

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

PUBLIC INQUIRY ON CHANGES ASSOCIATED
WITH THE DELIVERING FOR AMERICA PLAN

Docket No. PI2023-4

**OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO THE
MOTION OF THE GREETING CARD ASSOCIATION FOR
ISSUANCE OF AN INFORMATION REQUEST**
(August 17, 2023)

On August 14, 2023, the Greeting Card Association (GCA) moved for the Postal Regulatory Commission (Commission) to issue information requests asking that the United States Postal Service (Postal Service) explain the methods it used to develop the projections used in the *Delivering for America Plan* (DFA Plan) and producing the “workpapers, analyses, or studies” underlying those projections. See GCA Motion at 2. As demonstrated below, however, GCA’s Motion should be denied on the bases that the information requested is outside the stated purpose of these proceedings, would not advance a legitimate regulatory objective within the scope of the Commission’s authority, unjustifiably intrudes on Postal Service managerial independence, and impermissibly seeks to revisit previously rejected arguments for regulating market dominant rates.

I. ARGUMENT

On March 23, 2021, the Postal Service published the DFA Plan, a ten-year strategic plan articulating a broad guiding vision with high-level future initiatives to address the Postal Service’s long-standing financial, service, and operational

challenges. The Plan is designed to achieve two fundamental goals: service excellence, defined as meeting or exceeding 95 percent on time delivery across all product categories, and financial sustainability, by enabling the Postal Service to achieve break-even performance over the next ten years while making the necessary investments in people and infrastructure.

On April 20, 2023, the Commission established this proceeding as a vehicle to gather information about changes to the postal network proposed in the DFA Plan. See Order 6488 (Apr. 20, 2023) at 4.

In its June 21, 2023, denial of the Postal Service's Motion for Reconsideration of Order No. 6488, the Commission clarified "that the docket was not intended as an advisory opinion process on the plan" but rather "to provide a forum to seek additional information about certain planned initiatives, such as the creation and implementation of sorting and delivery centers (S&DCs)." See Order 6548 (Jun. 21, 2023) at 2. The Commission further clarified that the docket was neither "intended to be a comprehensive review of the entire plan" nor established "to review areas of the DFA Plan beyond [the Commission's] authority." *Id.* at 9.

GCA now asks that the Commission issue information requests asking that the Postal Service:

explain fully the method(s) used to develop the projections contained in *Delivering for America*, including (without limitation) projections of (a) market-dominant volume, by product, (b) competitive product volume, by product, (c) the rate of substitution of electronic media for market-dominant mail (referred to on p. 42 of *Delivering for America*), (d) the revenues anticipated from the volumes projected under (a) and (b) above., and (e) the additional costs anticipated from execution of the DfA plan

GCA Motion at 2. GCA also asks that the Postal Service produce the "workpapers, analyses, or studies" underlying those projections. See *id.*

A. GCA's Proposed Requests Exceed the Purpose of this Proceeding.

Notwithstanding the Commission's clarification that these proceedings are not intended to comprehensively review the entire DFA Plan, GCA proposes that the Commission do precisely that: "It is GCA's view that unless these projections are fully explained and the reasoning governing them made clear, the entire DfA plan cannot be evaluated." GCA Motion at 1.

Indeed, beyond its professed wish to evaluate the entire DFA Plan, GCA does not even hint at how the proposed projections or, more precisely, the methods used to develop the projections, might advance the Commission's consideration of the initiatives being pursued pursuant to the DFA Plan. Rather, GCA simply concludes that because "[t]he DfA plan depends pervasively on certain projections" about declining market dominant mail volume and increasing competitive mail and electronic mail volumes, and "that unless these projections are fully explained and the reasoning governing them made clear, the entire DfA plan cannot be evaluated." See *id.*

As the Commission has made clear, this proceeding was established to gather information about the specific initiatives identified in the DFA Plan that may implicate the Commission's regulatory responsibilities and does not serve as a means to disassemble the DFA Plan and intimately test its underlying rationale. See Order 6548 at 2, 9. Because GCA's proposed information requests exceeds the scope of these proceedings, GCA's Motion seeking issuance of those requests should be denied.

B. GCA's Proposed Requests do not Advance a Legitimate Regulatory Objective Within the Scope of the Commission's Authority.

In addition to exceeding the stated scope of these proceedings, GCA's proposed requests do not advance any legitimate regulatory objective within the scope of the

Commission's authority. In that regard, the Commission has explained that it believes this proceeding furthers its oversight authority under title 39, that is to say, the authority to assess whether the DFA Plan initiatives comport with statutory and regulatory requirements. See Order 6548 at 10-12.

Significantly, as the Commission has recognized, any such investigation into the DFA Plan must be forward looking—*i.e.*, whether implementing the initiatives triggers obligations under a statutory or regulatory requirement:

[The] DFA Plan initiatives may implicate Commission functions and obligations under Title 39, including but not limited to: the regulation of postal rates and classifications under Section 3622, the review of potential changes in the nature of postal services under Section 3661, the impact on service standards under Section 3691, and the Commission's review of performance goals under Section 3653(d) and the corresponding mandate to provide recommendations as to the protection and promotion of Title 39's public policy objectives.

* * *

Whether and how certain initiatives would impact costs or rates, the speed of delivery, and retail accessibility are all reasonable inquiries under the Commission's statutory authority, and similar initiatives have been evaluated in prior Commission proceedings. Indeed, the deployment of new facilities and other network changes may impact costs, service performance, and retail accessibility and may constitute a change in the nature of service under 39 U.S.C. § 3661. ... Seeking information to determine whether the obligation to file an advisory opinion under 39 U.S.C § 3661 is triggered, or to take action with regard to any other statutory provision, is well within the Commission's authority under 39 U.S.C. § 503.

Id. at 10-11. GCA's proposed requests, however, do not implicate any potential impact of the DFA Plan that might implicate Commission functions under title 39; rather GCA seeks only to explore the rationale underlying the DFA Plan, *i.e.*, the projections upon which the DFA Plan was based. Indeed, GCA's Motion makes no effort at all to attempt to explain how the requested projections and methodology might be used to evaluate

the impact of the DFA Plan or its compliance with any statute or regulation. And, while such requests might conceivably be appropriate in an advisory opinion proceeding under 39 U.S.C. § 3661 (assuming for the sake of argument that the advisory opinion process would ever be appropriate for the plenary review of a 10-year strategic plan), the Commission has made it clear that “this docket is not intended as an advisory opinion process on the entire DFA Plan.” *Id.* at 9 (citing Order No. 6488 at 4); *see also id.* at 2.

Because the information GCA seeks by its proposed requests does not advance a legitimate regulatory purpose within the scope of the Commission’s authority, GCA’s requests are improper in the context of these proceedings and the Motion should, therefore, be denied.

C. GCA’s Proposed Requests are an Unjustified Intrusion into Postal Service Managerial Independence.

The Postal Reorganization Act (PRA) embodies Congress’s intent “to minimize external intrusions on the Postal Service’s managerial independence.” *See Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833, 860 (E.D. Pa. 2020) (citing *LeMay v. USPS*, 450 F.3d 797, 800 (8th Cir. 2006) (citing *Buchanan v. USPS*, 508 F.2d 259, 262 (5th Cir. 1975)). And, while the scope of the Commission’s role was expanded in some specific and targeted respects in the Postal Accountability and Enhancement Act (PAEA), the fundamental recognition of managerial independence remained; thus, the PAEA gave the Postal Service the “primary responsibility for both long-range planning and day-to-day operations.” Docket No. C2012-2, Order Dismissing Complaint, Sept. 10, 2012 (Order No. 1463) at 9. Indeed, the Commission has recognized that:

[w]hereas the Commission has primary responsibility for evaluating compliance with title 39, the Postal Service has primary responsibility for developing postal operations that meet that requirement. As a practical matter, the Commission may direct the Postal Service to comply with the requirements of title 39 (which may require the Postal Service to make operational changes), but it is normally within the purview of the Postal Service to develop the specific operational changes necessary to achieve that goal.

Docket No. C2013-10, Order Granting Motion for Reconsideration and Granting Motion to Dismiss, May 27, 2015 (Order No. 2512) at 17 n.30.

As discussed above, however, GCA proposes information requests that bear solely on the Postal Service's strategic operational decision-making underlying the DFA Plan: "It is GCA's view that unless these projections are fully explained and the reasoning governing them made clear, the entire DfA plan cannot be evaluated." GCA Motion at 2. But, not only has the Commission made clear that evaluating the DFA plan is not the intended purpose of this public inquiry docket, scrutinizing and second-guessing the Postal Service's strategic operational decision making embodied in the DFA Plan directly conflicts with the Postal Service's well-recognized independence with respect to strategic planning and operational management. GCA's requests are not only outside the scope of this docket but an improper infringement on Postal Service managerial independence and should, therefore, be denied.

D. GCA's Requests Impermissibly Seek to Revisit its Previously Rejected Arguments for Regulating Market Dominant Rates.

Notwithstanding the Commission's stated purpose and scope of this proceeding, GCA seeks to use this public inquiry to, once again, question the propriety of the Postal Service Governors' pricing decisions. Specifically, the 10-Year Review rules expanded the Postal Service's pricing authorities to include density, retirement, and non-

compensatory class authorities, and GCA's Motion specifically calls into question the decision to use all, or nearly all, available pricing authority in prior and future rate cases:

DfA set out a plan to utilize all the market-dominant pricing authority provided by the statute and the new rules enacted in Docket RM2017-3. The revenue projections in DfA apparently rest on this postulate, but since it does not necessarily imply a change in the nature of service it would apparently not fall within section 3661. Consequently, the projections should be explained and justified in this proceeding.

GCA Motion at 2.

As the Commission has repeatedly held, however, its oversight of the Governors' pricing decisions is limited to whether prices comply with the requirements of title 39 and the Commission's regulations. As such, the Commission has repeatedly refused mailers' requests to take direct action against consecutive pricing decisions that use all available pricing authority and to the contrary has recognized that it is within the authority of the Postal Service to use the pricing authority available to us. Pricing decisions using all available authority need not be revisited nor justified in this proceeding either.

In Docket No. R2022-1, for example, commenters objected to the Postal Service's request to use all of its available pricing authority given that it had also done so in the preceding market dominant price case. This, the commenters argued, was neither a "prudent" pricing decision nor a "judicious" use of pricing authority, contrary to the Commission's expectations in granting additional pricing authorities in the 10-Year Review (see, e.g., Docket No. R2022-1, Comments of MPA – The Association Of Magazine Media, May 6, 2022, at 2; Docket No. R2022-1, Comments of the Association for Postal Commerce, May 6, 2022, at 2), nor could the current system of regulating rates be relied upon to produce prudent or judicious pricing decisions by the Postal

Service. See Docket No. R2022-1, Comments of the National Postal Policy Council, May 6, 2022, at 6-7.

It must be noted, as an initial matter, that the fact that the Postal Service has utilized the full extent of the limited additional pricing authority since it was provided reflects good judgment and common sense given its financial condition, which is, after all, the definition of “judicious.” Moreover, the Commission rejected these arguments out of hand, noting that its review is limited to whether the Postal Service’s proposed rates comply with applicable law and that its expectations in granting the Postal Service new pricing authorities were not frustrated. Specifically, the Commission held that setting prices is, by statute, left to the business judgment of the Governors; that there was no factual basis before it “to find that the Postal Service should not or cannot use the full scope of authority granted to it”; and that, in any event, nothing in the law limits the Postal Service from using all available pricing authority if it so chooses. (Docket No. R2022-1, Order on Price Adjustments Etc., May 27, 2022, at 22-23 (Order No. 6188)).

Apparently undaunted, commenters renewed these arguments and objections in the next two price cases, seeking in addition the remedy that the Commission begin its review of the system for regulating rates immediately rather than waiting the planned five years. See Docket No. R2023-1, Comments of the National Postal Policy Council, Nov. 7, 2022, at 2, 5-7; Docket No. R2023-1, Comments of the Association for Postal Commerce, Nov. 7, 2022, at 1-2, 6; Docket No. R2023-2, Comments of the Association for Postal Commerce, May 10, 2023, at 1; Docket No. R2023-2, Comments of the National Postal Policy Council, May 10, 2023, at 2, 5; Docket No. R2023-2, Comments of the Greeting Card Association, May 10, 2023, at 1-2.

The Commission, restating its findings and reasons from Docket No. R2022-1, twice rejected the arguments and noted in addition that the requests to review the system for regulating rates were outside of the scope of the price cases before it. See Docket No. R2023-1, Order on Price Adjustments Etc., Nov. 28, 2022, at 21-24 (Order No. 6341); R2023-2, Order on Price Adjustments Etc., May 31, 2023, at 27-30 (Order No. 6526).

Likewise here, GCA has provided no basis in fact or law to second-guess the pricing decisions of the Governors, nor has GCA done anything other than use a docket designed for different purposes to repeat earlier, rejected arguments that the Commission should revisit the system for regulating market dominant rates earlier than it has planned.

II. CONCLUSION

GCA's Motion should be denied on the bases that the information requested is outside the stated purpose of these proceedings, would not advance a legitimate regulatory objective within the scope of the Commission's authority, unjustifiably intrudes on Postal Service managerial independence, and impermissibly seeks to revisit previously rejected arguments for regulating market dominant rates.

Respectfully submitted,

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