

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

CUSTOMIZED MARKET MAIL        )  
MINOR CLASSIFICATION CHANGE    )

Docket No. MC2003-1

REPLY BRIEF

OF

VALPAK DIRECT MARKETING SYSTEMS, INC., AND  
VALPAK DEALERS' ASSOCIATION, INC.

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**TABLE OF CONTENTS**

ARGUMENT	Page
I. The Postal Service Acknowledges That its Proposed Rate for CMM Lacks Any Cost Justification and the Cost Coverage for CMM Is Speculative . . . . .	1
II. The Postal Service’s Argument Demonstrates That Unit Costs for CMM Mail Are Not Analogous to Residual Shape Mail and Could Have and Should Have Been Estimated . . . . .	2
III. As an Alternative to Cost Estimates, the Postal Service’s Initial Brief Offers a Discussion of Rate-category Applicability That Is Neither Logical, Nor Reasonable, Nor Fair . . . . .	6
A. Failing to Recognize Cost Avoidance by Virtue of Presort and Dropship Requirements for CMM Is Neither Logical, Nor Reasonable, Nor Fair . . . . .	7
B. Requiring that CMM be Capable of Being Handled as a Flat, but Nevertheless Imposing a Parcel Surcharge, Is Neither Logical, Nor Reasonable, Nor Fair . . . . .	8
C. Use of the Priority Mail Dropship Option for CMM Would Result in Double Payment for Upstream Processing, Transportation, and Delivery and Contribution to Institutional Costs, Which Is Neither Logical, Nor Reasonable, Nor Fair . . . . .	11
CONCLUSION . . . . .	12

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ARGUMENT

**I. THE POSTAL SERVICE ACKNOWLEDGES  
THAT ITS PROPOSED RATE FOR CMM  
LACKS ANY COST JUSTIFICATION AND  
THE COST COVERAGE FOR CMM IS SPECULATIVE.**

A reading of the Postal Service's Initial Brief confirms the Postal Service's lack of evidence to support its request for a permanent mail classification change. Its brief is reduced to relying on "[w]itness Hope's ... **assertion** that CMM **should** yield positive contribution...." The Postal Service would have the Commission treat such an **assertion** as an acceptable substitute for a **record estimate** of unit cost (that could be compared to the proposed rate), and would have the Commission believe that this **assertion** "is **reasonable**, particularly given her detailed analysis of CMM's physical characteristics, entry profile, and special and ancillary service restrictions." Postal Service Initial Brief, p. 10 (emphasis added).

The Postal Service wants the Commission to believe that a conclusory assertion by witness Hope that a proposed rate should cover costs is "reasonable" even though it is made

without any unit cost estimate whatsoever. The same witness Hope, of course, has testified that “[s]pecific costs for accepting and handling CMM pieces at Destination Delivery Units (DDUs) were **not discussed or calculated.**” Response to OCA/USPS-T1-1 (emphasis added). With respect to whether her proposed rate bears a reasonable relationship to the Postal Service’s cost of handling the product, her discussion is wholly speculative, and cannot be considered to constitute valid record evidence.

There is another curious aspect to witness Hope’s speculation: it has a one-sided focus on covering cost, with no consideration of whether the cost coverage is so high and so out of line as to be confiscatory and unduly discriminatory. Witness Hope could have made the same assertion discussed *supra* if she believed the cost of handling and delivering CMM to be 2 cents, even though the proposed rate is many multiples of that amount. Witness Hope’s “assertion,” which is relied on by the Postal Service on brief, is no substitute for a reasoned estimate of unit cost that the Postal Service should have made, and Valpak submits that the Commission may not reasonably rely on it.

**II. THE POSTAL SERVICE’S ARGUMENT  
DEMONSTRATES THAT UNIT COSTS FOR CMM MAIL  
ARE NOT ANALOGOUS TO RESIDUAL SHAPE MAIL AND  
COULD HAVE AND SHOULD HAVE BEEN ESTIMATED.**

Although obviously not expressly acknowledged by the Postal Service, its detailed description of CMM and how it will be handled demonstrates why the CMM product is both (i) anything but the “twin sister” of Residual Shape Surcharge (“RSS”) mail, requiring record evidence on the unit cost of handling CMM, and (ii) fully capable of being separately costed.

The Postal Service's Initial Brief notes that CMM pieces would consist "of thin, lightweight, nonrectangular shapes" (at 1), "be limited to 3.3 ounces" (at 1), "be subject to strict entry requirements, so as to prevent them from entering into mail processing operations" (at 1), "bypass all mail processing operations at plants and would enter the mailstream at the deepest possible entry point, *i.e.*, the destination delivery unit (DDU) level" (at 1), have "[a]ncillary and special service restrictions [that] would also simplify handling methods and prevent CMM from entering the mail processing network in other ways" (at 1), be accepted "only under controlled circumstances that ensure minimal impact on postal operations" (at 2), "bypass mail processing operations entirely by entry at or dropship to DDUs" (at 3), "not be subject to any minimum quantity requirements other than the subclass minimum" (at 3), be "likely to be configured as a non-rectangular flat" (at 3), "avoid mail processing operations at plants prior to delivery" (at 6), and be "reasonably structured ... to limit its handling and presence in mail processing operations after delivery" (at 6). It is explained that this last point, relating to handling after delivery, means "that undeliverable-as-addressed CMM would not be eligible for ancillary forwarding or return services, thereby preventing its reentry into the mail processing environment," would "never be held for pickup," and "would be required to participate in the carrier release program" (at 6).

Residual Shape Surcharge mail is wholly different from CMM in thickness, weight, rigidity, handling and almost any other pertinent cost-causing characteristic. Nothing in the record indicates that it will have an average unit cost comparable to that of parcels. The costs of Residual Shape Surcharge mail are wholly inapplicable to CMM:

- Parcels are **more than 0.75 inches** thick, whereas CMM is required to be **less than 0.75 inches**, and in general is expected to be **less than 0.25 inches**.
- Standard Nonprofit and Regular parcels **on average** weigh, respectively, **7.5 and 9.3 ounces** — and Standard parcels can weigh **up to 16 ounces** — whereas the **maximum** weight of CMM is **3.3 ounces**.
- Parcels are almost invariably **rigid** (or if mailed in a flexible envelope, have rigid contents, such as film for cameras), whereas CMM is required to be sufficiently **flexible** to fit into apartment-type mailboxes.
- Parcels are **not cased with flats**, whereas CMM is **expected to be cased with flats**.
- Parcels **are returned to the post office and held for pickup** if they do not fit into a mailbox, whereas CMM would **never be returned and held for pickup**.

Moreover, there is no reason why the Postal Service could not have separately costed CMM, or could not do so in the near future after this request is denied by the Commission, as it should be. Based on the detailed description of CMM in the record, as summarized above, the flow path for CMM appears reasonably clear. CMM avoids all operations prior to the DDU. Upon arrival at a DDU, it receives manual handling by a clerk, which is not unusual. Many pieces, including some parcels and Bound Printed Matter, are known to be sorted to carriers at DDUs currently. With respect to handling by carriers, the above-cited list of restrictions on the product precludes a number of possible carrier operations. Reinforcing the expected ease of handling CMM under the proposed restrictions, Postal Service witness Ashe explains that “[i]t is not believed ... the entry of such pieces will have any noticeable impact on

handling/processing and delivery operations at destination delivery units (DDUs).” Response to OCA/USPS-T1-2.

Considering the few operations through which CMM passes, it is difficult to imagine a flow path that is less stochastic or more deterministic. In fact, one of the clearest and most straightforward aspects of this case is the handling that CMM pieces receive. Their flow path contains no complexities, no forks, and no randomness. The Postal Service has extensive experience doing special cost studies, and has previously submitted them in proceedings before the Commission. To almost any analyst, a quantitative costing exercise would be a straightforward matter. The Postal Service fails to explain why such an exercise was not attempted. The costs should have been studied, since costs are the key reference point for rates. Yet no analysis is provided.

It is difficult to understand why the Postal Service has decided to file a case without unit cost data. First, it is impossible to believe that the Postal Service has developed a new institutional position that rates should be developed intuitively without reliance on any cost estimates. Second, for reasons set out above, it is impossible to believe that design of a cost study would have been difficult. Third, it is impossible to believe that it would have been too expensive to conduct a cost study. Fourth, the question arises as to whether the Postal Service wants to use this docket to establish the precedent that the Postal Service can do what it wants in creating new products, and setting rates, without meaningful Commission review. If no cost estimates are provided, no meaningful litigation or review can be had.<sup>1</sup> The Commission’s

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<sup>1</sup> Valpak did not engage in discovery or request a hearing on the merits of the testimony of the two witnesses presented by the Postal Service because there were no unit cost

approval of this filing, without any unit cost estimates would establish the principle that the Postal Service could set its own rates for its own products. Now it is up to the Commission to respond to this request by defending its own rules, its own jurisdiction, and its own role, and saying “no.” If the Postal Rate Commission were to defer to the Postal Service and approve this request, it would set a precedent for the future under which it is difficult to imagine when it could deny or modify any future Postal Service rate or classification request, and in doing so, the Commission would lose much of its very reason for being.

**III. AS AN ALTERNATIVE TO COST ESTIMATES,  
THE POSTAL SERVICE’S INITIAL BRIEF OFFERS A DISCUSSION  
OF RATE-CATEGORY APPLICABILITY  
THAT IS NEITHER LOGICAL, NOR REASONABLE, NOR FAIR.**

The Postal Service’s Initial Brief states that “CMM has been adequately analyzed and **reasonably** designed” (at 1, emphasis added) and that “[w]itnesses Ashe and Hope provide a **logical** and **reasonable** explanation of the underlying rationale for the purpose and design of the CMM product” (at 2, emphasis added). Witness Hope described her approach, as follows: “by methodically choosing rate elements that **logically** follow from the characteristics and requirements for CMM, I conclude that the prices are **reasonable** with regard to costs.” Response to OCA/USPS-T1-1 (emphasis added). For the reasons discussed below, witness Hope’s process of “methodically choosing rate elements” is neither logical, nor reasonable, nor fair.

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estimates of handling CMM to be tested, as the Postal Service’s initial filing contains no testimony, no library reference and no data which could be questioned or challenged.

**A. Failing to Recognize Cost Avoidance by Virtue of Presort and Dropship Requirements for CMM Is Neither Logical, Nor Reasonable, Nor Fair.**

Witness Hope determined that CMM pieces would be ineligible for either presort discounts or dropship discounts. Referring to witness Hope, the Postal Service's Initial Brief states:

As described in her testimony, the Basic category is appropriate because each CMM mailing would not be subject to any minimum quantity requirements other than the subclass minimum. USPS-T-1 at 7. She reasons that the density of CMM mailings would be unlikely to allow for the significant level of presortation that is currently required in order to qualify for further **presort** or **destination entry** discounts in the Regular and Nonprofit subclasses. [Postal Service Initial Brief, at 3 (emphasis added).]

The argument made by the Postal Service is unreasonable on its face. It is well known that minimum quantities exist for **presort discounts** so that the per-piece costs of the bundle sorts are small relative to the per-piece costs that would be incurred if the pieces themselves were sorted individually. But in the case of CMM, as clearly explained on the record and reviewed above, none of the bundle sorts are required because all bundles are dropshipped to DDUs. Accordingly, the presort minimums do not apply to CMM simply because they are irrelevant to this new product.

Furthermore, major questions arise over the suggestion that minimum quantities and presortation are required to qualify for **dropship discounts**. The cost analysis supporting the dropship discounts contains nothing which restricts its application to mail meeting minimum quantities or presort thresholds. And in regard to the requirement that DDU entry be restricted to carrier-route presort, this is only required because the sorting to carrier route is normally

done at an upstream facility, which is not the case for CMM mail. Interestingly, the Postal Service allows certain parcels and Bound Printed Matter to be entered at DDU's without being carrier-route presorted.

To sum up, CMM would clearly avoid the costs on which presort and dropship discounts are based. Absent any analysis demonstrating that CMM will cause higher costs elsewhere, it is illogical and unreasonable to deny such discounts to CMM. In short, no good reason has been given on the record for discriminating against CMM, which would preclude CMM from receiving either presort or dropship discounts.

**B. Requiring that CMM be Capable of Being Handled as a Flat, but Nevertheless Imposing a Parcel Surcharge, Is Neither Logical, Nor Reasonable, Nor Fair.**

Witness Hope elects to impose the Residual Shape Surcharge, applicable to non-letters/non-flats, on flat-shaped CMM. In defending this decision, the Postal Service's Initial Brief states that "[witness Hope] logically concludes that [other rate elements plus] the residual shape surcharge would be the best fit for CMM" (at 3), and concludes:

Finally, based on **simple logic** and the current Standard Mail rate design, witness Hope concludes that CMM **should be subject** to the residual shape surcharge **because** it would neither (1) be prepared as either a letter or a flat or (2) satisfy the specifications of letter or flats as prescribed in the Domestic Mail Manual. [Postal Service Initial Brief, at 4 (emphasis added).]

Certain kinds of reasoning can lead, step by step, to conclusions that are absurd on their face. The fact that CMM is prepared neither as a letter nor a flat, and the fact that it does not satisfy the Domestic Mail Manual specifications for either letters or flats, does not demonstrate that it should be subject to the Residual Shape Surcharge. Indeed, it may be that in this case

the forest was missed for having examined one tree too closely. At some point, one really needs to ask whether any of the costs which undergird and justify the Residual Shape

Surcharge apply to CMM pieces. Witness Hope's own analysis undermines her conclusion:

[I]t is my understanding that approximately **53 cents of that 84.1 cents** difference [associated with the Surcharge] takes place in mail processing, much of **which CMM will bypass**, and approximately **10.3 cents in air/highway/water/rail transportation**, all of which **would be bypassed by CMM** (see worksheets 3REG Parcels (detailed) and 3REG Flats (detailed) in USPS-LR-J-58). I should also note that **many** of the underlying flats mail processing and **probably all** of the underlying flats transportation costs would also be **avoided**, further compounding the cost difference between CMM and other residual shapes. [Response to OCA/USPS-T1-29 (emphasis added).]

With respect to the handling at the DDU, witness Ashe explains, as noted above, that

“[i]t is **not believed** that the entry of such pieces will have **any noticeable impact** on handling/processing and delivery operations at destination delivery units (DDUs).” Response to OCA/USPS-T1-2 (emphasis added). Witness Ashe further explains:

Under mailing standards to be proposed, CMM could be constructed of any material that is safe for handling by postal personnel. However, CMM mailpieces would have to be sufficiently flexible to withstand movement in the mailstream, the normal handling required for casing and delivery, and folding or rolling to fit in a small mail receptacle (such as a post office box). The Postal Service expects that this latter requirement, in combination with a mailers' desire to make a positive impression with the CMM pieces on the recipient, will naturally inhibit the use of rigid and insufficiently-flexible materials. [USPS-T-1, p. 10, ll. 16-22.]

Clearly, the CMM piece is not expected to be handled as a parcel. In addition, further unlike parcels, witness Ashe explains that the “Carrier Release” endorsement is required, and,

even unlike other flats, that no undeliverable-as-addressed endorsements are allowed and that no special services can be used. *See* USPS-T-1, p. 12, ll. 9-22.

In the face of arguments that all handling and transportation prior to the DDU are avoided, that carrier and DDU operations will be minimally impacted, and that the piece will not be handled as a parcel, but rather as a flat (that will always fit into the mail box), it is difficult to understand why witness Hope believes that the price, including the Residual Shape Surcharge, is “reasonable with regard to costs” when “[s]pecific costs for accepting and handling CMM pieces at Destination Delivery Units (DDUs) were **not discussed or calculated.**” Response to OCA/USPS-T1-1 (emphasis added). Absent some cost justification that appears nowhere in the record, imposition of a surcharge that increases an already high rate by over 65 percent is neither logical, nor reasonable, nor fair.<sup>2</sup>

Valpak does not take the position that the proposed rate for CMM, less subtractions for presort, DDU-entry, and the Residual Shape Surcharge, would necessarily lead to an appropriate rate. It is possible that the non-standard character of the pieces will cause carriers to incur extra handling time. Here again, some analysis should have been presented, even if it involved no more than an estimate that carriers would case CMM pieces at 6 or 7 per minute, instead of 8 per minute.

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<sup>2</sup> This is not to say that Valpak knows that the surcharge is disproportionately large to the cost, for on this record no one knows. All analysis, including that contained herein, is speculative. This is why on-the-record cost estimates are essential. It is the Postal Service’s failure to provide any cost estimates which necessitates Valpak’s opposition, not any contention the proposed rate is too high or too low.

**C. Use of the Priority Mail Dropship Option for CMM Would Result in Double Payment for Upstream Processing, Transportation, and Delivery and Contribution to Institutional Costs, Which Is Neither Logical, Nor Reasonable, Nor Fair.**

The Postal Service's Initial Brief provides two tables that show the postage costs for mailings of different sizes and densities associated with using Priority Mail to dropship CMM (See Postal Service Initial Brief, p. 9). Examination of these tables reinforces some of the issues raised above. Priority Mail rates cover upstream processing, transportation, and delivery; they also have a substantial markup that provides a contribution to institutional costs. When consideration then is given to the postage for the pieces inside the Priority Mail package, it becomes obvious immediately that the CMM pieces **also** pay for upstream processing and transportation, since they do not get either a presort or dropship discount. They also pay for delivery and make a contribution to institutional costs. It thus appears that users of CMM would pay double postage for upstream handling and transportation, double postage for delivery, and a double contribution to institutional costs.<sup>3</sup> Such double charging is neither logical, nor reasonable, nor fair. If the Postal Service wants to serve mailers at fair and equitable rates, as well as be competitive, analysis of these issues, including a cost analysis capable of justifying rates charged, is needed.

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<sup>3</sup> The charge for delivery and the contribution that are built into Priority Mail rates would contribute toward the cost of opening and distributing CMM to carriers at DDUs.

**CONCLUSION**

The Postal Service has taken a reasonable proposal for a new product, one that Valpak likely would use, and for some unknown reason has chosen to file an obviously and clearly deficient case. It is for a situation such as this that the Commission was created. If Congress intended for the Postal Service to have the latitude to establish its own mail classifications and the flexibility to set its own rates without needing to present a meritorious, cost-based justification, it would not have created the Postal Rate Commission. Having created the Commission, and charged the Commission with the duty to ensure compliance with 39 U.S.C. sections 3622 and 3623, as well as 39 U.S.C. section 403(c), the Commission must carry out that duty. The Commission is on the record as interpreting these constraints as requiring that “new services ... must be offered at compensatory rates....” Order No. 1110 (May 7, 1996), p. 5. In this instance, the filing of a request devoid of cost estimates requires that the Commission “Just Say No.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

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William J. Olson

May 15, 2003