

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

Amendment to Rules Regarding Rate
Incentives for Market Dominant Products

Docket No. RM2020-5

COMMENTS OF THE NATIONAL POSTAL POLICY COUNCIL
(March 23, 2020)

The National Postal Policy Council respectfully submits these comments in response to Order No. 5433.¹ The Commission proposes to revise its regulation defining “rate of general applicability” for purposes of market dominant rate adjustments. In particular, the Commission proposes to specify that a rate is not “of general applicability” if eligibility for the rate depends on “factors other than the characteristics of the mail to which the rate applies, including the volume of mail sent by a mailer” in a past year.

Since at least Order No. 2086 in Docket No. RM2014-3, the Commission’s rules have provided that the Postal Service could (at its option) include, in the percentage change in rates calculation for purposes of price cap compliance, rate incentives that meet three criteria. The criterion relevant to this proceeding is that the rate incentive “is a rate of general applicability.” 39 C.F.R. §3010.23(e)(2)(iii). The Commission has also stated that a rate is not generally applicable if a condition of eligibility is a factor that is not a “characteristic of the

¹ Order No. 5433 (Feb. 14, 2020) (Notice of Proposed Rulemaking To Amend Rules Regarding Rate Incentives for Market Dominant Products) (“*NPRM*”), 85 *Fed. Reg.* 10120 (Feb. 21, 2020).

mail to which to the rates under the incentive program apply.” Order No. 2086 at 15. In particular for this proceeding, the Commission held that if a condition of eligibility for an incentive is the “volume sent by a mailer in a previous year,” the incentive would not be considered generally applicable and, consequently, the Postal Service could not include the incentive in its price cap calculations. *Id.* at 16.

As discussed in the *NPRM*, in Dockets Nos. R2019-1 and R2020-1 the Postal Service conditioned eligibility for the Earned Value Reply Mail Promotions in part on a mailer’s volume of returns meeting or exceeding a certain percentage of the number of returns it had received in a previous year. Due to an ambiguity as to whether that “mailer-specific” version of the incentive could be considered “generally applicable” (in contrast to conditioning eligibility on a set static volume) based on the theory that any mailer might be able to exceed its previous year’s volume, the Commission allowed both incentives to take effect and to be included in the price cap calculation. See *generally* Order No. 5433 at 7 & Order No. 5321 at 23-24.

Nevertheless, the Commission also stated that it would initiate this proceeding to address the treatment of “mailer-specific” volume thresholds as generally applicable when calculating price cap compliance. Order No. 5321 at 22-24. The Commission now proposes to amend its rules to provide “that in order to qualify as a rate of general applicability, a rate cannot be based on mailer-specific data, such as historical mailer volume.” Order No. 5433 at 8. The Commission also proposes to amend its rules to require that for a rate incentive

to be eligible for inclusion in the percentage change calculation, “the rate incentive must be made available to all mailers equally on the same terms and conditions.” *Id.* Finally, the Commission would require the Postal Service to provide additional information in its notice of rate adjustments to justify inclusion of a rate incentive in the price cap calculation. *Id.*

Had the proposed revisions been in effect during Docket No. R2020-1, they would have affected the Earned Value Reply Mail Promotion in two ways. First, for repeat participants, the requirement that their returns met or exceeded 93 percent of their number of returns in the prior year presumably would have been deemed not generally applicable. Second, the additional 2-cent “bonus” credit for repeat participants whose returns exceeded 100 percent of their returns in the prior year also likely would have been not deemed generally applicable. However, the credit for new participants would have been generally applicable, at least if it were available as well to repeat participants.

Discussion

NPPC traditionally has supported promotional incentives to encourage new approaches and innovations in the use of the mail. Many NPPC members have made use of one or more promotional incentives, including the Earned Value Reply Mail credit and the Personalized Color Transpromo promotion. They regard the credits that they have earned as a valuable means of partially offsetting the costs of the extra effort required to participate in the promotion, and without the incentives they likely would have mailed fewer pieces.

As a general matter, NPPC believes that promotional incentives should be available to any mailer. That allows for the broadest possible participation in these worthwhile initiatives. For that reason, NPPC does not support the use of historical volume thresholds as an eligibility criterion for generally applicable rate incentives.

As the *NPRM* notes, at times the Postal Service has conditioned eligibility in some manner on a mailer's volume in a prior year. These can be viewed as an effort by the Postal Service to convert promotional incentives into, at least in part, a type of volume retention initiative. In NPPC's view, that alters the purpose and nature of the incentive. While NPPC encourages the Postal Service to offer innovative initiatives, we understand the perceived unfairness to other mailers, whose rates theoretically could be higher to offset the incentives, when the initiatives are not generally applicable.²

Using historical volumes as an eligibility criterion means that the incentive is not available on the same terms to all mailers. Depending on how the incentive is structured, either it hinders the availability of the incentive to past participants (because they now have a past volume threshold to meet) or excludes new participants (who have no past volume upon which some increment of the incentive may be based). That is why the two features of the

² The Commission might consider whether it would make a difference in treatment if a rate incentive offered in Year 1 *also* clearly stated that Year 1 participants could expect to be eligible for an additional incentive if they also participate in a repeat incentive in Year 2, based on mailer-specific volume. Would such an incentive be "available to all mailers equally on the same terms and conditions"?

R2020-1 Earned Value Reply Mail Promotion mentioned above would likely be considered not generally applicable if the proposed regulation were adopted.

However, the Commission should be wary of broadly disallowing all types of rate structures based on a mailer-specific past volume from being generally applicable. First, in theory, any mailer potentially could exceed its volume from a prior year if it desired to do so. Second, whether a volume incentive based on mailer-specific past volumes is “on equal terms” is debatable; an incentive based on surpassing a set percentage of a mailer’s volume in a previous year could be earned at a much different absolute volume by mailer A compared to mailer B even if both surpassed the same percentage of its prior year’s volume. NPPC understands the intent of the *NPRM*, if adopted, is to prevent such an incentive from being “generally applicable” for purposes of the price cap calculation.

Nonetheless, at a time of declining volumes, the Commission should not be discouraging the Postal Service from offering creative or innovative volume retention incentives. Instead, the Commission should encourage the Postal Service to design volume retention initiatives in the nature of generally available niche mail classifications.³ A properly-designed niche classification conceivably could be able to use mailer-specific volume history, rather than absolute or “static” volumes, to broaden the potential set of mailers that could use the classification.

Finally, regardless of the outcome of this proceeding, the Postal Service should remain free to offer discounts based on past mailer-specific or general

³ Negotiated service agreements could provide another type of volume retention incentive, but these are not eligible to be “offset” by higher rates elsewhere under the price cap rules.

threshold volumes *without* including them within the calculations for cap compliance, and it may well be in its best financial interest for it to do so.

Consider the Earned Value Reply Mail promotional incentive that ran from April 1 through June 30, 2019, part of which might not have been deemed generally available if the now-proposed rules were in effect, and that earned mailers \$6.7 million in credits for approximately 426 million pieces of reply mail. United States Postal Service, *FY 2019 Annual Compliance Report* at 12 (Dec. 27, 2019). Each of those First-Class Mail reply envelopes, when used, were quite profitable on a per-unit basis to the Postal Service and that profits more than offset the promotional credits that were earned. Of course, mailers have the option whether to enclose reply mail envelopes, and NPPC members say that the incentive was important to their decisions to include reply mail envelopes in their mailings. And those envelopes did not replace “anyhow” mail because the recipients almost always could have replied in some other manner, such as by telephone or Internet.

Thus, even were the Postal Service unable to include some portions of these promotions in the price cap calculations, the incentives could remain quite profitable to the Postal Service as well as mailers. Accordingly, the Postal Service should not be discouraged from offering innovative incentive programs even if not generally available.

Conclusion

The National Postal Policy Council respectfully urges the Commission to take these comments into consideration.

Respectfully submitted,

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