

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

CALCULATION OF UNUSED RATE ADJUSTMENT
AUTHORITY

Docket No. RM2011-2

**PETITION FOR RULEMAKING REGARDING THE CALCULATION OF UNUSED
RATE ADJUSTMENT AUTHORITY**
(November 10, 2011)

The Postal Service hereby requests clarification and, if necessary, amendment of the Commission's Rules of Practice relating to calculation of unused rate adjustment authority under the price cap for market dominant products.

On October 6, 2010, R. Andrew German, Managing Counsel of the Pricing and Product Development section in the Postal Service's Law Department, sent a letter to Shoshana M. Grove, Secretary for the Commission, seeking clarification of the current amount of unused rate authority (hereinafter "German Letter"). Mr. German noted that more than 12 months had passed since the previous Type 1 rate adjustment for market dominant products and alluded to some uncertainty at the September 30, 2010, press conference regarding the Commission's final order in Docket No. R2010-4. Mr. German inquired whether the definitive amount of unused rate authority to be used in the Postal Service's financial plans was (1) that according to the calculation in 39 C.F.R. § 3010.26(c)(1)-(3) for rate adjustments more than 12 months apart or (2) the 12-month Consumer Price Index for All Urban Consumers (CPI-U) data provided on the Commission's website, which purport to show the applicable price cap.

On October 12, 2010, Stephen L. Sharfman, General Counsel for the Commission, replied to the German Letter. Mr. Sharfman characterized his letter

(hereinafter “Sharfman Letter”) as providing “informal advice on the interpretation of [the Commission’s] Rules.” Mr. Sharfman distinguished between Type 1-A rate adjustments within a price cap calculated from the 12-month average CPI-U and Type 1-B rate adjustments, which pertain to unused rate adjustment authority and to which 39 C.F.R. § 3010.26 applies. Mr. Sharfman also acknowledged that little attention was given to the possibility of deflation in Docket No. RM2007-1, in which the rate adjustment rules were developed, but explained that

[t]he rules reflect the generally shared expectation that if the Postal Service chose to defer an annual rate adjustment, the result would be that it would bank positive rate adjustment authority. In fact, following the rate adjustment approved in Docket R2009-2 some negative rate adjustment authority accrued. This unexpected event does not alter the calculation of the annual limitation applicable to a Type 1-A rate adjustment.

The day after the Sharfman Letter was posted on the Commission’s website, a coalition of business mailers known as the Affordable Mail Alliance (AMA) filed a response to the German and Sharfman Letters (hereinafter “AMA Response”).¹ The AMA agreed with the Postal Service that the Commission should offer definitive guidance to clarify Mr. German’s question. AMA Response at 1. The AMA also disputed the legality, effectiveness, and merits of the Sharfman Letter. *Id.* at 2, 5-8. In a departure from the German Letter, however, the AMA reframed the question at hand as whether, in light of recent negative inflation averages, the calculation in 39 C.F.R. § 3010.26(c)(1)-(3) applies in all cases, or only when the “additional unused rate

¹ Response of the Affordable Mail Alliance to October 6 Letter-Petition of the United States Postal Service and October 12 Letter-Ruling of the Office of General Counsel, October 13, 2010. Although the AMA Response styles itself as pertaining to Docket No. R2010-4, the Commission’s website has not organized it within that docket. Rather, the AMA Response currently appears to enjoy the same undocketed status as the German and Sharfman Letters.

authority” under 39 C.F.R. § 3010.26(c)(2) is positive. *Id.* at 3. The AMA concluded that the only legally correct answer is that unused rate authority must be calculated according to 39 C.F.R. § 3010.26(c)(1)-(3) without regard to whether inflation is positive or negative, resulting in a lower amount of current unused rate adjustment authority. *Id.* at 8-19.

In order to obtain a definitive answer on which it and the mailing community can rely, the Postal Service respectfully requests formal clarification of whether 39 C.F.R. § 3010.26(c)(1)-(3) or the CPI-U data provided on the Commission’s website determine the amount of unused rate adjustment authority when rate adjustments are more than 12 months apart. The Postal Service believes that a formal determination will provide the necessary conclusiveness, in light of the disclaimer in the Sharfman Letter and the procedural questions raised by the AMA.² If amendment to the Commission’s rules is necessary to give effect to the Commission’s determination, then the Postal Service asks that the Commission take such action. The Postal Service believes that a formal proceeding on this question would benefit all interested parties.

² The Postal Service does not take a position on the validity of the AMA’s procedural objections at this time.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

R. Andrew German
Managing Counsel, Pricing and Product
Development

Jacob Howley

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-8917, Fax -5628
jacob.d.howley@usps.gov
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