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

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

**REPLY COMMENTS OF THE NATIONAL POSTAL POLICY COUNCIL,
THE MAJOR MAILERS ASSOCIATION,
THE NATIONAL ASSOCIATION OF PRESORT MAILERS, AND
THE ASSOCIATION FOR MAIL ELECTRONIC ENHANCEMENT**
(December 6, 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 reply comments in response to the late-filed comments of the National Mailers Handlers Union in this proceeding.[1]

The Mail Handlers assert that because the Postal Service is requesting only a "very small" portion of the total amount of money to which it allegedly entitled – an amount the Mail Handlers say is "well over $20 billion"[2] -- the Commission need not hold the Service to a particularly demanding burden of proof. The Mail Handlers argue for a modest burden of proof even while contending that the requested exigency amounts would have to remain

[1] *Comments of the National Postal Mail Handlers Union in Support of Postal Service Request for Rate Adjustment*, Docket No. R2013-11 (November 27, 2013).

[2] *Id.* at 2.

embedded in postal rates for “more than ten years” to recoup the “cumulative contribution loss” attributed by the Postal Service to the recession.

The Joint Commenters strongly disagree with the notion that a rate increase in an amount triple the rate of inflation, piled on top of the inflation level increase already approved, is modest in any sense of the word. Moreover, the Mail Handlers’ assertion is inconsistent with Order No. 864 and would allow the Postal Service to use the exigency provision not to rectify an extraordinary event, but to eviscerate the price cap.

In Order No. 864, the Commission observed (at 49) that the “evidence needed to support the Postal Service quantification will vary in degree depending on the nature of the exigent circumstances, the amount of the proposed adjustment, and the complexity of the exigent request.” It further noted:

> Supportable methods justifying the quantification must be commensurate with the amount of the proposed adjustment. A larger amount requires more rigorous estimate techniques and a more persuasive showing that the sums sought are the result of the exigent circumstances.

Order No. 864 at 50. Here, the Postal Service bears the burden of proving the entire amount which it asserts is “due to” the recession, even if it asks now for less than the full amount. This is because once the “loss” has been quantified, the Postal Service could be expected to rely upon such a finding in the future even if the Postal Service asked for only a portion of the amount in this case.

Mailers are quite aware that the Postal Service has steadfastly refused on several occasions to say that it would not return in future years to claim more than the $1.8 billion in net contribution that it seeks in this case. And the Mail

Handlers acknowledge that even the $1.8 billion asked now would be embedded in the rates indefinitely. And, if the Postal Service's methodology for quantifying the losses were accepted, it is not presently apparent what, if anything, would restrain the Service demanding still further, and enormous, rate increases for years to come.

Accordingly, the Commission should appreciate that the approach taken by the Postal Service in calculating volume losses "due to" the recession is not limited even to the absurdly large losses calculated by its demand model that translate into $1.8 billion in net contribution that it now asks. The Service's approach would pave the way now for potentially vastly larger and open-ended sums in the future. Were the Commission to credit the Postal Service's method of calculating volume losses "due to" to the recession, the amount of "lost contribution" could easily exceed even the $20 billion acknowledged by the Mail Handlers. This is because the net present value of $6.65 billion (the total amount claimed to be lost in 2012 alone), discounted at the rate of about 2.7 percent currently used for Workers Compensation, would exceed $235 billion.

Thus would end the price cap for all practical purposes, the single legal provision that has done more to force the Postal Service into beginning to take steps to right-size its structure and workforce than any action by management or the Governors. Given the vast sums that are the logical consequence of the Postal Service's "due to" calculation, the Service should be held not to the lax standard urged by the Mail Handlers, but to a demanding standard that is commensurate to the hundreds of billions of dollars to which its theory of the case would lead.

And the Postal Service has failed to satisfy its burden. As numerous parties, including the Joint Commenters, the Greeting Card Association, and the MPA *et al*. showed in their comments, the Postal Service's calculation, based as it is on its econometric demand studies, is fatally flawed in numerous respects. One of the major problems with the Postal Service's approach is the counter-intuitive notion that the alleged effects of the recession deepen the longer the recession recedes into history. MPA *et al*. submit an alternative analysis that, correcting some of the errors in the Service's approach, concludes that a "reasonable (if generous) estimate of those losses" amount to $401 million in FY 2013 and $301 million in FY 2014. MPA *et al* Comments at 5.

But even the MPA *et al*. analysis is incomplete, because the statute requires a further step. Section 3622(d)(1)(E) provides that an exigent adjustment due to extraordinary or exceptional circumstances can be approved only if the Commission also determines that the adjustment:

> is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

The MPA *et al* comments do not address this "reasonable and equitable and necessary" provision.

Although the Commission has not previously interpreted this provision, the Postal Service has argued that the honest, efficient, and economical management provision is part of a forward-looking "prospective inquiry." *Request* at 19. If the Postal Service is correct on this point, which the Joint Commenters will assume for the purpose of discussion, then the task for the Commission is to determine whether the requested rates (or some other adjustments appropriately "due to" the recession) are reasonable and equitable and necessary going forward. On this, too, the Postal Service bears a burden of proof commensurate with the sums at stake.

Thus, even if the Commission were to determine that the Postal Service had suffered some financial losses due to the 2007-2009 recession, it could approve adjusting rates only if the Postal Service had proven that the adjustments were, looking forward, "reasonable and equitable and necessary." The focus of this question is altogether different than the question which the Mail Handlers and MPA *et al* addressed, which is what amount, if any, increased contribution may be needed to make the Postal Service in some sense "whole." That is essentially a backward looking inquiry.

The Postal Service has not meet its burden of showing that its requested rates in this case are "reasonable and equitable and necessary." The Postal Service has merely requested a general across-the-board increase, based on little more than its sense of a more desirable level of liquidity. There was apparently no attempt to consider, and certainly no attempt to prove, what prices would be appropriate for its most profitable products, how discounts could send more efficient signals, or even to determine how its customers would likely respond. Such an approach hardly evidences a "best practice" of good management facing financial challenges after years of business declines, and whose customers have ready access to less expensive electronic alternatives.

Indeed, history tells us that each time the Postal Service has raised rates since 2007, it has suffered both volume and absolute revenue declines. It is not a best management practice to repeat the same action and expect a different result. This is especially so when the Postal Service's only estimates of price elasticity of demand are essentially meaningless at rate increases of the magnitude sought because real prices have barely moved over the past six years, and where all of the evidence from mailers points to much higher elasticities. *See Joint Commenters Comments* at 36-38; *Declaration of Lawrence G. Buc* at 10, 16-19.

Commenters such as Pitney Bowes and the American Bankers Association echoed the Joint Commenters on how the requested price levels and rate design for First-Class Mail are not reasonable.[3] These commenters explained that it is not reasonable to impose large increases on the most profitable postal products, such as 5-Digit Presort letters, when price decreases would be far more likely to stem or reverse the volume decline, or equitable to do so (because unit contributions are not equalized and the Presort workshare discounts are inefficient).

[3] Nor, as Valassis and others pointed out, has the Postal Service shown that the requested increases are "necessary." The Postal Service does not contend that it will be unable to pay its bills over the next few years. Its primary complaint is that is has less liquidity than UPS and FedEx, but it fails to show that it could not be ameliorated by more aggressive pricing of Competitive services (as UPS suggests) and continued cost reductions.

On November 29, three days after the opening comments were filed, the Postal Service admitted that failing to set workshare discounts equal to the Postal Service's avoided costs impairs the efficiency of the postal sector.[4] The Service also admitted that it chose not to passthrough 100 percent of workshare avoided costs because it was focused on pursuing an "across-the-board" approach.[5]

The comments of Pitney Bowes, filed three days before the Postal Service responded to POIR No. 11, showed the feasibility of an alternative First-Class Mail Presort Letter rate design that promotes efficient workshare prices, a goal which the Joint Commenters supported in their initial Comments (at 39). For the reasons stated in their initial Comments, as well as above, the Joint Commenters do not believe that the Postal Service has satisfied its burden of proof for any increase, much less one of the magnitude requested. But to the extent the Commission approves any rate adjustment affecting First-Class Letters, it should implement two important elements of the Pitney Bowes alternative approach: (1) workshare discounts should be set equal to avoided costs to promote efficiency and fairness while minimizing counterproductive rate shock; and (2) the Full Service Intelligent Mail barcode credit should be increased to encourage the voluntary adoption of Full Service IMb.[6]

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4 *Response to POIR No. 11*, Q1(a)&(b) (Nov. 29, 2013).

5 *Id*., Q1(d).

6 The Postal Service's recent decision to defer implementation of the Full Service IMb requirement makes more compelling the need for an expansion of the IMb credit to encourage mailers to continue to convert. *See Response of the United States Postal Service to Order No. 1890*, Docket No. R2013-10 (Nov. 29, 2013).

For the reasons set forth above, the Joint Commenters respectfully request that the Commission reject the Mail Handlers' suggestion that the Postal Service's burden of proof is modest, but rather require the Postal Service to meet a burden of proof commensurate with the unprecedented rate adjustments that it now seeks.

Respectfully submitted,

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