

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

CUSTOMIZED MARKET MAIL)
MINOR CLASSIFICATION CHANGE)

Docket No. MC2003-1

INITIAL BRIEF

OF

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

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

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

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ARGUMENT

I. WITHOUT SUPPORTING COST DATA, THE POSTAL SERVICE SHOULD NOT HAVE REQUESTED, AND WITHOUT RECORD COST DATA, THE COMMISSION MAY NOT RECOMMEND, THIS PERMANENT MAIL CLASSIFICATION CHANGE

It is only with reluctance, and for the compelling reasons set out herein, that Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. (referred to collectively as "Valpak") must oppose the requested Customized Market Mail ("CMM") Minor Classification Change, and urge the Commission to reject the Postal Service's request.

It appears that this docket was initiated by the Postal Service in a genuine attempt to respond to its customers' perceived needs for a new product. The anticipated market for that new product is not vast, yet the Postal Service has devoted a certain level of resources to propose the creation of that product. In general, responsiveness by the Postal Service to mailers' needs is most welcome, and should be acknowledged.

Should CMM eventually be recommended by the Commission and implemented by the Board of Governors, Valpak and some of its customers may well use this new postal product.

Nonetheless, at stake is an important issue that cannot be overlooked: the Postal Service has provided the Commission with no supporting cost estimate for the new product. Nor has any such estimate been introduced at any point in these proceedings. Thus, there is a fatal defect — the absence of cost data — in the Postal Service's case. The issue cannot even rise to the level of a debate about quality of the cost estimate,

because the record nowhere contains any cost data, even of the crudest form. Under the Postal Reorganization Act, as well as the rules of this Commission, it is not possible to create a new permanent postal product without meaningful record cost estimates.

Valpak's concern about the absence of cost data is not based on any assertion that the new CMM product has been underpriced by the Postal Service. In fact, it is quite possible that the proposed CMM product may be seriously overpriced, but no one knows based on record evidence. Since the Postal Service has not submitted any estimate whatsoever of unit cost, any pricing conjecture is purely speculative, at best no more than a semi-informed guess. And just as it is impossible for Valpak to comment intelligently on the proposed pricing, so also it is impossible for the Commission to make a favorable decision on the record that the Postal Service has provided for this docket. No record evidence exists for appraising the credibility of any cost estimate, for there is nothing to critique. Nor does any basis exist to develop an independent cost estimate. Neither speculation, nor guesswork, nor faith in the Postal Service can be the standard for implementation of permanent postal mail classification changes. For the Postal Service to ask the Commission to implement a permanent mail classification change, based on this record, is to ask the Commission to act in dereliction of its duty.

A. The Postal Reorganization Act Requires that the Commission Act only on Adequate Cost Data.

The Postal Reorganization Act does not contemplate the filing of postal rate or mail classification cases which lack underlying cost data — particularly as it applies to

the development of **permanent** rates. Title 39, Chapter 36, Subchapter II is entitled “Permanent Rates and Classes of Mail.” Within that subchapter, Section 3621 authorizes the Governors “to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage.” Section 3622(b)(3) compels the Commission to ensure “that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class” as well as other, “reasonably assignable” costs. Section 403(c) forbids “any undue or unreasonable discrimination among users of the mails, [or] any undue and unreasonable preference to any such user.”

Even if Section 3622(b)(3) applies only to subclasses, each subclass is the sum of its parts. When considering the addition of new products to subclasses, fairness to existing products requires that the Postal Service not simply rely on the assumption that any losses would be small when compared to the totality of the subclass (here, Standard Mail). When the Minor Classification rules were adopted, in Commission Order No. 1110 (May 7, 1996), the Commission addressed concerns expressed by the Newspaper Association of America (NAA) about the “possible impact of non-compensatory services upon other postal ratepayers, particularly monopoly mailers.”

The Commission agrees that **new services** adopted to meet competitive or other perceived needs **must be offered at compensatory rates**, and cannot be allowed to become a revenue burden on other categories of mail.... [I]t is a reason for ... applying the rules in a manner that will avoid this potential harm.... Furthermore, in applying the rules the Commission will be bound, as always, by the requirement in section 3622(b)(3) to recommend rates that

recover costs and contribute to the institutional costs of the Postal Service. [at 5-6 (emphasis added).]

Without some estimate, however rough, about the costs which will be incurred by the anticipated mail stream, it is impossible to establish an equitable rate of postage. Without some assessment of unit cost, there is no means to ensure that the requested postage rates will cover the direct and indirect postal costs, as well as an appropriate contribution to the Postal Service's institutional costs. Without cost data, it is also impossible to assess whether a rate will be so high as to constitute undue or unreasonable discrimination among users of the mails, or preference to any mailer. Neither the Governors nor the Commission can comply with these statutory requirements in the context of a docket — like Docket No. MC2003-1 — where the Postal Service fails to supply even an informed judgment about cost of the mail in question as part of its case-in-chief.

B. The Postal Service Has Failed to Establish Even a *Prima Facie* Case.

At this stage of the proceeding, the Postal Service's proposal has been submitted to the Commission for its recommended approval or rejection. It is apparently no longer central to the proceeding as to whether the Postal Service's failure to supply cost data in its case-in-chief for this docket means that the Postal Service has failed to present even a *prima facie* case for the Commission to recommend the CMM rates. This issue was raised by the Office of the Consumer Advocate ("OCA") in its Response 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), and was supported by Valpak's Response to those OCA motions (filed April 10, 2003), but the motions were denied by the Commission in Order No. 1368 (April 14, 2003). At this point, a decision on the merits must be made. Nevertheless, a brief review of the law applicable to *prima facie* challenges provides useful background for understanding the posture of this docket.

Challenges to the *prima facie* sufficiency of a Postal Service case-in-chief do not appear to have not been favored by the Commission in the past. *Ops. & Rec. Decs.*, Docket No. R71-1, pp. I-136, I-328-329; Docket No. MC79-2, pp. 28-30; Docket No. R83-1, ¶¶ 2015-24. For example, in Docket No. R83-1, the Mail Advertising Service Association challenged the Postal Service's proposed "E-COM" rates as anti-competitive, and argued that the Postal Service had not made a *prima facie* case demonstrating otherwise. However, the Commission found that the Postal Service had met its burden:

The Service has presented a claim, and offered evidence to support it, that in accordance with its conception of the proper calculation of E-COM costs they will be recovered. As in any litigation, that claim may be sound or not; and the related evidence may or may not persuade. The fact is that the Postal Service has made it. [*Id.*, ¶2021.]

The Commission apparently has thus far declined to determine at the outset of a docket that a Postal Service's request is insufficient as a matter of law; it has acknowledged, however, that under the right circumstance, it must do so:

Under § 556(d) of the Administrative Procedure Act [5 U.S.C. § 556(d)], “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” This provision is made applicable to our proceedings by 39 U.S.C. § 3624(a). No statutory provision modifies the rule. [*Op. & Rec. Dec.*, Docket No. R83-1, ¶2016, brackets in original.]

The Postal Service “has the general burden of coming forward with a prima facie case.” *S. Doc. No. 245*, 79th Cong., 2d Sess., at 270 (1946), quoted in *id.*, ¶2017.

Commission Rule 66 provides that proceedings may be stayed where the Postal Service has failed to provide any required information if it “interferes with the Commission’s ability promptly to consider the request.” Beyond that, Commission Rule 64(i) states that “[t]he Commission may reject any request under this subpart that patently fails to substantially comply with the requirements of this subpart.”

Unlike prior dockets where the Postal Service has offered at least some data,⁵ in this docket the Postal Service has offered no testimony on which the Commission may rely to estimate the cost of CMM. Rather, the Postal Service’s submission in this docket, in the Commission’s own words, combines a “lack of case-specific quantitative data,” with “somewhat limited” “available qualitative data.” Order No. 1368 (April 14, 2003), p. 6. Thus, after several instances of just clearing the wall, the Postal Service finally has chosen to run directly into it. As discussed in Section I.A., *supra*, evidence as to the cost of a new postal product is not a minor factoid which can be waived — it is the statutorily-required essence of rate setting for new mail

⁵ See Section II.A. and II.B., herein.

classifications. Valpak submits that the Postal Service, with its cost estimate-less case-in-chief in Docket No. MC2003-1, finally has crossed the line demarcated by the Administrative Procedures Act (“APA”) and imposed by statute upon the Commission. It has failed to present even a *prima facie* case, although it would appear unnecessary for the Commission to revisit this issue at this time. The Postal Service’s case has been offered, and the Commission may now rule on the merits. However, on its merits and on the record, the Postal Service’s request must be denied.

C. Commission Rules Require Cost Data for Permanent Classification Changes.

As seen below, Commission rules allow for five types of proceedings in which new mail classifications can be proposed: Standard, Experimental, Minor, Market Test, and Provisional.

Under Subpart C of its rules, the Commission establishes requirements applicable to requests for **establishing or changing the mail classification schedule**.

- Rules 61 through 66 apply to all classification cases. Rule 64 sets out the required contents of formal requests. Rule 64(a)(2) explains how to proceed when Commission rules require information that “cannot be made available without undue burden,” but even there (in subsection (v)), it is envisioned that the Postal Service will present information about “reliable

estimates.” Cases brought under the general rules can be considered **standard** mail classification cases.

- Rule 67 applies to **experimental** changes.
- Rule 69 applies to **minor** classification cases. This is the option selected by the Postal Service for the new CMM product.

Under Subpart I, the Commission gives the Postal Service the option to have **market tests** of proposed mail classification changes.

Under Subpart J, the Commission gives the Postal Service the option for **provisional** service changes of limited duration.

Standard mail classification changes and **minor** classification changes lead to **permanent** changes in the Domestic Mail Classification Schedule (“DMCS”).

Experimental cases, **market tests**, and **provisional service changes** of limited duration all lead only to **temporary** changes in the DMCS. *See* Rule 67(b)(f); Rule 161(a); Rule 171(a).

It is unclear why the Postal Service chose to file this docket under one of the two sets of rules which lead to creation of a permanent classification change. The Postal Service has explained its reluctance to conduct the data collection work that would be required of other types of cases. *See* Response of Postal Service witness Hope to OCA/USPS-T1-1 (redirected from witness Ashe). But that excuse cannot serve as a foundation for seeking a permanent change in classification. If the Postal Service had elected to file its request under one of the three sets of rules leading to temporary DMCS changes, its lack of cost data might have been more understandable.

Indeed, if the Postal Service's request were filed under any of three sets of rules leading to temporary changes in the DMCS, even with only ballpark cost estimates on the record, Valpak likely would support it. However, instituting a permanent change without any record cost estimate is unacceptable and dangerous for all mailers.⁶

D. The Record Is Devoid of Cost Estimates Applicable to CMM.

CMM is a new product with new mailing restrictions which are unlike those for any other product. It requires separate costing. Rules for mailing the proposed CMM product have been designed in a manner to ensure that CMM will avoid all intermediate handling as Standard Mail prior to arrival at a Destination Delivery Unit ("DDU"). The rules even preclude any possible intermediate handling of CMM in "bulk," such as bundles, boxes, envelopes, trays, tubs, pallets, or other containers, since all CMM must be presorted into 5-digit packages and dropshipped directly to DDUs, via means other than Standard Mail, at the mailer's expense. Despite the restriction regarding where CMM must be entered, and the 5-digit presortation required to enable DDU entry, CMM does not receive any presort discount.

⁶ In Governors of the United States Postal Service v. United States Postal Rate Commission, 654 F.2d 108 (1981), the U.S. Court of Appeals for the District of Columbia determined that the Commission could not transform a request for permanent classification to a temporary classification without intruding on the prerogatives of the Board of Governors. Insofar as the option of a temporary classification change does not exist, the Commission has no choice but to reject the proposal as filed, of course allowing the Postal Service, in its managerial discretion, to consider refiled under an appropriate set of Commission procedures to propose establishing temporary rates.

After CMM arrives at a DDU, other restrictive regulations, such as a prohibition on forwarding or return of CMM, guarantee that not one piece will work its way back into the mailstream for individual piece handling beyond that which occurs within DDUs and by carriers on their routes.

The minimum rate for a Standard basic presort non-letter (under 3.3 ounces) with no destination entry is 34.4 cents per piece. This rate includes handling at an originating facility, at a Destination Bulk Mail Center (“DBMC”), at a Destination Sectional Center Facility (“DSCF”), and at a DDU, plus delivery by carriers on their routes. This 34.4 cent rate also includes all transportation cost from the originating facility where it is entered to the DDU. (Since the Postal Service does not prepare cost estimates for individual rate cells, the extent of any markup included in this 34.4 cent rate is not known). Because CMM pieces can weigh no more than 3.3 ounces, the standard rate proposed by the Postal Service for CMM is 57.4 cents per piece (the minimum rate of 34.4 cents plus the 23 cent residual shape surcharge).⁷

By virtue of dropshipping to DDUs, CMM will avoid all transportation cost, as well as all intermediate handling costs included in the destination entry discounts. Yet, despite the avoidance of all these transportation-related costs, CMM will not receive any destination entry discount. The lack of any cost justification for this exclusion of destination entry discounts for CMM is, at the very least, wholly arbitrary, and appears to constitute undue and unreasonable discrimination under 39 U.S.C. section 403(c).

⁷ The rate for nonprofit CMM would be 16.5 cents plus the 23 cent surcharge, or 39.5 cents.

E. No Record Cost Estimate Supports Application of the Residual Shape Surcharge to CMM Mail.

The current 23 cent residual shape surcharge (“RSS”)⁸ was established by the Commission to compensate the Postal Service for the extra costs incurred in handling Standard nonletter/nonflat pieces (parcels) which may pass through the entire mail processing operation,⁹ virtually all of which CMM is required to bypass. By witness Hope’s own admission, 53 cents out of 84.1 cents of costs takes place in mail processing, most of which CMM will bypass, and approximately 10.3 cents in transportation, all of which would be bypassed by CMM. She also notes a number of other cost-causing characteristics of parcels that will not be present in CMM pieces (*e.g.*, no pieces returned to office for pickup by customer).¹⁰ Witness Hope’s own testimony thus indicates that something over 75 percent of the costs that underlie the RSS should not be considered applicable to CMM.

Treating CMM as a parcel, for purposes of applying the surcharge, instead of a flat, is highly questionable for several reasons. First, no CMM piece will have the thickness of a parcel. As witness Hope has noted, pieces more than 0.75 inch thick are considered parcels, yet the **maximum** thickness for CMM pieces is 0.75 inches, and “it

⁸ DMM section R600.1.2.

⁹ *Op. & Rec. Dec.*, Docket No. R2001-1, at ¶¶ 3133-34.

¹⁰ Response of Postal Service witness Hope to OCA/USPS-T1-29 (redirected from witness Ashe).

is likely that most CMM pieces will be 0.25 inch thick or less.”¹¹ Second, no CMM piece will have the weight characteristics of a parcel. The maximum allowable weight for a CMM piece is 3.3 ounces, whereas “[i]n the Standard Mail Regular subclass, in FY 2002, the weight of the average RSS piece was 9.33 ounces; in Standard Nonprofit it was 7.50 ounces.” Third, it is anticipated that CMM pieces will be cased manually along with other flats, whereas Standard parcels as a rule are not cased with flats. Fourth, the maximum dimensions for CMM pieces, 12 inches in height and 15 inches in width, are based on the dimensions for flats. Fifth, while CMM pieces will be irregular (*i.e.*, non-rectangular) shape, it also is anticipated that, unlike parcels, they will consist of advertising material, and probably will be printed on some type of paper. A parcel, by contrast, could be a cannister (*e.g.*, a film cannister), a plastic toy, or a number of other things that are neither printed nor consist of paper. To sum up, the record does not establish that the physical characteristics of CMM will resemble those of parcels more than flats.

Witness Hope’s case for applying the RSS would appear to rest on the fact that “CMM in most incarnations would not be (1) prepared as either a letter or a flat or (2) satisfy the specifications of letter or flats as prescribed in the Domestic Mail Manual.”¹² This is indeed a thin reed for justification of a 23 cent surcharge. Presumably, upon arrival at DDU’s, packages of CMM might contain fewer pieces than

¹¹ *Id.*

¹² *Id.*

packages of flats or letters. If this were the only or principle difference, however, then that is all the more reason why a ballpark cost estimate is needed, rather than hand-waving speculation. After all, how much time and effort can be involved in opening packages?

Contrary to witness Hope's assertions,¹³ it is not logical to saddle CMM simultaneously with all the above-described restrictions and the full amount of the RSS. This is especially so in the absence of any cost estimate to support application of the surcharge.¹⁴ Unlike Standard "parcels" — pieces which are neither letters nor flats — subject to the RSS, CMM is expected to be cased manually as flats. CMM pieces would be required to pay the RSS ostensibly because of their non-rectangular shape. Nonetheless, this sets a dangerous precedent for imposing a RSS on non-standard flats without clear supporting evidence.¹⁵

¹³ Direct Testimony of Postal Service Witness Laraine B. Hope, USPS-T-2, p. 7, ll. 13-15.

¹⁴ Valpak does not object to the many mailing restrictions proposed for CMM. It does object, however, to the fact that no effort was made to incorporate the effect of those restrictions into a cost estimate.

¹⁵ The future implications for mailers in having the Postal Service appoint to itself the right to proceed without cost data are serious, and should not be underestimated. As just one current illustration, there is discussion in the postal community about the creation of two mail flows for flat-shaped pieces — one for standardized flats which may be processed efficiently into delivery point sequence at low cost, and one for nonstandard flats which must be processed manually at higher cost. If the Postal Service were allowed to create CMM and subject it to a RSS, without cost data, this precedent could enable it do so in the future with respect to any nonstandard flat that must be cased manually.

Being nonstandard is not wrong, or contrary to any rule or regulation. Mailers certainly deserve some assurance that their mail is priced fairly, regardless of whether it is nonstandard or not. Without any cost justification, and in the face of the obvious differences between current Standard parcels and the proposed CMM, the application seems to be driven more by fear and lethargy, rather than by logic and facts.

F. No Cost Estimates Versus Ballpark Cost Estimates.

Postal Service Witness Hope boldly states “[s]pecific costs for accepting and handling CMM pieces at Destination Delivery Units (DDUs) were not discussed or calculated.” Response to OCA/USPS-T1-1. This response indicates that prior to filing the case costs likely were not discussed anywhere in the Postal Service, an amazing assertion on its face.

Since CMM would be a new product that can assume various unusual and creative shapes, it is understandable that the Postal Service might not have any hard cost data on which to rely. At the same time, it is not obvious, and there is no persuasive evidence, why the Postal Service could not have developed even a ballpark "bottom-up" estimate of unit cost. Such a task would not have been difficult. For example, the Postal Service would have needed only to estimate the costs at DDUs of: (i) opening and distributing CMM to carriers; (ii) casing CMM; and (iii) delivering CMM to the addressee's mailbox.

Even for a minor classification change such as that proposed in this case, at the very least the Commission and intervenors need to have a reasoned ballpark estimate of

unit cost to support the proposed rate. Such an estimate could start by selecting a proxy from the detailed unit cost models which the Postal Service has developed for a wide array of products, and then carefully documenting factors or characteristics that might be expected to cause the unit cost of handling the new product either to exceed or be less than the proxy. In a minor classification case such as the one here, providing such a reasoned estimate of unit cost might well be construed as sufficient. That is, for a small niche product it might not be worth the cost and effort to undertake a full-blown market study of demand, with estimates of total volume, total revenue, etc. Following implementation, hard data on volume and revenue would be available for review after the fact, and such data would be far superior to the estimates contained in any market study.

For reasons unknown, the Postal Service opted not to look at costs. According to witness Hope, it started by focusing on rates: “Overall, the goal described in my testimony was to identify the rate categories for which eligibility could be reasonably expanded to accommodate Customized MarketMail (CMM).” Response to OCA/USPS-T1-29. This testimony about “goals” provides no cost analysis whatsoever. And without cost information, establishing that the right category has been selected is pure speculation.

Witness Hope concludes: “As I state in my response to OCA/USPS-T1-13, the CMM product was designed logically.” *Id.* A mere assertion of logic does not make it so. Even a rough analysis of the CMM pieces and their characteristics provides evidence that as far as the rates are concerned, the product may have been designed

illogically. The Commission should consider carefully the “logic” that underlies the rates selected.

In response to the need for costs, witness Hope says: “In fact, as described in my testimony regarding rate application, by methodically choosing rate elements that logically follow from the characteristics and requirements for CMM, I conclude that the prices are reasonable with regard to costs.” Response to OCA/USPS-T1-1. This assertion is wholly conclusory. It speculates about some kind of cost analysis that was never performed, and adds nothing to the record on which the Commission may rely. Not doing what needs to be done does not create a record that the Commission can determine supports the proposal.

G. Post-Implementation Data Collection Deficiencies.

The Postal Service not only has no preliminary cost estimates for CMM, but also it has presented no plan to collect any product-specific cost data in the future. If CMM were approved as presented in the Postal Service’s case-in-chief, then, even after CMM has been offered for several years, the Postal Service still would not have any product-specific cost data with which to evaluate CMM, including applicability of the RSS. Consequently, neither the Postal Service nor the Commission ever would know whether the CMM product is highly profitable, or a money-loser.

If CMM were approved, the Postal Service says that it will collect and file annually volume and revenue data on CMM.¹⁶ However, the record does not indicate whether CMM volumes and revenues will be recorded consistently as CMM, or as flats, or as parcels. With respect to cost information, the record does not even indicate whether the Postal Service intends to have In-Office Cost System (“IOCS”) tallies that distinguish CMM for in-office handling at DDUUs. When pieces of CMM are handled in DDUUs, there appears to be no way — and no plan — to record them separately from other Standard flats or parcels.¹⁷ In general, it simply will be a “non-standard” flat that requires manual casing. In fact, if some pieces of CMM happen to fall within the dimensions of a letter-shaped piece, an IOCS tally might even record them as letters.

It appears that when carriers are handling CMM on their routes, it will be neither counted separately nor studied in any other way to ascertain if extra time (cost) is incurred by city or rural carriers while on their routes. Thus, after the fact, in future rate cases, no more will be known about the cost and profitability of CMM than has been presented in this docket.¹⁸ CMM thus would set a new precedent in non-accountability for mail classification cases.

¹⁶ See Stipulation and Agreement (p. 4, ¶ 10) filed by the Postal Service with the Motion of the United States Postal Service for Consideration of the Stipulation and Agreement as the Basis for Recommended Decision (April 30, 2003).

¹⁷ Presumably, at some point the Postal Service will need to consider whether the billing determinants, in the face of CMM, if approved, will be useful for calculating Standard revenues.

¹⁸ Of course, since the Postal Service has requested a permanent classification change, this means the Postal Service would not have to revisit the issue.

H. Approval of CMM Would Establish a Dangerous Precedent.

The Postal Service asserts that CMM will be a small-volume niche product. That may turn out to be the case. Indeed, at the proposed rate of 57.4 cents, it likely will be so.

Nevertheless, approval of CMM would set a precedent for other “niche” products to be developed within Standard Mail: (i) with no cost data, (ii) with no plan for developing separate cost information, and also (iii) with no plan to prevent the cost data relating to any number of niche products from infecting the cost data for ordinary pieces of Standard Mail.

In order to operate efficiently in the future, the Postal Service needs cost information that is increasingly more accurate and more reliable, not cost data that are made less accurate and less reliable because they include an expanding variety of niche products, with possibly disparate costs.

II. PRIOR COMMISSION DECISIONS ESTABLISH LESSONS WHICH SHOULD BE FOLLOWED IN THIS DOCKET

A. Bulk Parcel Return Service Case (Docket No. MC97-4).

The Postal Service in the past has requested rates for pieces for which costs were not readily available. In the Bulk Parcel Return Service (“BPRS”) case, Docket No. MC97-4, the Commission described the cost situation as follows:

Postal Service witness Pham discusses the BPRS proposal and describes the methodology used to calculate the costs associated with BPRS.... Given BPRS’s status as a new service, witness Pham’s costing methodology used a proxy for each of the cost components that will constitute BPRS’s total attributable cost. Witness Pham identifies these as collection, mail processing, transportation, postage due activities, and bulk delivery costs. [*Op. & Rec. Dec.*, Docket No. MC97-4 at 4-5.]

In its conclusion, the Commission said:

the Commission has reviewed the evidentiary record pursuant to its statutory obligation under chapter 36 of title 39 of the U.S. Code. This includes an independent review of the costing and pricing testimony of Postal Service witnesses Phan and Adra. This review leads to the conclusion that the proposed classification and fee changes meet the criteria of 39 U.S.C. §§ 3622 and 3623, and conform to policies of the Postal Reorganization Act. [*Op. & Rec. Dec.*, Docket No. MC97-4 at 10.]

B. Ride-Along Case (Docket No. MC2000-1).

Another case bearing some similarity to the BPRS case is the Ride-Along case, Docket No. MC2000-1. A Ride-Along piece is a Standard enclosure or attachment in a Periodical. No good estimate was available of the additional cost that the attachment

might cause. In its *Opinion*, referring to Postal Service witness Taufique, the

Commission stated:

He also says that the 10-cent rate will only be available if the inclusion of the “Ride-Along” piece does not cause any significant additional mail processing or delivery costs.... To help ensure that outcome, the Service has developed proposed physical criteria. These include requirements that the weight of the “Ride-Along” piece cannot exceed the weight of the host Periodical copy, nor exceed 3.3 ounces. [*Op. & Rec. Dec.*, Docket No. MC2000-1, at 4-5.]

Interestingly, the Postal Service proposes the same weight limit in the instant proceeding. Even though the additional cost was argued as likely insignificant, the Postal Service proposed to collect data on the Ride-Along pieces (*see id.* at 10), and to collect samples of all such pieces and to examine these samples “to assure that additional mail processing and delivery costs are not being incurred due to these attachments or enclosures.” *Id.* at 9.

C. Lessons from Prior Dockets.

These previous dockets demonstrate that special situations can be dealt with, data can be collected, acceptable proxies can be found, and cost incidence can be assessed. No one would expect the techniques and procedures in the instant proceeding to be identical to those used in some past proceeding, such as those cited above, as all classification proposals are different. But it seems reasonable to expect that some cost analysis could be conducted and presented. Such cost estimates are the *sina qua non* of

setting rates for new classifications, and because they are lacking, the proposal must be rejected.

CONCLUSION

Valpak appreciates and applauds the Postal Service's desire to be responsive to its customers' needs. At the same time, Valpak believes that Postal Service filings also must be responsive to the need for adequate cost information. For the reasons set forth above, Valpak believes that the minor permanent classification change requested by the Postal Service, as well as the provisions set forth in the proposed Stipulation and Agreement filed by certain parties, fail to meet the requirements of the Postal Reorganization Act and the Commission's rules, and should not be recommended.

Respectfully submitted,

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

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

CERTIFICATE OF SERVICE

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

William J. Olson

May 8, 2003