

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

POSTAL RATE AND FEE CHANGES, 2000)

Docket No. R2000-1

VAL-PAK DIRECT MARKETING SYSTEMS, INC.,
VAL-PAK DEALERS' ASSOCIATION, INC., AND
CAROL WRIGHT PROMOTIONS, INC.
RESPONSE TO ORDER NO. 1305
(March 19, 2001)

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Val-Pak Direct Marketing Systems, Inc., Val-Pak Dealers' Association, Inc. and Carol Wright Promotions, Inc., d/b/a "Cox Direct," hereby submit the following response to Commission Order No. 1305.

In their Decision of March 5, 2001, the Governors have asked the Commission to recommend rates that would generate \$69.8 billion annually, even though the Postal Service's initial rate request sought rates that would generate only \$69.0 billion annually. Order No. 1305 (March 9, 2001) asks three questions about recommending higher rates sufficient to produce the additional revenues sought by the Governors. These parties address those questions herein and provide their responses below.

1. Can the Commission lawfully recommend higher rates?

The original revenue requirement of approximately \$69.0 billion represented an increase in revenues, from TYBR to TYAR of \$3.7 billion. Increasing the revenue requirement for TYAR to \$69.8 billion, or by an additional \$800 million, represents a 21.7 percent increase in additional revenues sought by the Postal Service. This represents a substantial, material change in the Postal Service's revenue requirement.

A revised revenue requirement of \$69.6 billion first surfaced on July 7, 2000 in Exhibit USPS-ST-44D, and the final figure of \$69.8 billion appears to reflect a further revised revenue requirement, incorporating a \$200 million field reserve. The omission of the field reserve in ST-44's calculations was first acknowledged on August 11, 2000,¹ two and a half months after intervenor testimony rebutting the Postal Service case-in-chief was filed (May 22, 2000), and three days before participants had to file testimony in rebuttal to other parties. No specific Postal Service filing has been found which notified parties that these new calculations constituted an amendment to the Postal Service's revenue requirement, nor did the Postal Service file revised rates designed to produce an additional \$800 million in revenue. Intervenors had no opportunity to conduct normal discovery or present rebuttal evidence to this new revenue requirement.

The Governors should not be allowed to have it both ways. If they wanted an expeditious hearing within 10 months of the original filing date so they could impose higher rates in January 2001, they must be held to their original request. Alternatively, if they determined that the amount requested in their initial filing was insufficient due to a mistake or due to developments occurring after the initial filing, they should have (i) withdrawn the initial request and refiled for a higher amount, or (ii) declared the amendment to be a new filing and requested the Commission restart the 10-month statutory time clock with a new litigation schedule, or (iii) by now should have filed another request for increased rates. Increasing the revenue requirement above the amount originally requested, so late in the case, with no

¹ Revised Response of United State Postal Service to Presiding Officer's Information Request No. 14, Item 2(b) and (e) — ERRATA (August 11, 2000).

opportunity for discovery or rebuttal, deprives intervenors of their due process rights and is unlawful.

For the Commission to allow the Postal Service to increase significantly the revenue requirement so late in the case would set a terrible precedent. If the revenue requirement can be changed so materially and so late in litigation, what other changes will be made in future dockets without withdrawing the case and refileing it? Such a precedent virtually invites the Postal Service to “sandbag” mailers in future cases by filing material changes concurrently with or after the filing of their rebuttal to the Postal Service case. Allowing such material changes so late in the case would require intervenors to litigate against a moving target, giving little meaning to due process.

Not only did mailers receive no specific notice concerning this increase in the revenue requirement; in various pleadings concerning the use of more recent cost data the Postal Service repeatedly argued that it stood by its original filing and its original rate request, and urged the Commission to adhere to the original filing. For example, only a month before the Postal Service first presented cost updates that led to a higher revenue requirement, it had complained that:

at a time and stage of the proceedings when the Postal Service has already presented and defended its direct case at hearings, and intervenors have formulated and presented their own cases and proposals, based almost exclusively on the Postal Service’s proposals and evidence, **requiring a fundamental change in the financial foundation of the ultimate recommendations would be impractical.**²

² United States Postal Service Motion for Reconsideration of Order No. 1294 (6/2/00), page 5 (emphasis added). The American Bankers Association and National Association of Presort Mailers warned the Commission of the due process problems associated with Order No. 1294. ABA/NAPM Response to Motion for Reconsideration of Order No.

The Postal Service concluded that, “[i]n its effects on the Postal Service, as the principal proponent of change in the proceeding and the focus of the statutory ratemaking scheme, the prescription embodied in Order No. 1294 [directing the Postal Service to update interim and test year estimates using FY 1999 CRA data] fundamentally denies due process.”³

Supplemental testimony of witness Patelunas (USPS-ST-44) gives a detailed discussion of the cost update process based on the FY 1999 CRA, but nowhere mentions any increase in the revenue requirement.⁴ Although the Commission clearly indicated its intention to use more recent cost data, at no time between July 7 and August 14, 2000 (the due date for intervenors to file rebuttal testimony to other intervenors and revise their initial testimony to take account of updated unit cost data) did the Commission or the Postal Service put parties on notice that use of a revised, higher revenue requirement might be considered. The Postal Service did not fashion revenue targets for the individual classes and subclasses of mail designed to produce \$69.8 billion. Parties were invited to revise their testimony to reflect updates to unit cost data, but were given no notice of such a change to the revenue requirement.

Finally, witness Strasser’s rebuttal testimony (USPS-RT-1), filed on August 14, 2000, states explicitly that:

The Postal Service does not believe that it would be appropriate to supplant the financial foundation for its filing with a reformulated base year and completely revised test year

1294. (June 9, 2000).

³ *Id.*, p. 7.

⁴ Exhibit USPS-44D, accompanying witness Patelunas’ supplemental testimony, calculates a revenue requirement of \$66,644,865(000).

estimates. Accordingly, it has not proposed amending its Request for new revenues as a result of the updates.⁵

It is not clear when the Postal Service's official position changed, but it was certainly long after intervenors could have commented on these increases to the revenue requirement.

2. Should the Commission recommend higher rates?

The answer is an emphatic “no”! First, imposition of the higher revenue requirement in this docket is not lawful, as discussed above.

Second, record evidence does not support such an increase. Essentially, what the Governors (and the Postal Service) have done is renew their insistence that the Governors have sole jurisdiction to determine the amount of the revenue requirement, as well as the contingency — which dispute underlies this conflict. With respect to the contingency, the Governors continue to maintain their position that, so long as Postal Service testimony provides some rhetoric about the subjectivity of the issue, as well as the inapplicability of variance analysis, and then makes reference to “management discretion,” the Commission must accede to the request — unless, perhaps, the requested contingency is totally outrageous, well beyond the highest percentage ever permitted previously. In other words, the Governors continue to argue that review of the contingency is beyond the bounds of the Commission's discretion — and, parenthetically, that intervenors should therefore quit wasting their time submitting testimony on the issue.

⁵ USPS-RT-1, p. 1.

Third, any attempt to increase rates sufficient to produce an additional \$800 million in revenue would raise a host of other operational issues and problems; see the discussion below under question 3.

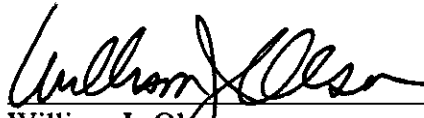
3. How should higher rates be developed?

Increasing the revenue requirement from \$69.0 to \$69.8 billion is an increase of approximately 1.6 percent. Neither the Commission nor the Governors could increase rates “across the board” by this amount, even if they wanted to, because of the integer constraint on First-Class Mail. Consequently, rates in some subclasses and rate categories would necessarily increase by more (or less) than others. In order to put into effect rate increases of varying amounts, based on record evidence, the Commission would have to review again all the statutory criteria as they apply to each class and subclass, along with all the evidence submitted by all the parties. In any such review — which we emphatically do not recommend — the rate for the first ounce of First-Class Mail should also be on the table for a possible increase from 34 to 35 cents, because the Postal Service’s initial submission was tailored to obtain only \$69.0 billion in revenues. The Postal Service did not submit rates designed to yield \$69.8 billion. If the Postal Service had been required to fashion a rate request for \$69.8 billion either before filing its case, or when submitting its supplemental testimony revising the cost basis for its request (July 7, 2000) the Postal Service might well have requested such a higher rate for the first ounce of First-Class Mail.

CONCLUSION

Val-Pak Direct Marketing Systems, Inc., Val-Pak Dealers' Association, Inc., and Carol Wright Promotions, Inc., respectfully request the Commission to refuse to make any rate increases at this time.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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



William J. Olson

March 19, 2001