

June 24, 2016

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VIA FIRST-CLASS MAIL AND EMAIL

Thomas J. Marshall
General Counsel and Executive Vice President
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-1137

Re: Competitive Issues Raised by Political Mail Dashboard Initiative

Dear Mr. Marshall:

We are writing on behalf of our client, the Association for Postal Commerce (“PostCom”), to express serious concerns regarding the rollout of the Postal Service’s Political Mail Dashboard (“Dashboard”) platform. The platform competes directly with products offered by PostCom members. Further, it does so illegally by relying on information provided by mail service providers that would otherwise be unavailable to the Postal Service. PostCom and its members have raised this issue with Postal Service representatives repeatedly, but their concerns have been ignored. Accordingly, we are bringing this matter to your attention. We ask that you review the Dashboard initiative in light of the prohibitions in 39 U.S.C. § 404a against anticompetitive conduct, especially the prohibition in section 404a(a)(3) against obtaining “information from a person that provides . . . any product” and then proffering “any postal service that uses or is based in whole or in part on such information.”

The Postal Service has been developing the Dashboard as part of its “Deliver the Win” campaign. This campaign, coinciding with the presidential election season, touts the value of mail as a means of conveying political messages. While a detailed description of the Dashboard has not been released, information revealed in MTAC meetings and in discussions with the Postal Service indicates that it presents tracking information gleaned from the Intelligent Mail barcode (“IMb”) and mandatory By/For information in industry supplied electronic documentation, including information such as which targeted Zip codes have received mailings. It is our understanding that the Postal Service does not intend to charge for this service.

The Dashboard will compete directly with products offered by PostCom members. While this competition would be unwelcome in any event, in this case, it is also illegal. That is because none of the information the Postal Service seeks to provide mail owners through this product would be available if the Postal Service did not require permit holders to provide information about the mail owner in the “By/For” information included in the electronic documentation.

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Without this mail owner information, the Postal Service would only be able to tie the tracking information to the permit holder, who is often a mail services provider and not the mail owner (and who often consolidates the mail of numerous mail owners into a single mailing). The Dashboard, therefore, is a “postal service that uses or is based in whole or in part on . . . information” “obtain[ed] from a person that provides (or seeks to provide) any product.” 39 U.S.C. §404a(a)(3).

This illegal use of by/for information is exactly the sort of abuse PostCom and others warned against when the by/for requirement was first announced. In addition to the comments raised in response to the Advanced Notice of Proposed Rulemaking published in the Federal Register in April 2012, which first introduced the by/for requirement, PostCom expressed its concerns with the IMb by/for requirement to your office, specifically noting the potential for competitive abuse. *See* Letter to Mary Anne Gibbons, Dec. 18, 2012. PostCom raised these issues again when a similar requirement was proposed for the Intelligent Mail Package barcode (“IMpb”). *See* Letter to Thomas J. Marshall, Sept. 16, 2013.

In March 2013, in response to industry concerns, the Postal Service released a Statement on *By/For* Issues. In that document, the Postal Service stated that it “will not disclose *by/for* information to competitors of a mailing agent and will maintain this information confidentially.” It further stated that it “will not use information gained from mailing statements to secure direct entry of volume from a mail owner that is otherwise received through a mailing agent.” *Id.* As PostCom noted in its letter regarding the IMpb, these promises are insufficient with respect to information that could be used by the Postal Service to directly compete with the providers of the information. PostCom explained:

The IMpb standards apply to competitive products—meaning that in this context, the Postal Service itself is a competitor to some mailing agents, mail service providers, and their affiliates. It is of no consolation, therefore, that the Postal Service has promised not to disclose this information to “competitors of a mailing agent.” It has disclosed this information to a competitor simply by collecting it.

See Letter to Thomas J. Marshall, Sept. 16, 2013 at 1-2.

The same logic applies to the use of by/for information to provide the Dashboard to mail owners. In both form and function, the Political Mail Dashboard is nearly identical to products offered by many PostCom members. The Dashboard will directly compete with these products.

In fact, some PostCom members have previously shared their reports with Postal Service representatives under the understanding that the Postal Service would not use this information to develop its own similar reports. And when mailers have raised concerns about the Postal

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Service's information collection activities, the Postal Service, through Jim Cochrane and others, has repeatedly insisted that it is interested only in the data produced from the use of the IMb, and that it would not use that data to market products to compete with products offered by the public sector. With the introduction of the Dashboard, the Postal Service is renegeing on these promises and taking advantage of the trust PostCom members have placed in it.

As it has become clear that the Postal Service intends to move forward with the Dashboard, PostCom members have brought their concerns to the Postal Service at MTAC meetings and through informal contacts. The industry has repeatedly requested a meeting with the Postal Service to discuss the policy issues raised by the Dashboard. The Postal Service has not responded to these requests. Instead, it has announced that it will hold a webinar regarding the Dashboard on June 28 that it specifically describes as a tutorial, not a policy discussion. This characterization indicates that the Postal Service has no intention of addressing the competitive issues raised by the Dashboard.

In PostCom's view, the Dashboard clearly violates section 404a. We believe that if a complaint were brought under sections 404a(c) and 3662, the Commission would agree. While we assume that the Postal Service takes a different view, the Postal Service has yet to explain its position to PostCom. Before we proceed with any further action, and before the Postal Service implements the Dashboard, we ask that you review and respond to the concerns raised in this letter.

Regards,

/s/ Matthew D. Field
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Ian D. Volner
*Attorneys to the Association for Postal
Commerce*