

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

RATE AND SERVICE CHANGES TO) Docket No. MC2004-4
IMPLEMENT FUNCTIONALLY EQUIVALENT)
NEGOTIATED SERVICE AGREEMENT WITH)
DISCOVER FINANCIAL SERVICES, INC.)

VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
RESTATED REQUEST FOR HEARING,
PRELIMINARY STATEMENT OF ISSUES, AND
SUBMISSION OF PROPOSED HEARING SCHEDULE

(July 23, 2004)

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak"), hereby restate in writing their request for a hearing originally requested orally on July 15, 2004, as well as set out a preliminary statement of issues, and proposes a schedule for a hearing which was discussed, but not agreed to, at the July 21, 2004 settlement conference.

Background

Valpak's request for a hearing was originally made verbally at the prehearing conference held herein on July 15, 2004. At that time, Valpak's view of the need for additional time to determine whether a hearing would be requested was explained. However, some stated the view that a hearing must be requested at the outset. Counsel for Valpak stated that, if a request had to be made that early in these proceedings, Valpak requests a hearing. (Related discussions on these procedural matters occurred in the Bank One Corporation ("Bank One") prehearing conference, Docket No. MC2004-3.)

Since then, counsel for Valpak participated in a meeting with counsel for Discovery Financial Services, Inc. ("DFS") and the Postal Service at which the DFS Negotiated Service

Agreement (“NSA”) was reviewed in detail and issues about the implication of the differences between the Capital One Services, Inc. (“Capital One”) NSA and the DFS NSA were discussed, had other conversations and e-mails with counsel for the Postal Service and DFS, participated in a conference call with Postal Service witness Ali Ayub (USPS-T-1) to discuss the financial model relied on by the Postal Service, propounded written discovery to Postal Service witness Ayub (VP/USPS-T1-1-11) and DFS witness Karin Giffney (VP/DFS-T1-1-15), and participated in the settlement conference held on July 21, 2004. Nevertheless, the Postal Service’s report on the settlement conference filed on the afternoon of July 22, 2004, reveals the position of counsel for DFS as being that he did not believe that either the Office of the Consumer Advocate (“OCA”) or Valpak yet has identified any issues that would warrant a hearing (at 2). Further, although most of the settlement conference on July 21, 2004 dealt with the schedule for a such hearing, the Report of Settlement Coordinator filed on July 22, 2004 states that no agreement was made on holding a hearing. (*Id.*) Valpak had understood that, under Presiding Officer’s Ruling No. MC2004-4/1, the identification of issues was intended to be addressed in its response to the Postal Service Proposal for Limitation of Issues, which is due July 29, 2004, but, to avoid any confusion, makes this preliminary statement of factual issues, reserving the right to supplement this list.

Valpak would like to reiterate that it would like to avoid the need to orally cross-examine any witnesses of the co-proponents, and avoid the need to file any testimony. In the event that there proves no need for such oral cross-examination or testimony, the request for a hearing would be withdrawn, and depending on the position of other parties, the case could proceed rapidly, perhaps within the alternative 60-day period set out in the Commission rules.

Preliminary Statement of Issues

A. Factual Differences between Capital One NSA and DFS NSA

Significant factual differences appear to exist between the Capital One baseline NSA and this functionally-equivalent NSA for DFS. Most of these issues relate to the financial impact of the NSA on the Postal Service.

1. The Capital One NSA involved only new First-Class volume, but the DFS NSA involves only migrated Standard Mail, raising the issue of whether the Postal Service properly compared the contribution to institutional costs under DFS' current use of Standard Mail with the future situation in which DFS would be using First-Class Mail. A number of other specific questions are presented by this fact, including:

a. Has the Postal Service correctly calculated both the total cost and the marginal cost of electronic Undeliverable as Addressed ("UAA") information for the new First-Class volume?

b. Has the Postal Service ignored the cost of free-forwarding and free electronic Address Correction Service ("ACS") for forwarded mail?

c. Both on average and at the margin, could the Postal Service actually suffer a reduction in contribution to institutional costs as a result of the migration from Standard Mail to First-Class Mail that is being encouraged by this NSA?

2. The Capital One NSA involved a mailer which maintained its own solicitation list, while DFS apparently uses rented lists, raising the issue of whether any use that DFS could possibly make of the expensive electronic UAA information is of low value, far below the cost

of providing the information. A number of other specific questions are presented by this fact, including:

a. Is there any value whatsoever to the Postal Service or DFS of DFS obtaining UAA electronic return information, and, if so, what is that value, and how does it compare to the Postal Service's cost of providing this information?

b. How have anticipated benefits to the Postal Service of DFS obtaining this UAA electronic return information been incorporated into this NSA?

3. Stated differently, when DFS achieves its maximum discount, will the **marginal** contribution to the Postal Service's overhead from First-Class solicitation mail that converts from Standard Mail be significantly less than the average contribution when mailed at Standard Mail rates? That is, at the margin, will the Postal Service suffer a reduced contribution to overhead as a result of implementing the NSA? If so, by how much? And, worse, will it suffer a reduced contribution to overhead even before the maximum discount is reached?

B. Other Factual issues

1. Does implementation of this NSA make a systemwide fix of the UAA pricing problem more difficult for the Postal Service, and hence, less likely?

2. Does the Postal Service now have in place the systems which it testified it did not have in place when the Capital One NSA was considered, that would allow this NSA to be offered as a niche classification, available to all similarly situated mailers who meet certain generalized criteria, rather than just this one mailer (in this docket), as the Commission anticipated could occur in the future after the Capital One NSA was in place?

3. Does the stop-loss provision contained in the DFS NSA satisfy the principles established by the Commission with its Capital One stop-loss provision?

Proposed Timetable

Although hopeful it will receive responses to its written discovery which would allow it to waive any oral cross-examination of Postal Service/DFS witnesses and the filing of any testimony, Valpak believes at this juncture it would be prudent for the Commission to proceed with a “worst-case scenario” when establishing a schedule so that the 120 day deadline can be met irrespective as to how the litigation will unfold. A new and truncated schedule could be issued in the future if parties choose not to participate fully in these proceedings.

Valpak proposed the timetable set out below at the July 21, 2004 settlement conference. It was not agreed to at that conference, but Valpak proposes this schedule to the Commission for adoption. This schedule incorporates the seven-day response to discovery requests agreed to by Valpak and OCA at the July 21, 2004 settlement conference. This schedule contains an earlier alternative date for filing of intervenor/OCA testimony if no oral cross-examination of Postal Service/DFS witnesses is required. Most importantly, even in the worst case scenario where all parties choose to cross-examine all witnesses and file all types of testimony, this schedule allows the Commission to issue its Opinion and Recommended Decision within 120 days.

August 5	Thursday	Discovery cutoff of to Postal Service/DFS witnesses (Presiding Officer’s Ruling No.MC2004-4/1)
August 17	Tuesday	Intervenors/OCA notify PRC if oral cross-examination of Postal Service/DFS witnesses is required

August 31	Tuesday	Intervenors/OCA submit testimony (if no oral cross-examination of Postal Service/DFS witnesses is required)
Sept. 8-9	Weds-Thurs	Hearings on Postal Service/DFS witness testimony (if required) (Presiding Officer's Ruling No.MC2004-4/1)
Sept. 13	Monday	Intervenors/OCA submit testimony (if oral cross-examination of Postal Service/DFS witnesses is required) (Intervenors/OCA to provide answers in 7 days)
Sept. 24	Friday	Discovery cutoff for intervenors/OCA witnesses
October 1	Friday	Intervenors/OCA respond to timely-filed interrogatories
October 4	Monday	Hearings on testimony of intervenors/OCA witnesses (if required)
October 12	Tuesday	Postal Service/DFS submit rebuttal testimony (if required) (Note: October 11 is Columbus Day)
October 18	Monday	Hearings on rebuttal testimony of Postal Service/DFS (if required)
October 25	Monday	Initial Brief by all parties
November 1	Monday	Reply Brief by all parties / Submission of case to PRC
November 17	Wednesday	Deadline for Opinion and Recommended Decision (120 days from July 20)

Respectfully submitted,

William J. Olson
John S. Miles
WILLIAM J. OLSON, P.C.
8180 Greensboro Drive, Suite 1070
McLean, Virginia 22102-3860
(703) 356-5070

Counsel for:
Valpak Direct Marketing Systems, Inc. and
Valpak Dealers' Association, Inc.