

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Robert G. Taub

Valassis NSA

Docket No. MC2012-14

Valassis NSA

Docket No. R2012-8



Washington, DC 20268-0001

August 23, 2012

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Docket No. R2012-8

ORDER APPROVING ADDITION OF VALASSIS DIRECT MAIL, INC.  
NEGOTIATED SERVICE AGREEMENT TO THE  
MARKET DOMINANT PRODUCT LIST

(Issued August 23, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new negotiated service agreement (NSA) with Valassis Direct Mail, Inc. (Valassis) to the market dominant product list. For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

Pursuant to 39 U.S.C. 3622 and 3642, and 39 CFR 3010 and 3020 *et seq.*, the Postal Service filed a formal request and associated supporting information to add the

Valassis Direct Mail, Inc. Negotiated Service Agreement (Valassis NSA) to the market dominant product list.<sup>1</sup>

The Postal Service's Request includes the following six attachments:

- Attachment A—a copy of Governors' Resolution No. 11-4, establishing mail classifications and rates corresponding to Domestic Market Dominant Agreements, Inbound International Market Dominant Agreements, and Other Non-Published Market Dominant Rates;
- Attachment B—a copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule (MCS);
- Attachment D—a proposed data collection plan;
- Attachment E—a Statement of Supporting Justification as required by 39 CFR 3020.32, which the Postal Service is also using to satisfy the requirements of 39 CFR 3010.42(b)-(e); and
- Attachment F—a financial model, by which the Postal Service demonstrates that over its 3-year term, the contract will generate an additional \$13 million to \$42 million in contribution.<sup>2</sup>

The Postal Service identifies two main objectives of the Valassis NSA: (a) to maintain the total contribution the Postal Service receives from existing Valassis Saturation Mail, and (b) to provide an incentive for Valassis to find innovative ways to expand its use of Standard Mail. *Id.* at 2. The Postal Service describes the contract and its four key components: mailer eligibility, mail eligibility, mailing and volume commitments, and rebates on Standard Mail Saturation Flats. *Id.* at 4.

Under the NSA, discounted prices would apply to new saturation shared mail programs (limited to advertising of durable and semi-durable goods by retailers with

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<sup>1</sup> Notice of the United States Postal Service of Filing of Contract and Supporting Data and Request to Add Valassis Direct Mail, Inc. Negotiated Service Agreement to the Market-Dominant Product List, April 30, 2012 (Request).

<sup>2</sup> Attachment F also estimates that the net value (contribution less earned rebates) of the Valassis NSA over its three year term will be between \$4.7 million and \$15.3 million.

physical retail outlets in 30 or more states) in markets where Valassis has maintained an existing Standard Mail Saturation mailing program on at least a monthly basis during the two years prior to the execution of the contract. Valassis must also maintain its existing shared mail programs for the duration of the NSA, and shall not transfer or consolidate advertising from current advertisers into the new program, extend the new program to ZIP Codes or carrier routes that are beyond the market profile of its existing programs, or migrate advertising circular business from the solo mail stream<sup>3</sup> into the new program. *Id.*

Mailpieces eligible under this program are Standard Mail Saturation Flats entered at a destination Sectional Center Facility (SCF) or Destination Delivery Unit (DDU). *Id.* at 3. Qualifying mailpieces must have dimensions between 6.125" x 11.5" x .25" and 12" x 15" x .75", and must contain between 3 and 10 advertising inserts during at least 9 of the 12 months of each contract year. *Id.* at 5. The volume dropshipped to DDUs must exceed 85 percent of the total NSA volume. *Id.*

Valassis has agreed to initiate mailings under the contract within 90 days of its effective date. Otherwise, either party may cancel the agreement within 30 days. *Id.* The effective date is defined as the date on which the Commission approves the contract. *Id.* Attachment B at 5. If Valassis decides to proceed with the agreement, it must mail at least 1,000,000 pieces during the following 12 months or pay the Postal Service a one-time fee of \$100,000. *Id.* at 5.

If all the above conditions are met, Valassis NSA mail will earn an annual rebate on published prices as follows:

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<sup>3</sup> Solo mail is one-time or individual mailings as opposed to a coordinated marketing program.

Weight Per Piece	DDU Rate	SCF Rate
4.5 to 6.5 ounces	20% off published rates at the time of mailing	20% off published rates at the time of mailing
6.5 to 9 ounces	\$0.172	\$0.185
9.0 to 11 ounces	\$0.211	\$0.229
Over 11 ounces	20% off published rates at the time of mailing	20% off published rates at the time of mailing

The annual rebate will be paid after the end of each contract year. *Id.* at 5-6. If the Postal Service implements price adjustments during the term of the agreement, the rebate prices for the 6.5 to 9 ounce and 9.0 to 11 ounce mailpieces will be adjusted in an amount equal to the percentage price change for Standard Mail Saturation Flats, provided that the rebates remain in the range of 22 percent to 34 percent. *Id.* at 6. The mailpieces sent under the contract will be entered exclusively under dedicated PostalOne™ permit accounts. *Id.*

The Postal Service expects the agreement to maintain a positive value if the penalty provision is triggered, reducing the risk of the agreement. *Id.* at 7.

In Order No. 1330, the Commission established Docket Nos. MC2012-14 and R2012-8 to consider the Postal Service's Request, appointed a Public Representative to represent the interests of the general public in this proceeding, set May 23, 2012 as the deadline for interested persons to submit comments on the NSA, and set May 30, 2012 as the date for persons to submit reply comments.<sup>4</sup>

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<sup>4</sup> Order No. 1330, Notice and Order Concerning the Filing of Contract and Supporting Data and Request to Add Valassis Direct Mail, Inc. Negotiated Service Agreement to the Market Dominant Product List, May 23, 2012.

The Commission received 44 comments and 5 reply comments from various parties.<sup>5</sup> Three Chairman's Information Requests (CHIRs) were issued and responded to by the Postal Service.<sup>6</sup>

On June 15, 2012, the Commission issued a Notice of Inquiry (NOI)<sup>7</sup> requesting that interested parties provide additional supporting information for their respective claims. There were 42 responses to the NOI.<sup>8</sup>

### III. STATUTORY STANDARDS

Negotiated Service Agreements (NSAs) are new products that are subject to certain statutory requirements.<sup>9</sup> The Postal Accountability and Enhancement Act of 2006 (PAEA) assigns the Commission the responsibility to add, remove, or transfer new Postal Service products to or between the market dominant and competitive products lists. 39 U.S.C. 3642(a). As part of this responsibility, the Commission also reviews new product proposals for compliance with other statutory requirements.

In determining whether to assign the Valassis NSA to the market dominant product list or the competitive product list, the Commission must consider whether the proposed product meets either of two statutory tests. The first test involves determining whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other

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<sup>5</sup> See Appendix A for a list of commenters.

<sup>6</sup> Chairman's Information Request No. 1 was issued on May 9, 2012 and the Postal Service responded on May 16, 2012. Chairman's Information Request No. 2 was issued on May 11, 2012 and the Postal Service responded on May 18, 2012. Chairman's Information Request No. 3 was issued on May 15, 2012 and the Postal Service responded on May 21, 2012.

<sup>7</sup> Notice of Inquiry No. 1, June 15, 2012 (NOI).

<sup>8</sup> See Appendix B for a list of entities submitting responses to NOI No. 1.

<sup>9</sup> Docket No. MC 2007-1, Order No. 43, Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007.

firms offering similar products.” 39 U.S.C. 3642(b)(1). The second test requires considering if the product is covered by the postal monopoly. 39 U.S.C. 3642(b)(2). If the product meets either of those tests, it will be categorized as market dominant.

The Commission closely examined the proposed NSA’s conformity with the criteria set forth above. Although this product is proposed as market dominant, it is apparent from the record that it exists within a competitive market. Newspapers and private delivery services contribute to a marketplace within which the Postal Service must compete, and therefore it cannot set prices substantially above costs, raise prices significantly, or decrease quality or output without the risk of losing a significant level of business. The Valassis NSA is highly contested precisely because it constitutes a price reduction in an attempt to better compete in a marketplace already populated by competitors.

The Commission must also consider whether this product is covered by the postal monopoly because such products may not be transferred to the competitive product list. 39 U.S.C. 3642(b)(2). In this case, the Postal Service asserts that because the Valassis NSA applies to Standard Mail Saturation Flats, all volume under the agreement is subject to the postal monopoly. Request Attachment E at 4.<sup>10</sup> As a result of the PAEA, the Commission now has the authority to promulgate regulations

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<sup>10</sup> NOI question 8 requested interested persons’ views on whether four Standard Mail products, Saturation Flats and Parcels and High Density Flats and Parcels, would qualify as competitive under 39 U.S.C. 3642(b)(1). The Postal Service, NAA, Valassis, Valpak, and the Public Representative responded to this question. The Postal Service contends that most of the materials encompassed by the product categories are subject to the Private Express Statutes (PES) and thus excluded from consideration as competitive. Postal Service Response at 25. NAA also asserts that Saturation and High Density Flats are subject to the PES. Valassis takes no position on the issue of whether three of the products would qualify as competitive, but suggests “that a reasonable argument can be made that Saturation Flats, or components of this product, might qualify as competitive.” Valassis Response at 16. Valpak argues that the NSA was filed as a market dominant product and analyzing it “from any other standpoint would neither make sense, nor be legally permissible.” Valpak Response at 11. The Public Representative states that the market for Saturation Flats is competitive, but that, due to the mailbox monopoly, the Postal Service retains “substantial market power over the market for the delivery of Saturation [F]lats.” PR Response at 22.

interpreting or defining the postal monopoly, although it has not yet done so.<sup>11</sup> Until the Commission promulgates new regulations, historical case law<sup>12</sup> – predicated on the Postal Service’s regulatory authority that was eliminated by PAEA – indicates that mailpieces included in this NSA constitute “letters” for the purpose of the Private Express Statutes. Therefore, the Commission classifies this NSA as a market dominant product.

In evaluating the new product, the Commission must give due regard to the following considerations:

- (A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved;
- (B) the views of those who use the product involved on the appropriateness of the proposed action; and
- (C) the likely impact of the proposed action on small business concerns (within the meaning of section 3641(h)).

39 U.S.C. 3642(b)(3)

As a market dominant product, the Valassis NSA is subject to 39 U.S.C. 3622(c)(10), which requires the Commission to take into account:

(10) the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including agreements between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that –

(A) either –

(i) improve the net financial position of the Postal Service through reducing Postal Service

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<sup>11</sup> See 39 U.S.C. 601(c). The Postal Service no longer has authority to issue regulations interpreting or defining the postal monopoly.

<sup>12</sup> *Associated Third Class Mail Users v. U.S. Postal Service*, 440 F. Supp. 1211 (D.C. Cir. 1977).

costs or increasing the overall contribution to the institutional costs of the Postal Service; or

(ii) enhance the performance of mail preparation, processing, transportation, or other functions; and

(B) do not cause unreasonable harm to the marketplace.

In response to the Commission's rules, the Postal Service addresses the objectives and factors set forth in sections 3622(b) and (c). Request Attachment E at 1-3. It emphasizes the NSA is an important example of the increased pricing flexibility allowed the Postal Service under the PAEA (section 3622(b)(4)), and provides incentive for profitable new mail to improve the Postal Service's financial position (section 3622(b)(5)).

The Commission considered all relevant statutory requirements when evaluating the proposed Valassis NSA.<sup>13</sup>

#### IV. COMMENTS

Most of the 44 initial comments filed in this case oppose the proposed NSA. The primary issues raised in the initial comments relate to the requirements of section 3622(c)(10)(B), including unreasonable harm to the marketplace, the net financial effect on the Postal Service, and the criteria for similarly situated mailers.

The Commission considered all initial and reply comments. The principal arguments raised in the comments are reviewed below. The identification of specific comments is not intended to be exhaustive. The discussion, however, is indicative of the general views of commenters. A full list of initial and reply comments is contained in Appendix A.

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<sup>13</sup> The Commission also considered the application of 39 U.S.C. 404a and 39 U.S.C. 403(c) to this NSA. See section VI. E., *infra*.

A. Issues Raised by Opponents of the NSA in Initial Comments

*Unreasonable harm to marketplace.* A majority of commenters opposed to this NSA claim that it would create an unfair competitive advantage for Valassis and harm the marketplace in violation of 39 U.S.C. 3622(c)(10)(B).

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak) assert that harm would be caused by the government offering a special deal to a large firm, preventing other companies from competing on a level playing field. Valpak Comments at 22.<sup>14</sup> Gannett Company, Inc., states that newspaper advertising revenues directly support journalism critically important to local communities and “[b]y putting newspapers at a severe disadvantage in competing for advertising dollars, the USPS is threatening the entire industry.” Gannett Comments at 2.

Community Newspaper Holdings, Inc. claims that “advertising for [durable and semi-durable] goods represent [a] significant portion of our total revenues. The Valassis/NSA proposal puts this revenue at extreme risk and throws the playing field (the marketplace) out of balance.” CNHI Comments at 2. Similarly, the Newspaper Association of America (NAA) asserts that this NSA is “an effort to replace an existing distribution channel – namely the Sunday/weekend newspaper preprint package” and that “newspapers could lose up to \$1 billion of advertising revenues as a consequence of this deal.” NAA Comments at 13. NAA contends that even if Valassis does not win any business, the NSA enables Valassis to wreak substantial havoc on advertising competition in local markets by targeting certain advertisers with free or nearly free offers. *Id.* at 15.

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<sup>14</sup> Valpak also claims that the NSA was not specifically approved by the Board of Governors, and therefore invalidly delegated. Valpak Comments at 3-6. The Postal Service responds by stating “the Governors did authorize the Postal Service to enter into this NSA and reviewed the specific terms and prices that would be charged prior to filing the Notice.” Postal Service Comments at 19. It correctly references Governors’ Resolution No. 11-4, Attachment A to the Request, which obviates the need for a separate specific authorization for every contract consistent with that resolution. *Id.*

Several elected officials also submitted comments. Senator Maria Cantwell (D-WA) expresses concern that approval of this NSA could cause significant financial harm, including bankruptcy, to struggling newspapers. She cites NAA's estimate of a potential \$1 billion dollar loss of advertising revenue if this NSA is approved. Senator Cantwell Comments at 1.

Senator Charles Schumer (D-NY) also cites NAA's \$1 billion loss estimate to caution that approval of this NSA could cause unreasonable harm to the marketplace. Senator Schumer Comments at 1.

Senator Jon Tester (D-MT) recognizes that the Postal Service must be encouraged to find alternate revenue streams, but urges the Commission to take appropriate time to consider the repercussions that this NSA may have on the marketplace, particularly community newspapers. Senator Tester Comments at 1.

Congressman Todd Russell Platts (R-PA, 19<sup>th</sup> District) expresses concerns that the NSA could negatively impact local newspapers, referencing, in particular, The Patriot-News. He asks that comments requesting that the Commission reject the NSA be given full and fair consideration. Representative Platts Comments at 1.

*Similarly situated mailers.* The Postal Service is required to make NSAs available on public and reasonable terms to similarly situated mailers (39 CFR 3010.40(c)). Commenters claim that the Postal Service's depiction of Valassis' characteristics in the Request is designed to preclude other mailers from qualifying as similarly situated mailers.

The Public Representative identifies 17 restrictions on similarly situated mailers in the Request, and notes that there is no plausible rationale for excluding other mailers based on these restrictions. PR Comments at 5-7.

Valpak claims that "[t]he Postal Service has set the bar for this NSA so high as to ensure that there will be no similarly situated mailers eligible to have a 'similar

opportunity to participate’.” Valpak Comments at 23. NAA states that the “NSA precludes any other mailer from being similarly situated, and there is no reasonable justification.” NAA Comments at 30. The Milwaukee Journal Sentinel states “the proposed NSA has been created in a way that advantages one mailer and one mailer only...not even a future mailer could qualify for the significant rebate since to take advantage of the proposed NSA, a mailing program must have been in existence monthly for the past two years, and must continue. No one except Valassis can be expected to ever benefit from the proposed NSA.” Journal Sentinel Comments at 2.

*Financial Impact on the Postal Service.* Many newspapers assert that approval of the Valassis NSA would not improve the net financial position of the Postal Service as required by 39 U.S.C. 3622(c)(10)(A)(i). These commenters argue that even if the Postal Service realizes its projected gains from the Valassis NSA, it would lose net revenue because newspapers would pull some or all of their Total Market Coverage (TMC) products<sup>15</sup> out of the mail. TMC products, as a whole, generate significantly higher revenues for the Postal Service than the amount that the Postal Service expects to generate from the Valassis NSA.

The Illinois Press Association claims “there will be lost volume and revenue related to others abandoning direct mail.” Illinois Press Association Comments at 1. CNHI argues that should the Valassis NSA be approved, “those newspapers that are currently mailing their TMC products will be forced to convert some or all of their TMC delivery from the mail to a private delivery system as a competitive response.” CNHI Comments at 3. The National Newspaper Association (NNA) states one consequence of an approval is “many of [the Postal Service’s] existing newspaper TMC and shopper

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<sup>15</sup> TMC packages are advertising supplements delivered to all households in a designated market. Mid-week TMC circulars generally feature grocery and service advertisements and are delivered either via the Postal Service or alternate private delivery methods. Sunday Select circulars generally feature advertisements for durable and semi-durable goods and are generally delivered on Sundays through private delivery methods. See PR Comments at 4.

mailers will leave the mails as a result of this NSA, being unable to afford the luxury of the valuable mailbox.” NNA Comments at 10.

NAA asserts the Postal Service is “likely to drive away as much as six times as much TMC postage revenue, and corresponding contribution, as it stands to gain from Valassis.” NAA Comments at 18. The Public Representative considers it unlikely that mail qualifying for this NSA would be new to the Postal Service. PR Comments at 8. He suggests approval of this NSA could result in lost revenue from lighter weight High Density TMC mail and further the potential shift of this mail to less profitable, heavily discounted Saturation mail. *Id.* He sees additional risk to the Postal Service’s bottom line from the potential diversion of solo mailings into heavily discounted NSA mailings. *Id.* at 11.

Senator Cantwell questions whether the economic analysis submitted by the Postal Service accounted for the impact of lost business revenue on the Postal Service’s net finances. Senator Cantwell Comments at 1.

Senator Schumer, referencing NAA’s estimate that \$200 million of TMC postage revenues could be lost, suggests that the NSA will potentially result in a revenue loss for the Postal Service. He urges the Commission to reject the NSA unless the Postal Service provides clear and convincing evidence that the NSA does not violate the statute. Senator Schumer Comments at 2.

*Violation of 404a.* The Public Representative claims that the discriminatory price structure erected by the many restrictions in the NSA preclude competition and constitute “an unfair competitive advantage which the Postal Service is attempting to secure for itself vis-à-vis the newspaper industry, setting up Valassis as its proxy for capturing the Sunday circular market.” PR Comments at 7.

*Undue or unreasonable discrimination.* Several commenters, including Valpak and NAA, claim that the Postal Service is unreasonably discriminating among mail

users in violation of 39 U.S.C. 403(c) by offering discounts to Valassis that are not offered to any other mailer.

Valpak contends that “any national retailer of durable goods desiring to use saturation mail essentially will be forced to advertise with Valassis because this NSA will make Valassis the least expensive option for shared mail. This constitutes undue preferential treatment of Valassis by the Postal Service.” Valpak Comments at 21. NAA claims the Valassis NSA discriminates among Standard mailers due to the size of the discount provided to Valassis and, in the case of the flat-rate weight-range categories, discriminates against those mailers not party to this NSA who are forced to pay the per piece and a per pound rate. NAA Comments at 24-31.

*Impact on small business.* The NNA claims this NSA will have a detrimental impact on small newspapers. NNA Comments at 7-9.

#### B. Reply Comments

Reply Comments were filed by Valpak, the Postal Service, the Public Representative, William C. Miller, and Valassis. Valpak and the Public Representative reiterate their opposition to the Valassis NSA in their reply comments. The Postal Service and Valassis address most of the issues raised in the initial comments. William C. Miller filed reply comments refuting certain arguments from newspapers concerning net financial benefit to the Postal Service.

*Unreasonable harm to marketplace.* The Postal Service argues that the opposition by commenters claiming unreasonable harm to the marketplace is unfounded for several reasons. First, it disputes the assertion it is unfairly using its monopoly powers to discriminate among mailers, stating it has been given flexibility by statute to “create opportunities for new postal revenues and competitive distribution alternatives that will benefit, rather than harm, the marketplace.” Postal Service Reply Comments at 2. It also claims that the terms set forth in the NSA were not designed to

preclude other mailers from qualifying as similarly situated mailers, stating it is willing to consider any NSA that will generate new volume and revenue to the Postal Service on a case by case basis. *Id.* at 3. The Postal Service further argues the narrow scope of the NSA, which is not available for advertisements from local and regional retailers or retailers of non-durable goods, provides adequate safeguards against unreasonable market harm and protects small businesses. *Id.* at 4-5.

*Similarly situated mailers.* Valassis states that it believes newspapers should be considered similarly situated mailers for this NSA. Valassis Reply Comments at 1. It claims that this NSA will meet an important marketplace need, and does not view the NSA as a replacement for newspaper advertising distribution. *Id.* at 2-4.

*Financial impact on the Postal Service.* The Postal Service states that speculation that newspapers would remove all of their advertisements (TMC mailings) from the mail if the Valassis NSA is approved is unwarranted. Postal Service Reply Comments at 10. It states that advertisers use multiple channels to reach their desired audience, and points to the current trend of newspapers migrating to private delivery, with or without the NSA. It suggests that the NSA would have little impact on the business considerations that newspapers evaluate when deciding whether to use the Postal Service to deliver TMC pieces. It concludes that little or no diversion will occur as a result of this NSA. *Id.* at 9-11. Additionally, the Postal Service notes that it can terminate the NSA within 30 days to protect its interests or guard against adverse consequences. *Id.* at 7.

Miller also questions the newspapers' claims that they would divert TMC mailings from the Postal Service, causing the Valassis NSA to result in a net financial loss. Miller Reply Comments at 5-6. He states that cutting non-durable goods advertising through TMCs would reduce newspapers' bottom lines directly. If the newspapers found it advantageous to deliver these pieces using private delivery, they would do so regardless of the existence of this NSA. *Id.* at 6. Miller also observes that the vast

majority of durable goods advertising business Valassis might capture currently is delivered by the newspapers in house. He contends Valassis NSA mail would be new system volume for the Postal Service.<sup>16</sup> Miller Reply Comments at 6.

Valassis states that the newspapers' diversion out of the mails is occurring anyway, and argues that volitional threats of diversion are not an appropriate basis to deny this NSA. Valassis Reply Comments at 4-8.

## V. NOI AND RESPONSES

Having reviewed the issues raised in the initial and reply comments, the Commission determined that certain areas of the record required further development. It issued the NOI on June 15, 2012, requesting additional information from the Postal Service and other interested parties on the following issues:

- defining the relevant marketplace and identifying potential harm to this marketplace (NOI, questions 1 and 9);
- quantifying the net financial impact on the Postal Service (NOI, questions 2(a), 2(b), and 10);
- quantifying potential diversion of TMC mail (NOI, questions 2(b) and 3);
- determining the availability and nature of private sector enterprises engaged in the delivery of qualifying advertisements (NOI, question 4);
- soliciting the views of those who use and distribute qualifying advertisements and/or goods advertised in qualifying advertisements (NOI, question 5);
- identifying the concerns of small businesses (NOI, questions 6(a) and 6(b));
- defining similarly situated mailers (NOI, questions 7, 11(a), and 11(b));
- determining which subproducts in the High Density and Saturation Flats and Parcels product may qualify as competitive (NOI, question 8); and

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<sup>16</sup> Valpak questions the assumptions underlying Miller's claim that the NSA would be financially beneficial to the Postal Service. Valpak Reply Comments at 18-21.

- determining the regional variations in Valassis' potential distribution campaign (NOI, question 12).

The Commission recognized that fully responsive answers might involve sensitive business information, and invited respondents to utilize rules for nonpublic submissions if necessary. Several respondents did so.

The Commission received 42 responses to the NOI from newspapers, direct mail advertisers, Discover Financial Services, the Public Representative, Valassis, Valpak, NAA, NNA, and the Postal Service.<sup>17</sup> The Commission appreciates the effort expended by all responders to the NOI. Selected NOI responses are discussed in each section of the Commission's analysis below.

## VI. COMMISSION ANALYSIS

The Commission has reviewed the Request, the NSA, the financial analyses, CHIR responses, comments, reply comments, and responses to the NOI. The following section references the statutory requirements for the Commission's approval of a market dominant product, and applies the record information to each applicable consideration.

39 U.S.C. 3622(c)(10) requires the Commission to make three findings. First, a proposed market dominant NSA must either "(i) improve the net financial position of the Postal Service"; or "(ii) enhance the performance of mail preparations, processing, transportation, or other functions" (39 U.S.C. 3622(c)(10)(A)(i) and (ii)). Second, the NSA may not "cause unreasonable harm to the marketplace" (39 U.S.C. 3622(c)(10)(B)). Finally, a market dominant NSA must be "available on public and reasonable terms to similarly situated mailers." 39 U.S.C. 3622(c)(10).<sup>18</sup>

In its analysis, the Commission discusses:

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<sup>17</sup> See Appendix B for a list of entities submitting responses to NOI.

<sup>18</sup> In addition, the Commission must take into account the policies of title 39.

- whether the NSA would improve the net financial position of the Postal Service as required by 39 U.S.C. 3622(c)(10)(A)(i);
- the definition of a marketplace under 39 U.S.C. 3622(c)(10)(B) and identification of the relevant market for evaluating the Valassis NSA;
- whether the NSA causes unreasonable harm in the marketplace (39 U.S.C. 3622(c)(10)(B));
- whether the functionally equivalent terms of the NSA are reasonable and available to similarly situated mailers (39 U.S.C. 3622(c)(10));
- whether the NSA, as a new product, complies with the terms of 39 U.S.C. 3642(b)(3), including consideration of the availability and nature of enterprises in the private sector engaged in the delivery of this product, the views of those who use this product on the appropriateness of this NSA's approval, and the likely impact the NSA's approval may have on small business concerns;
- whether, as opponents claim, the NSA violates 39 U.S.C. 403(c); and
- whether, as opponents claim, the NSA violates 39 U.S.C. 404a.

A. The NSA Will Improve the Postal Service's Net Finances

The Valassis NSA has been carefully crafted to limit discounts to only new Standard Mail Saturation Flats volumes. As outlined above, it does this by, among other things, limiting discounts to new saturation shared mail programs (applicable only to advertising of durable and semi-durable goods by retailers with physical retail outlets in 30 or more states), and requiring Valassis to maintain its existing Standard Mail Saturation mailing programs in markets where it has operated for the last two years. See section II, *supra*. These restrictions directly address Commission criticism that prior market dominant NSAs did not adequately distinguish between volumes generated in response to the discount offered and volume that would have been mailed absent the discount. See, e.g., Docket No. MC2002-2, Opinion and Recommended Decision, May 15, 2003; Docket No. R2010-3, Order Approving Standard Mail Volume Incentive Pricing Program, Order No. 439, April 7, 2010.

No commenter disputes that this NSA will generate new volumes and thus new revenues for the Postal Service.<sup>19</sup> In FY 2011, Saturation Flats produced a unit contribution of 9.1 cents.<sup>20</sup> The Postal Service estimates that the contribution per piece, after rebates, for the Valassis NSA will range from 3.3 cents to 4.0 cents<sup>21</sup> over the life of the contract.<sup>22</sup> The Postal Service expects the overall value (contribution, less earned rebates) of the Valassis NSA to total between \$4.7 million and \$15.3 million over the three years of the contract.

Many commenters, particularly newspapers, allege that any revenue gain from the NSA will be more than offset by losses due to diversion of TMC products from the mail. See, e.g., Landmark Publishing Comments at 2; CMGO Comments at 1;

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<sup>19</sup> The Public Representative suggests that some portion of the volume obtained from this NSA may not be new. See PR Comments at 8-12.

<sup>20</sup> To measure contribution (whether costs are covered), the Postal Service inflates the FY2011 unit costs for each contract year using Global Insight forecasting data. The Postal Service also accounts for unit cost savings associated with dropshipping NSA pieces at DDUs and DCSFs. Even without dropshipping cost savings, however, the NSA is still expected to have a positive contribution.

<sup>21</sup> See VDM\_NSA\_Model Final.xls. Contribution per piece after rebates is calculated by dividing the contribution less earned rebates by the estimated Valassis NSA volume in each contract year.

<sup>22</sup> The Postal Service uses average cost per piece of Standard Saturation Flats in FY 2011. It recognizes that the Valassis NSA pieces are heavier than average, but explains that the added cost due to weight would have to be of a much greater proportion (vs. the added revenue due to weight) to eliminate the positive contribution per piece. See VDM\_NSA\_Model Final.xls, tab: Analysis Footnote.

Washington Post Comments at 6. The Commission attempted to obtain information through the NOI that would allow it to quantify likely TMC diversion.<sup>23</sup> The responses did not yield results that would enable the Commission to estimate reasonably the extent to which the NSA may cause diversion of TMC volumes to private carriers.

Newspapers, as a general matter, were unable to provide piece and postage pound data for their TMC mailings or, more specifically, for the portion related to durable and semi-durable goods advertising. While some TMC volume and revenue data were provided, no piece and postage pound diversion estimates were provided. Instead, newspapers provided estimates that approval of the NSA could cause the Postal Service to lose 100 percent of the respondent's 2011 mid-week TMC postage, (see, e.g., Miami Herald Response at 2; Arizona Republic Response at 3, Indianapolis Star Response at 2) or something less than that (see, e.g., Washington Post Response at 3, Tribune Company Response at 2, Virginia-Pilot Response at 2, Hearst Media Services Response at 3, and Milwaukee Journal Sentinel Response at 2).

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<sup>23</sup> NOI No. 1, question 2: To assist the Commission in determining the Valassis NSA's financial impact on the Postal Service as required by 39 U.S.C. 3622(c)(10)(A)(i):

(a) Please provide a quantitative analysis of the expected loss in contribution primarily attributable to the Valassis NSA (in pieces and postage pounds), including lost revenues from mailers that are not a party to the agreement. Please include all supporting workpapers.

(b) For each contract year that the Valassis NSA is scheduled to be in effect, please provide estimates of Total Mail Coverage (TMC) volumes (in pieces and postage pounds) currently delivered by the Postal Service that are likely to be diverted to private (nonpostal) carriers primarily as a result of the Valassis NSA. Explain the basis for your estimates.

NOI, question 10: For commenters alleging that the Valassis NSA would cause a net financial loss to the Postal Service due to lost TMC revenue, please provide the number of pieces and total postage pounds of TMC advertising inserts displaying durable and semi-durable goods sold by companies operating in 30 or more states, which, during the last 12 months, your organization:

(a) Distributed via the Postal Service; and/or

(b) Distributed via private delivery carriers or through other delivery methods.

As used in this question, the term "advertising inserts" refers to advertising that is separate and physically segregated from a publication.

The responses are necessarily speculative for several reasons. First, because the NSA will operate only in a limited number of markets, most newspapers will be unaffected. Valassis projects that even in the third year of the NSA it will have commenced service in only about 11 markets. Valassis Response at 5. NAA estimates that the Postal Service will lose 1.1 billion pieces of TMC mail equating to \$199 million in postage. These estimates were based on survey responses from members including those in markets where Valassis will not be competing. For the reasons discussed in this section, the Commission concludes that the newspapers' estimates are not sufficiently probative to be useful.

Second, newspapers' TMC mailings could decline for reasons unrelated to the NSA. Indeed, TMC volumes have been declining over time as the newspaper industry adapts to its own technological and related economic challenges, *i.e.*, declining circulation and readership, and growing digital alternatives. See Postal Service Response at 8; Valassis Response at 2. The Postal Service reports that from FY 2010 to FY 2011 newspapers' High Density and Saturation Flats volume and revenue have declined by 4.3 percent and 4.4 percent, respectively, and, for the period through May 2012, by 4.6 percent and 7.6 percent, respectively. Postal Service Response at 8.

Third, these predictions assume that most or all national retailers of durable and semi-durable goods will abandon entirely their use of newspapers to distribute their "FSIs"<sup>24</sup> and adopt a wholly new marketing strategy in the form of the NSA. No persuasive evidence was offered to support this assumption. While some retailers may choose to test the efficacy of this new distribution channel, the claims that the NSA will cause many national advertisers to rapidly abandon all use of newspapers seem implausible.

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<sup>24</sup> Free standing inserts (FSIs) are circulars or leaflets consisting of multiple advertisements, either inserted in a newspaper or magazine or delivered independently to customers.

Fourth, the responses appear, as a general matter, to assume that newspapers will not compete for this advertising business. Newspapers have a de facto monopoly on the weekend advertising of national retailers of durable and semi-durable goods. Naturally, they would like to retain that business. The Postal Service has long been in the market for the distribution of such advertising, but has not competed effectively. The NSA is designed to attract volumes not currently in the mail. The newspapers have provided no explanation demonstrating that they would be precluded from competing effectively by adjusting their advertising rates and/or negotiating different rates for delivery.

Fifth, the responses assume that the newspapers will not act in their self-interest. The distribution of advertising materials is competitive. Some newspapers already use alternate delivery methods for their TMC programs. For example, AH Belo Corporation and the Tribune Company make extensive use of private delivery carriers. See Belo Response at 2; Tribune Company Response at 3. Whether or not the NSA is approved, the trend is likely to continue. For example, one respondent states that it “is currently testing alternate delivery methods for its overall TMC program - not just for those pieces displaying durable and semi-durable goods from national advertisers whom we believe operate in 30 or more states.” Star Tribune Media Response at 2. Ultimately, as they have historically done, newspapers will choose whatever distribution methods serve their needs best.<sup>25</sup>

Newspapers, as profit-maximizing entities, must choose the delivery channel that allows them to maximize their profits, balancing their costs with the need to maintain their customers' satisfaction. That equation will remain valid even as a new, reduced-cost joint mailing option enters the market. Neither the individual newspapers that provided comments, nor their associations offer nuanced analyses of the competing

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<sup>25</sup> Valassis characterizes the newspapers' claims that their TMC mail will be converted to private delivery as exaggerated, a “kind of ‘volitional’ threat . . . that anyone can make it in response to any proposal that they oppose.” Valassis Reply Comments at 5. The point is a fair one.

cost and market considerations that determine how retailers develop their marketing strategies, or the economic and operational factors that will influence how individual newspapers may respond to new competition. It seems unlikely that newspapers will choose to forgo use of the Postal Service simply as an act of retaliation. This would seem especially true as the mail is apparently viewed positively by advertisers currently in TMC products.<sup>26</sup>

Lastly, the newspapers' lost revenue estimates may be inflated given that the national retailers Valassis hopes to attract are not, as a general matter, advertising in mid-week TMCs. See, e.g., McClatchy Company Response at 2; Cumberland Times Response at 1, Valassis Reply Comments at 5. Rather, most of such advertising circulars are distributed in newspapers' Sunday editions by private carriers. Since there is little, if any, of this advertising in the mail, diversion should not be appreciable.

In sum, the NSA is geared to the needs of national retail advertisers not generally in the mail and is specifically structured so that discounts are payable only for new volume. While some TMC volumes may be diverted to private carriers, the cause cannot be linked solely to the effects of this NSA. The assertion that price competition for Sunday insert advertisements will cause a significant number of newspapers to abandon midweek TMC advertising is insufficiently supported to allow the Commission to conclude that the NSA will not benefit the Postal Service. On balance, these assertions do not successfully rebut the Postal Service's projections that the NSA will produce net financial benefits.

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<sup>26</sup> Valassis Response at 13; Community Newspapers Comments at 2.

B. The Proposed NSA Will Not Cause Unreasonable Harm to the Marketplace.

1. Defining the marketplace.

To evaluate whether the NSA causes unreasonable harm to the marketplace pursuant to 39 U.S.C. 3622(c)(10)(B), the Commission must first define the relevant marketplace. In response to NOI question 1, which sought identification of the relevant marketplace, several parties identify the marketplace that they suggest the Commission should consider. These proposed definitions vary greatly, from very narrow to extremely broad.

Valassis argues that the relevant market is limited to weekend distribution of advertising circulars of durable and semi-durable goods retailers that operate in 30 or more states. Valassis Response at 1. The Postal Service suggests several plausible marketplace definitions before proposing that the Commission consider a “fairly narrow subset of the overall distribution of advertising circulars” as the relevant market. Postal Service Response at 3. NAA asserts that the relevant marketplace is the United States market for distribution of preprinted retail advertising inserts. NAA Response at 3. Valpak proposes that the relevant marketplace consists of all firms capable of distributing free standing hard copy advertising matter. Valpak Response at 4. The Public Representative suggests that marketplace be defined as “direct marketing—the large subset of the advertising sector that is not delivered through mass media.” PR Response at 2. This would include, for example, unsolicited e-mail, telephone calls, in-store coupons, coupons on websites, coupons mailed at Saturation rates, and FSIs delivered with newspapers. *Id.* at 2-3. Finally, Geomentum claims that the retail industry, newspapers, and all providers of advertising or media services should be considered. Geomentum Response at 1.

No respondent supported its proposed marketplace definition by reference to other regulatory statutes, academic or Federal agency sources, or case law. The

Commission sought an objective and relevant methodology by which it could evaluate the competing proposals, which led to analyses used to evaluate the relevant marketplace for potential economic harm within an antitrust context.

The Commission found the most relevant literature to be the guidelines published by the Department of Justice and the Federal Trade Commission with respect to mergers and acquisitions involving actual or potential competitors under the federal antitrust laws.<sup>27</sup> The Guidelines are useful because they suggest means for determining the relevant product market and geographic market.

The Guidelines instruct that “[m]arket definition focuses solely on demand substitution factors, i.e., on customers’ ability and willingness to substitute away from one product to another in response to a price increase or a corresponding non-price change such as a reduction in product quality or service.” *Id.* at 7. It cautions against defining markets too broadly and states that “[r]elevant markets need not have precise metes and bounds.” *Id.*

In considering the relevant product market, the Guidelines employ the hypothetical monopolist test to evaluate whether groups of products in candidate markets are sufficiently broad to constitute relevant antitrust markets. That test is used to identify a set of products that is reasonably substitutable for a product sold by one of the merging firms.

More specifically:

The hypothetical monopolist test requires that a product market contain enough substitute products so that it could be subject to post-merger exercise of market power significantly exceeding that existing absent the merger. Specifically, the test requires that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products (hypothetical

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<sup>27</sup> See Horizontal Merger Guidelines, Department of Justice and the Federal Trade Commission, August, 19, 2010 (Guidelines).

monopolist) likely would impose at least a small but significant and non-transitory increase in price (SSNIP) on at least one product in the market, including at least one product sold by one of the merging firms.

*Id.* at 9; footnote omitted.<sup>28</sup>

This test is instructive in determining the appropriate size of a market for evaluating potential adverse competitive effects. The hypothetical monopolist test is designed to ensure that all competitors are included in the relevant market.<sup>29</sup> If the hypothetical monopolist has control over all of the competitors, the monopolist could increase price and also increase profits. If the hypothetical monopolist does not have control over all of the competitors, it could not increase price and thereby increase profits. The relevant market is not properly defined and must be expanded until the test is met.

In practical terms, NAA's proposed definition – distributors of preprinted (free standing) retail advertising inserts (FSIs) – appears to encompass the relevant product market. If a hypothetical monopolist were able to control the distribution of preprinted FSIs, *i.e.*, the mail, newspaper distributors, and private carriers, it is likely that it could impose a small but significant and non-transitory price increase and increase profits. Therefore, the hypothetical monopolist test is met, and it is not necessary to expand or contract the product market as espoused by other commenters.

However, NAA's definition includes the entire United States FSI distribution market. This geographic market does not reflect the operational realities of this NSA. Because Valassis' reach is limited to markets where it has maintained an existing

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<sup>28</sup> Although the test assumes a hypothetical profit-maximizing firm not subject to price regulation, this assumption does not impair its utility in evaluating the Postal Service's proposed NSA in this context. Papatheodorou, Andreas, *Corporate Rivalry and Market Power: Competition Issues in the Tourism Industry*, at 192 (2006).

<sup>29</sup> See also W. Kip Viscusi, Joseph E. Harrington, Jr., John M. Vernon, *Economics of Regulation and Antitrust*, at 225 (4<sup>th</sup> ed., 2005) ("A relevant market is a group of products and a geographic area that is no bigger than necessary to satisfy [the hypothetical monopolist] test.")

Standard Mail Saturation mailing program on at least a monthly basis during the prior two years, Request at 4., *Id.*, Attachment C at 1, the relevant marketplace is limited to those areas where Valassis could implement a new FSI distribution program pursuant to the terms of this NSA. Although Valassis will initially operate only in a limited number regional markets, the Commission considers the relevant geographic market to be all marketplaces that may be affected by this NSA.<sup>30</sup> As discussed in section VI B.2., analyzing the NSA necessarily considers the effects of the NSA on consumers, *i.e.*, national retailers advertising durable and semi-durable goods and similarly situated mailers.

2. Unreasonable harm to the marketplace.

As required by 39 U.S.C. 3622 (c)(10)(B), the Commission has reviewed the record to determine if this NSA will cause unreasonable harm in the relevant marketplace. In its evaluation, the Commission has assessed the potential effects of this NSA on competition as a whole, rather than the impact on individual competitors. This is consistent with precedent under the antitrust laws. *See, e.g., Brown Shoe Company v. U.S.*, 370 U.S. 294, 320 (1962) (“It is competition, not competitors, which

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<sup>30</sup> See Federal Trade Commission and U.S. Department of Justice, Commentary on Horizontal Merger Guidelines (March 27, 2006) at 8:

The Guidelines indicate that the relevant market is the smallest collection of products and geographic areas within which a hypothetical monopolist would raise prices significantly. At times, the Agencies may act conservatively and focus on a market definition that might not be the smallest possible relevant market. For example, the Agencies may focus initially on a bright line identifying a group of products or areas within which it is clear that a hypothetical monopolist would raise prices significantly and seek to determine whether anticompetitive effects are – or are not – likely to result from the transaction in such a candidate market. If the answer for the broader market is likely to be the same as for any plausible smaller relevant market, there is no need to pinpoint the smallest market as the precise line drawn does not affect the determination of whether a merger is anticompetitive. Also, when the analysis is identical across products or geographic areas that could each be defined as separate relevant markets using the smallest market principle, the Agencies may elect to employ a broader market definition that encompasses many products or geographic areas to avoid redundancy in presentation. The Guidelines describe this practice of aggregation “as a matter of convenience.” Guidelines 1.321 n.14.

the [antitrust laws] protect[.]”); *Spectrum Sports, Inc. v McQuillan*, 506 U.S. 447, 458 (1993) (“The purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market.”).<sup>31</sup>

The Commission considered two approaches when evaluating whether the NSA will cause unreasonable harm to the marketplace. The first is an economic test, which the Commission adopts as an appropriate measure of harm. The Commission also considered a second test. Numerous commenters assert that harm should be evaluated in light of policy concerns, essentially that newspapers, as important civic institutions, should be shielded from the effects, if any, of the NSA. In the second test, the Commission undertakes a qualitative analysis of harm, concluding that protecting newspapers’ advertising from competition is not a policy found in the Act and would deny consumers the benefits of competition.

i. Economic Test

The first approach is a purely economic test that evaluates reasonableness in terms of a pricing structure in a competitive market. Under this test, as long as the Postal Service is not pricing its products below costs to drive its competitors out of business, it is not creating an unreasonable level of harm in the marketplace. Professor John Panzar espoused this approach in his testimony on the Capital One NSA (Docket No. MC2002-2), stating that “[c]ompetitors of the Postal Service, such as *providers* of advertising media other than direct mail, might find themselves adversely affected by an NSA. However, I do not believe that competitors have ‘economic standing’ to protest Postal Service pricing policies unless they are anti-competitive.” (MC2012-2 Tr. at 1637).

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<sup>31</sup> The *Spectrum* Court stated: “The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself. It does so not out of solicitude for private concerns but out of concern for the public interest.” *Id.*

In this context, the Commission differentiates between instances where the Postal Service competitively prices its products and instances where it might be anti-competitively pricing its products. In a competitive market, firms can compete for business by undercutting competitors' prices. If, however, a dominant firm competes for business by reducing its price below its marginal cost, it may suffer a loss. Economic theory indicates that a rational firm would behave in this way over a period of time only if it expects to drive its competitors out of business and later increase prices substantially in order to recoup losses and make a profit. This behavior can be described as predatory pricing and may be viewed as anti-competitive. Prices under the NSA are compensatory, *i.e.*, in excess of attributable costs.<sup>32</sup> Hence, the Postal Service pricing policy is not anti-competitive.

## ii. Policy Considerations

In assessing harm to the marketplace, the Commission also examined broader policy considerations. This qualitative analysis attempts to frame the issue of harm to the marketplace in light of the policies that underlay the PAEA.

The record reflects widely divergent estimates of market impact presented by the proponents and opponents of the NSA. The opponents of the NSA allege, in their comments and in responses to the NOI, that the NSA is unfair and discriminatory and, if approved, would wreak havoc on the marketplace.

In opposition to the NSA, NAA cites the testimony of John Panzar from a Commission proceeding conducted under the PRA for the proposition that this NSA will harm participants in a downstream market. NAA Comments at 12; see *also* NAA Response at 3-4; PR Response at 13; Valpak Reply at 8-10. Panzar's testimony was

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<sup>32</sup> The Postal Service estimates that the contribution per piece under the NSA will range between \$0.033 and \$0.040 and thus, by definition, is compensatory. The PAEA authorizes the pricing flexibility, subject to other statutory provisions.

offered in the first Commission proceeding in which the Postal Service proposed an NSA. He was sponsored as a Commission witness to address, among other things, the economic implications and potential consequences of “introducing negotiated rate and service terms available to a sole user into a pre-existing regulatory regime of uniform tariff rates and conditions of service[.]” Docket No. MC2002-2, Tr. 8/1577. Thus, the predicate for Panzar’s statement upon which NAA relies is that the discount is available only to a single, favored firm. In response to that concern, the Commission’s predecessor, the Postal Rate Commission, developed rules on functional equivalency, *i.e.*, rules that functionally equivalent agreements be made available to similarly situated mailers.<sup>33</sup> The PAEA addresses this issue by explicitly authorizing the Postal Service to enter into NSAs, but requiring that such agreements be “available on public and reasonable terms to similarly situated mailers.” 39 U.S.C. 3622(c)(10).

NAA claims that pre-print advertising of durable and semi-durable goods constitutes about 47 percent of total newspaper pre-print revenue, comprising on average 12.5 percent of total newspaper advertising revenue. NAA Response at 24. Various newspapers have submitted their own estimates of total advertising revenues attributable to durable and semi-durable goods and have alleged that the NSA could erode a significant portion of these revenues. *See, e.g.*, McClatchy Response at 2, Miami Herald Response at 2, Sacramento Bee Response at 2.

Valassis counters these allegations of harm by claiming that a number of the opponents of the NSA are located outside of Valassis’ existing markets and would not be affected by this NSA. Valassis Response at 19. It also asserts that the restriction to durable and semi-durable goods advertising over 4 ounces limits the impact on the marketplace because Valassis would have to bring three or more qualifying advertisers together for a common distribution over a two-day window. *Id.* at 20. Finally, Valassis

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<sup>33</sup> See Docket No. RM2003-5, Order Establishing Rules Applicable to Requests for Baseline and Functionally Equivalent Negotiated Service Agreements, Order No. 1391, February 11, 2004.

contends that newspapers will continue to have a number of advantages with retailers that will protect against the kind of dire harm hypothesized by the newspapers. *Id.*

The Postal Service estimates that the advertising circulars market is roughly 40 percent of the total advertising market occupied by newspapers and private delivery, or \$11.2 billion.<sup>34</sup> Postal Service Response at 3. It calculates that only 8 to 10 national advertisers, representing a \$2.8 billion market, would be eligible for NSA rates. *Id.* at 4. There is no precise figure available for the relevant market, those FSIs distributed in areas where Valassis currently operates, but it would fall somewhere between these two estimates. The Postal Service expects gross annual postage revenue of up to \$51.8 million by the 3<sup>rd</sup> year of the NSA. Postal Service Response at 4. This amount constitutes between 0.46 percent and 1.85 percent of this market. A market share of 0.46 percent to 1.85 percent is unlikely to have an appreciable effect on the marketplace.

Newspapers' claims of harm, while no doubt earnest, do not lend themselves to reasonable quantification. First, they are not susceptible to summing because they are undifferentiated by market. That is, they are not identified as within a market potentially subject to new competition. Valassis currently operates in 105 markets. Postal Service Response at 2. The Postal Service estimates that the NSA may operate in 10 to 15 of those markets. *Id.* at 4. Valassis projects that, under the NSA, it will operate in only 11 markets. Valassis Response at 5.

Second, claims that the NSA will cause irreparable and immediate harm are unsubstantiated. The submissions did not include profit and loss statements or indications of profit margins. But even if they had, it would not further the Commission's assessment of harm to the marketplace. The issue before the Commission is whether

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<sup>34</sup> The Postal Service states that this estimate is based on a reasonable approximation of the advertising circular market based on estimates of the percent Sunday advertising contained in the Pew Center's State of the News Media 2012 and a review of the AdAge Top 100 Advertisers spend by media.

the NSA and the competition it represents are fair. The economic test confirms that the NSA's pricing is not unlawful. As discussed below (section IV.C), the agreement will be available on reasonable terms to similarly situated mailers. Thus, it cannot be said to be unduly discriminatory. The distribution of FSIs is a competitive market. As long as the competition is fair, and the Commission finds that it is, harm cannot be unreasonable.

The term "harm" found in section 3622(c)(10)(B) is not defined. In assessing the likelihood of harm to competition resulting from a merger or acquisition, antitrust enforcement agencies consider the adverse effects on customers, *e.g.*, which result in higher prices, lower quality, reduced output, or "otherwise harm customers as a result of diminished competitive constraints or incentives." Guidelines at 2. The NSA does not adversely affect either customers or competition. This is not to say that individual competitors will be unaffected, but that does not constitute the test at hand, whether there is unreasonable harm to the marketplace.<sup>35</sup>

The discounted prices have not been shown to be unlawful, *i.e.*, they are compensatory and not unduly discriminatory. Moreover, the PAEA authorizes the very activity being challenged subject to conditions which the proponents of the NSA have satisfied. In sum, fair competition in the marketplace is good for consumers.

Lastly, a related concern that newspapers raise is that approval of the NSA may cause them to lose advertising business critical to their wellbeing, and which if lost, may

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<sup>35</sup> Enforcement agencies balance the proposed benefits of a merger against the harm to consumers by emphasizing the desirability of efficiencies that lower marginal costs are likely to have on post-merger prices. This enforcement standard is closely related to a concern about the effect of a merger on consumer surplus. Guidelines Section 10. (Consumer surplus is defined as the consumer's total willingness-to-pay for a particular good less what the consumer must actually pay. It is interpreted as the monetary gain to consumers because they are able to purchase a product for a price that is less than the highest price they would have been willing to pay.) Likewise, the Commission considers potential harm to the retailers that are the consumers of FSIs. In this case, the Valassis NSA is likely to increase consumer surplus lowering the cost the consumers will pay (to either Valassis or newspapers) for distribution of FSIs. In this sense, the Valassis NSA does not cause anticompetitive harm to consumers.

force them to retrench further due to economic factors affecting that industry. Some commenters suggest that the NSA threatens the entire industry, and that newspapers, as important civic institutions, should be shielded from the competitive consequences of the NSA. Gannett Comments at 3; PR Comments at 5. Essentially, these commenters suggest, as a matter of public policy, that the Postal Service be precluded from attempting to compete more effectively for any additional share of the market for the distribution of advertising inserts. Currently the Postal Service is unsuccessfully competing with newspapers for the distribution of the kind of advertisements included in this NSA, presumably because Postal Service saturation rates are higher than the rates charged by the newspapers to distribute FSIs. Newspapers' comments indicate reduced saturation rates may attract some of this business.

Before turning to the merits of these suggestions, it bears noting that the Postal Service already provides significant benefits to periodical publications. It has a long-standing policy of providing reduced rates for the editorial portion of periodical publications, and Congress has mandated an additional preference for small, local (in-county) newspaper rates.

Newspapers, like the Postal Service, are under siege from electronic alternatives. Newspapers' print circulation and readership are declining. They have developed

websites but have not yet been able to monetize them as successfully as they would like.<sup>36</sup> While the Commission is sensitive to the claims of market disruption, the definition of harm newspapers suggest the Commission adopt, based on newspapers' role in the community, is not a policy embodied in title 39, as amended by the PAEA. The Commission is not persuaded that policies of the PAEA shield newspapers from the consequences of fair competition.

### C. Terms Available To Similarly Situated Mailers

39 U.S.C. 3622(c)(10) requires that NSAs be made "available on public and reasonable terms to similarly situated mailers." This consideration comprises an essential part of the Commission's analysis. The Commission draws on a body of substantial precedent in its own proceedings for evaluating whether a mailer can be

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<sup>36</sup> A 2010 report by Ernst & Young, entitled *Monetizing Digital Media, Creating Value Consumers Will Buy*, states:

There was a time in the early days of the internet when many newspapers offered subscription-based online content. However, consumer and competitive pressures led most newspapers to put their content online for free. They avoided charging for content because they didn't want to limit access to their websites, which drove online ad revenue.

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With online ad revenue unable to make up for lost print ad revenue for most newspapers, many publishers believe that moving to some sort of customer paying model is the only viable future for the newspaper industry."

[http://www.ey.com/Publication/vwLUAssets/Mon%3%A9tiser\\_les\\_m%3%A9dias\\_num%3%A9riques/\\$FILE/Monetizing\\_digital\\_media.pdf](http://www.ey.com/Publication/vwLUAssets/Mon%3%A9tiser_les_m%3%A9dias_num%3%A9riques/$FILE/Monetizing_digital_media.pdf) at 12.

A recent Reuters news article states:

For an industry savaged by the erosion of print advertising dollars, significantly boosting digital revenue is necessary for survival. But the double-digit online growth rates that many newspapers used to enjoy -- and on which their hopes for a prosperous future rest -- could be a thing of the past."

See <http://www.reuters.com/article/2012/06/07/us-newspaper-digital-ads-idUSBRE85605E20120607>

deemed similarly situated for an NSA.<sup>37</sup> In Order No. 694 (Docket Nos. MC2011-19/R2011-3), the Commission clarified, and now reiterates, that it reserves the right to make the determination of which terms of the NSA are “essential” in the context of determining which mailers may be entitled to a similarly situated agreement.<sup>38</sup>

In its Request, the Postal Service initially stated the design imperative—to generate additional contribution—and the basic structure of the agreement with Valassis would provide guidance in the negotiation of similar agreements and might, in those agreements, yield parameters that were substantially different from those in this NSA. Request at 6-7. The Postal Service stated that in assessing the desirability of the NSA, it believed that the defining characteristics of Valassis were its size, nationwide distribution network, and significant volume of Saturation Mail. *Id.* at 7. The Postal Service maintained it was these three characteristics that would enable Valassis to provide a new opportunity, scalable across multiple media markets, to retail advertisers of durable and semi-durable goods. *Id.* In offering similar agreements, the Postal Service claimed it would look for all of these characteristics, as well as other conditions that might affect a favorable contractual agreement. *Id.*

Many commenters objected to the restrictive terms used by the Postal Service to describe Valassis’ characteristics. In its Response to the NOI, the Postal Service explains that the terms describing Valassis’ relationship with the Postal Service would not automatically disqualify other potential NSA partners. Postal Service Response at 24. The Postal Service’s Response significantly expands its definition of similarly situated mailers by enumerating more appropriate elements of functional equivalency. *Id.* It now states that to be functionally equivalent, an NSA must (a) be a rate incentive designed to induce new volume in the delivery of a segment of Standard Mail Saturation

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<sup>37</sup> See Docket No. MC2002-2, Opinion and Recommended Decision at 141-42.

<sup>38</sup> Docket Nos. MC2011-19 and R2011-3, Order No. 694, Order Adding Discover Financial Services 1 Negotiated Service Agreement to the Market Dominant Product List, March 15, 2011, at 19.

Flats, (b) produce new volume and not merely diversion from existing mail programs, and (c) lead to financial gain for the Postal Service. A mailer would be similarly situated if it could fairly negotiate a functionally equivalent NSA that would incorporate features designed to ensure that the above conditions are met, including limitations on source and content of advertising and prohibition against diversion. Postal Service Response at 23.

The Commission finds that the Postal Service's Response, which clarifies the terms on which agreements would be available to similarly situated mailers, resolves the objections presented by the commenters. The Commission views the new list of three essential elements as well-founded, with the legitimate objectives of preserving existing volumes and creating new volume in saturation flats. The aim of increasing revenue incentivizes the Postal Service to bargain in good faith with other mailers seeking similarly situated status. Both the Postal Service and Valassis attest that qualifying mailpieces sent under this NSA may be tailored to specific markets. *Id.* at 29; Valassis Response at 23. As such, the Commission expects that the Postal Service will consider regional distributors, such as newspapers, eligible for market-specific versions of this NSA. Lack of a national distribution network will not preclude a mailer from qualifying as similarly situated as long as the three enumerated essential requirements are met.

The Commission expects the Postal Service to negotiate in good faith with mailers. Allegations of possible discrimination may be appropriately addressed in a complaint proceeding.

#### D. Addition of a New Product Under 3642

In reviewing a proposed change in the product lists, the Commission is required to give due regard to the following: (1) the availability and nature of enterprises in the private sector engaged in the delivery of the product; (2) the views of those who use the

product involved on the appropriateness of the proposed action; (3) and the likely impact of the proposed action on small business concerns. 39 U.S.C. 3642(b)(3)(A),(B), and (C). To develop the record further on these issues, the Commission requested interested persons to address each of these considerations specifically. See NOI questions 4-6. The responses and other relevant comments are discussed below.

1. The availability and nature of enterprises in the private sector

Four participants responded to NOI question 4.<sup>39</sup> Each agrees that the private sector is engaged in the distribution of advertising circulars to consumers. These enterprises include newspapers and private carriers or alternate delivery companies. See Postal Service Response at 14; NAA Response at 17; PR Response at 16; and Valassis Response at 12.

The Commission concludes that the market for distributing advertising circulars is competitive which, in addition to the Postal Service, is served by the private sector.

2. Views of the NSA by those who use the product

Four participants responded specifically to NOI question 5.<sup>40</sup> Newspapers roundly oppose the NSA. See, e.g., Fort Worth Star Telegram Response at 2; Hearst Media Response at 2; Miami Herald Response at 2; San Francisco Chronicle Response at 2; Seattle Times Response at 2; Star Tribune Media Company Response at 2; Washington Post Response at 2; NNA Response at 1. In responding to question 5,

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<sup>39</sup> Question 4 reads: "Please explain the availability and nature of enterprises in the private sector engaged in the delivery of advertisements for firms that sell or distribute semi-durable and durable goods nationally. See 39 U.S.C. 3642(b)(3)(A)."

<sup>40</sup> Question 5 reads: "Please provide information regarding the views of those who sell or distribute semi-durable and durable goods nationally, and/or those who sell or distribute advertising for firms that sell or distribute semi-durable and durable goods nationally on the appropriateness of the Valassis NSA. See 39 U.S.C.3642(b)(3)(B)."

NAA reiterates its opposition to the proposal and states that “newspapers distribute advertising for retail firms that sell or distribute semi-durable and durable goods nationally.” NAA Response at 18.<sup>41</sup>

Valassis indicates that in discussing the concept of the NSA with prospective advertisers, “[a]ll were extremely supportive of having an additional option available to expand the reach of their advertising distribution beyond the declining newspaper subscriber base.” Valassis Response at 13. The Postal Service states that advertisers expressed interest in a shared mail product. Postal Service Response at 15.

While no users of the product submitted comments, the Commission has duly considered the relevant record materials on this question.

### 3. The Likely Impact of the Proposed NSA on Small Business

NOI question 6 sought information about small businesses specifically. Question 6a asked that “[i]f your organization qualifies as a small business under the Small Business Act” to indicate whether it “sells or distributes advertising for firms that sell or distribute semi-durable and durable goods nationally.” Question 6b requested “specific examples of small business concerns likely to be impacted by the Valassis NSA, ....” No specific information was provided in response to this question.

Only one commenter states it is a small business. Tifton Gazette Response at 1.<sup>42</sup> Valassis states that the Tifton Gazette operates in a market that is outside “the boundaries of Valassis’ existing shared mail programs.” Valassis Response at 19. While it provides certain information in response to NOI question 9, e.g., that advertising inserts of durable and semi-durable goods from national retailers represented 9.6

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<sup>41</sup> Geomentum responded to question 5, opposing the NSA on the grounds that its pricing structure is inappropriate. Geomentum Response at 2. The Public Representative also submitted a response to question 5, arguing that the NSA violates section 3622(c)(10). PR Comments at 19-20.

<sup>42</sup> Valassis states that the Tifton Gazette operates in a market that is outside “the boundaries of Valassis’ existing share mail program.” Valassis Response at 19 (footnote omitted).

percent of FY 2011 advertising revenues, it did not substantiate its contention that the NSA would have “a devastating effect on [its] operation.” *Id.*<sup>43</sup> NAA, the only industry organization to address question 6 directly, states that some of its members “most likely qualify as small businesses,” concluding that the proposed NSA could have very disruptive effects in the competitive advertising distribution market, on local retailers, and on the financial ability of some members to publish news and information in their communities. NAA Response at 19.

Newspapers comment generally that the NSA would adversely affect their operations. See, e.g., Tribune Company Response at 2; ATU Response at 1; Niagara Gazette Response at 2. None, however, substantively addresses the likely impact on small business concerns due to this proposal. Although a substantial number of newspapers provides information on the value of the pre-print advertising they currently carry, none provides information that would allow the Commission to conclude they would be unable to effectively compete with Valassis for FSIs of retailers of durable and semi-durable goods.

Limitations on the NSA are likely to mitigate any adverse effect on small business. Over the three year term of the agreement, Valassis projects that it will operate in only about 11 markets. Valassis Response at 5. Thus, most newspapers will not be directly affected.

The Postal Service observes the NSA was developed in an effort to reduce the impact on small businesses by excluding those advertisements predominantly carried by small businesses, such as regional, local, service related, and grocery

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<sup>43</sup> The only other commenter to reference small business is the Hearst Newspapers – Community Group, which serves seven communities in three states. It characterizes its operations as follows: “In the communities where we publish newspapers we are considered a small business.” Hearst Community Group Response at 2. It estimates that 9.6 percent of FY 2011 advertising revenues were attributable to advertising inserts of durable and semi-durable goods from national retailers. *Id.* at 1. It asserts that, if approved, the NSA will result in job and revenue losses. *Id.* at 2-3. This assertion, however, is unsubstantiated.

advertisements. As a consequence, the Postal Service expects competition in the marketplace to continue and the impact of the Valassis NSA on small businesses to be minimal. Postal Service Response at 16.

Based on the record on this issue, including the NSA's structural limits, the Commission concludes that the likely impact of the NSA on small businesses will not be significant.

E. Other Considerations

1. Compliance with section 403(c)

Two commenters argue that the NSA violates section 403(c)'s prohibition against unduly discriminatory or preferential treatment among users of the mails. Valpak contends that "[b]ecause no other mailer will qualify for similar discounts," the NSA "constitutes undue preferential treatment of Valassis by the Postal Service." Valpak Comments at 21. NAA makes a similar claim that the NSA confers "one mailer with an undue rate discrimination" that is "not available to any other mailer." NAA Comments at 2.

The premise underlying these arguments, that the NSA will be available to no other mailer, is flawed. As discussed in section VI. C., the NSA will be available on reasonable terms to similarly situated mailers.<sup>44</sup> The commenters have not presented any evidence to show that this NSA constitutes unreasonable discrimination in violation of section 403(c). NAA argues that the difference in contribution and rate structure is discriminatory. *Id.* at 25-28. It concludes that the difference in rates is not justified. *Id.* at 28-29. Merely offering lower prices under an NSA does not constitute unreasonable discrimination *per se*. The Postal Service is authorized to offer NSAs provided the

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<sup>44</sup> These arguments were based on the terms of availability announced by the Postal Service initially in its Request. As discussed in section VI.C., the Postal Service subsequently clarified the terms on which agreements would be made available to similarly situated mailers.

requirements of 39 U.S.C. 3622 and 39 U.S.C. 3642 are satisfied. The instant NSA does so.

## 2. Violation of section 404a

The Public Representative contends that the NSA's "discriminatory price structure" violates 39 U.S.C. 404a because it "precludes competition' and constitutes an 'unfair competitive advantage'" for the Postal Service. PR Comments at 7. Section 404a prohibits the Postal Service from establishing any rule or regulation "the effect of which is to preclude competition" unless it demonstrates that the regulation "does not create an unfair competitive advantage for itself ..."<sup>45</sup>

Section 404a is inapplicable to the NSA. It bars the adoption of rules or regulations, promulgated by the Postal Service pursuant to 39 U.S.C. 401(2), that have the effect of precluding competition unless the Postal Service demonstrates that the rule does not create an unfair competitive advantage for itself. Violations of section 404a are subject to complaint pursuant to 39 U.S.C. 3662. The NSA is not a rule or regulation promulgated pursuant to chapter 4 of title 39. The Postal Service's Request was filed pursuant to 39 U.S.C. 3622 and 3642 and related Commission rules. The NSA is consistent with those statutory and regulatory provisions, including other relevant provisions, *i.e.*, section 403(c).

## VII. DATA COLLECTION REQUIREMENTS

The Postal Service's proposed data collection plan states that it will provide certain information to the Commission "[n]ot later than 60 days after the end of each contract year." Request, Attachment D.

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<sup>45</sup> NNA also references section 404a, arguing that "[t]he burden is in the Postal Service to demonstrate that its actions do not create an unfair competitive advantage." NNA comments at 5 (emphasis in original).

Consistent with the Commission's rules, the Postal Service proposes a data collection plan which, in the main, is acceptable; and will further the goals of transparency and accountability. Request, Attachment D. To measure more fully the impact of the NSA on Postal Service finances and the relevant markets, the data collection plan will include estimates specific to the markets in which the NSA is operational. The Postal Service shall provide, within 60 days of the end of each contract year:

- Valassis' volumes entered by qualifying price category for the preceding contract year.
- Valassis' postage paid by qualifying price category for the preceding contract year.
- The rebate paid to and/or penalty paid by Valassis (if any) and the calculations underlying their determination;
- The volume and payment paid by Valassis (if any) for any mailings identified in violation of the terms for the migration of USPS solo mail into the package detailed in the agreement; and
- The calculations used to determine the rebate prices for the 6.5 to 9 ounce and 9 to 11 ounce increments, adjusted by an amount equal to the percentage price change for Standard Mail Saturation Flats, provided that the resulting percentage rebates remain in the range of 22 percent to 34 percent.
- An estimate of the Valassis NSA's costs for each market where the Valassis NSA is operational.
- An analysis of the impact of the Valassis NSA on TMC mailings for each market where the Valassis NSA is operational.

To the extent possible, the foregoing data should be provided for each market where the Valassis NSA is operational. If unable to submit such data, the Postal Service shall provide an explanation of its inability to do so.

- A summary of the data collected during the quarterly audits to assess diversion of volume.<sup>46</sup>

Finally, the Postal Service must notify the Commission within 30 days of when the Valassis NSA becomes operational in a market. The notification should include the geographic area where the Valassis NSA will operate.

*Early termination.* The Postal Service shall promptly notify the Commission if the Valassis NSA terminates earlier than the proposed term, but no later than the actual termination date. The Commission will then remove the applicable agreement from the MCS. In addition, within 60 days of an early expiration, the Postal Service shall file costs, volumes, and revenues associated with the contract.

## VIII. CONCLUSION

The Commission approves the negotiated service agreement with Valassis Direct Mail, Inc. as a new product to be assigned to the market dominant product list under 39 U.S.C. 3642 and the implementing regulations. The revisions to the market dominant product list are shown below the signature of this Order.

## IX. ORDERING PARAGRAPHS

*It is ordered:*

1. Valassis Direct Mail, Inc. Negotiated Service Agreement is added to the market dominant product list as a new product under Negotiated Service Agreements.
2. The Postal Service shall report data concerning the Valassis NSA as set forth in the data collection plan discussed in this Order.

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<sup>46</sup> The Postal Service indicates it will perform quarterly audits of mailings under the NSA. Request, Attachment C at 2.

3. If the Valassis NSA terminates earlier than the proposed 3-year term, the Postal Service shall notify the Commission and file relevant contract data as set forth in the body of this Order.
4. The proposed draft Mail Classification Schedule language will be revised as discussed in the body of this Order.
5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove  
Secretary

Commissioner Hammond dissenting.

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix A to subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2012-14 and R2012-8. The Commission uses two main conventions when making changes in the product list. The addition of text is indicated by underscore. Deleted text is indicated by a strikethrough.

PART A—Market Dominant Products

1000 Market Dominant Product List

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Negotiated Service Agreements

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Valassis Direct Mail, Inc. Negotiated Service Agreement

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<b>APPENDIX A</b>		
<b>Commenters—Docket Nos. MC2012-14 and R2012-8</b>		
<b>Commenter</b>	<b>Comment Citation</b>	<b>Citation Short Form</b>
Advance Publications, Inc.	Opposition of Advance Publications, Inc. May 23, 2012	Advance Publications Comments
A.H. Belo Corporation	Comments of A.H. Belo Corporation on Proposed Postal Service Negotiated Service Agreement with Valassis May 23, 2012	Belo Comments
Antelope Valley Press	Comments of the Antelope Valley Press on Valassis NSA May 25, 2012	Antelope Valley Press Comments
Atlanta Journal-Constitution	Comments of the Atlanta Journal- Constitution on the Valassis NSA May 23, 2012	Atlanta Journal- Constitution Comments
Austin American-Statesman	Comments of Austin American-Statesman May 23, 2012	Austin American- Statesman Comments
Cadillac News	Comments of Cadillac News on Valassis NSA May 25, 2012	Cadillac News Comments
Community Newspapers	Potential Reaction by Community Newspapers May 23, 2012	Community Newspapers Comments
Community Newspaper Holdings Inc.	Community Newspaper Holdings Inc.'s (CNHI) NSA Valassis Rejection Request May 23, 2012	CNHI Comments
Courier-Times, The	Comments of The Courier-Times on Valassis NSA May 25, 2012	Courier-Times Comments
Cox Media Group Ohio	Comments of Cox Media Group Ohio (CMGO) on Valassis NSA May 21, 2012	CMGO Comments

<b>Commenter</b>	<b>Comment Citation</b>	<b>Citation Short Form</b>
Crowley Post-Signal, The	Comments of The Crowley Post-Signal on Valassis NSA	Crowley Post-Signal Comments
	May 31, 2012	
Fort Worth Star Telegram	Fort Worth Star Telegram Letter to U.S. Postal Regulatory Commission Re: Valassis NSA	Fort Worth Star Telegram Comments
	May 23, 2012	
Gannett Co., Inc.	Gannett Co., Inc. Opposition to Valassis NSA	Gannett Comments
	May 23, 2012	
Greensboro News & Record, LLC	Comments of News & Record	News & Record Comments
	May 22, 2012	
Illinois Press Association	Illinois Press Association Comments on Valassis NSA	Illinois Press Association Comments
	May 23, 2012	
Kansas City Star, The	Comments from the Publisher of The Kansas City Star Regarding NSA between the United States Postal Service and Valassis	Kansas City Star Comments
	May 22, 2012	
Kansas Press Association, Inc.	KPA Letter to PRC Re: USPS Proposed Negotiated Service Agreement with Valassis	KPA Comments
	May 23, 2012	
Landmark Media Enterprises, LLC	Objections to the Valassis Direct Mail Negotiated Service Agreement Filing	Landmark Publishing Comments
	May 23, 2012	
Ledger Independent, The	Comments from The Ledger Independent on Valassis NSA	Ledger Independent Comments
	May 30, 2012	
McClatchy Company, The	McClatchy Company Opposition to Proposed Valassis NSA	McClatchy Comments
	May 23, 2012	
McKenzie Banner, The	Comments of The McKenzie Banner on Valassis NSA	McKenzie Banner Comments
	May 31, 2012	

<b>Commenter</b>	<b>Comment Citation</b>	<b>Citation Short Form</b>
Miami Herald, The	Comments of The Miami Herald/ El Nuevo Herald on Valassis NSA	Miami Herald Comments
	May 23, 2012	
William C. Miller	Comments by William C. Miller in Response to the PRC's Notice and Order Concerning the Filing of Contract and Supporting Data and Request to Add Valassis Direct Mail, Inc. NSA to the Market Dominant Product List	Miller Comments
	May 23, 2012	
William C. Miller	Reply Comments by William C. Miller	Miller Reply Comments
	June 1, 2012	
Journal Sentinel, Inc.	Journal Sentinel, Inc. Comments	Journal Sentinel Comments
	May 22, 2012	
Minnesota Newspaper Association	Minnesota Newspaper Association Comments on Valassis NSA	Minnesota Newspaper Association Comments
	May 23, 2012	
Natchitoches Times, The	Comments of The Natchitoches Times on Valassis NSA	Natchitoches Times Comments
	May 25, 2012	
National Newspaper Association, Inc.	Comments of National Newspaper Association, Inc. on the Postal Service's Proposed Negotiated Service Agreement with Valassis, Inc.	NNA Comments
	May 23, 2012	
Newspaper Association of America, The	Opposition of the Newspaper Association of America	NAA Comments
	May 23, 2012	
Ohio Newspaper Association	Comments of Ohio Newspaper Association on Valassis NSA	Ohio Newspaper Association Comments
	May 25, 2012	
Palm Beach Post, The	Comments from Publisher of Palm Beach Post on Valassis NSA	Palm Beach Post Comments
	May 30, 2012	

<b>Commenter</b>	<b>Comment Citation</b>	<b>Citation Short Form</b>
Public Representative	Comments of the Public Representative in Response to Order No. 1330	PR Comments
	May 24, 2012	
Public Representative	Reply Comments of the Public Representative in Response to Order No. 1330	PR Reply Comments
	June 1, 2012	
Representative Todd Russell Platts	Comments of U.S. Representative Todd Russell Platts (19th District, PA) on Valassis NSA	Representative Platts Comments
	May 25, 2012	
William Rogers	Comment of William Rogers	Rogers Comments
	May 23, 2012	
Saratoga Sun	Comments from Saratoga Sun of Saratoga, Wyoming on Valassis NSA	Saratoga Sun Comments
	June 25, 2012	
Seattle Times, The	Valassis NSA Comments	Seattle Times Comments
	May 23, 2012	
Senator Maria Cantwell	Comments of Senator Maria Cantwell on the Proposed Negotiated Services Agreement with Valassis	Senator Cantwell Comments
	June 22, 2012	
Senator Charles Schumer	Comments of Senator Schumer on Proposed Postal Service Negotiated Service Agreement with Valassis	Senator Schumer Comments
	May 22, 2012	
Senator Jon Tester	Comments of United States Senator Jon Tester on Valassis NSA	Senator Tester Comments
	May 31, 2012	
Star Tribune Media Company LLC	Comments of Star Tribune Media Company LLC re: Valassis NSA	Star Tribune Comments
	May 22, 2012	

<b>Commenter</b>	<b>Comment Citation</b>	<b>Citation Short Form</b>
Times Publishing Co.	Formal Comments on Behalf of Times Publishing Co.	Times Publishing Comments
	May 22, 2012	
Tribune Company	Valassis NSA - Formal Comments from Tribune Company	Tribune Comments
	May 22, 2012	
United States Postal Service	United States Postal Service Reply Comments	Postal Service Comments
	June 1, 2012	
Valassis Direct Mail, Inc.	Reply Comments of Valassis Direct Mail, Inc.	Valassis ReplyComments
	June 1, 2012	
Valpak Direct Marketing Systems, Inc and Valpak Dealers' Association, Inc.	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments	Valpak Comments
	May 23, 2012	
Valpak Direct Marketing Systems, Inc and Valpak Dealers' Association, Inc.	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments	Valpak Reply Comments
	June 1, 2012	
Vertis Communications	Vertis Response to Valassis NSA	Vertis Comments
	May 24, 2012	
Washington Post, The	The Washington Post's Comments in Opposition to the Valassis NSA	Washington Post Comments
	May 23, 2012	

<b>APPENDIX B</b>		
<b>Responses to Notice of Inquiry No. 1—Docket Nos. MC2012-14 and R2012-8</b>		
<b>Respondent</b>	<b>Response Citation</b>	<b>Respondent Short Form</b>
A.H. Belo Corporation	Response of A. H. Belo Corporation to Notice of Inquiry No. 1 June 29, 2012	Belo Response
Albany Times Union	Response of Albany Times Union to Notice of Inquiry No. 1 June 29, 2012	ATU Response
Arizona Republic, The	Response of The Arizona Republic to Notice of Inquiry No. 1 June 29, 2012	Arizona Republic Response
Charlotte Observer, The	Response of The Charlotte Observer Publishing Company to Notice of Inquiry No. 1 June 28, 2012	Charlotte Observer Response
Conaghan, Jim, Declaration of	Declaration of Jim Conaghan June 29, 2012	Conaghan Response
Cox Enterprises, Inc.	Response of Cox Enterprises, Inc. to Notice of Inquiry No. 1 June 29, 2012	CEI Response
Cumberland Times-News	Response of the Cumberland Times-News to Notice of Inquiry No. 1 June 21, 2012	Cumberland Times-News Response
Discover Financial Services	Comments of Discover Financial Services June 29, 2012	DFS Response
Fort Worth Star Telegram, The	Response of the Fort Worth Star Telegram to Notice of Inquiry No. 1 June 27, 2012	Fort Worth Star Telegram Response
Geomentum	Response of Geomentum, an Interpublic Group of Companies (IPG) agency, to Notice of Inquiry No. 1 June 29, 2012	Geomentum Response
Hearst Media Services Connecticut	Response of Hearst Media Services CT to Notice of Inquiry No. 1 July 5, 2012	Hearst Media Response

<b>Respondent</b>	<b>Response Citation</b>	<b>Respondent Short Form</b>
Hearst Newspapers –Community Group	Response of Hearst Newspapers –Community Group to Notice of Inquiry No. 1 June 29, 2012	Hearst Community Group Response
Houston Chronicle	Response of Houston Chronicle to Notice of Inquiry No. 1 July 3, 2012	HC Response
Indianapolis Star, The	Response of The Indianapolis Star to Notice of Inquiry No. 1 June 29, 2012	Indianapolis Star Response
Kokomo Tribune	Response of Kokomo Tribune to Notice of Inquiry No. 1 June 22, 2012	Kokomo Tribune Response
Latin—Pak, et. al	Response to Notice of Inquiry No. 1 July 2, 2012	Latin—Pak, et. al
Lee Enterprises, Incorporated	Response of Lee Enterprises, Incorporated to Notice of Inquiry No. 1 July 2, 2012	Lee Response
McClatchy Company, The	Response of The McClatchy Company to Notice of Inquiry No. 1 June 26, 2012	McClatchy Response
Miami Herald, The	Response of The Miami Herald Media Company of Inquiry No. 1 June 26, 2012	Miami Herald Response
Milwaukee Journal Sentinel	Response of the Milwaukee Journal Sentinel to Notice of Inquiry No. 1 June 29, 2012	Milwaukee Journal Sentinel Response
National Newspaper Association	Comments of National Newspaper Association, Inc. in Response to Notice of Inquiry No. 1 June 29, 2012	NNA Response
National Newspaper Association	Comments of National Newspaper Association, Inc. in Response to Notice of Inquiry No. 1 Notice of Filing Redacted Copy June 29, 2012	NNA Redacted Response
New England Media Group	Response of New England Media Group to Notice of Inquiry No. 1	New England Media Group Response

	June 29, 2012	
<b>Respondent</b>	<b>Response Citation</b>	<b>Respondent Short Form</b>
News and Observer Publishing Company, the	Response of The McClatchy Company [News and Observer] to Notice of Inquiry No. 1	News & Observer Response
	June 26, 2012	
Newspaper Association of America	Newspaper Association of America Response to Notice of Inquiry No. 1	NAA Response
	June 29, 2012	
Niagara Gazette	Response of Niagara Gazette to Notice of Inquiry No.1	Niagara Gazette Response
	June 22, 2012	
North of Boston Media Group	Response of North of Boston Media Group to Notice of Inquiry No. 1	North of Boston Media Group Response
	July 3, 2012	
Public Representative	Public Representative Response to Notice of Inquiry No. 1	PR Response
	July 2, 2012	
San Antonio Express News	Response of San Antonio Express News to Notice of Inquiry No. 1	San Antonio Express News Response
	July 3, 2012	
San Francisco Chronicle	Response of San Francisco Chronicle to Notice of Inquiry No. 1	San Francisco Chronicle Response
	June 29, 2012	
Sacramento Bee, The	Response of The Sacramento Bee to Notice of Inquiry No. 1	Sacramento Bee Response
	June 29, 2012	
Seattle Times, The	Response of The Seattle Times to Notice of Inquiry No. 1	Seattle Times Response
	June 29, 2012	
Star Tribune Media Company, LLC	Response of Star Tribune Media Company LLC to Notice of Inquiry No. 1	Star Tribune Media Company Response
	June 29, 2012	
Tifton Gazette	Response of the Tifton (GA) Gazette to Notice of Inquiry No.1	Tifton Gazette Response
	June 22, 2012	

<b>Respondent</b>	<b>Response Citation</b>	<b>Respondent Short Form</b>
Tribune Company	Response of Tribune Company to Notice of Inquiry No. 1	Tribune Company Response
	June 29, 2012	
Tribune Democrat, The	Response of Tribune Democrat to Notice of Inquiry No. 1	Tribune Democrat Response
	June 21, 2012	
United States Postal Service	Response of the United States Postal Service to Notice of Inquiry No. 1	Postal Service Response
	June 29, 2012	
Valassis Direct Mail, Inc.	Responses of Valassis Direct Mail, Inc. to Notice of Inquiry No. 1	Valassis Response
	June 29, 2012	
Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc.	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Response to Notice of Inquiry No. 1	Valpak Response
	June 29, 2012	
Virginian-Pilot	Response of the Virginian-Pilot to Notice of Inquiry No. 1	Virginian-Pilot Response
	June 29, 2012	
Washington Post, The	The Washington Post Response to Notice of Inquiry No. 1	Washington Post Response
	June 29, 2012	