

NPPC

National Postal Policy Council



The Hon. Stacy L. Ruble
Secretary
Postal Regulatory Commission
901 New York Avenue, N.W.
Suite 200
Washington, D.C. 20268

October 15, 2018

Re: *Docket No. RM2018-11*

COMMENTS OF THE NATIONAL POSTAL POLICY COUNCIL

The National Postal Policy Council (“NPPC”) respectfully submits these comments in response to the Advance Notice of Proposed Rulemaking in Order No. 4750.¹ Order No. 4750 is the next step necessary to ensure that the Postal Service properly accounts for the rate effects of mail preparation changes under rule of practice 3010.23(d)(2).

The Commission has repeatedly held that changes by the Postal Service to its mailing preparation regulations could have price cap effects. Order No. 1890, Docket No. R2013-10, at 5-35 (Nov. 21, 2013); Order No. 3047, Docket No. R2013-10R (Jan. 22, 2016); Order No. 3441, Docket No. R2013-10R (July 20, 2016). This is a proper assertion of regulatory jurisdiction to prevent the Postal Service from evading the price cap by manipulating mailing preparation requirements.

The Court of Appeals for the District of Columbia Circuit has twice affirmed the Commission’s jurisdiction to review changes to mailing regulations for violations of the statutory price cap. *United States Postal Service v. Postal Regulatory Commission*, 785 F3d 740, 744 (D.C. Cir. 2015) (“*USPS I*”); *United States Postal Service v. Postal Regulatory Commission*, 886 F.3d 1253 (D.C. Cir. 2018) (“*USPS II*”). However, the Court of Appeals in each case has remanded the matter to the Commission for it to

¹ Order No. 4750 (August 9, 2018) (Advance Notice of Proposed Rulemaking).

formulate a better test for when a mailing preparation change could have price cap implications. The instant ANPRM responds to *USPS II*.

In *USPS II*, the Court suggested that the Commission should consider mail preparation changes that “induce mailers to shift to a higher-priced service.” *USPS II* at 1259. Of course, all mailing preparation changes could have the effect of altering the usability of a rate cell and thus shifting mailers to higher priced rate cells if they do not adjust, as both this Commission and the Court have acknowledged. However, only those changes that “induce” mailers to shift to a higher-priced service, taking into account the costs of compliance, are potentially pertinent to the price cap. It is worth noting that, over the more than a decade of experience under the price cap, only the Postal Service’s attempt to force mailers to convert to the highly expensive Full-Service IMb in R2013-10 has triggered such significant mailer concern as to cause the Commission to address the problem.²

The simplest and most direct way to identify mailing preparation changes that would present the greatest risk that mailers would shift to the higher-priced service instead of incur compliance costs to focus on changes that would have non-*de minimis* effects on cap compliance. Such changes are those that would have material rate effects due to the size of the rate change, the mail volumes affected, or both.³

In Docket No. R2013-10R, NPPC joined other mailers in suggesting an approach to identifying such significant mailing preparation changes based on the existing standard for *de minimis* rate changes. See *Initial Comments of the Association for Postal Commerce, Alliance of Nonprofit Mailers, Major Mailers Association, MPA--The*

² It bears reminding that the Postal Service tried to force this change on mailers in a market dominant product. Unlike in the case of a Competitive Product, where mailers could simply shift to a rival service, the Postal Service has no competitor for hardcopy letter mail. But forcing changes on mailers of market dominant products, whose budgets and operations are not amenable to costly or immediate readjustments, can drive the mailers to accelerate shifting to electronic alternatives, leaving mail altogether. This highlights the importance, as the Commission has long recognized, of its regulating in this area.

³ The Commission need not worry about applying this approach to Postal Service proposals to transfer or delete products. Those are governed by Section 3642(b)(3), which explicitly directs the Commission to take into account the views of mailers.

Association of Magazine Media, and National Postal Policy Council In Response to Order No. 586 (August 17, 2015). That proposal recommended that the Commission base its approach on the standard for *de minimis* rate changes found in 39 C.F.R. §3010.30.⁴ That proposal remains the simplest way to identify proposed mailing regulation changes that would most likely have price cap impacts.

The National Postal Policy Council continues to recommend that the Commission consider such an approach seriously, and looks forward to submitting more extensive comments on a forthcoming Notice of Proposed Rulemaking consistent with this approach.

Respectfully submitted,

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⁴ The Commission might, however, consider increasing the threshold of *de minimis* to a percentage change for a class modestly higher than 0.001 percent.