



## BPM Litigation on Hold

Among the many government activities on hold because of the government shutdown are those of Department of Justice attorneys representing other federal agencies.

Among the dockets being delayed is the suit brought against the Postal Regulatory Commission by the Postal Service last summer. In that case, the USPS petitioned the US District Court of Appeals for the DC Circuit to review the PRC's June 25 decision denying the Postal Service's request to remove Bound Printed Matter flats and parcels from the market-dominant product list.

That request was one of two filed December 20, 2024; the second, essentially meant to complement the first, was to expand the criteria for Marketing Mail to enable inclusion of items that would otherwise be categorized as BPM. That second request was approved on June 25, and the Postal Service is proceeding to implement it, with a set of rates likely to be included in a price filing next year.

Meanwhile, clearly unhappy with the PRC's BPM decision, the USPS went to court on July 25, stating simply:

"The United States Postal Service petitions this Court for review of Postal Regulatory Commission ('Commission') Order Number 8937, *Order Denying Request to Remove Bound Printed Matter from the Market Dominant Product List and Approving Changes in Weight Limits for USPS Marketing Mail* (Commission Docket Nos. MC2025-948 and MC2025-958; June 25, 2025) ('Order'). Specifically, the Postal Service appeals the part of the Order that denied the Postal Service's request to remove Bound Printed Matter Flats and Parcels from the Market Dominant Product List. ..."

On August 27, the Postal Service filed its *Petitioner's Statement of Issues to be Raised*, stating:

"Pursuant to this Court's Order of July 28, 2025, Petitioner, the United States Postal Service, submits the following statement of the issues to be raised in this matter:

"First, did the Postal Regulatory Commission ('Commission') act arbitrarily, capriciously, or abuse its discretion in denying the Postal Service's request to remove Bound Printed Matter Flats and Bound Printed Matter Parcels from the Market Dominant product list?

"Second, did the Commission act arbitrarily, capriciously, or abuse its discretion by failing to provide any articulable standard for when a product can be removed from the Market Dominant product list unless that product is moribund and unused?

"Third, did the Commission act arbitrarily, capriciously, or abuse its discretion in balancing the factors in favor and against removing Bound Printed Matter Flats and Parcels and in concluding that the Postal Service had abused its market power by making serious factual and analytical errors?

"Fourth, did the Commission err by holding that the elimination of Bound Printed Matter Flats and Parcels would be an abuse of the Postal Service's market power, as defined by 39 USC § 3642(b)(1), when the Postal Service demonstrated that any migration within Market Dominant products would fall within the applicable price caps, and that any migration to Competitive products would be subject to competition with other vendors?"

The court set a schedule for the filing of briefs, but that was interrupted when the aforementioned DOJ attorneys had to stop working when the government shut down.

Based on an unopposed October 24 motion by the USPS, on October 28 the court issued an order granting

"... petitioner's unopposed motion to defer briefing to accommodate mediation discussions. Case 25-1161 held in abeyance pending further order of the court. The parties are directed to file motions to govern further proceedings in this case within 10 days of the date that appropriations are restored and the Department of Justice attorneys are permitted to resume their usual civil litigation functions."

It's unclear what was meant by "mediation discussions"; the existence of BPM as a category of mail would seem to be binary, so any other possible status is less than obvious.

More importantly, it's unknown when legislators will rediscover the art of compromise and, in turn, pass the necessary legislation to get the federal government back in operation. Until then, the BPM case, like most other government activities, will remain in suspended animation.