

Nonprofit Mailers Face Unprecedented Challenges:

What Does The End of the PRC's 10-Year Review Mean?

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VENABLE LLP



Alliance
of Nonprofit
Mailers

Who We Are

- **Eric Berman**
 - Venable Partner, Nonprofit Organizations Practice Group
- **Stephen Kearney**
 - Executive Director of the Alliance of Nonprofit Mailers since 2014
 - ANM the leading advocate for nonprofit users of mail since 1980
 - **Formerly:**
 - Senior Executive, U.S. Postal Service
 - Co-Chair, Mailers' Technical Advisory Committee
 - Economist, U.S. Department of the Treasury



Postal Regulation: 2006 - Today

December 2006

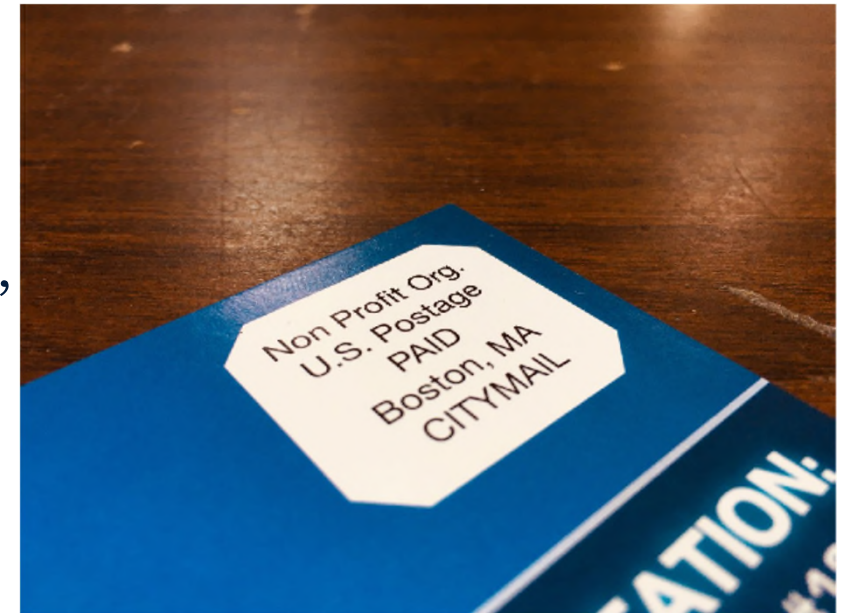
- Postal Accountability and Enhancement Act (PAEA), Pub. L. 109–435, 120 Stat. 3198
 - Bipartisan legislation changed process for setting postal rates
 - Relevant portion codified at 39 U.S.C. 3622

Key PAEA Provisions

- Competitive products vs. market dominant products
- CPI Cap
- Retirement benefits pre-funding
- Review of ratemaking system in 10 years

PAEA Provisions

- **Product classification**
 - **Competitive** – e.g., Priority Mail, Priority Mail Express, First-Class Package Service, USPS Retail Ground
 - **Market Dominant** – e.g., First-Class Mail, Marketing Mail, Periodicals
 - Nonprofit orgs often purchase market dominant mail products, including single-piece first class, flat-shaped marketing mail, letters, newsletters, and magazines



PAEA Provisions (cont'd)

- **CPI Rate Cap**
 - **Requirements** – “The system for regulating rates and classes for market-dominant products shall ... include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer Price Index for All Urban Consumers...” 39 U.S.C. § 3622(d)(1)
 - **“Exigency” Exception** – Congress expressly included limited exception to CPI cap requirement
 - “reasonable” “equitable and necessary” above-CPI price changes “due to either extraordinary or exceptional circumstances”

PAEA Provisions (cont'd)

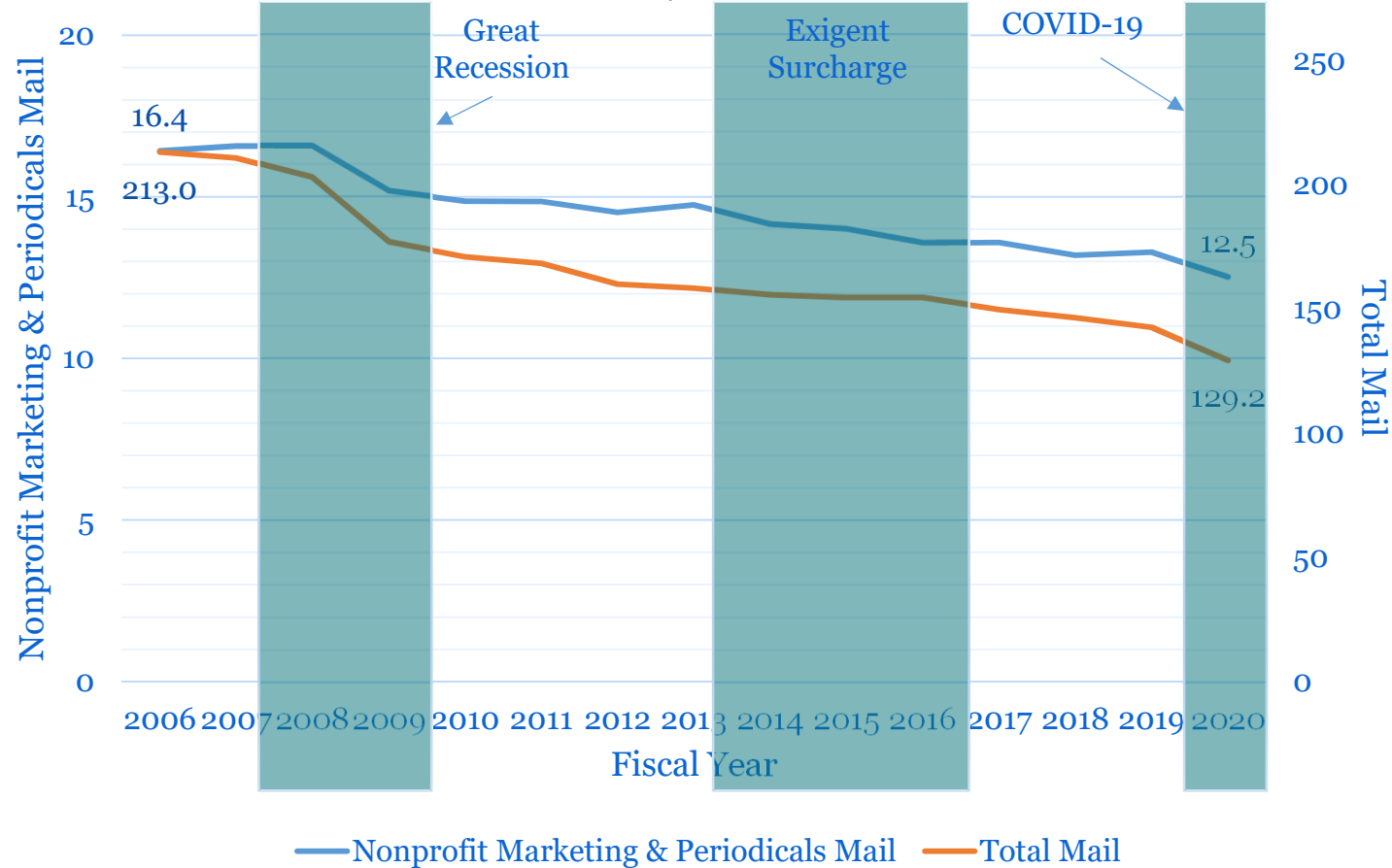
- **Importance of the CPI cap:**
 - “The **centerpiece** of [PAEA] is a price cap limiting increases to the rate of inflation which ensures rate stability and predictability for the nation’s mail users, and provides incentives for the Postal Service to reduce costs and operate efficiently.” PRC (Sept. 2010)
 - “The postal community broadly supported replacing cost-of-service ratemaking with a price cap model. The price cap model simplifies the rate-setting process and provides greater accountability for the Postal Service.” *Id.*
 - Predictability and stability ... allows mailers to better plan their mailing and could allow them to increase the amount of business they do with the Postal Service. **Of primary importance**, then, is the establishment of a regulatory system that will provide for limits on the percentage changes in Postal Rates.” (Leg. History, 2004)

PAEA Provisions (cont'd)

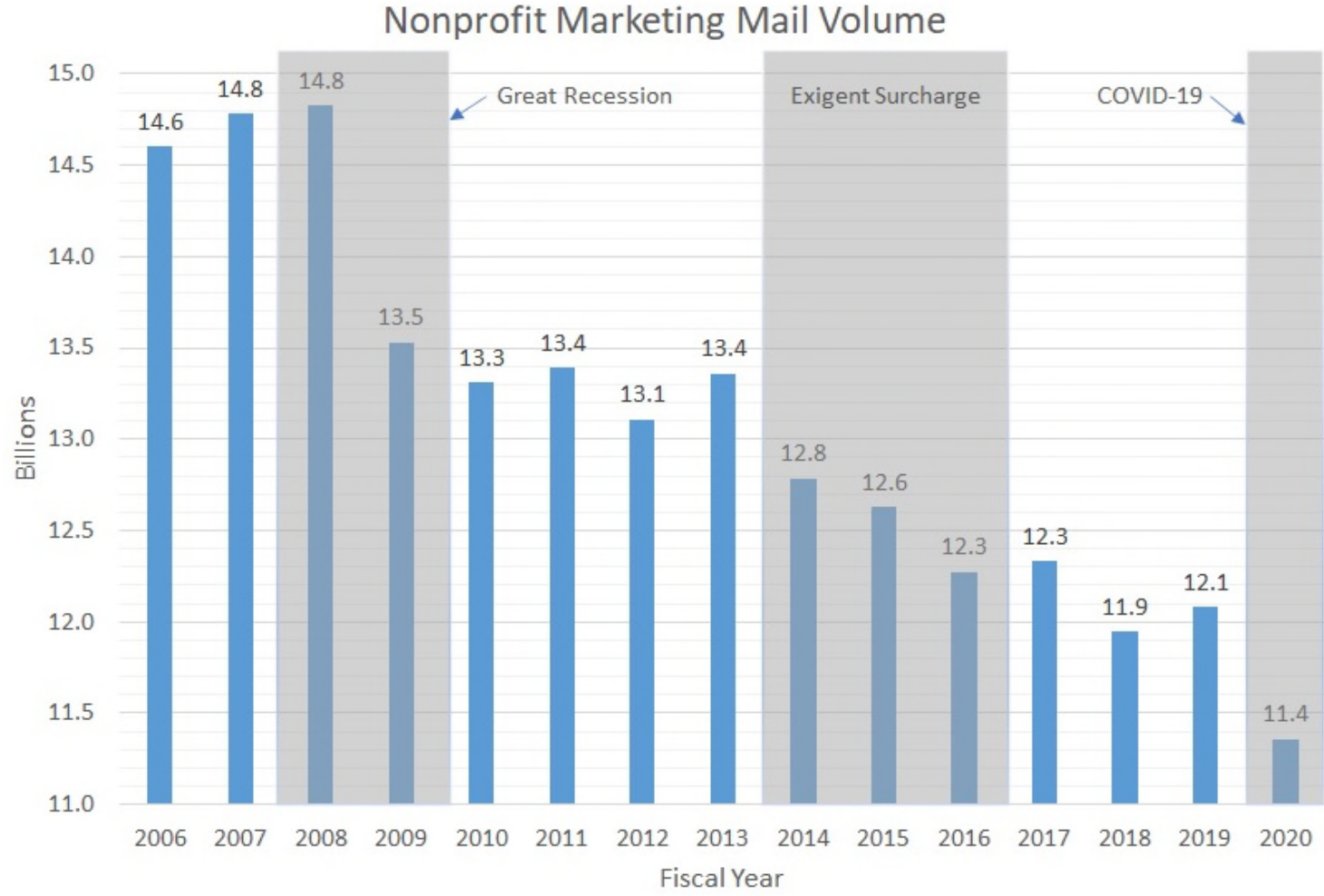
- **Retirement pre-funding**
 - PAEA imposes on Postal Service an obligation to pre-fund retiree health benefits
 - Retirement pre-funding obligations, not lack of revenue, have caused USPS balance sheet losses
- **10-Year Ratemaking Review**
 - 10 years after PAEA's enactment, PRC required to review market dominant ratemaking system
 - Meeting statutory objectives? Taking into account various factors?
 - If not, PRC may modify system or adopt alternative system

Mail Volume During the PAEA Era

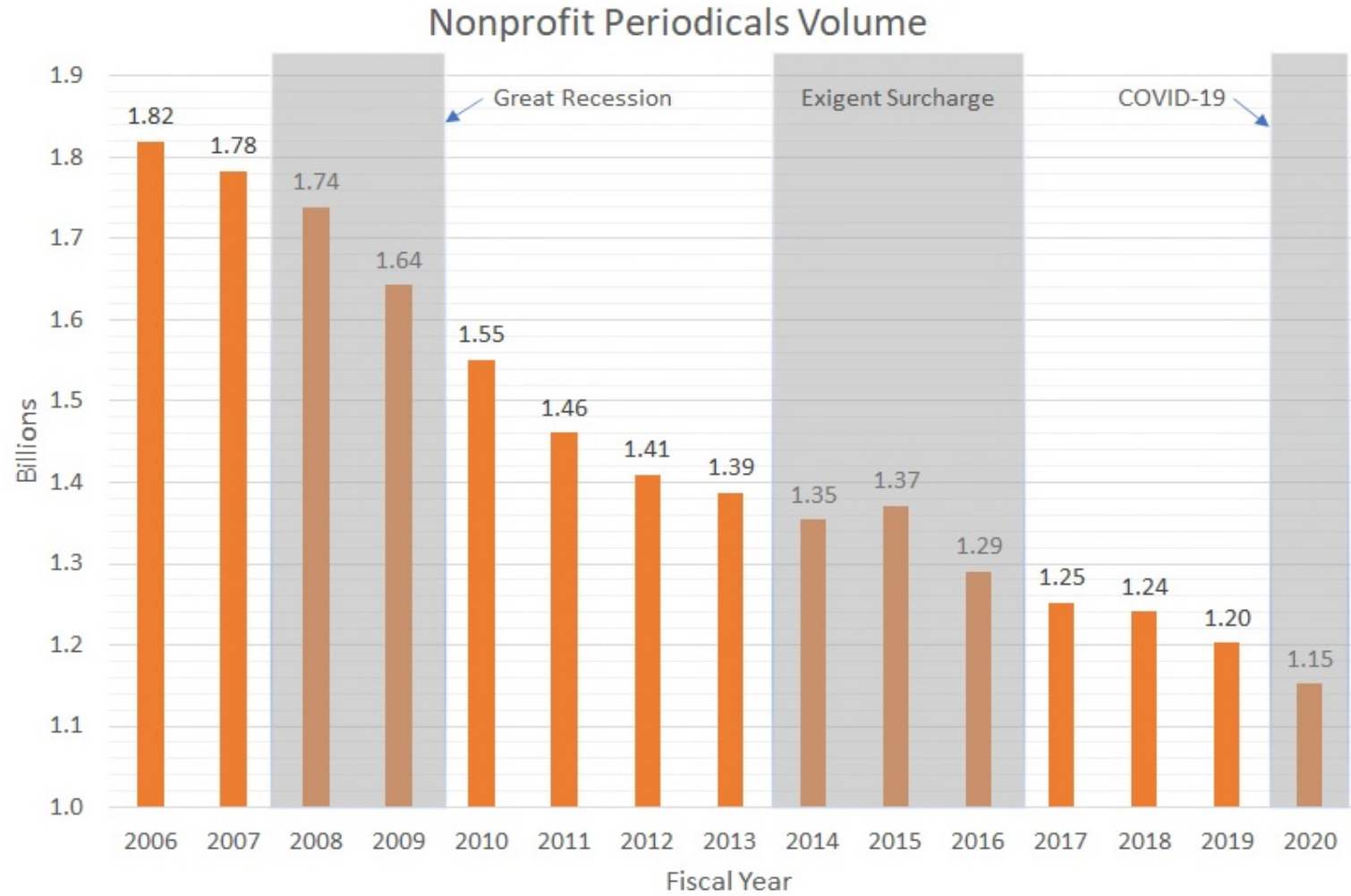
Total Mail and Nonprofit Marketing & Periodicals Mail (Billions)



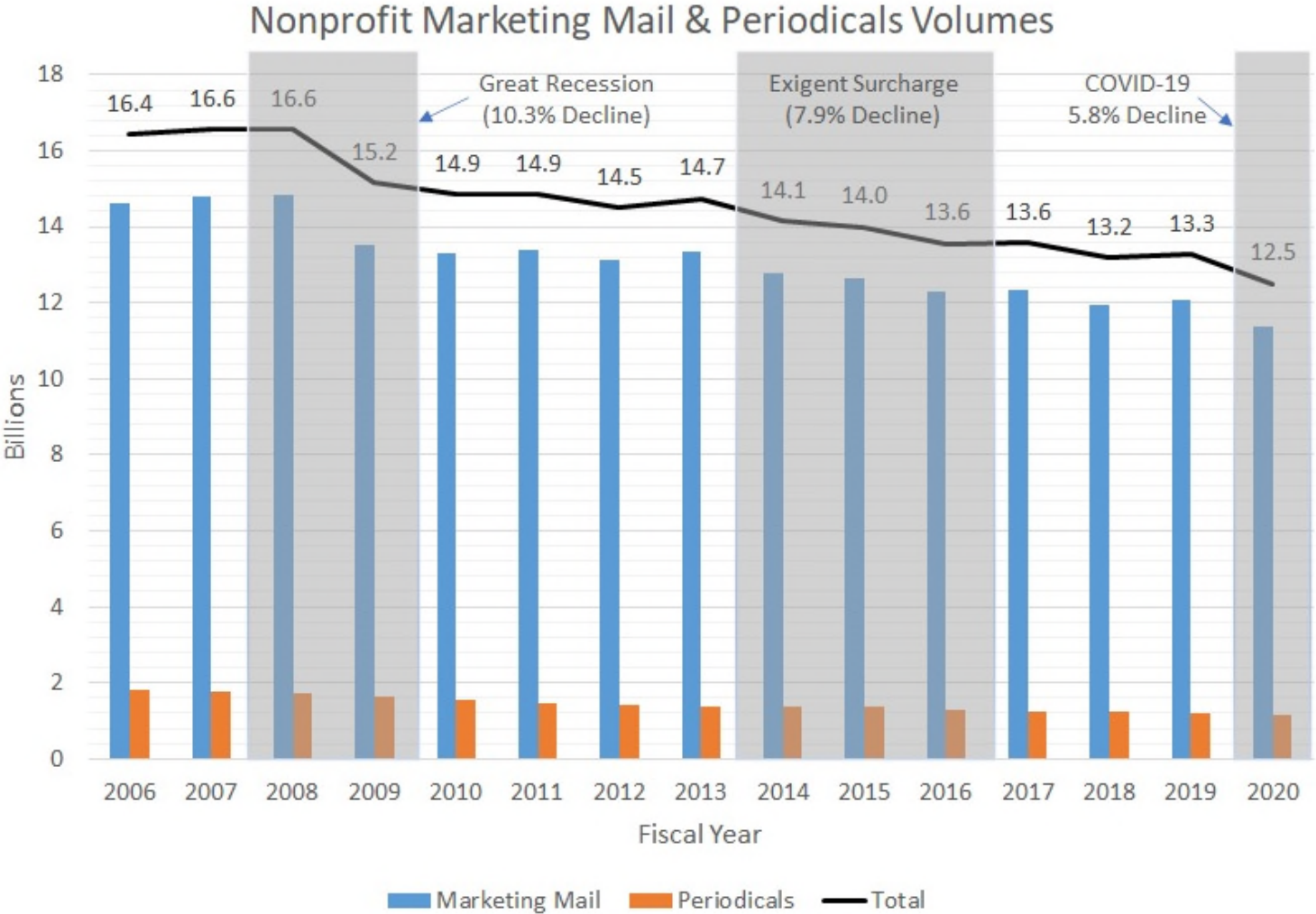
Nonprofit Mail Volume During PAEA Era



Nonprofit Mail Volume (cont'd)



Nonprofit Mail Volume (cont'd)



Ten-Year Review (RM2017-3)

- **Dec. 2016**
 - Rulemaking begins
- **Dec. 2017**
 - PRC finds ratemaking system not meeting objectives
 - Proposes new rules designed to give USPS additional, above-CPI price increase authority
- **Dec. 2019**
 - PRC revises proposed rules
- **Mar. 2020**
 - Mailers (ANM) request docket held in abeyance
- **July 2020**
 - Mailers (ANM) seek to supplement record with COVID impact data
- **Nov. 30, 2020** – PRC issues final rules



Ten-Year Review – PRC Proposals & Final Rules

PRC Ten Year Review			
	2017 Proposal	2019 Proposal	Final Decision
Above CPI Increase	CPI +2% each year for 5 years	Formula based on delivery density and phased-in retirement amortization costs	Same, but Density Bankable
Productivity Increase	Productivity: +0.75% Service: +0.25%	+1% if productivity increases and service standards maintained	Withdrawn (separate later rulemaking)
Underwater	+2% (Mandatory)	+2 (Optional)	Same, but Bankable
Workshare	75% Minimum Passthrough of USPS Cost Savings	85% Minimum Passthrough of USPS Cost Savings	Same

Impact on Nonprofit Mailers

- If implemented, the PRC’s final rules will result in **massive** price hikes on USPS customers

Above-CPI Rate Authority	Magnitude
Density	4.500%
Retirement	1.062%
Productivity	N/A (future rulemaking)
Non-compensatory	2.00%
Total Above-CPI Authority	
-Compensatory	5.562%
-Noncompensatory	7.562%

Timing

- **Dec. 31, 2020** – USPS filed calculations of future density rate authority (4.5%) and retirement rate authority (1.062%)
 - “As a general matter, the Postal Service intends to utilize the additional pricing flexibility granted by the Commission ...”
- **March 2021** – PRC determines amount of rate authority
- **April 2021(?)** – Postal Service files notice of market dominant rate adjustment
- **June/July 2021(?)** – Rate adjustment effective following PRC review

Mailer Association Efforts to Combat Rules

PRC

- Motion for stay pending judicial review (Dec. 28, 2020)
- USPS filed opposition Jan. 4, 2021
- No PRC ruling to date



DC Circuit

- ANM et al. petition for review (Dec. 18, 2020)
- Other mailer associations and USPS also seeking review
- Briefing likely through Q1 2021



ANM et al. v. PRC (DC Cir.)

- ANM partnering with other mailer associations to challenge PRC's rules in court as illegal under PAEA and APA
- Currently there are four petitions for review before the court
 - Cases have been consolidated
 - Other associations intervening in support of mailers
- Mailers will seek stay of the rules from the court
- Timing of oral argument and decision uncertain

Additional Mailer Efforts

Urge Members of Congress to Enact Postal Reform

- Reform must include four elements:
 - Retention of the CPI rate cap without add-ons
 - Much more efficient and reliable postal operations
 - Restructuring and reduction of retiree health benefit pre-funding
 - Federal funding of USPS public service mandates (Universal Service Obligation)

Additional Mailer Efforts (cont'd)

Contact members of the two postal oversight committees:

- Senate Committee on Homeland Security & Governmental Affairs (www.hsgac.senate.gov)
 - Sen. Gary Peters (D-MI), Chair
 - Sen. Tom Carper (D-DE)
- House Committee on Oversight and Reform (www.oversight.house.gov)
 - Rep. Carolyn B. Maloney (D-NY), Chair



Taking Full Advantage of the PPP and Employee Retention Tax Credit

February 11, 2021



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