

PRISON POLICY INITIATIVE

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Hon. Michael M. Kubayanda, Chairman

Postal Regulatory Commission

901 New York Ave., NW, Suite 200

Washington, DC 20268

VIA EMAIL (stakeholderinput@prc.gov)

Re: Rate Increases for Market-Dominant Products

Dear Chairman Kubayanda:

On behalf of the Prison Policy Initiative (“PPI”), I respectfully submit the following comments for the Commission’s consideration in connection with its review of market-dominant rate and classification systems, as mandated by the Consolidated Appropriations Act of 2022 (the “Appropriations Act”).¹

PPI is a nonprofit organization that uses data analysis to demonstrate how the American system of incarceration negatively impacts everyone, not just incarcerated people. We have published numerous reports concerning communications options available to incarcerated people.² Our research reveals that financial exploitation is often built into communication-providers’ business models. While the U.S. Postal Service has generally stood out as a universally accessible communications network that gives incarcerated people access to quality service at a reasonable price, recent hikes in postage rates, layered on top of sharply degraded service standards, have substantially reduced the value of First-Class Mail to all customers, particularly incarcerated users of the mail.

Because the Commission’s review is expected to focus on recent ratemaking developments for market-dominant products, we begin with a discussion of incarcerated peoples’ reliance on First-Class Mail, and then provide a brief overview of the financial hardships that high postage rates cause for incarcerated postal customers. We conclude with recommendations regarding actions that the Commission should take.

¹ See [H. Rep. No. 117-79](#), at 100 (Jul. 1, 2021).

² Information about our general work on carceral communications can be found at <https://www.prisonpolicy.org/communications.html>. Postal-specific work is summarized at <https://www.prisonpolicy.org/mail/>.

I. Incarcerated People Are Uniquely Dependent on First-Class Mail

Approximately 2 million people are incarcerated in the United States on any given day, and the total number of people cycling through prison and jail each year exceeds 10 million (given the frequent churn of people in and out of local jails).³ These millions of people represent a significant population that is uniquely sensitive to changes in postal rates and service standards, given a level of dependence on First-Class Mail that is unusual in modern life.

Mail is the primary channel by which people in prison and jail can conduct personal business. Incarcerated people must still use paper for basic activities that have migrated online for many segments of society—activities like filing tax returns (as hundreds of thousands of incarcerated people did recently to claim economic impact payments under the CARES Act⁴); submitting documents in judicial proceedings; monitoring credit reports for purposes of preventing identity theft; staying on top of personal finances;⁵ and laying the groundwork for post-release jobs or educational programs.

Even more importantly, incarcerated people heavily rely on postal mail to maintain social connections with family and friends. Not only is this a leading example of our national postal policy in action (i.e., “to bind the Nation together through the personal . . . correspondence of the people”⁶), but it has significant societal benefits as well: mail plays a critical role in strengthening family ties, which in turn, is a key to reducing recidivism.⁷

Unlike most current postal customers, incarcerated mailers generally lack the ability to use alternative communications channels. Indeed, incarcerated people represent a rare group for whom Justice Holmes’ observation still rings true: “the use of the mails is almost as much a part of free speech as the right to use our tongues.”⁸ People in prison and jail are unable to access to the internet⁹ and do not have email. Even in correctional

³ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2022* (Mar. 14, 2022).

⁴ See Stephen Raher, “[Update: Court says IRS can’t deny economic stimulus payments to incarcerated people](#),” PPI Blog (Oct. 5, 2020).

⁵ See *Collection at All Costs: Examining the Intersection of Mass Incarceration and the Student Debt Crisis* at 9-10 (Jul. 2022) (explaining communication difficulties incarcerated people face in trying to manage student loan debt); *Justice-Involved Individuals and the Consumer Financial Marketplace* at 22 (Jan. 2022) (difficulties managing consumer debt in general).

⁶ 39 U.S.C. § 101(a).

⁷ See Leah Wang, “[Research roundup: The positive impacts of family contact for incarcerated people and their families](#),” PPI Blog (Dec. 21, 2021) (reviewing studies quantifying the benefits of postal communication in maintaining family connections).

⁸ *U.S. ex rel. Milwaukee Social Democratic Pub. Co. v. Burlison*, 255 U.S. 407, 437 (Holmes, J., dissenting).

⁹ See Titia A. Holtz, *Reaching out from behind Bars: The Constitutionality of Laws Barring Prisoners from the Internet*, 67 Brook. L.Rev. 855 (2001-02).

facilities that have adopted electronic messaging systems, these systems are functionally inferior for many reasons, including the inability of users to attach documents or forward webpages.¹⁰ Thus, if someone wants to send an incarcerated relative a tax form, a newspaper article, or a copy of a legal document, the only way to do so is through the mail. But increasing prices and slower delivery standards degrade the value proposition for these customers.

While most incarcerated people can make phone calls, they can only do so to a limited number of preapproved people, with almost all systems categorically prohibiting calls to toll-free telephone numbers.¹¹ In addition, phone calls can only be made to a small list of pre-approved numbers and rates range up to 50¢ per minute.¹²

II. Incarcerated People Have Little Ability to Earn Money and Wages for Incarcerated Workers Do Not Rise with the Consumer Price Index

In 2020, the Commission implemented a new ratemaking system that allows rates for market-dominant products to rise faster than the consumer price index.¹³ But incarcerated peoples' earning power is severely limited to begin with, and does not come close to keeping pace with increases in inflation.

Jails, which typically house people for periods under a year, rarely have robust employment programs. Prisons do employ more incarcerated people,¹⁴ but wages for these jobs are breathtakingly low. In 2017, PPI surveyed prison wages in all 50 states and discovered that wage scales for people incarcerated in state prison systems average 14¢ to 60¢ per hour for standard prison-based jobs.¹⁵

¹⁰ See generally, Stephen Raheer, [You've Got Mail: The Promise of Cyber Communication in Prisons and the Need for Regulation](#) (Jan. 21, 2016) (discussing benefits and drawbacks of electronic messaging systems in prisons); Stephen Raheer, *The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails*, 17 *Hastings Race & Poverty L.J.* 3, 40-46 (2020) (discussing the lack of privacy protections as applied to electronic communications in correctional facilities).

¹¹ See *Annual Compliance Review, 2021*, PRC Dkt. No. ACR2021, [Opening Comments of PPI](#) at 2-3, n.10 (Mar. 1, 2022) (collecting prison policies prohibiting calls to toll-free numbers).

¹² See generally, PPI webpage: Regulating the prison phone industry, available at <https://www.prisonpolicy.org/phones/>.

¹³ *Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products*, PRC Dkt. No. RM 2017-3, [Order Adopting Final Rules, Order No. 5763](#) (Nov. 30, 2020).

¹⁴ Am. Civil Liberties Union & Univ. of Chicago Law School Global Human Rights Clinic, [Captive Labor: Exploitation of Incarcerated Workers](#) at 24-28 (2022) (finding that over 65% of people incarcerated in prisons work, predominantly in assignments maintaining the facilities in which they are housed).

¹⁵ Wendy Sawyer, "[How much do incarcerated people earn in each state?](#)," PPI Blog (Apr. 10, 2017).

When researchers at the ACLU and the University of Chicago Law School conducted a similar survey in 2022, they reported virtually unchanged wages, with averages ranging from 13¢ to 52¢ per hour.¹⁶ These shockingly low average figures mask substantial variation, with at least eight states paying nothing for standard jobs, and four states paying starting wages of 10¢ or less per hour. While no reliable research exists on the income of incarcerated peoples' families, one can infer that such relatives are more likely to be low-income based on the fact that incarcerated people are disproportionately likely to have low pre-incarceration incomes.¹⁷

III. The Commission Should Take Steps to Ease the Burdens Caused by High Rates for First-Class Mail

In requiring the Commission to solicit stakeholder input on market-dominant prices, Congress expressed particular concern about the ability of the Postal Service to precipitously raise rates under the rate system adopted in Order 5763.¹⁸ In the nineteen months following the entry of Order 5763, single-piece letter rates have risen from 55¢ to 60¢, an increase of 8.3%.¹⁹ As noted above, wages for incarcerated workers have not seen any material increase over the last five years.²⁰ The numerous incarcerated workers earning 10¢ an hour form a constituency of mailers who must work for *six hours* to afford the postage on a single letter home. At the same time postal rates are increasing, incarcerated mailers receive less value for their money, due to the degraded service standards for First-Class Mail.²¹

¹⁶ *Captive Labor*, *supra* note 14 at 57-58. According to this report, a very small number of people (less than 7% of incarcerated workers) are employed in certified prison-industry programs. *Id.* at 27. Wages in these programs are only slightly higher, but also have not shown movement over time. PPI's 2017 survey revealed average certified-program wages of 33¢ to \$1.41 per hour. The recent ACLU/University of Chicago report found averages of 30¢ to \$1.30 per hour. *Id.* at 57-58.

¹⁷ Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned* (Jul. 2015) (finding median incomes of incarcerated men and women to be 52% and 42% (respectively) lower than those of non-incarcerated people).

¹⁸ See H. Rep. No. 117-79, at 100 ("USPS has used this expanded authority [under Order 5763] to propose increasing certain postal rates effective August 20, 2021, by approximately 7 percent. The [House Appropriations] Committee is concerned with the size and timing of that rate increase.").

¹⁹ See Rates for Domestic Letters Since 1863, available at <https://about.usps.com/who/profile/history/domestic-letter-rates-since-1863.htm> (last visited Jul. 25, 2022).

²⁰ See *supra*, notes 15 and 16 and accompanying text.

²¹ See *First-Class Mail and Periodicals Service Standard Changes, 2021*, PRC Dkt. No. N2021-1, [PPI Statement of Position](#) at 3-8 (Jun. 15, 2021) (describing impacts of slower mail delivery on incarcerated mailers).

The Commission has at least two avenues for ameliorating the current financial burdens imposed on incarcerated ratepayers. First, the Commission can and should grant the pending petition for rulemaking in Docket Number RM2022-5.²² As the petitioners in that proceeding have adeptly noted, many premises upon which the Commission relied when crafting Order 5763 have dramatically changed due to the passage of the Postal Service Reform Act of 2022.²³ The Postal Accountability and Enhancement Act of 2006 requires the Commission to review market-dominant rate-setting systems “as appropriate,”²⁴ and the changes brought about by the 2022 Reform Act make such a review appropriate at this time.

Second, in light of the important social benefits that come from facilitating communication between incarcerated people and their families, the Commission should recommend to Congress the creation of a special reduced rate for First-Class Mail sent by or to an incarcerated person. Throughout our nation’s history, postal classifications have been driven in part by the “nature of mailers, their motivations, and the purposes behind the matter they mailed.”²⁵ Given the societal challenges posed by mass incarceration and the beneficial impacts of postal communication, we encourage the Commission to support a proposal for such a new classification.

IV. Conclusion

PPI thanks the Commission for its work on this topic, and we appreciate the opportunity to provide feedback on behalf of the millions of incarcerated people in the U.S. As the Commission carries out its important role of overseeing the Postal Service and ensuring compliance with the law, PPI hopes you will keep in mind the unique needs of the many postal customers who rely on First-Class Mail to communicate across prison and jail walls.

Sincerely,



Stephen Rahe
General Counsel

²² *Petition for Rulemaking*, PRC Dkt. No. RM2022-5, [Petition of Association for Postal Commerce and Alliance of Nonprofit Mailers](#) (Apr. 11, 2022).

²³ *Petition for Rulemaking*, PRC Dkt. No. RM2022-5, [Comments of PPI in Support of Petition for Rulemaking](#) (May 13, 2022)

²⁴ 39 U.S.C. § 3622(d)(3).

²⁵ Richard B. Kieobowicz, [A History of Mail Classification and its Underlying Policies and Purposes](#) at 106 (Jul. 17, 1995, Postal Rate Comm’n Proc. MC95-1).