion to strike seeks "extraordinary relief." 39 C.F.R. §3001.21(c). The Postal Service presents nothing warranting such extraordinary relief.[2]

In GCA and NPPC's initial comments on the remand to the Commission by *Alliance of Nonprofit Mailers v. Postal Regulatory Commission*, No. 14-1009 (Slip Op. June 5, 2015) ("*ANM*"), we pointed out that:

1. The Postal Service bears the burden of proving that its approach to counting pieces is correct;
2. That the Postal Service's estimate of 35 billion pieces purportedly lost due to the recession until the new normal was achieved

[1] Motion Of The United States Postal Service To Strike New Analyses Improperly Submitted In Reply Comments by GCA/NPPC And Valpak (July 8, 2015) ("*Motion To Strike*").

[2] That Rule 21(c) declares motions to strike to be requests for *extraordinary* relief is important in the present context. As shown below, the Postal Service understood the GCA/NPPC proposal well enough to criticize it extensively, in its Reply Comments, before reviewing the spreadsheet illustrating its operation. That by itself shows that no extraordinary relief is warranted.

(expressed in its June 8, 2016 *Motion*) is the *maximum* volume loss because it counts every piece every year; and

3. That the Postal Service's "count every piece every year" approach appears to overcount the volume loss because it assumes that a piece lost due to the recession would not have left the postal system for other reasons in a subsequent year.

GCA and NPPC also suggested in Section II(B) of their opening comments how that overcount could be avoided, which would result in fewer pieces lost due to the recession than the Postal Service claimed. Indeed, in its Reply Comments, the Postal Service devoted more than 14 pages to responding to the GCA/NPPC point that its "count every piece every year" approach would overcount the volume lost due to the recession. Conceding the basic point, the Postal Service even presented its own calculation as to how that should be done.

In response to the Postal Service's June 26 Comments, which sought to reopen settled issues and presented new calculations to generate an egregious amount of volume losses purportedly due to the recession -- and which continued to fail to "factor out the financial impact of non-exigent circumstances" as required by Order No. 864 -- GCA and NPPC felt compelled to submit calculations to illustrate the overcount inherent in the Postal Service's approach. Those calculations followed the steps identified in the GCA/NPPC opening comments (at 11). Those numbers, contained in our Reply Comments and the supporting spreadsheet, simply present in a numerical format the methodology described in the GCA/NPPC initial comments, and the Postal Service does not contend otherwise. That calculation – which the Commission staff is perfectly capable of generating on its own based solely on the GCA/NPPC Comments --

remains the only method yet offered in this proceeding that is based on the record and requires no reopening of settled issues.

The GCA/NPPC calculation produces a count of approximately 31.381 billion pieces of mail lost due to the recession before the new normal was achieved, which works out to a net loss of contribution (using FY14 anticipated unit contributions) of $3.373 billion.[3] That equates to about 6 billion additional pieces lost due to the recession (or 4 billion fewer than calculated using the Postal Service's "count every piece every year" approach), which would translate into an additional recovery of approximately $600 million. Those are the numbers that the Postal Service does not want the Commission to see.

The Postal Service asserts in its *Motion To Strike* that GCA/NPPC had an obligation to submit the quantification in their initial comments, and that it has been deprived of the opportunity to respond to that approach. Both contentions are completely without merit.

First, contrary to the Postal Service's motion (at 3), mailers are under no obligation to quantify the Postal Service's volume or financial losses due to an exigent circumstance. That responsibility is the Postal Service's alone.[4] The Postal Service flatly misreads Order No. 864, which squarely places the burden of quantifying volume losses due to an exigent circumstance solely on the Postal

[3] Of that, $2.766 billion is being collected currently by the surcharge.

[4] In its *Motion To Strike* (at 3), the Postal Service argues that parties are obliged to provide their quantifications, citing pages 46-52 of Order No. 864, and declares that "the Commission made clear the importance of such quantifications as far back as September 2011." In fact, the recurring theme in that portion of Order 864 is "the *Postal Service* must." It is devoted to explaining what the *Postal Service* must provide in order to carry its burden of establishing the damage caused by the exigent circumstances.

Service. *See* Order No. 864 at 46 (stating that to establish the "due to" causal nexus, "the Postal Service must quantify the net adverse financial impact of the exigent circumstances"). And, particularly relevant here, the Commission stated: "[W]hen quantifying the net adverse financial impact of the exigent circumstances, the Postal Service *must factor out the financial impact of non-exigent circumstances*, such as the continuing effects of electronic diversion." *Id*., at 48 (emphasis added).[5]

Because mailers have no obligation to quantify the Postal Service's volume losses, they cannot be faulted for not doing so. However, mailers can and do identify flaws in the *Postal Service's* attempt to quantify its volume losses, which is precisely what GCA and NPPC did in their initial comments. There, GCA and NPPC explained that the method the Postal Service advanced in its June 8 motion likely overstated the volume loss and set forth the steps one would need to take to avoid the overcount. *See* GCA/NPPC Comments at 11.

Second, and of even more significance in the present situation, although the Postal Service in its *Motion* now complains that it has "improperly and unfairly" been deprived "of its ability to respond and to point out the many fundamental errors (including computational errors)[6] in GCA's methodology" (Motion To Strike at 3),[7] that contention is belied by its own Reply Comments,

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5 Note that even the Postal Service's calculations attribute the great majority of its allegedly "lost volume" to factors other than the recession. *USPS June 26 Comments* at 37.

6 The Postal Service's *Motion To Strike* points to no computational errors.

7 *See also Motion To Strike* at 2 ("Had GCA quantified its suggested approach in its Initial Comments, which it had every opportunity to do, the Postal Service in its Reply Comments could have identified and easily addressed the simple, obvious, and egregious errors in GCA's methodology which produce absurd results when properly considered").

which devote 14 ½ pages to responding to the GCA/NPPC point that the Postal Service's "count every piece every year" approach results in an overcount. In fact, the Postal Service Reply Comments responded both to the overcount identified by GCA and NPPC, *and* to the improved counting methodology suggested by GCA/NPPC, by:

- Arguing that GCA/NPPC misunderstand the econometric model (42-44);
- Conceding that GCA/NPPC's criticism of its simplified example of the cable customer "may have some merit," but arguing that it is irrelevant (n.73);
- Criticizing GCA/NPPC for adhering to the Commission's adjustments to the econometric model which were affirmed by the Court of Appeals (47-48);
- Agreeing that "all of the inputs for the various component steps of [the GCA/NPPC adjustment] can be found in the parts of the Commission's own spreadsheets that present the Commission's interpretation of the accepted econometric models" (50);
- Agreeing that the steps laid out on page 11 of the GCA/NPPC Comments "are broadly correct" although it goes on to criticize that approach for allegedly omitting a step that it itself omitted previously (50);
- Suggesting that the percentages coming out of the model should be applied in a different order than was done by GCA/NPPC – and by itself in its June 8 and June 26 filings in this remand proceeding (50);
- Agreeing with GCA and NPPC that "The intuition is straightforward – in each subsequent year, additional previous mailers who are no longer mailing due to the Macro effects of the Great Recession fall by chance into the subset of mailers who would have switched to electronic payment that year even in the absence of the Great Recession" (54);
- Generating an entirely new spreadsheet to present its view of how the necessary adjustment identified by GCA/NPPC should be done (50-55 and Spreadsheet "Reply.GCA.Diversion.Overlap.xlsx"); which results in
- Conceding that making the adjustment to avoid overcounting pieces that would have left for non-recession reasons reduces the volume loss compared to its "count every piece every year" approach, although to a smaller degree than GCA and NPPC think is the case.

In light of these 14 ½ pages of response, the Postal Service's assertion that it has been denied an opportunity to address the approach suggested by GCA/NPPC cannot be taken seriously.

On the contrary, the Postal Service's Reply Comments addressed and conceded the central principle identified by GCA and NPPC – that its "count every piece every year" approach erroneously counts as lost some pieces that would have left the mail for non-recession reasons. Its own filings in this case demonstrate that no grounds exist for the "extraordinary relief" of a motion to strike. The Postal Service has also been able to present its preferred way of making the adjustment.

Third, we note that the Postal Service's preferred way of making the adjustment, presented in its July 6 reply comments (upon which its Motion To Strike relies) in response to the GCA/NPPC approach, consists of yet another way to interpret the results of its regression that differs from the approach it advocated in its June 8 and June 26 filings in this remand proceeding.[8] By so doing, the Postal Service has tacitly conceded that there is no single, uniquely correct way to count the pieces lost due to the recession or to make the adjustment that it agrees should be done. The Postal Service's latest interpretation produces the result that only 1 to 2 percent of the pieces lost due to the recession in one year would have left for non-recession reasons in

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[8] The difference lies in the "order of multiplication." *See* Reply Comments of the United States Postal Service In Response To Commission Order No. 2540, at 50 (July 6, 2015) ("*USPS Reply Comments').*

subsequent years,[9] a much smaller proportion than seems reasonable. The Commission should apply its expertise to avoid the overcount of pieces lost due to the recession.

The Postal Service may not be pleased by alternative counting methodologies that impede its evident quest to undermine the price cap regulatory regime with an inordinately prolonged,[10] if not essentially permanent, surcharge purportedly based on a provision which under established law is a "narrow exception" to that same price cap. But it does the participants and the Commission a disservice by trying to strike calculations it does not like. And the Postal Service has fallen far short of making the showing required for the extraordinary relief it seeks.[11]

[9] *USPS Reply Comments* at 53.

[10] To as late as FY2021 (*USPS June 26 Comments* at 29 [asking for 6.33 more years of the current surcharge], but at least through the § 3622(d)(3) tenth-year review, after which it would seemingly become invisible (but not disappear from the rates). *Id*. at 39, n.65.

[11] Moreover, as the Presiding Officer pointed out in Docket No. R97-1, POR 20, the Commission, faced with a motion to strike, tries to achieve solutions that retain the disputed material in the record. To resort to a motion to strike in these circumstances unwarrantably disparages the filers of the disputed material, since such a motion is neither justified as a matter of sound procedure nor necessary to insure a representative record for decision. Finally, while it is not part of the issue before the Commission in this remand proceeding, it should be observed that the tone and some of the wording of the Postal Service's motion does not promote healthy customer relations or further the kind of productive cooperation which helps both it and the mailing public.

For the foregoing reasons, the Greeting Card Association and the National Postal Policy Council respectfully urge the Commission to deny the Postal Service's Motion To Strike.

Respectfully submitted,

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