

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

CUSTOMIZED MARKET MAIL)
MINOR CLASSIFICATION CHANGES)

Docket No. MC2003-1

VALPAK RESPONSE TO OCA MOTIONS
TO REJECT REQUEST TO APPLY MINOR CLASSIFICATION RULES,
FOR SUSPENSION OF PROCEEDINGS, AND
TO DEFER THE TIME TO REQUEST HEARING
(April 10, 2003)

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc.

(hereinafter "Valpak") hereby respond to OCA motions¹ to reject the Postal Service's request to apply minor classification rules, for suspension of proceedings, and to defer the time to request hearing.

Analysis

Two profound peculiarities in the Postal Service's request together justify the granting of all three OCA motions: the Postal Service's failure to prepare and file any cost data whatsoever in support of the proposed mail classification, and the Postal Service's failure to justify why it has requested a permanent mail classification change, rather than an experiment.

Absence of Cost Data. It is axiomatic that the Postal Rate Commission must render its opinion and recommended decision based on the record. Even for a new product, cost data are foundational for the record before the Commission.² Once a reasonable estimate of unit cost is

¹ Office of the Consumer Advocate Request to Motions for Waiver, Expedition, Settlement Procedures and Motions to Reject Request to Apply Minor Classification Rules, Suspension of Proceedings, and to Defer the Time to Request Hearing (filed April 3, 2003).

² Rule 69a(a) requires that in Expedited Minor Classification cases, the Postal Service provide, *inter alia*, "(3) An estimate, prepared in the greatest level of detail practicable,

available, tentative pricing can be done, and whether a proposed change in mail classification will at least break even then can be forecast. The Postal Service has made it impossible for the Commission to do its work on the record as it now stands. Having failed to make even a *prima facie* showing, the proper remedy is the suspension of the proceedings, allowing the Postal Service the opportunity to cure the defect. Valpak does not presume, as OCA does, that these pieces will not generate revenue sufficient to cover their costs. (OCA Responses and Motion, p. 13.) It does believe, however, that the Postal Reorganization Act, and in particular 39 U.S.C. sections 3622(b) and 3623(c), require the Commission to act on record evidence. If the Postal Service's request does not make a *prima facie* case, the Commission should either dismiss it or suspend proceedings. (The Commission should not proceed with the docket on the hope that the discovery process may help develop the necessary record.)

One argument raised by the Postal Service in its request is that the demand would be small, its impact would not be significant in terms of Postal Service cost/revenue relationships,³ and virtually any loss on a small subset of Standard Mail could be viewed as insignificant when compared with the 87.2 billion pieces of Standard Mail, and its \$6.8 billion contribution to institutional costs (in 2002). But by that somewhat simplistic test, all manner of

of the overall impact of the requested change in mail classification on postal costs and revenues, mail users, and competitors of the Postal Service.”

³ “CMM will not cause a significant impact on the contribution of Standard Mail toward institutional costs....” Request of the United States Postal Service for Recommended Decision (March 14, 2003), p. 4. “[T]he proposal would not result in significant changes to postal costs and revenue relationships....” Postal Service Motion for Waiver (March 14, 2003), p. 3,

mischievous could be approved. Neither the Postal Service nor the Commission can allow such a loose standard to be the test.

Permanent mail classification change. There appears to be no adequate foundation for a permanent change in the mail classification schedule, such as the Postal Service has proposed. The very most that it should request for such a new product is an experimental rate.⁴ Rule 67 appears to be designed for situations such as these. With experimental changes, the rules provide opportunities to limit issues to simplify litigation, and anticipates plans for data collection to cure unavailability of data. *See* Rule 67a, 67b, and 67c. It would appear that the Postal Service's filing for Customized Market Mail has been brought under the wrong procedure.⁵

Conclusion

Although Valpak is primarily a Standard ECR mailer, it uses Standard Regular mail for certain of its "solo" advertising mail. If Customized Market Mail were created as a new product, Valpak likely would hope to use it in the future. Nevertheless, Valpak's principal concern in this docket is to ensure that a dangerous precedent is not established by permitting changes in mail classifications without compliance with Commission rules, and without adequate record support. It is important to the long-term interests of all Standard mailers that

⁴ By way of illustration, this was the approach taken by the Postal Service and approved by the Commission in Docket Nos. MC97-1 and MC99-1 under the experimental rates for Weight-Averaged Nonletter-Size Business Reply Mail, which became a permanent mail classification only after Docket No. MC99-2.

⁵ Of course, the Postal Service also could choose to file the case under the Subpart I Market Test case rules or Subpart J Limited Duration case rules.

within the Standard Mail class new types of high-cost mail not be created which fail to recover their costs and therefore would be subsidized by other Standard Mail.

For the reasons set forth above, the Commission should grant the OCA's three motions, giving the Postal Service an opportunity to amend its filing to comply with Commission rules.

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

April 10, 2003