

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

RATEMAKING PROCEDURES FOR INBOUND  
LETTER POST AND RELATED SERVICES

Docket No. RM2019-2

**COMMENTS OF THE NATIONAL POSTAL POLICY COUNCIL,  
THE MAJOR MAILERS ASSOCIATION,  
THE NATIONAL ASSOCIATION OF PRESORT MAILERS, AND  
THE ASSOCIATION FOR MAIL ELECTRONIC ENHANCEMENT**  
(December 20, 2018)

The National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement (“Joint First-Class Mailers”) hereby respectfully submit these comments in response to the Advance Notice of Proposed Rulemaking in this proceeding.<sup>1</sup> These comments address only Docket No. RM2019-1; the Joint First-Class Mailers take no position on Docket Nos. PI2018-2 or MC2019-17.<sup>2</sup>

In Order No. 43, the Commission rejected an argument from the Postal Service that International Letter Post (“ILP”) should not be deemed either market-dominant or competitive, but rather subject to a *sui generis* form of regulation. The Commission instead classified ILP as a market-dominant product subject to the price cap. Order No. 43, Docket No. RM2007-1, at 88 (Oct. 29, 2007).

---

<sup>1</sup> Order No. 4882, at 3 (Nov. 20, 2018).

<sup>2</sup> Our positions in Docket No. 2017-3 have been presented fully in that proceeding.

The ANPRM responds to a petition from the Postal Service requesting removal of market-dominant price cap regulation from ILP.<sup>3</sup> The Postal Service claims that the announcement by the United States of its intent to withdraw from the Universal Postal Union, and the related expectation that the Service will thereafter charge either higher UPU (or negotiated rates) for ILP or self-declare<sup>4</sup> ILP rates unilaterally is a “changed circumstance” justifying exempting ILP from the price cap.<sup>5</sup>

Although the Postal Service disclaims any intent to ask the Commission to review the determination that ILP is a market-dominant product,<sup>6</sup> it now seeks essentially the same regulatory regime for ILP as it did in Docket No. RM2007-1 and in Docket No. RM2017-3. However, nothing about the prospective withdrawal from the UPU justifies the Commission reaching a different conclusion now. Neither withdrawing from the UPU nor self-declaring rates offers a persuasive rationale for exempting such rates from the cap, because the Postal Service has ample flexibility to set self-declared ILP rates at compensatory levels

---

<sup>3</sup> *Petition of the United States Postal Service To Initiate A Rulemaking Concerning Ratemaking Procedures for Inbound Letter Post and Related Services*, Docket No. RM2019-2 (Nov. 16, 2018) (“*USPS Petition*”).

<sup>4</sup> We understand “self-declared” rates to be those set by the Postal Service in its discretion, instead of through the UPU terminal dues process, subject to whatever regulation that the Commission would establish in this proceeding. In this sense, the Postal Service currently “self-declares” market-dominant and Competitive product rates, subject to regulatory oversight.

<sup>5</sup> The Postal Service suggests that ILP rates could be subject to after-the-fact review through annual compliance proceedings, although it acknowledges that prior review may be appropriate. *USPS Petition* at 9-10. The Postal Service does not explain how such a system would satisfy the statutory Objectives for market-dominant rate regulation set forth in Section 3622(b), taking into account the Factors in Section 3622(c).

<sup>6</sup> *United States Postal Service Notice of Clarification*, Docket No. RM2019-2, at 1 (Nov. 20, 2018).

within the price cap. Applying the price cap to self-declared market-dominant ILP rates is eminently reasonable.

Furthermore, other First-Class Mail, including the Presort product primarily used by the Joint First-Class Mailers, have cross-subsidized ILP every year since FY 2008,<sup>7</sup> by \$170 million in FY 2017 alone, and the cumulative subsidy is approaching \$1 billion. Even if the Commission were inclined to create an exception to the price cap for ILP, such an exception must be conditioned on a reduction of First-Class Mail cap authority sufficient to eliminate the current cross-subsidy.

**I. THE COMMISSION DENIED ESSENTIALLY THE SAME REQUEST IN ORDER NO. 43 AND WITHDRAWING FROM THE UNIVERSAL POSTAL UNION DOES NOT SUPPORT A DIFFERENT OUTCOME NOW**

The Postal Service is asking that the Commission exempt entirely from the market-dominant price cap the rates for that portion of f ILP that is not transferred to the Competitive product category in Docket No. MC2019-17. The Commission squarely denied precisely such a request in Order No. 43, and no different outcome is warranted here.

The only changed circumstance in law or fact since Order No. 43 that the Postal Service has brought to the attention of the Commission is the United States' prospective withdrawal from the UPU and the resulting imposition of self-declared rates. That does not justify a different regulatory system that would exempt ILP from the cap and privilege it with *sui generis* regulation.

---

<sup>7</sup> The Postal Service's Annual Compliance Report for FY 2018 (due after these comments are filed) will indicate whether ILP was cross-subsidized again in FY 2018.

As Order No. 43 discussed at length, international postal rates are governed by two provisions of the Postal Accountability and Enhancement Act: 39 U.S.C. § 407 (international rates) and 39 U.S.C. §36622(d)(2)(A) (market-dominant rates). In Order No. 43 (at 79), the Commission found that Section 407 does not itself establish a different system of regulation for inbound international mail.

Instead, Section 407(c)(1) provides that international market-dominant rates are subject to Section 3622.<sup>8</sup> Since enactment of the PAEA, the Commission's standards and criteria under Section 3622 have been founded on the CPI price cap. Only the Secretary of State has authority to approve a market-dominant international rate or classification that is inconsistent with Section 3622, and that authority is strictly limited only to where doing so is in the foreign policy or national security interest of the United States. 39 U.S.C. §407(c)(2). Nothing in the PAEA authorizes the Commission or the Secretary to approve rates for market-dominant international products that are *inconsistent* with the standards and criteria established under Section 3622 in the absence of a convention or treaty.

Self-declared market-dominant ILP rates, by definition, would be outside of the UPU Convention or a treaty. Therefore, under the PAEA, self-declared ILP rates must be fully subject to Section 3622. Withdrawing from the UPU simply renders inapplicable the lone exception under which market-dominant ILP rates

---

<sup>8</sup> Section 407(c)(1) directs the Secretary of State, before concluding any international postal treaty, convention or amendment that establishes a rate or classification for a market-dominant product, to ask the Commission whether the rate or classification "is consistent with the standards and criteria established by the Commission under section 3622." 39 U.S.C. §407(c)(1).

conceivably could be *inconsistent* with Section 3622. That withdrawal obviously does not undermine the Commission's conclusion in Order No. 43.

Nor does Section 3622(d)(2)(A), which states that the statutory price cap "shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect" on the date of the enactment of the PAEA. Indeed, in Order No. 43 the Commission expressly rejected a request by the Postal Service that the price cap not apply to single piece international mail, such as ILP.<sup>9</sup> Order No. 43 at 88. And the cap has since applied to ILP for more than a decade.

It is worth noting that the Postal Service's position in the *Petition* contradicts arguments it made less than a year ago in Docket No. RM2017-3. Then, the Postal Service argued that ILP should be excluded from the price cap because it has *no* discretion over ILP rates.<sup>10</sup> Now, it argues that ILP should be excluded from the cap in a future in which it *does* have discretion over ILP rates.

Nothing about the United States' prospective withdrawal from the UPU requires the Commission to reconsider the regulatory structure applied to ILP in Order No. 43. Indeed, in such a circumstance the PAEA would require ILP to be fully subject to Section 3622, just as Order No. 43 determined more than a decade ago. The Postal Service has not justified a different result now.

---

<sup>9</sup> Section 3622(d)(2)(A) does not necessarily mean that the Commission has discretion not to apply the price cap to market-dominant ILP. The provision may simply have had the separate purpose of Congress's intention that the price cap should continue to apply at the pre-PAEA class level, instead of at narrower or broader groupings of mail.

<sup>10</sup> *Initial Comments of the United States Postal Service In Response To Order No. 4248*, Docket No. RM2017-3, at 154 (Mar. 1, 2018). The Postal Service conceded in those comments that when terminal dues rates increase more slowly than CPI, it frees up "additional cap space for other First-Class Mail prices."

## II. THE PRICE CAP DOES NOT PREVENT THE POSTAL SERVICE FROM SELF-DECLARING HIGHER, COMPENSATORY ILP RATES

Only the UPU terminal dues process – not the price cap -- has prevented the Postal Service from raising ILP rates to compensatory levels in the past. *Nothing* about the price cap system has prevented, or in the future would prevent, the Postal Service from self-declaring ILP rates that are compensatory or, better, that would make a positive contribution to institutional costs.<sup>11</sup>

Put simply, the Postal Service has not shown why any new regulatory regime would be necessary after withdrawal from the UPU. Self-declared ILP rates would fit easily within the current price cap system. To raise ILP rates to more compensatory levels, the Postal Service merely would need to apply some cap authority to ILP rates instead of to other First-Class Mail. Allocating cap authority differently among products is commonplace. As the Commission well knows, over the years, the Postal Service frequently has raised rates for some First-Class Mail products and categories by more than CPI while imposing lower increases, or even decreases, on other products.

Absolutely nothing would prevent the Postal Service from simply using cap authority for self-declared ILP rates instead of for other market-dominant First-Class rates (which have been subsidizing ILP for a decade). Indeed, the USPS would have maximum flexibility in the case of self-declared ILP rates because they, unlike Presort and other rates, are not “linked” to other products through the

---

<sup>11</sup> Throughout the price cap era, the USPS has “self-declared” all other First-Class Mail rates. That such filings were subject to regulatory oversight is inconsequential. The Postal Service is not asking the Commission to exempt ILP from all regulatory review, but only from the price cap system.

use of benchmarks in one product to set discounts in another under the prevailing interpretation of Section 3622(e).

The problem here is that the Postal Service does not want to offset (presumably) above-inflation rate increases for ILP by moderating increases on the already excessive, cross-subsidizing rates in First-Class Mail. It argues “the Presidential Memorandum lacks any indication that the Postal Service should suffer an offsetting detriment in the form of reduced price-cap authority or even price decreases for domestic-origin mail.” *USPS Petition* at 7. But there would be no “offsetting detriment.” Nothing about self-declared rates would reduce the CPI calculation, so there would be no “offsetting detriment” to the Postal Service if self-declared ILP rates were to remain subject to the CPI cap.

What the Postal Service presumably means by “offsetting detriment” is the rate relief that domestic First-Class mailers – who for years have paid inflated prices to offset the losses from ILP – would experience when the Postal Service finally is able to charge compensatory ILP rates. That the Postal Service might – at last – devote cap authority to higher ILP rates instead of overpricing other First-Class Mail is not an “offsetting detriment” – it is simply how a price cap works. Just why domestic mailers should not enjoy some benefit from compensatory ILP rates the Postal Service never explains.<sup>12</sup>

---

<sup>12</sup> Presumably the Postal Service meant to address by arguing that the consumer protection and accountability goals of the price cap are not intended to protect foreign mailers. However, where inbound mail contains matter for which the domestic addressee has paid, domestic consumers are ultimately the ones who pay the mailing costs. And other domestic mailers within First-Class Mail would benefit from compensatory ILP rates.

The amount of pricing authority that would be applied to ILP would depend on what mail remains in that market-dominant product after Dockets Nos. MC2019-17 and PI2018-2 are completed. But, as within any class of mail, the fact that larger increases in one product may mean lower increases or decreases in rates for another product is not a “detriment” – it is simply the normal operation of a price cap.

**III. IF ILP IS EXCEPTED FROM THE CAP, THE COMMISSION MUST ALSO ELIMINATE THE CURRENT CROSS-SUBSIDY OF ILP BY OTHER FIRST-CLASS MAIL BY REDUCING THE POSTAL SERVICE’S FIRST-CLASS MAIL CAP AUTHORITY**

In FY 2017, Inbound Letter Post had a negative contribution of \$170 million. This was not new; over the decade beginning in FY 2008, ILP incurred a cumulative negative contribution of approximately \$922 million. Over that period, the cost coverage of ILP averaged about 69 percent per year. That cumulative loss means that First-Class Mailers, including the Joint First-Class Mailers, have cross-subsidized ILP throughout the past decade by paying at least \$922 million in higher rates over the past decade than they would have had ILP paid at least compensatory rates.

If ILP had made even zero contribution to institutional costs, other First-Class rates would have been lower. Had it made a class-average contribution, other First-Class rates would have been lower still. But it did not, so the resulting cross-subsidy has caused all other First-Class rates to be some \$170 million (in FY 2017) higher than they would have been had ILP been priced at a compensatory level. Although the negative effect on Postal Service volumes



from these higher rates will never been known, what is known is that other First-Class Mailers have paid well over \$900 million more than they would have had ILP been priced properly.<sup>13</sup>

As discussed above, the Postal Service has offered no valid reason for the Commission to reverse its decision in Order No. 43. If, however, the Commission were inclined to grant ILP an exceptional regulation status outside of the price cap, the Commission should also grant other First-Class Mailers relief from their current annual cross-subsidy of ILP which, using FY 2017 data, was \$170 million. That would require at a minimum a reduction of at least \$170 million in price cap authority for First-Class Mail.

If the Commission decides to exempt ILP from the price cap, it would be appropriate to eliminate all vestiges of the existing cross-subsidy at the same time. The simplest and most direct way to do so would be to impose a one-time reduction in First-Class Mail cap authority equal to the amount of the cross-subsidy.

---

<sup>13</sup> This situation is analogous to that of Flats in USPS Marketing Mail. In both situations, one product within a class has consistently made a negative contribution for years, thereby causing other mail within the class to pay higher rates. Unlike in the case of Marketing Mail Flats, however, there is no suggestion that a “multiplier effect” exists in the case of ILP that might justify below-cost rates.

#### IV. CONCLUSION

For the foregoing reasons, the undersigned parties respectfully recommend that the Commission has already decided this matter in Order No. 43, and nothing that the Postal Service has submitted justifies changing that outcome. The Postal Service should eliminate the long-standing cross-subsidy of Inbound Letter Post by other First-Class Mailers by raising ILP rates to compensatory levels and giving corresponding relief to other First-Class Mail under the price cap.

Respectfully submitted,

Mury Salls  
President  
MAJOR MAILERS ASSOCIATION  
11448 Chateaubriand Avenue  
Orlando, FL 32836-8825

Robert Galaher  
Executive Director and CEO  
NATIONAL ASSOCIATION OF PRESORT  
MAILERS  
PO Box 3552  
Annapolis, MD 21403-3552

Steve Krejcik  
President  
ASSOCIATION FOR MAIL ELECTRONIC  
ENHANCEMENT  
1260 E 88<sup>th</sup> Street  
Newaygo, MI 49337

By: /s/ William B. Baker  
William B. Baker  
POTOMAC LAW GROUP, PLLC  
1300 Pennsylvania Avenue, N.W.  
Suite 700  
Washington, D.C. 20004  
(571) 317-1922

Arthur B. Sackler  
Executive Director  
NATIONAL POSTAL POLICY COUNCIL  
629 K Street, N.W.  
Suite 300  
Washington D.C. 20066