

October 27, 2021

T 202.344.8281
F 202.344.8300
MField@Venable.com**VIA FIRST-CLASS MAIL AND EMAIL**

Nabeel R. Cheema
Chief Counsel, Pricing and Product Support
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

Dear Mr. Cheema:

We are writing regarding the proposed rule published in the Federal Register on September 30, 2021, that would change the way the Postal Service calculates postage for Periodicals pending authorization. *See* Proposed Rule, Periodicals Pending Authorization Postage, 86 Fed. Reg. 54,142 (Sept. 30, 2021). Our clients, the Association for Postal Commerce (“PostCom”) and MPA—the Association of Magazine Media (“MPA”) generally support the proposed rule as an improvement on the current process used for determining postage rates for Periodicals pending authorization, a process currently subject to unnecessary complexities leading to unfortunate disputes over eligibility and postage refunds. The proposed rule, however, appears to be a change in prices that has not been submitted to the Commission, and is therefore in violation of 39 C.F.R. Part 3030. It may have classification impacts as well.

Under existing DMM § 207.5.2.1 and 5.2.2, a publisher or news agent may mail a Periodical while its application for Periodicals authorization is pending, but it may not mail the Periodical at Periodicals prices. Instead, it can pay the applicable USPS Marketing Mail, Bound Printed Matter, and Parcel Select prices or single-piece Priority Mail, First-Class Mail, and First-Class Package Service—Retail prices while the application is pending, and receive a refund equal to the difference between the Periodicals price and the price paid once the application is approved. Thus, while the application is pending, the publisher or news agent will pay a rate that has been duly filed with and approved by the Commission. Upon approval, it will receive a refund for the difference between that duly authorized rate and the duly authorized Periodicals rate the mailing would have been eligible for if it had received Periodicals authorization at the time of mailing.

Under the proposed rule, however, the publisher or news agent would not pay the existing price applicable to the mail absent Periodicals authorization while the application is pending. Instead, it will pay a price determined as a percentage of the Periodicals price. For instance, if the mailing is entered as USPS Market Mail Flats while the authorization is pending, it would pay 63% of the corresponding Periodicals price. This new price has not been filed with or approved by the Commission.

October 27, 2021

Page 2

The Postal Service might intend for the percentage of Periodicals price to equal the price the pending Periodicals would pay under the existing rules. But the Federal Register notice does not provide this justification, nor does it provide any calculations demonstrating the equivalence between the two rates. PostCom members have done some preliminary analysis that indicates publishers could see significant changes in the postage they would pay pending authorization—both increases and decreases—depending on the characteristics of individual mailings. While there are numerous factors at play, making it difficult to identify the precise magnitude of the changes, we are confident that Periodicals pending authorization will pay different prices under the proposed rules than they do under the current rules.

Moreover, the notice does not state whether the stated percentages will change if prices change for either Periodicals or the mail types listed in proposed Exhibit 5.2.3. Functionally, the Postal Service has created new prices for Periodicals pending authorization tied to the Periodicals rates in effect at any point in time.

The Commission’s rules regulating rates for market dominant products apply “whenever the Postal Service proposes to adjust a rate of general applicability for any market dominant product, which includes the addition of a new rate, the removal of an existing rate, or a change to an existing rate.” 39 C.F.R. § 3030.100(a). There is no existing rate for Periodicals pending authorization in the Mail Classification Schedule or Notice 123. The changes described in the Federal Register thus appear to create a new rate requiring compliance with 39 CFR Part 3030.

We acknowledge the proposed change would apply to a limited volume and may not significantly increase the rates Periodicals pending authorization currently pay. To the extent the Postal Service believes this change represents a de minimis rate increase, it should comply with the requirements of 39 C.F.R. § 3030.129.

In raising these issues, we do not intend to obstruct the implementation of the new methodology. But failing to resolve these issues at the pre-implementation stage could lead to controversies later on, especially as the rate applied to pending Periodicals changes in the future (through changes to the percentages, changes to the Periodicals rates, or changes to the relationship between Periodicals rates and the rates for the mail types listed in proposed Exhibit 5.2.3). Rather than risk disruption to a beneficial initiative, the Postal Service should proceed conservatively and present these changes as a rate filing with the Commission, either on its own or in conjunction with the next general rate filing in April 2022. At a minimum, we suggest that the Postal Service file the rates with the Commission on a conditional basis and ask for a ruling as to whether the changes must comply with 39 C.F.R. Part 3030.

October 27, 2021
Page 3

Best regards,

Matthew D. Field

Matthew D. Field

Counsel to the Association for Postal Commerce

Eric S. Berman

*Counsel to MPA—The Association of Magazine
Media*

cc: Sharon Owens, Vice President, Pricing and Costing
Elke Reuning-Elliott