Summary of Postal Regulatory Commission Order No. 5763 ("10-Year Review")

In the Postal Accountability and Enhancement Act of 2006 ("PAEA"), Congress created the system governing the rates for postal products and services for which the Postal Service is considered to have market-dominance. These include all services subject to the Private Express Statutes, as well as Periodicals and magazines, among others. A central element of the current system is a price cap on the overall rate increase for each class of service, measured by the Consumer Price Index.

The PAEA also directed the Postal Regulatory Commission, after 10 years, to review the rate system to determine if it had achieved 9 statutory objectives, taking into account 14 statutory factors. If the Commission were to determine that the system had not achieved the statutory objectives, then Congress provided that the agency "may, by regulation, make such modification or adopt such alternative system . . . as necessary to achieve the objectives." 39 U.S.C. §3622(d)(3).

The Commission commenced the required review on December 20, 2016, with an advance notice of proposed rulemaking. After public comment, it issued an Order on December 1, 2017, in which it determined that the ratesetting system was not achieving the statutory objectives. In particular, the Commission concluded that the system had failed to (1) maximize the incentives to reduce costs and increase operational efficiency, (2) produce "financial stability," and (3) maintain high quality service. Major reasons for those conclusions were that postal volumes, which were growing in 2006, had been declining for the past decade and that the PAEA had saddled the Postal Service with an obligation to prefund future retiree health benefits that it was unable to meet.

The Commission issued a notice of proposed rulemaking in 2017 and a revised notice in 2019 proposing solutions to those problems.

After voluminous public comment, the Commission issued a final order on November 30, 2020, in which it decided that a number of changes to the ratesetting system are warranted. That order is more than 400 pages long. In short, however, the Commission believes that the Postal Service's needs more revenue to meet its unpaid retiree funding obligations, to offset declining volumes, and to make sufficient investments in facilities and repairs, in technology, and in vehicles and to pay its statutory obligations.

Although acknowledging that the Postal Service needs greater cost reductions and operational efficiency, the Commission also concludes that additional revenues authorized in the order are "required and "necessary" to mitigate near-term financial pressure on, and to lead to financial stability of, the Postal Service.

The changes are summarized below. In particular, the Commission has changed the system governing market-dominant rates by:

- Creating new “density” rate authority based on the increase in unit cost per delivery point as volume declines and the number of delivery points grows. Based on preliminary data, if this new authority were applied to Fiscal Year 2020 data, it would generate about 4.5 percent of new rate authority. If the Postal Service chose not to use some or all of that authority in a given year, the unused part could be “banked” for use over the next five years. This density factor would become permanent; each year’s factor would remain in the rate base after being used; and the factor would not decrease if unit costs per delivery point were to decline.

- Creating a new “retirement rate authority” which the Postal Service must use to make the statutorily-required amortization payment towards retiree health and pension benefit costs, as calculated by the Office of Personnel Management. This authority will phase in over five years, and is expected to be approximately 1 percent per year. Each year’s additional authority would expire unless used within 12 months of the date of the determination.

- Directing, in the case of postal products whose revenues do not cover their attributable costs, but are in classes of mail that do (for example, catalogues in Marketing Mail), the Postal Service to raise the rates of the non-compensatory products by a minimum of 2 percentage points above the overall average percentage increase for the class when making a general rate adjustment.

- Authorizing, for classes of market-dominant postal products whose total revenues are less than their total measured costs (“non-compensatory classes”) – currently only Periodicals mail is in this situation – the Postal Service to have an additional 2 percent of rate authority for the class in addition to all other available rate authorities. If there is a product within such a class that is compensatory, its rate may increase only by the amount of the class’s average increase. The Postal Service could “bank” any unused portion of this additional 2 percent authority for use in the following 5 years.

- Adopting a requirement that workshare discounts generally passthrough at least 85 percent of the costs that the Postal Service avoids by having the mailer do the work. The Postal Service will be prohibited from decreasing the amount of a workshare discount that is less than the avoided costs or from changing a rate discount set equal to avoided costs. The Postal Service may request a waiver of this requirement. Discounts that exceed, or are less than, avoided costs should be moved closer to 100 percent incrementally by at least 20 percent in each rate adjustment. As an exception, the Commission will continue to allow workshare discounts in Periodicals Mail to exceed the costs.

- Adopting new reporting requirements intended to facilitate the monitoring of the Postal Service’s efforts to reduce costs, including the provision of summaries of internal decisional analyses for initiatives costing $1 million or more.

- Requiring the Postal Service to file annually the data and calculations that it uses to measure its changes in productivity;

- Requiring the Postal Service to describe and justify any changes to its service standards, including business rules, or certify that no changes have occurred.

The Commission did not adopt a previous proposal to give the Postal Service "performance-based rate authority" if it met certain operational efficiency and service standards thresholds. Instead, the Commission stated it would initiate a new rulemaking to consider that matter.

As for the process of reviewing rate changes, the Commission modified its rules to require the Postal Service to file notices of rate adjustments at least 90 days before they take effect, instead of the current 45-day period. This change largely conforms to current actual practice, as the Postal Service has generally allowed that much time to give mailers an opportunity to prepare for new rates. Also, the Commission lengthened the review process to allow a 30 day period for comments (instead of the current 20 days) and an additional 21 days thereafter (instead of the current 14) in which to complete its initial review of rate adjustment filings.

The Commission also decided that it no longer will need to assess the statutory qualitative Objectives and Factors when reviewing notices of rate changes. It asserts that because it took those Objectives and Factors into account in revising the ratemaking system in this order, any rate adjustment that complies with the final rules necessarily will be consistent with those Objectives and Factors. Separate consideration of the Objectives and Factors would no longer be required.

Finally, the Commission stated that it would review the revised system 5 years after the final rules take effect, although it could review aspects of the system sooner if "serious ill effects" are evident.

The new regulations will take effect 30 days after publication in the Federal Register, which had not happened as of December 4.

All told, these changes could allow the Postal Service to raise rates above inflation sometime in mid-to-late 2022 in the range of 5.5 percent for USPS Marketing Mail and 7.5 percent for Periodicals.