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

Removing Bound Printed Matter from the Market-Dominant Product List	Docket No. MC2025-948
Raising Market Mail Weight Limits	Docket No. MC2025-958

COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE, ALLIANCE OF NONPROFIT MAILERS, AND AMERICAN COMMERCE MARKETING ASSOCIATION
(March 7, 2025)

Pursuant to Order Nos. 8596 and 8679, the Association for Postal Commerce ("PostCom"), Alliance of Nonprofit Mailers ("ANM"), and American Commerce Marketing Association ("ACMA") (together, "Joint Commenters") submit these comments on the Postal Service's request to remove Bound Printed Matter ("BPM") from the list of Market Dominant products.

The Postal Service has not provided adequate justification for its request and has not even attempted to address serious market power concerns regarding BPM parcels. For the reasons explained below, the Commission should reject the Postal Service's request.

I. LEGAL STANDARD

The Commission's review of a request to eliminate a product is governed by 39 U.S.C. §3642, which requires the Commission to consider the availability and nature of private enterprises engaged in the delivery of the product to be deleted, the views of users of the product to be deleted, and the likely impact of the deletion on small business concerns.[1]

[1] 39 U.S.C. § 3642(b)(3).

As established by the D.C. Circuit, 39 U.S.C. § 3642 provides the Commission with "broad authority to act in the public interest and to prevent the Postal Service from abusing its unique and powerful market position."[2] The statute "requires a broad, contextual consideration" of the kind of market power concerns that also underlie the price cap's limitation on annual rate increases.[3] If a proposed change to the product lists will materially harm mailers by "camouflaging a monopolistic rate increase as a product addition or deletion," the statute requires that the Commission reject the proposal.[4]

The D.C. Circuit emphasized that "Section 3642 requires . . . *prominent* consideration of customers' interests."[5] Consistent with that directive, the Commission's prior determinations in product removal cases largely turned on the views of mailers using the services in question. With respect to Return Receipt for Merchandise Service ("RRM"), for example, the Commission found that customers would not oppose its discontinuation, and it lacked negative feedback from small businesses regarding the removal.[6] Furthermore, there were only two commentors in the RRM removal case, with one being the Public Representative. Similarly, when the Commission approved the removal of Confirm service from the market dominant product list, it received no comments or concerns from mailers.[7]

The only product the Commission has permitted the Postal Service to eliminate in the face of customer opposition was Customized Postage.[8] But that removal request presented

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2 *United States Postal Serv. v. Postal Regulatory Comm'n*, 886 F.3d 1261, 1264 (D.C. Cir. 2018) ("*USPS v. PRC*").

3 *Id.* at 1269.

4 *Id.*; *see also* Docket No. MC2020-126, Order No. 5550 at 5 (June 16, 2020) (explaining the Commission will review requests to remove products "by examining whether the request is a pretext for an abuse of market power") ("Order No. 5550"); Docket No. MC2015-8, Order No. 5214 at 3 (Aug. 29, 2019) (same).

5 *USPS v. PRC*, 886 F.3d at 1270 (italics added).

6 *See* Docket No. MC2015-8, Order No. 2322 at 13 (Jan. 15, 2015) ("Order No. 2322"); *USPS v. PRC*, 886 F.3d at 1266.

7 *See* Docket No. MC2013-38, Order No. 1664 at 3 (Feb. 19, 2013).

8 *See* Order No. 5550 at 6.

unusual circumstances not present here: the Postal Service identified "unique risks" associated with personalized indicia and pointed to two pending lawsuits related to the program.[9] The Commission still gave significant weight to customer views in that docket, but, finding no market power issues were implicated, it accepted the Postal Service's argument "that revenue obtained from the program no longer outweighs the financial and brand risks of defending its brand against litigation and customer complaints" tied to eligibility criteria for the product.[10] Thus, while the Commission must balance sometimes competing factors, the Postal Service must provide a convincing justification for removing a product in the face of customer opposition, and the Commission's first duty is to protect against the Postal Service's abuse of its market power.

Finally, the Commission's regulations dictate the supporting justification the Postal Service must provide with any request to eliminate a product. The Postal Service must explain why the product removal is not inconsistent with the policies and criteria of chapter 36 of title 39;[11] the D.C. Circuit has explained that this regulation gives "the Commission . . . an opportunity to consider prices" in its § 3642 review outside of the expedited confines of a rate-change review.[12] The Postal Service must also provide any information available on the views of users of the product;[13] describe the likely impact of the deletion on small business concerns;[14] and provide information and data, and statements of reasons and bases, necessary for the Commission to evaluate "the nature, scope, significance, and impact of the proposed modification."[15]

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9 *See id.* at 2, 7.
10 Order No. 5550 at 7.
11 39 C.F.R. § 3040.132(b).
12 *USPS v. PRC*, 886 F.3d at 1271.
13 39 C.F.R. § 3040.132(g).
14 39 C.F.R. § 3040.132(h).
15 39 C.F.R. §3040.132(i).

II. ARGUMENT

A. The Postal Service's Proposal Lacks Support, Is Inconsistent with Precedent, and Will Harm Mailers

The Postal Service recognizes that the BPM product grew out of structural flaws in the former fourth-class catalog rate that resulted in anomalous pricing. As the Postal Service relates, "a telephone book consisting only of Yellow Pages advertising could be mailed using the fourth-class catalog rate, but a telephone book of the same dimensions and weight that was half Yellow Pages advertising and half white pages directory listings could not."[16] The solution: amend the fourth-class catalog rate to include all bound printed matter, whether it included advertising or not.[17]

This change did not fully resolve the anomalies, however. Despite being bound, printed matter, books were ineligible for the new rate unless they contained "non-incidental" advertising. Book publishers thus began adding advertising to their books to qualify for the BPM rate. Recognizing that maintaining this fiction did not serve its customers, the Postal Service proposed, and the Commission approved, including all books in the BPM category.[18]

The Postal Service fails to recognize, however, that its proposal to eliminate BPM products would reinstate these anomalies. The Postal Service justifies eliminating BPM in part by reference to its companion proposal to increase the maximum weight of Marketing Mail, claiming that if it does so, "the BPM products would become duplicative."[19] Setting aside any

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[16] USPS Request at 4-5 (citing Docket No. MC73-1, Postal Rate Commission Op. & Rec. Decision at 59 (Apr. 15, 1976) ("MC73-1 Op. & Rec. Decision").

[17] *Id.* at 5 (citing MC73-1 Op. & Rec. Decision at 62).

[18] Docket No. R90-1, Postal Rate Commission Op. & Rec. Decision at V-375-76 (Jan. 4, 1991) ("We are allowing books without advertising into this subclass. It does not make economic sense to require publishers to include advertising in their books in order to qualify for these rates") ("R90-1 Op. & Rec. Decision"); USPS Request at 5.

[19] USPS Request at 8.

questions of pricing, that statement would be true for only a portion of BPM—the portion that accommodates catalogs, advertising, and promotional materials. Heavyweight Marketing Mail would not be duplicative of BPM for fulfillment matter and books without advertising because those mailings are not eligible for Marketing Mail.[20] Thus, the Postal Service would re-create the prior situation where eligibility for the rate depends entirely on the inclusion of advertising in the mailpiece.

In fact, there would no longer be any product category tailored specifically to fulfillment pieces meeting the current BPM requirements. This change will have a significant effect—the Postal Service reports over 3.5 million BPM Flats fulfillment pieces in FY 2024,[21] and over 162 million BPM Parcels fulfillment pieces, representing 72% of that product's total volume.[22] The Commission recognized in MC2021-78 that similar products do not exist in the private sector.[23] Nor do they currently exist outside of BPM, as demonstrated by the Postal Service's discussion of the products that would be available for customers currently using BPM for fulfillment if the BPM products are eliminated. Although the Postal Service states that customers could send books via Media / Library Mail and "various competitive products, including USPS Ground Advantage,"[24] these products are not comparable to BPM.

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[20] *See* USPS Request at 2 ("BPM Flats and BPM Parcels pieces that contain books, however, may not be sent as Marketing Mail because the class excludes order fulfillment, DMM § 243.3.2.2 . . .")

[21] *See* USPS Response to ChIR No. 2, Question 8 (reporting 3,562,755 fulfillment pieces and 115,419,269 non-fulfillment pieces).

[22] *See* USPS Response to ChIR No. 2, Question 9 (reporting 162,163,630 fulfillment pieces and 61,526,415 non-fulfillment pieces).

[23] *See* Order No. 6105 at 44, Docket No. MC2021-78 ("Given BPM Parcels' content restrictions and the prohibitively high surcharges that would be imposed on most BPM Parcels volume if instead shipped via UPS Ground or FedEx Ground, the Commission finds that BPM Parcels is not reasonably interchangeable with UPS Ground and FedEx Ground, and thus does not operate in the same market. Accordingly, based on these distinct prices and characteristics, the Commission finds that BPM Parcels instead operates in a distinct submarket of the general parcels market, one not served by UPS Ground or FedEx Ground.")

[24] USPS Request at 2.

First, the content restrictions of Media / Library Mail are similar to, but not identical, to BPM for fulfillment books. BPM permits the inclusion of books with or without advertising,[25] but Media / Library Mail is limited to books "consisting wholly of reading matter or scholarly bibliography . . . and containing no advertising matter other than incidental announcements of books."[26] It is a more restrictive category than BPM.

Second, the Postal Service's claim that the service standard for Media / Library Mail is identical to that of BPM[27] is misleading. While both products are subject to identical Package Services service standards, BPM is eligible for destination entry, which provides access to shorter service standards. For example, "Package Services mail that qualifies for a Destination Delivery Unit . . . rate . . . has a 1-day (overnight) service standard."[28] BPM Flats and BPM Parcels both have DDU rates.[29] Media / Library Mail does not.[30] The end-to-end service standards that apply to Media / Library Mail are longer than the destination entry service standards that apply to most BPM mail. With respect to service, Media / Library Mail is not duplicative of BPM.

Additionally, books eligible for Media / Library Mail are not the only type of fulfillment pieces mailed with BPM. The Postal Service makes no reference whatsoever to non-book fulfillment pieces. These pieces would not be eligible for Media / Library Mail because they are not "books." The Postal Service has not quantified how much volume would fall into this category or described what product would make BPM "duplicative" as to these pieces.

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25 *See* MCS § 1415.1 (defining BPM Flats as containing "advertising, promotional, directory, or editorial material (or *any combination of such material*) (emphasis added)); MCS § 1420.1 (establishing the same criteria for BPM Parcels).

26 DMM § 273.3.1a; MCS § 1425.1(a).

27 USPS Request at 7-8.

28 39 C.F.R. § 121.4(b)(1).

29 *See* MCS §§ 1415.6 (BPM Flats) and 1420.4 (BPM Parcels).

30 *See* MCS § 1425.4.

Accordingly, when looked at "from the point of view of content restrictions and service characteristics,"[31] BPM products are not duplicative of other products. More importantly, they are not duplicative of other products when looked at from a pricing perspective. Media / Library Mail prices are significantly higher than BPM prices, especially once one accounts for the lack of drop entry discounts in Media / Library Mail. These differences are likely to increase further, as the Postal Service has recently indicated that it "is considering eliminating 5-Digit and Basic Media/Library Mail Presort price options," leaving only the single piece rate.[32] Published prices for Ground Advantage are even higher. Removal of BPM will force current users to move to higher-priced postal products.[33]

Although the Commission has approved deletion of a product when it would force users to a higher-priced product, it has done so when the benefits of removing "a service with declining volumes and revenue outweighs the potential harm that current customers may face."[34] In this case, the Postal Service has not demonstrated that maintaining these products will cause it any harm, much less that the benefits of eliminating the product will outweigh the harm higher prices will cause its users. BPM products remain profitable and contribute to the Postal Service's institutional costs—in fact, revenue for BPM Parcels has increased the last 3 fiscal years and was higher in Fiscal Year 2024 than it was in Fiscal Year 2019.[35] The Postal Service has not quantified any costs savings from the proposal, explaining that any savings "will be

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31 USPS Request at 8.

32 *See* July 2025 Release Overview. Proposed July 2025 Changes, Change 1.0, at 5 (updated Feb. 7, 2025), available at https://postalpro.usps.com/july-2025-release-overview (last visited Feb. 27, 2025); *see also* USPS Response to ChIR. No. 2, Question 11.

33 The Postal Service has not yet established prices for heavyweight Marketing Mail, so we cannot definitively determine whether BPM flats and parcels eligible for this category will pay higher rates. But higher rates will undoubtedly apply to fulfillment BPM.

34 Order No. 2322 at 13; Docket No. MC2015-8, Order No. 5408 at 5 (Jan. 16, 2020).

35 USPS Response to ChIR No. 1, Question 13 (Chart titled "Revenue" in which revenue for BPM Parcels in Fiscal Year 2024 was 327,700,000 compared with 288,800,000 in Fiscal Year 2020.)

incidental to the proposed product consolidation and simplification."[36] It has further conceded that BPM Flats and BPM Parcels do not "per se interfere with efficiency, reliability, or cost reduction" and that they are not being removed because "they are per se suboptimal products for customers."[37]

Finally, the Postal Service diminishes the importance of maintaining BPM Parcels "in the interest of ensuring a low-cost means of distributing books as educational, cultural, scientific, and informational material," claiming that BPM Parcels has always been duplicative of the Media / Library Mail rate (formerly "book rate"), which is better suited to the purpose. But the Postal Rate Commission rejected this very reasoning when it approved the inclusion of books without advertising in the BPM category. The Commission explained that despite the existence of a special rate for books, "the intent of the Act is to encourage widespread dissemination of ideas by considering the postage paid by senders of books. Our effort to make low-cost options available if possible furthers the policies found in the Act."[38] The Postal Rate Commission approved the inclusion of books in BPM knowing full well that there would be overlap with the book rate. The Postal Service has not explained why that overlap now counsels for the opposite conclusion, or how the policies of the postal statutes have changed to reduce the importance of supporting the widespread dissemination of ideas.

B. The Postal Service's Request is a Transparent Attempt to Nullify the Commission's Earlier Findings on BPM

In 2021, the Postal Service submitted a request to transfer BPM Parcels to the Competitive Product list. In its Order rejecting that request, the Commission correctly

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36 USPS Response to ChIR No. 2, Question 5.

37 USPS Response to ChIR No. 3, Question 1.

38 R90-1 Op. & Rec. Decision at V 376. In doing so, the Postal Rate Commission recognized that these principles supported providing preferences for educational materials beyond maintaining a book (now Media / Library Mail) rate.

determined that "the Postal Service exercises sufficient market power over the sale of BPM Parcels to preclude its transfer to the Competitive product list."[39] Having failed in that attempt, the Postal Service is availing itself of a different procedure to achieve the same intended result. The Commission should prevent this attempt at another bite at this vermicious apple.

When asked what has changed between Docket MC2021-78 and its current BPM removal attempt, the Postal Service leans on its fealty to the now-discredited *DFA* Plan, claiming that this new effort "is a crucial step towards long-term operational excellence and financial stability, which are key components of its 10-year strategic plan, *Delivering For America*."[40] This is the same *DFA* Plan, of course, under which the Postal Service lost $9.5 billion last year and whose operational and service standard changes the Commission describes as relying on "overly optimistic and unsubstantiated financial projections."[41] The Postal Service does not explain how attempting to impose higher prices on 0.3 percent of mailpieces is "crucial" to achieving financial stability,[42] but the overall pricing strategy of squeezing market dominant mailers has indisputably failed.

The Postal Service's claim that "the proposed changes to the market-dominant product list will not reclassify as competitive any product that is the subject of this filing" is demonstrably false in any meaningful sense as the Request openly contemplates stranded users of BPM parcels availing themselves of USPS Ground Advantage.[43] In fact, the Postal Service

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39 Order No. 6105 at 2.

40 USPS Response to ChIR No. 1, Question 12.

41 *See* Docket No. N2024-1, Advisory Opinion on the Operational and Service Standard Changes Related to the Delivering for America Plan at 2 (Jan. 31, 2025).

42 Moreover, it is clear that the primary purpose of the change is not to create cost savings or improve operational efficiency. *See* USPS Response to ChIR No. 2, Question 5, and discussion at pages 7-8, *supra*.

43 USPS Request at 2; *see also* USPS Response to ChIR No. 1, Question 1 (identifying competitive products Priority Mail Express, Priority Mail, Parcel Select, USPS Ground Advantage, and Negotiated Service Agreements as products to which current BPM Parcels volume could transition); USPS Response to ChIR No. 1, Question 2 (identifying competitive products as an option for shipping unboxed and boxed non-advertising or fulfillment

confirms that 87% of BPM fulfillment volumes will be excluded from price cap calculations because they will shift to competitive products.[44] The Postal Service estimates these pieces will experience a rate increase of 189%.[45] These impacts are practically indistinguishable from the impacts of transferring BPM Parcels to the competitive product list.

Even mailers who are able to comply with the content restrictions of Media Mail or Marketing Mail, and therefore are not forced to shift to competitive products, would face higher rates, providing evidence that the elimination of BPM is an exercise of Postal Service market power. The Postal Service acknowledges that "[i]mplementing the proposed mail classification changes would create a price increase for the BPM mail pieces that would be sent as Marketing Mail or Media Mail."[46] While these shifts would factor into the Postal Service's price cap calculations, the price cap provides little protection against the initial rate increase these mailers would experience.

The Postal Service has not provided a sufficient justification for why the Commission should allow a change that would have largely the same substantive effect of the rejected transfer in Docket No. MC2021-78. In its attempt to circumvent necessary barriers to an inappropriate transfer, the Postal Service is simultaneously dismissive of legitimate customer concerns and confused about the preferences of BPM mailers. For instance, product simplification is cited as a primary reason for the Postal Service's request, yet the Postal Service characterizes BPM customers – of both parcels and flats – as sophisticated, and therefore unlikely to desire or benefit appreciably from product simplification.[47]

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material currently shipped as BPM); USPS Response to ChIR No. 1, Question 12 (claiming BPM products are duplicative because users could instead use "a wide array of package products for fulfillment material").

44 USPS Response to ChIR No. 2, Questions 10.a. and 10.b.

45 USPS Response to ChIR No. 2, Question 10.c.

46 USPS Response to ChIR No. 2, Question 6.

47 USPS Request at 15.

Similarly, the rate and classification anomalies cited by the Postal Service as justifying its request[48] could be repaired without restricting mailer and shipper choices as the Postal Service proposes. As with the recently concluded N2024-1 case, this appears to be yet another effort by the Postal Service to overcome its inability to effectively manage operations by burdening its captive "customers" with higher rates.

Joint Commenters accept that there may be benefits to increasing the weight limit on Marketing Mail Flats and encourage the agency to do so. Similarly, there may be virtue in the creation of a Heavy Printed Matter category. PostCom has consistently encouraged the Postal Service to experiment with new product and rate offerings and would support such an effort were it not presented as a pretext for forcing customers to pay higher rates.

C. The Postal Service's Effort to Assess the Views of Customers Are at Best Perfunctory

It is telling that the Postal Service addresses its customers' perspectives in a scant six paragraphs that are devoid of specificity of any kind.

Several PostCom members were contacted by the Postal Service regarding their perspectives on the possible removal of BPM from the USPS product list. Rather than a systematic and careful effort to understand customer interests, these contacts were made after the Postal Service had already decided to eliminate the products and were designed solely to facially satisfy regulatory requirements.

ANM members were not contacted as part of this process, but the proposed removal will negatively impact some of them nevertheless. One ANM board member, Guideposts, mails religious books as BPM and will not be able to use Media Mail due to the latter's advertising content restrictions. Guideposts estimates that it will face price increases of between 240-245

[48] *See id.* at 9-13.

percent for Lightweight Parcel Select (for its books under 1 lb.) and between 237-248 percent for Parcel Select (for its books over 1 lb.).[49]

The Postal Service's responses to information requests confirm that its attempt to understand the views of its customers were perfunctory. The Postal Service attempted to present the users of BPM as a small group of large mailers in its Request, stating that "10 mailers sent approximately 72 percent of BPM Flats, and 10 mailers sent approximately 91 percent of BPM Parcels."[50] These "10 mailers," however, were mail service providers and consolidators that enter mail for other mail owners. The Postal Service has acknowledged that approximately 2,403 BPM Flat mail owners and 2,504 BPM Parcel mail owners will be impacted by the elimination of BPM.[51]

The Postal Service only contacted 20 of these thousands of mail owners regarding its plans to eliminate BPM.[52] It did not even contact all of the limited set of MSPs, communicating with only 4 of them.[53] The Postal Service provides no indication that these contacts support its statements regarding mailer views or experience in its Request and ChIR responses, including that "customer reaction to this proposal will be mixed,"[54] that "some mailers may favor the proposed changes because they will see increased opportunity,"[55] or that the current set of product offerings "creates a suboptimal customer experience."[56] These claims are certainly not supported by the Postal Service's own documentation of conversations with customers.[57] Not only did the Postal Service not perform the diligence necessary to assess whether its customers

49 *See* Comments of Guideposts, at 3.
50 USPS Request at 14.
51 USPS Response to ChIR No. 1, Question 8.
52 USPS Response to ChIR No. 1, Question 10.
53 USPS Response to ChIR No. 1, Question 10.
54 USPS Request at 14.
55 *Id.* at 16.
56 USPS Response to ChIR No. 1, Question 12.
57 *See* Library Reference USPS-LR-MC2025-948-NP2 (documenting USPS conversations with customers).

would find any value at all in the removal of BPM, but the research it did perform suggests its customers overwhelmingly oppose the change.

Because the Postal Service has failed to meaningfully consider the views of users of BPM products, the task of giving "prominent consideration" to customers' interests falls to the Commission. While the Postal Service claims it has not made any decisions regarding future rates for BPM mailers and shippers, the Postal Service's recent track record is clear. At every turn, the Postal Service has shown that it will maximize use of its available rate authority. By eliminating the availability of BPM, the instant USPS proposal would further that effort. If the Commission approves the Postal Service's request, mailers will pay significantly higher rates.

D. The Postal Service Failed to Adequately Consider the Impact of its Proposal on Small Businesses

Perhaps as a consequence of its lack of outreach to customers, the Postal Service also fails to adequately address the impact of its proposal on small business concerns, essentially treating the 19 percent of BPM not presented by "large corporate mailers"[58] as irrelevant. The Postal Service acknowledges that it did not "generate any identifiers for small businesses versus large businesses in its customer impact analysis."[59] Moreover, as noted above, the large customers the Postal Service did contact include MSPs, many of whom perform services on behalf of small businesses. The Postal Service appears to have made no attempt to assess the impact of its changes on these users or even assess whether they meet the Commission's definition of small business.[60] Without the information necessary to assess the likely impact on small business concerns, the Commission cannot approve the Request as consistent with 39 U.S.C. § 3642(b)(3).

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58 *See* USPS Request at 14.
59 USPS Response to ChIR No. 2, Question 1.
60 *See* USPS Request at 13.

III. SUMMARY

Just weeks ago, the Commission issued a lengthy condemnation of the Postal Service's proposal to reduce service standards on Market Dominant products. In the N2024-1 Docket, the Commission's authority was limited to the offering of guidance. Irrespective of the withering and legitimate criticisms leveled by the Commission, the Postal Service has moved forward with its ill-considered efforts to reduce service quality.[61]

In this case, the Commission can – and must – use its statutory authority to prevent the Postal Service from enacting a similar harm on the users of BPM. However, the Postal Service attempts to sugar-coat its intentions, if the BPM proposal is not rejected, current users of BPM will pay more and get less in return.

As the Postal Service notes in its request, BPM has existed for nearly 50 years.[62] During that time a number of business have structured their product offerings – which in many cases contribute directly to dissemination of educational materials – based on the Postal Service's product and rate structure. In allowing books into the BPM classification, the Postal Rate Commission explained that "the intent of the Act is to encourage widespread dissemination of ideas by considering the postage paid by senders of books."[63] It is reprehensible that the Postal Service is willing to disregard that history in its desperate attempt to paper over its inability to manage its resources. It would be irresponsible and inappropriate for the Commission to enable the Postal Service to succeed in such an effort. The Commission should reject the Postal

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61 *See* Service Standards for Market-Dominant Mail Products, 90 Fed. Reg. 10857 (Feb. 28, 2025).

62 USPS Request at 4.

63 R90-1 Opinion at V-376. In doing so, the Postal Rate Commission recognized that these principles supported providing preferences for educational materials beyond maintaining a book (now Media / Library Mail) rate.

Service's proposed elimination of BPM and encourage the Postal Service to instead address any perceived rate anomalies elsewhere.

Respectfully submitted,

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