

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

SCOPE OF REVIEW OF SYSTEM FOR
REGULATING MARKET-DOMINANT RATES AND
CLASSES

Docket No. RM2016-9

**PETITION OF THE UNITED STATES POSTAL SERVICE FOR THE INITIATION OF A
PROCEEDING TO CLARIFY THE SCOPE OF THE REVIEW OF THE SYSTEM FOR
REGULATING MARKET-DOMINANT RATES AND CLASSES**

(April 7, 2016)

The Postal Service requests that the Commission promptly initiate a rulemaking proceeding to clarify the scope of its forthcoming review of the market-dominant regulatory system under 39 U.S.C. § 3622(d)(3). That review covers “the system for regulating rates and classes for market-dominant products established under this section [i.e., Section 3622],” and contemplates a process by which (1) the Commission must determine whether the existing “system” is achieving the statutory objectives, taking into account the statutory factors, and (2) if the Commission concludes that the existing “system” is not doing so, must modify the system or adopt an alternative system “as necessary to achieve the objectives.” The Commission is to conduct the review “[t]en years after the date of enactment of the Postal Accountability and Enhancement Act” (PAEA), meaning that the review proceeding must begin in December 2016.

The Postal Service requests that the Commission clarify its position, following the solicitation and receipt of comments by interested parties, as to which aspects of the current market-dominant regulatory structure fall within the “the system for regulating rates and classes for market-dominant products established under [Section 3622]” for

purposes of Section 3622(d)(3), and thus are subject to potential modification or replacement as part of the review. As discussed below, the Commission is clearly authorized to address the scope of the review prior to the 10-year anniversary of the PAEA (i.e., in advance of the review itself). Furthermore, the Postal Service and other stakeholders planning to participate in the review would benefit from the Commission addressing this threshold issue in advance of the beginning of the review proceeding, to allow parties to efficiently prepare for the review and ensure that it can be conducted in a timely manner. Expeditious conduct of the review is particularly important considering the significant impact that the Commission's ultimate decision—whatever that may be—will have on the Postal Service's financial condition moving forward. As a result, time and certainty are of the essence.

I. THE COMMISSION IS AUTHORIZED TO ADDRESS THE SCOPE OF THE REVIEW IN ADVANCE OF THE REVIEW ITSELF

The Commission has the clear authority to conduct a proceeding to consider the scope of the Section 3622(d)(3) review at this time. The plain language of the statute only ties the 10-year anniversary of the PAEA to the conduct of the “review” of the market-dominant regulatory “system.” Thus, at most, the statute only precludes the Commission from conducting the two steps of the “review” of the “system” prior to December 20, 2016: first, considering whether the “system” is achieving the objectives, taking into account the factors, and second, considering what changes to the “system” need to be implemented in order to achieve the objectives, if the Commission finds that the existing “system” is not meeting the objectives, taking into account the factors.

By contrast, this petition requests only that the Commission clarify its view as to the scope of its review under Section 3622(d)(3): that is, to address which provisions of

the regulatory structure presently governing market-dominant products are subject to the review when it eventually occurs. To resolve this issue, the Commission must simply interpret the meaning of the statutory phrase “system for regulating rates and classes for market-dominant products established under [Section 3622]” as set forth in Section 3622(d)(3). Nothing in the statute precludes the Commission from addressing this issue of statutory interpretation at this time: resolving this interpretative issue is clearly distinct from conducting the review itself, because the Commission would in no way be conducting either step that constitutes the “review.” In particular, the Commission, by determining the scope of the “system” subject to the review, would in no way prejudge whether the existing “system” is achieving the objectives, taking into account the factors, much less analyze potential ways of modifying or replacing that “system.”

II. ADDRESSING THIS ISSUE IN ADVANCE OF THE REVIEW WOULD BENEFIT INTERESTED PARTIES AND ENSURE THE EFFICIENT CONDUCT OF THE REVIEW

Resolving this threshold interpretative question prior to the review also has clear benefits, and no discernable drawbacks. First, the Postal Service and other interested parties would benefit from understanding, in the advance of the review itself, what the Commission understands to be within the scope of the review. The Postal Service anticipates that it and other stakeholders are going to devote significant time to study the issues, consult experts, and develop their positions in preparation for the forthcoming review proceeding: a substantial undertaking, not least because it is the first such review since the PAEA was enacted. To ensure that these efforts proceed in the most efficient, useful, and cost-effective manner possible, it would be very helpful to

understand the parameters of what the Commission believes will be at issue in the review proceeding well in advance of December 2016.

Most significantly, the Postal Service is aware that a variety of mailer associations have previously asserted that Section 3622(d)(3) does not authorize the Commission to review or replace the current price cap structure, including the CPI-U price cap and the exigency provision. Needless to say, the Commission's position as to whether the review encompasses the price cap is of critical importance, since the price cap is the central element of the existing market-dominant ratemaking system. There is simply no rational reason to leave that question formally unaddressed prior to the beginning of the review: no interest is served by doing so, and the resulting lack of certainty would simply make it more difficult for the Postal Service and other stakeholders to prepare for the review. The same is true for other provisions of the present market-dominant regulatory structure for which stakeholders may hold different views as to whether they fall within the scope of the "system" for purposes of Section 3622(d)(3).

Addressing the scope of Section 3622(d)(3) in advance would also enable the review to be conducted more efficiently. In particular, the review proceeding would be able to focus on the two substantive aspects of the review itself—whether the statutory objectives are being achieved (taking into account the factors) by the existing "system," and whether changes need to be made—without being sidetracked or delayed by the need to also resolve threshold disputes as to what the review covers. Indeed, the Commission logically cannot decide whether the "system" is achieving the objectives (taking into account the factors) without specifying what the "system" actually is for

purposes of Section 3622(d)(3). Thus, if the Commission waited until after the beginning of the review to consider its scope, it could unduly delay the entire review process and, ultimately, the Commission's final decision on any potential modifications or replacement of the current system.

Any such delay in the conduct of the review would be completely unwarranted. While there are undoubtedly differences in viewpoint between the Postal Service and other parties as to appropriate outcome of the review, it is clear that the Commission's ultimate determination—whatever that may be—will significantly affect the Postal Service's financial situation, and hence is a vital question of postal policy. Therefore, it is critical that the Commission effectuate its responsibilities with respect to the review in a timely manner, so as to provide clarity to the Postal Service, Congress, and other postal stakeholders about the market-dominant regulatory structure that it concludes should be in place moving forward. The Commission should therefore address any preliminary issues now, rather than waiting unnecessarily for the review itself to begin.

III. CONCLUSION

For the foregoing reasons, the Postal Service requests that the Commission promptly initiate a rulemaking proceeding to address the scope of its forthcoming review under 39 U.S.C. § 3622(d)(3). The Postal Service also urges the Commission to establish a procedural schedule for receipt of initial and reply comments that ensures the proceeding is completed in a timely manner, well in advance of the beginning of the review itself. The Postal Service therefore requests that the Commission consider and address this legal question through an expeditious rulemaking, rather than an open-ended public inquiry docket.

Respectfully submitted,

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