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

Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products	Docket No. RM2017-3

COMMENTS OF THE NEWS MEDIA ALLIANCE

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(January 31, 2020)

The News Media Alliance ("NMA") respectfully submits these comments in response to the Revised Notice of Proposed Rulemaking in Order No. 5337 (Dec. 5, 2019) ("RNPRM"). The substantial postage increases that the RNPRM proposes to authorize would have profound and harmful implications for news media's use of the mail.

I. Introduction And Summary

The NMA is a trade association representing nearly 2,000 diverse news organizations in the United States and Canada—from the largest news groups and international outlets to print and digital newspapers in every state and congressional district—in short, all news media content creators. NMA members are trusted in their local communities, and are known for their highly-engaged audiences and high-quality journalism and sophisticated digital and mobile products.

NMA members use all categories of market-dominant postal products. First-Class Mail delivers invoices and payments; Periodicals Mail distributes their print editorial product (In- or Outside County, depending on each member's situation); and USPS Marketing Mail delivers "Total Market Coverage" (or "TMC") program mailings to residents who do not subscribe to the print newspaper. Newspapers in both metropolitan and smaller communities use TMC programs, which typically contain advertising for local and small businesses and are targeted to a specific geographical area, for distribution to residential addresses that do not subscribe to the newspaper. TMC shared mail packages most typically are mailed at High Density Plus and Saturation flats rates.

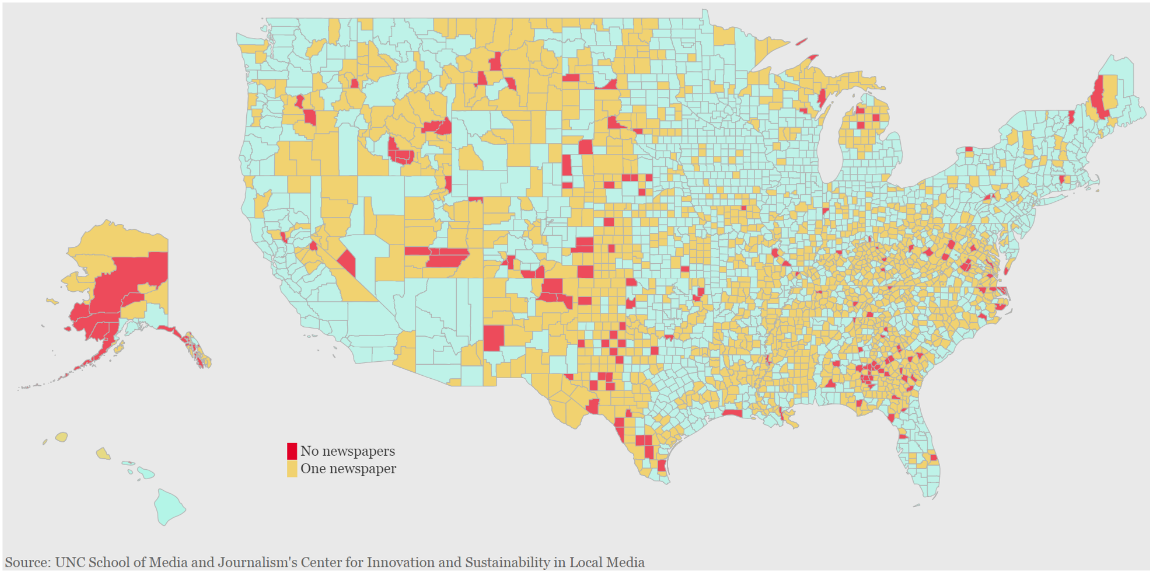
Like the Postal Service, NMA members have experienced numerous business challenges in recent years. Structural change in the newsgathering and publishing business has sharply affected revenues and costs. Publishers have had to confront problems ranging from reduced revenues due to digital competition and changing habits for consuming news and information to rising costs for newsprint or other inputs that can escalate unexpectedly.

One recent challenge to newspapers was the imposition in early 2018 of tariffs as high as 30 percent on Canadian uncoated groundwood paper, which is a primary source of newsprint and other paper used by U.S. newspapers and commercial printers. These tariffs were passed on to U.S. newspapers and printers in the form of higher newsprint prices and surcharges, which in most markets increased the cost of this essential raw material by 20 to 30 percent. Although the International Trade Commission reversed the tariffs in September 2018, newspapers and printers are still recovering from this price shock, which had a drastic effect on newspapers operations. Many small market daily and weekly newspapers had to cut back on delivery days, reduce staffing, and halted investment in digital operations. Unfortunately, a number of small market weekly newspapers were forced to cease publishing.

Due to these and other cost pressures facing their businesses, NMA members throughout the nation have grown very sensitive to costs of all kinds. This sensitivity certainly extends to postal costs. Postal rates above the current statutory Consumer Price Index cap established by the Postal Accountability and Enhancement Act ("PAEA") will prevent publishers and printers from recovering fully and will lead to operational changes or, in too many cases, closures.

In this business environment, the Knight Foundation reports that the United States has lost almost 1,800 newspapers since 2004, more than 1,700 of them weeklies. Of the remaining 7,112 newspapers in the U.S., about half serve small and rural communities. Nearly 5,500 of those 7,112 newspapers have circulations of less than 15,000. *See* https://www.usnewsdeserts.com/reports/expanding-news-desert/loss-of-local-news/loss-newspapers-readers/.

Today, nearly 200 of the 3,143 counties in the U.S. have no newspaper. More than half of the remaining counties are served by only one, typically a weekly, and which typically is delivered via Periodicals mail. The residents of these "news deserts" typically are poorer, older, and less educated than other Americans. The following map from the Knight Foundation, shows the emerging news deserts across America:



When local news close, there may be no one left to report on zoning decisions, school changes, local taxes or the activity of local elected officials. While the Internet offers no shortage of news and opinion on national issues, there is less local journalism today than when the PAEA was enacted.

Postal rates have a bearing on the nation's emerging news deserts. Both the substantial increases in USPS Marketing Mail and the potentially 10 percent (before compounding) even higher increases for Periodicals called for by the RNPRM would result in less local news gathering and publishing and less informed communities. Postage rates in the ranges contemplated by the RNPRM would render the Postal Service unaffordable to many local news media and uncompetitive with other distribution options where such options exist. Some newspapers, particularly weeklies that rely on the Postal Service for delivery, could stop publishing altogether, adding to the growing number of news deserts across the country.

Decisions having such far-reaching public policy ramifications should not be made by regulatory agencies, but properly belong to Congress. For these reasons, the Commission should pause its proposals to allow rates to soar above inflation and, instead, defer these important national issues to Congress.

II. The Proposed Potential Postage Rate Increases Are Unpredictable and Unlimited

In the Postal Accountability and Enhancement Act, Congress enacted a CPI price cap to protect mailers of market-dominant products and directed the Commission to craft the system within which that limit would be applied. The Commission now proposes to allow the Postal Service to exceed that price cap by large amounts.

The Commission would do so by creating four new sources of rate authority that would be in addition to, not limited by, the CPI price cap. These are:

1. A “density” factor, to offset the lost contribution per delivery point when volume falls or delivery points increase;
2. A retirement fund factor, to collect funds to be remitted to the Treasury to pay amortized retiree benefit funding obligations;
3. A “service performance” factor (of 1 percent) if the Postal Service improves its Total Factor Productivity and does not reduce its published service standards; and
4. An extra 2 percent per year for Periodicals class mail.

The total amount by which the Postal Service could exceed the CPI price cap is unpredictable, because the first two factors listed would be set by formulas whose inputs would be reset annually.

These proposals are inherently at odds with the concept of a price cap. Whether prices are capped at CPI or some other index is meaningless if the regulated entity is allowed to charge rates outside of the cap ceiling under various pretexts, particularly when those "outside" authorities far exceed CPI. And the lack of any ceiling whatsoever on some of the factors magnifies the inconsistency with a structure intended to restrain rates.

The RNPRM offers illustrative examples of how the two formulas might work. At Table IV-2, it presents a calculation that results in density rate authority ranging from 1.11 percent to 1.46 percent. A few pages later, Table IV-3 calculates what density rate authority might have been had it been in place from 2013 to 2019; those range from a low of 0.36 percent to a higher of 2.69 percent (which reflected the substantial volume declines after the Great Recession). The Commission says nothing about how realistic those numbers might be in the future but, using only these figures, the total increased rate authority *due to the density factor alone* after five years easily could be 10 percent or more. This could easily dwarf the CPI increase over the same period. And, of course, this would be only one source of authority for higher rates.

As for the retirement rate authority, an example in the RNPRM (at 92) yields a rate increase of five percent, but due to a phasing-in process only 1 percent would accrue in the first year. However, this was merely to illustrate the formula and offers no assurance that the actual amounts would be in that range. What is clear is that, after five years, the Postal Service could have accumulated permanent rate authority under this factor that itself could exceed the amount by which CPI increases over the same period. And if declining volume trends continue and revenue drops, the amount of rate authority could well increase beyond that illustrative five percentage.[1]

Although these numbers are speculative, neither the density nor the retirement formula has any limit to how much rate authority they could generate. By their design, the more that mail volume falls, the greater the rate authority. That would lead to an ever-dwindling amount of mail having to pay ever rising prices, creating and feeding a death spiral for our nation's postal system.

Using only these examples drawn from the RNPRM, the density and retirement formulas would sum to at least 3 percent above CPI per year for newspaper TMC products, and quite conceivably more, and at least 5 percent above CPI per year for newspapers' editorial products in Periodicals mail when the additional surcharge is included. Either of these alone could equal or exceed CPI itself. These increases could continue unabated for each of five years, at which time the Commission expects to review the results of these changes. At that point, the cumulative increases could be 10 percent or more for the density factor; an unknown amount, but for argument's sake 5 percent or more for the retirement obligations; 5 percent for "service performance" (1 percentage point earned annually); and 10 percent for Periodicals (2 percent annually). That

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[1] Even if revenue holds steady (due to increased rates), the burden of this retirement factor (and the others as well) would be borne by a shrinking number of pieces.

works out to 20 percent above CPI for the USPS Marketing Mail rates paid by newspapers' TMC products, and 30 percent above CPI for Periodicals mail.[2]

But as noted previously there is no assurance that these are the maximum increases that could be allowed. As volume declines, and especially if a recession were to occur, the factors would inexorably produce still higher rate authority. As is, the Postal Service expects its volume to decline by 18 percent by 2024.[3] The RNPRM does not address what the implications of such a decline would be on the rates for market-dominant products under the proposed system.

This would not constitute reasonable or predictable rate regulation. It should not be too much to expect that a system that is supposed to protect mailers subject to a legal monopoly would impose a limit to how much rates could increase, and a process by which to consider the effects of increases only those who must pay them. But the system proposed in the RNPRM does neither. Rate authority would be relegated to formulas and at no point would the effects on mailers be considered.

Furthermore, the additional factors send the wrong message to the Postal Service by assuring that it will recoup revenue even if it fails to maximize cost reductions and efficiencies. The density formula relaxes the pressure on the Postal Service to reduce delivery costs; the "service performance" factor rewards

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2 The total increase could actually be greater because (except for the retirement authority factor which would be adjusted to account for compounding) each year's increase would be compounded by the following year's increase. As proposed, only the retirement rate authority would cease increasing (although it would remain in the rate base); the density and service performance would continue to be available to the Postal Service for years to come.

3 *USPS Five Year Strategic Plan 2020-2024,* at 15.

it not for meeting service standards, but rather for not officially reducing them, and the retirement factor merely hoovers money from mailers directly to the Treasury and would have no impact on postal operations. All of these would have the effect of raising rates and dampen the Postal Service's incentives to reduce costs and become more efficient.

The Commission has a statutory duty to ensure that rates for market-dominant postal services are, *inter alia*, predictable and stable (39 U.S.C. §3622(b)(2) and just and reasonable (39 U.S.C. §3622(b)(8), and must take into account the effects of rate increases on mailers (39 U.S.C. §3622(c)(3)). NMA members do not see that the new system envisioned by the RNPRM would meet these necessary requirements.

III. Newspapers Cannot Afford Rate Increases Above the Statutory Cap

The PAEA-established price cap has helped to slow the decline of mail volumes by keeping rates at, essentially, the rate of inflation for the past decade other than for the disruption of the exigency surcharge. The RNPRM proposes to end that regime. Instead, as noted above one reasonably can expect that the RNPRM could authorize increases that cumulatively would amount to at least 20 percent or more above CPI for USPS Marketing Mail within 5 years, and 30 percent for Periodicals Mail.[4]

[4] The Commission cannot deflect responsibility for this outcome by saying that it is merely giving the Postal Service the option of raising rates up to that amount. Not only has the Postal Service historically used almost every bit of rate authority it has been authorized, but by establishing the system the Commission would inherently be presuming that any rates noticed by the Service that fits within the system would be reasonable.

News media simply could not afford increases of that magnitude. NMA members cannot simply pass along such rate increases to their customers in either Marketing or Periodicals Mail. Neither advertisers nor subscribers are willing to pay higher prices given the digital alternatives for distributing news and advertising.

For rural and weekly suburban newspapers, Periodicals Mail has long served as a vital means of delivering print news to subscribers.[5] Substantial increases in postage rates must be passed along, at least partly, to subscribers. But subscribers have low cost digital alternatives for consuming news and information. Raising the subscription price (which, of course, also must fund reporting, editorial functions, and printing) by the amounts necessary to cover the postage increases would be difficult to do given the widespread availability of digital news. Newspapers generally have been unable to pass postage rate increases along to their readers, because subscriber levels have fallen in recent years, and many have had little capability to absorb them internally.

And well-documented changes in the U.S. retail sector have reduced the volume and frequency of ad inserts that are mailed through newspapers' TMC programs.[6] Indeed, even current rates for Saturation and High Density Plus flats mailings – which are highly profitable to the Postal Service -- are too high in many geographic markets, judging by the willingness of advertisers to pay.

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[5] Those rates are also used by newspapers around the nation to reach subscribers who have temporarily moved away.

[6] TMC programs are not limited to large markets. Many NMA members in smaller communities operate TMC programs as well. The driving factor is advertiser demand.

Moreover, the possibility that postage costs could rise by such amounts injects a harmful uncertainty into the use of the mail that affects mailing in future years as well. News media would be reluctant to make new investments in mailing efforts or technology if they faced potential rate hikes of that magnitude or more in the future.

Thus, postage increases of the sizes contemplated by the RNPRM inevitably will drive newspaper Marketing and Periodicals mail out of the system. Many newspaper mailers will have no option but to reduce their distribution or shift to more affordable alternatives. Even the proposals alone are causing newspapers to give more consideration to leaving the mail. The consequences to local news and distribution, as noted above, would be bleak.

Measures that drive away Periodicals mail especially should be avoided, because newspapers are valued by consumers who have paid money to receive them and add immeasurably to the value of the “mail moment.” As noted above, nearly 1,800 newspapers already have stopped publishing altogether since 2005, and their local communities and the Postal Service are the worse for it.

Above-CPI rate increases are not the only solution available. For some time, news publications and the Postal Service have worked together to address operational problems and inefficiencies. These efforts may help to explain why unit attributable costs for Periodicals have risen by only 1.8 percent per year over the past decade. RNPRM at 172. The Postal Service must continue to engage in serious cost-cutting, just as many newspapers have had to do. The RNPRM’s worksharing proposals could help these efforts by further encouraging the Postal

Service to implement fully improvements in pricing efficiency and operations for Periodicals.

NMA recommends that the Commission should give these initiatives, together with the worksharing requirements proposed in the RNPRM, an opportunity to improve matters before authorizing potentially calamitous rate increases.

IV. Changes Having the Magnitude Proposed in the RNPRM Should Be Made By Congress And Not By A Regulatory Agency

The price cap system unquestionably has financed market-dominant postal operations successfully without interruption since its enactment. The Postal Service continues to deliver mail six days a week; it has made progress towards reducing its costs; rate adjustments have been swifter and simpler; and mailers have benefitted from generally predictable and stable rates. The price cap has financed market-dominant mail despite a major recession[7] and slowed volume declines, while the value of the network continues to grow with the number of delivery points.

These are not symptoms of a system needing an overhaul.

Despite this success, the Commission has concluded, based on the debt on the Postal Service's balance sheet, that the Postal Service's finances are unstable. But as the Commission, Postal Service, and mailers all know, the Postal Service's negative balance sheet, which is the Commission's primary

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[7] The Commission applied the exigency provision in Section 3622(d)(1) to allow the Postal Service a temporary rate increase to offset its losses due to the recession of 2007-2009.

focus, owes its red ink to retiree benefit prefunding and amortization obligations imposed by Congress[8] and has nothing to do with current operations.[9] The Postal Service has not made the "required" payments since 2011 and has suffered no discernible adverse consequence. Nor has that debt prevented the Postal Service from serving the public without interruption for many years. That suggests that a regulatory agency should not use accounting losses arising from long-ignored statutory funding obligations as the premise for major changes to the postal system that would have nationwide impact.[10]

To the extent that the legislated prefunding and amortization obligations pose a problem, Congress is the only entity properly in position to consider how best to reconcile those costs with the ramifications on the Postal Service and mailers. Only Congress has the authority to repeal the prefunding obligation and other aspects of the postal system. As a regulator, the Commission has no authority over the amortization requirements and is unable to develop a comprehensive solution because its jurisdiction is confined to rates and reports. It cannot affect the amortization provisions, it cannot affect delivery frequency or

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[8] This non-operational cost was imposed solely in order to satisfy budgetary "scoring" accounting requirements in late 2006.

[9] The Postal Service's Five-Year Strategic Plan notes that the lump sum and amortized retiree health, FERS, and CSRS benefits account for 84 percent of its accounting "losses" since 2007. *USPS Five Year Strategic Plan 2020-2024,* at 12.

[10] If prefunding defaults and negative balance sheet were indeed an existential problem, the Postal Service would have ceased operations years ago, and the National Guard would be delivering the mail. That clearly has not happened. That is evidence that GAAP-based accounting principles may not provide an accurate view of the financial situation of a government entity such as the Postal Service.

postal employee health and retirement plans, and it has no voice in labor relations.[11]

Congress alone is in position to determine whether the unanticipated volume declines since enactment of the PAEA should require modifying the retiree benefit funding obligations or not. Congress did not anticipate these volume declines, and therefore did not consider whether a consequence of such declines should be substantial above-CPI rate increases on the remaining mail in order to fund amortized retiree benefits. The Commission should pause its proposals to raise rates and defer to Congress to address these consequences of the funding obligations on rates, mailers, postal employees, and the Postal Service.[12]

V. Conclusion

The price cap system that governs the rates for market-dominant products has been successful for over a decade. The RNPRM proposes to replace that system in order to "cure" an unrelated balance sheet "problem" caused by neither market-dominant mail nor the system by which its rates are regulated. But the new system would create new problems, including unpredictable and potentially unlimited rate increases, which in turn would weaken the Postal Service's

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11 Even whether the Commission has the legal authority to allow the Postal Service to exceed or circumvent the price cap established by Congress is in dispute.

12 NMA notes that H.R. 2382, which would repeal the prefunding obligation, currently has more than 300 co-sponsors.

incentives to restrain costs while causing permanent harm to its efforts to retain advertising and subscriber mail in the system.

NMA has no doubt that the increases contemplated by the RNPRM would drive both TMC and editorial products out of the mail. With newspapers already shortening days of distribution and many weekly newspapers closing, the loss of this mail will spiral downward quickly.

Accordingly, the News Media Alliance respectfully recommends that the Commission make no changes in the current system for regulating the prices of market-dominant postal products but, instead, should defer to the Congress to make the fundamental policy decision regarding the direction of the nation's Postal Service, the prefunding obligation, and rates.

Respectfully submitted,

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