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

NOTICE OF MARKET-DOMINANT PRICE ADJUSTMENT	Docket No. R2013-10

FURTHER COMMENTS OF
THE NATIONAL POSTAL POLICY COUNCIL,
THE MAJOR MAILERS ASSOCIATION,
THE NATIONAL ASSOCIATION OF PRESORT MAILERS, AND
THE ASSOCIATION FOR MAIL ELECTRONIC ENHANCEMENT
(October 31, 2013)

The National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement ("Joint Commenters") hereby respectfully submit these further comments on the effect of the Postal Service's unilateral implementation of mandatory Full-Service IMb as a condition for eligibility for First-Class Automation rates on the proper price cap calculation in this proceeding.[1]

In their opening comments,[2] the Joint Commenters noted that as of January 26, 2014, the Postal Service will require all mailers of First-Class Automation Letters to include an Intelligent Mail Barcode on each mailpiece.

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[1] *United States Postal Service Notice of Market-Dominant Price Adjustment*, Docket No. R2013-1 (September 26, 2013) ("*USPS Notice*"). The Commission extended the time for filing comments on this issue in Order No. 1853 (October. 22, 2013).

[2] *Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement* (October 16, 2013).

Mailpieces that do not have the mandatory IMb will no longer be eligible for Automation prices, but instead presumably would be charged Presort rates. The Joint Commenters further noted that the Postal Service's cap compliance calculations did not appear to adjust properly for the mandatory implementation of Full Service IMb.

The Postal Service's response to Chairman's Information Request No. 3, Questions 1-2, confirms that it did not take the effects of mandatory IMb implementation into account in its cap calculations. *Response of United States Postal Service to Chairman's Information Request No. 3*, Questions 1 & 2 ("*USPS CIR 3*"). Instead, the Postal Service simply assumed that all current Presort mailers would implement Full-Service IMb by the January mandatory date.

It may not so assume, because it has changed the eligibility rules. Accordingly, the Commission must determine whether the Postal Service's noticed rates exceed the allowable cap level for that reason.

Commission rule 3010.23(d) provides:

> The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants. The Postal Service shall make reasonable adjustments to the billing determinants to account for the effect of classification changes such as the introduction, deletion, or redefinition of rate cells. Adjustments shall be based on known mail characteristics or historic volume data, as opposed to forecasts of mailer behavior. The Postal Service shall identify and explain all adjustments.[3]

[3] The Commission's revised regulations governing adjustments to rates for market-dominant products took effect on September 25, 2013. *Price Cap Rules For Certain Postal Rate Adjustments*, Docket No. RM2013-2, Order No. 1786, 78 Fed. Reg. 52694, 52695 (Aug. 26,

The Postal Service offers two legal contentions: first, that under 39 U.S.C. §3622(d)(1)(A) the cap applies only to rates but not to "additional sources of revenue that might arise from changes in mailing rules." Second, it contends that section 3010.23(d) applies only "when an MCS change moves mail from one category to another, regardless of mailer behavior," and that "[c]hanges to DMM standards are different." *USPS CIR 3*, Question 1 at 3. In the case of DMM changes, such as mandatory Full-Service IMb, the Postal Service says that mailers are expected to "adjust their mail preparation to reflect the new mail standards, and thus continue to qualify for the same price cells." *Id*.

Neither contention has merit.

First, nothing in Section 3622(d)(1)(A) of the Postal Accountability and Enhancements Act supports the Postal Service's position that the price cap does not apply to "additional sources of revenue that might arise from changes in mailing rules." Congress gave the Commission statutory authority to establish rules defining the price cap system, and those certainly may -- indeed necessarily must -- address how the cap is to be calculated in a variety of situations. In fact, the section of the Commission's rules at issue here, 3010.23(d), was adopted more than six years ago at the urging of the Postal Service.

Second, the Postal Service's contention that section 3010.23(d) of the Commission's rules applies only to MCS changes, not DMM changes, is untenable. First, it conflicts with the text of section 3010.23(d), which applies to

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2013). Those regulations apply to the Postal Service's proposed cap adjustments for market-dominant rates in the *USPS Notice*, which were filed the next day.

the “redefinition” of rate cells. It is clear that the Postal Service has unilaterally chosen to redefine the Automation rate cells by mandating Full-Service IMb, instead of in the past when it was merely optional. Nothing in section 3010.23(d) limits its scope to changes at the level of the MCS. Nor would it make sense for it to be so limited – otherwise, the Postal Service could evade the cap restrictions anytime by simply tweaking eligibility thresholds to force some mail to other categories, or by imposing onerous mailing requirements through the DMM. A price cap system does not work properly if the regulated entity can impose costs or raise prices by restricting eligibility to certain rates.

Furthermore, the history of the development of section 3010.23(d) shows that the type of situation presented by the implementation of mandatory Full-Service IMb was plainly contemplated when that provision was adopted in Docket No. R2007-1. The Commission had occasion recently (in Order No. 1786) to review the discussion in that proceeding regarding how billing determinants should be adjusted to reflect changes in mail preparation requirements. In that docket, commenters specifically had raised the concern about how the price cap implications of “changes in mail preparation requirements” that “reflect the impact of the rule change on rate eligibility.”

As Order No. 1786 observed, in response to those mailers’ concerns, the Postal Service in 2007 described “how billing determinant adjustments would be applied to ensure that a change in mail preparation requirements that shifts some mail into a different price category is fairly evaluated for compliance with the cap.” Order No. 1786, *citing Reply Comments of the United States Postal*

Service on the Second Advance Notice of Proposed Rulemaking at 3 (July 3, 2007). There, the Postal Service had described how billing determinants would be weighted "when some existing mail shifts from one category to a second category due to changes in mail preparation requirements":

> the solution is to create three volume groupings: (1) volume that starts in the first category and stays there, (2) volume that starts in the first category and shifts to the second category, and (3) volume that starts in the second category and stays there. When applying prices to these three groupings, volume in the first grouping is always charged the price applicable to the first category, volume in the third grouping is always charged the price applicable to the second category, and volume in the second grouping is charged the price applicable to the first category under existing rates, but the price applicable to the second category under the proposed rates.

Commenters in Docket No. RM2007-1 supported the weighting system contemplated by the Postal Service's reply comments in that proceeding, and that approach was adopted in Order No. 43. *Order Establishing Ratemaking Regulations for Market dominant and Competitive Products*, Docket No. RM2007-1 (October 29, 2007). As the Commission summarized the matter a few months ago when it issued its revised price cap regulations:

> With the broad support for the approach among commenters and the detailed explanations from the Postal Service of how it would be applied in various scenarios, the Commission's final rule adopted the concept of weighting the current and new rates by a fixed set of historical billing determinants, with adjustments based on additional historical mail characteristics data where necessary to reflect changes in the rate and classification structure.

Order No. 1786 at 19.

Despite authoring the weighting approach, the Postal Service in this proceeding has made no adjustment to account for the new mandatory IMb requirement.[4] *Response to CIR No. 3*, Q1 at 6. It certainly has made no attempt to apply its weighting approach in this docket.

According to the billing determinants, approximately 34.7 percent of Presort First Class letters do not use Full-Service IMb. *See* USPS-LR-R2013-10/1 - First-Class Mail Workpapers CAPCAL-FCM-R2013-10.xls, Tab "Presort." Assuming no change in mailer behavior – that is, that those pieces do not add a Full-Service IMb – those letters would be charged at least Presort prices. That would constitute an increase ranging from 3.6 to 8.1 cents (going from current Automation to new Presort rates) on approximately 14 billion letters that could cause the noticed rates to exceed the cap. Not one penny of these increases is reported in the Postal Service's cap calculations.

The Joint Commenters' opening comments observed that the Postal Service's cap calculation could be correct ONLY if ALL of the 34.7 percent of current Automation mailers that do not use Full-Service IMbs convert to doing so by January 26. The Postal Service's response to Chairman's Information Request No. 3 concedes that it is highly unlikely that they will do so.

The Postal Service's assurances that much of the mail will convert, partly based on its recitation of a list of steps that it has taken to encourage mailers to convert (*see USPS Response CIR* 3, Q. 1 at 4-5), is unpersuasive. That so

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[4] In contrast, the Postal Service did adjust its billing determinants to address the new Metered Mail rate in First-Class Mail and the various Flat Sequencing System rates in Standard Mail.

much mail has not yet converted *despite* those efforts suggests that a significant number of mailers will not do so. Even the Postal Service's experience with the more modest conversion from POSTNET to IMb suggests that some mailers will not convert. *Id*. at 5 (asserting that adoption of IMb from POSTNET increased from 81 to 95 percent, meaning 5 percent did not adopt). Consequently, there is little basis on this record for assuming, as the Postal Service has, that *all* mailers will convert. Accordingly, the Postal Service's calculations must be in error even under its own theory.

Finally, that the Postal Service plans not to issue any assessments as a result of Full-Service electronic verification is not an adequate solution. The rates would be in effect until such time as the next adjustment is made (putting aside the pending exigent rate request) and the Postal Service's refraining from issuing assessments does not affect the cap calculations.

For the foregoing reasons, and for the reasons stated in their initial comments in this proceeding, the Joint Commenters respectfully urge the Commission to determine whether the Postal Service has accurately calculated the cap increase for First-Class Mail, based on historical billing data and taking into account the implementation of Full-Service IMb.

Respectfully submitted,

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