

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

MARKET-DOMINANT PRICE CHANGE

Docket No. R2023-1

**COMMENTS OF THE
NEWS/MEDIA ALLIANCE**
(November 7, 2022)

The News/Media Alliance (“N/MA”), in response to Order No. 6296, respectfully submits these comments on the Postal Service’s notice of market-dominant price adjustments.¹ The proposed class-average increase for Periodicals exceeds the permitted rate cap because the Postal Service did not properly factor into its cap compliance calculations the effects of its elimination of FSS scheme preparation. Accordingly, the Commission should direct the Postal Service to file revised Periodicals rates.

N/MA is the leading association representing newspaper and magazine publishers that collectively generate more than \$40 billion in annual revenue. Our members are long-time Postal Service customers that use Periodicals mail to deliver news and information throughout the nation. The *Notice* announces rates that will impose substantial burdens on many struggling publishers. Those burdens are aggravated by rates that exceed the current allowable price cap.

¹ *United States Postal Service Notice of Market-Dominant Price Change*, Docket No. R2023-1 (October 7, 2022) (“*Notice*”).

I. **THE POSTAL SERVICE'S PROPOSED PERIODICALS RATES EXCEED THE PRICE CAP BECAUSE THEY DO NOT ACCOUNT FOR THE INCREASE IN BUNDLES CAUSED BY ITS ELIMINATION OF FSS SCHEME PREPARATION**

For some time, Periodicals mailers have been required to prepare qualifying mail to FSS scheme sortation makeup. Mailing regulations required mailers to prepare bundles that combined both carrier-route and 5-Digit pieces (as well as other pieces destined for the same FSS scheme) and enter them in containers, including pallets for mailings exceeding 250 pounds. *USPS Response to ChIR 3, Q1(d)*; see *Domestic Mail Manual 700.14.0*. In the July 14, 2022, issue of the *Postal Bulletin*, the Postal Service announced extensive changes to mail preparation labeling lists relating to the discontinuance of FSS scheme preparation. *USPS Response to ChIR 3, Q1(c)*. Those labeling changes became effective on August 1, 2022. *Id.* In the September 22, 2022, issue of the *Postal Bulletin*, the Postal Service announced the removal of FSS scheme preparation requirements altogether. *USPS Response to ChIR 3, Q1(a)*. The September 22 *Postal Bulletin* (at 5) stated that the revisions took effect immediately, although the Service would not publish them in the Domestic Mail Manual before November 7, 2022.

Due to the Postal Service's elimination of FSS scheme preparation, Periodicals mailers may no longer enter FSS bundles combining carrier-route and 5-Digit bundles. Periodicals mailers that desire to maintain the same presort piece rate as before must prepare, enter, and pay postage on separate carrier-route and 5-Digit bundles. *USPS Response to ChIR 3, Q1(e) & (f)*.

The Postal Service concedes that mailers splitting FSS scheme bundles into separate carrier-route and 5-Digit bundles "will be charged separate bundle prices

whereas under the previous FSS scheme they could have combined and paid a single bundle price while maintaining the lowest presort piece price.” *USPS Response to ChIR 3, Q2(d)*. That will increase the number of bundles mailers prepare. In fact, the Postal Service calculates that on average “FSS bundles will expand to 2.097 carrier-route or 5-Digit bundles.” *USPS Response to ChIR 3, Q1(f)*. In other words, for each bundle formerly mailed under the eliminated FSS scheme preparation, publishers will now on average mail more than **twice** as many. This calculation is consistent with reports from N/MA members, with magazine members currently experiencing *de facto* rate increases between 1 and 2 percent, solely due to increased numbers of bundles. For those mailers, who also face the 4.2 percent CPI increase in the case, the postage increase from this mail preparation change adds up to an additional two percent increase – itself nearly 50 percent on top of the CPI increase.

The Postal Service’s *Notice* did not adjust the billing determinants used in its cap compliance calculation to reflect the doubling of bundles driven by its elimination of FSS Scheme preparation.² In response to ChIR 3, Q2(f), the Postal Service calculated the increase due to the entry of more bundles. Using that calculation, the rates proposed in the *Notice* would produce a class-wide rate increase of **5.016 percent, exceeding by 0.816 percent the 4.200 percent** allowed by CPI. *USPS-CAPCAL-PER-R2023-1FSSRevised*, Tab Summary.

² The Postal Service contends that the increase in postage due to the additional bundles could partially be offset by a reduction in the number of containers due to mailers no longer being required to make an FSS pallet at 250 pounds. *Response to ChIR 3, Q2(b)*. However, the Postal Service has not quantified this effect (*Response to ChIR 3, Q2(f)*), and N/MA members indicate that any such offset is likely quite minor. Other potential future offsets cited by the Postal Service, such as the effects of Sort and Distribution Centers, are speculative.

II. THE COMMISSION SHOULD ORDER THE POSTAL SERVICE TO FILE REDUCED PERIODICALS RATES THAT ACCOUNT FOR THE ELIMINATION OF FSS SCHEME PREPARATION

The elimination of the FSS scheme preparation undeniably constitutes a change in mailing preparation requirements. It also will cause mailers to pay higher postage because they must now enter more bundles than when the FSS scheme was in effect to maintain the same presort levels. Indeed, the Postal Service recognized this internally well before eliminating the FSS scheme (*see Response to ChIR 3, Q2(c) & (d)*), but did not adjust for that effect when it filed the new rates in this docket.³

In *United States Postal Service v. Postal Regulatory Commission*, 785 F.3d 740, 754 (D.C. Cir. 2015) (“*IMb I*”), the Court affirmed the Commission’s authority to regulate mail preparation changes as rate changes in appropriate circumstances. It noted that the Commission’s authority applied to “changes to the prices actually applied to particular mailpieces.” 785 F.3d at 751. The Court stated that a “change in rates” had occurred where “the Service changed mail preparation requirements that would have the likely effect of changing rates paid by certain mailers for sending the same mailpieces that they sent in the prior year.” *Id.* at 746; *see also United States Postal Service v. Postal Regulatory Commission*, 886 F.3d 1253, 1256 (D.C. Cir. 2018) (“*IMb II*”).

That is precisely what has happened here. The Postal Service has changed mail preparation requirements by eliminating FSS scheme bundles. That change will cause publishers to pay more to mail the same mailpieces that they sent before the change by

³ See also “Transitioning from FSS to Non FSS Bundles,” *USPS-LR-N2022-2/4-Public Response to PR/USPS-T-2/1b*, Docket No. N2022-2 (Sept. 22, 2022) (identifying “Periodical postage increase” as a negative impact to the flats industry of the transition from FSS to non-FSS bundle preparation).

forcing them to prepare and enter separate carrier-route and 5-Digit bundles at the corresponding bundle rates instead of the combined bundles allowed under FSS scheme preparation.

Although the Commission does not currently have a standard for determining when a change in a mail preparation requirement constitutes a change in rates (see Order No. 5113, Docket No. RM2018-11), that is no obstacle to acting in this case. There is no dispute that the Postal Service's change in mail preparation requirements will force mailers to pay higher rates simply for mailing the same pieces (entirely apart from any change in the applicable rate cells themselves). The Court of Appeals in both *IMb I* and *IMb II* stated that mail preparation changes that cause mailers to pay more for mailing the same pieces constitutes a rate change. 785 F.3d at 746; 886 F.3d at 1256. *Accord* Order No. 5113, *Regulation of Mail Preparation Changes*, Docket No. RM2018-11 at 2 (June 3, 2019) (Order Closing Docket) (stating the Commission has "consistently held that a change to a mail preparation requirement that 'causes some mail to shift to another rate category and thereby pay different rates' will be subject to the price cap").

Furthermore, rejecting the proposed rates is consistent with the Commission's rule requiring reasonable adjustments when the Service redefines a rate cell. See 39 C.F.R. §3030.128(b). Although the elimination of FSS scheme may not technically constitute a deletion or redefinition of a rate cell – as there currently is no "FSS scheme" cell -- it is tantamount to the same thing. Pieces formerly entered as FSS bundles no longer may be entered in that manner; instead, they must be entered as separate carrier-route or 5-Digit bundles at the existing rate cells.

The Postal Service concedes that it has made no adjustment to account for the increase in bundles caused by its elimination of the FSS scheme preparation requirements. Rule 3030.128(b) requires the Service to make reasonable adjustments, based on known mail characteristics, to the billing determinants to account for the effects of the deletion or redefinition of rate cells.⁴ This is readily done, as the Postal Service has already done so in USPS-CAPCAL-PER-R2023-1FSSRevised, filed in response to ChIR 3.

III. CONCLUSION

The News/Media Alliance urges the Commission to reject the proposed Periodicals rates as excessive and non-compliant with price cap regulations, and to require the Postal Service to file new rates that properly account for the rate increase resulting from eliminating FSS Scheme preparation.

Respectfully submitted,

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⁴ The billing determinants upon which the Postal Service's filing is based are from periods that predate the elimination of FSS Scheme preparation, so they do not include any volume effects.