

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

)
CUSTOMIZED MARKET MAIL)
MINOR CLASSIFICATION CHANGES)
_____)

Docket No. MC2003-1

**JOINT REPLY BRIEF OF
ADVO INC., AMERICAN SPIRIT GRAPHICS CORPORATION,
AOL TIME WARNER INC., DIRECT MARKETING ASSOCIATION, INC.,
MAGAZINE PUBLISHERS OF AMERICA, INC., MAIL ORDER ASSOCIATION
OF AMERICA, AND PARCEL SHIPPERS ASSOCIATION
TO THE
INITIAL BRIEFS OF THE OFFICE OF THE CONSUMER ADVOCATE
AND
VALPAK DIRECT MARKETING SYSTEMS, INC AND VALPAK DEALERS'
ASSOCIATION, INC**

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I. INTRODUCTION.

In this proceeding, the Postal Service seeks a recommended decision establishing Customized Market Mail (“CMM”) that would enable certain materials not now eligible for mailing to be included within the Standard Mail Regular and the comparable nonprofit subclasses. The procedural history and nature of the Postal Service’s request have been well-summarized in the Initial Brief of the United States Postal Service and will not be repeated here. USPS Initial Brief, at i-iii.

The Commission’s consideration of this case is governed by Order No. 1368 issued April 14, 2003 granting the Postal Service’s motion that the proceeding be deemed a minor classification case and thus governed by Commission rule 69. In its Order granting the motion, the Commission, over the objections of the Office of the Consumer Advocate (“OCA”), concluded “that the proposed change is minor in nature” and therefore was

appropriately evaluated under the provisions of rule 69. Order No. 1368 at 7. Both the OCA's and Valpak's briefs in large part consist essentially of reiterations of arguments against the granting of the Postal Service's motion, i.e. contentions that the lack of cost, volume and revenue statistics about CMM should result in its rejection by the Commission.

As already found by the Commission, however, "the Postal Service offers evidence that, if found probative, would support a finding that CMM, at least for the foreseeable future, would have an extremely limited impact on institutional cost contribution". PRC Order No. 1368 at 7. The issue before the Commission is whether the Postal Service's evidence is "probative". The dispute about whether the Postal Service should have been required to submit cost, volume and revenue statistics in support of its request is over. Further, the un rebutted testimony submitted by the Postal Service is "probative". That testimony has established that CMM, as a minor classification change, should be recommended by the Commission because it will serve the interests of mailers without risking damage to the cost/revenue relationship of Standard Mail Regular.

II. SUMMARY OF THE ARGUMENT.

The Postal Service has presented probative evidence to support its position that the proposed CMM service would be of value to mailers, a position that is strongly supported by the signing of the Stipulation and Agreement by associations representing the overwhelming majority of Standard Mail users. Because of its high price and the costs of preparing pieces, however, CMM would attract only small volumes. Because of those factors, CMM, at worst, would not result in a deterioration of the cost and revenue position of Standard Mail Regular.

The briefs of OCA and Valpak argue strenuously that the Commission should reject the USPS proposal because the Postal Service has failed to bring forward estimates of costs, revenues and volumes. Those arguments have already been rejected in Order No. 1368 and are irrelevant. Thereafter, the OCA and Valpak part company, with Valpak

arguing that the CMM rate is probably too high and the OCA that it is too low. Both arguments are fallacious. The USPS has demonstrated that the rate, cost of piece preparation and other factors ensure that volumes will be low and that those volumes will cover costs. Thus the OCA position should be rejected. The Valpak position should be rejected because the Postal Service has appropriately adopted a conservative pricing approach for this new service.

III ARGUMENT.

A. Nature Of Market For CMM.

As stated by USPS witness Ashe, CMM would be “designed and produced in an unique and unusual shape, with other distinctive features of color or content, to serve as a high-impact marketing piece for delivery of the sender’s message.” USPS-T-1 at 1. As also concluded by witness Ashe, “there is a consistent level of interest in CMM, an intention among advertisers to evaluate and use it, and an expectation that it could become a regular ingredient of advertisers’ strategies”. Id. at 6. Witness Hope also testified that current restrictions on the use of Standard Mail “have left a gap in the marketplace for business mailers who may wish to reach their customers using more unusual and creative advertising messages and design than current postal regulations allow. USPS-T-2 at 1. The USPS testimony about the market is persuasive, must be deemed “probative” and in the absence of any rebuttal, should be accepted at face value. To do otherwise would require a conclusion that the Postal Service has proposed a service by which that is of no interest to mail users. Further, the support of the proposal by the wide spectrum of Standard Mail users signing the Stipulation supports the USPS witnesses’ conclusions.

B. CMM Has Been Properly Classified And Would Not Threaten Postal Revenues.

The Postal Service has explained the basis for classifying CMM as Standard Mail Regular and the proposed rate and entry requirements. CMM would be designed to

reach specific groups rather than to reach a high density geographic area. As stated in witness Hope's testimony, "the Standard Regular subclass and its nonprofit counterpart, both of which are designed for low-density advertising mailings, are the appropriate classification within Standard Mail for CMM". USPS-T-2 at 6. Witness Hope also concludes that the CMM offers an additional tool for current and potential direct mail advertisers and does so "in a manner that builds on current offerings without detracting from or changing what is already available." Id. at 8. The Postal Service's approach has been a conservative one to ensure that there will be no adverse affects upon postal costs and revenues. CMM will be classified within Standard Mail "parcels", and thus subject to the residual shape surcharge. Because limited to pieces weighing no more than 3.3 ounces that must be entered at the DDU, and ineligible for any discounts, CMM assuredly will incur less cost than other RSS pieces. Thus, CMM will not result in any negative revenue consequences. CMM is a minor change which represents the kind of market-driven action that should be taken by the Postal Service in order to best serve its customers.

The only other issue is whether the proposed classification represents any significant threat to postal revenues. Here again, the USPS has offered probative, persuasive and uncontradicted testimony that CMM would not threaten the Postal Service's financial position.

Both OCA and Valpak oppose the approval of CMM because of the absence of statistical evidence of the costs, revenues and volumes of the new service. Thereafter, however, the two opponents approach the issue from radically different directions. The OCA, at great length, expresses the fear that in the absence of statistical projections there is no way for the Commission reasonably to determine whether this new type of mail will threaten Standard Mail Regular's cost and revenue relationship. Despite those arguments, however, the OCA recognizes both the value of CMM to mailers and minimal affect on costs.

The OCA acknowledges that the proposed changes would be beneficial to some advertising mailers in that CMM relaxes existing restrictions to accommodate novel mail pieces. By requiring job shipments to, or entry at, the DDU, the OCA believes that the USPS designed CMM to have minimal presence in mail processing operations.

OCA Brief at 9.

Coming from the exact opposite direction, Valpak argues that a qualitative and logical evaluation of CMM supports the conclusion that the proposed rate is too high. Valpak supports its arguments from the fact that there would be no intermediate handling prior to presentation at the DDU and CMM would receive no discounts even if otherwise eligible for such discounts. Further, Valpak also argues that, because of the characteristics of CMM pieces, its costs are likely to be less than the other types of RSS mail. Valpak Initial Brief at 9-11.

Valpak presents interesting issues, but ignores the fact that in the absence of quantitative data, the Postal Service is not only justified, but also could not prudently proceed, on any basis other than proposing an initial rate that ensures that this new type of mail will meet its costs and make a contribution to the institutional burdens of the Postal Service.

Valpak's arguments that the rate is too high serve to discredit the OCA's position that CMM may burden other types of Standard Mail. Further, if it develops that the CMM rate has been set too high, as based upon data collected once the service has been initiated, the rate level can be reevaluated.

C. The OCA's Arguments About RSS Mail Are Irrelevant To This Proceeding.

The OCA's objection to the new subclass is premised heavily upon the position that RSS mail within Standard Mail is undercharged and therefore additional types of mail subject to the surcharge should not be permitted. The question of whether OCA's position on the rate for RSS is well taken, is not, however, a proper issue in this proceeding. The OCA has had and will continue to have opportunities to advance its argument and evidence about the proper rate for residual shapes within Standard Mail. Those arguments ought

not be permitted to stymie Postal Service efforts to bring into the marketplace new products that will serve mailers and enhance the Postal Service's marketing abilities.

D. The OCA Relies Upon An Erroneous Legal Position About Cost/Revenue Relationships.

The OCA's arguments about CMM's threat to the cost/revenue relationship of Standard Mail have no substance, as shown by USPS testimony, this brief and the Initial Brief of the Postal Service. Further, the OCA relies upon a legal argument that is entirely erroneous. Specifically, the OCA argues that CMM, under §3622(b)(3), must be required to recover its attributable costs. OCA Brief at 10-15. That position by the OCA is premised upon a contention that the Postal Service has misconstrued the requirements of Commission rule 69. *Id.* at 11-12. The OCA argues "when rule 69 allows the possibility of an insignificant decrease in institutional costs contribution, this is to be understood as a slight reduction in a subclass cost coverage or markup position not an absolute loss to the subclass arising from the failure of the proposed rate to cover the cost of the new service." OCA Initial Brief at 13.

The full intended scope of the OCA's position is not apparent. Regardless of how interpreted, however, it is wrong. It is beyond argument that the requirements of §3622(b)(3) apply only at the subclass or class level and have no application to particular types of mail within subclasses. If the OCA's legal arguments were correct, and the OCA's factual arguments that RSS mail fails to meet its costs were also correct, any decision permitting an RSS rate which resulted in revenues that were less than costs would be facially unlawful. That is not the case as applied to RSS as a whole and is certainly not the case as applied to CMM. In sum, the OCA's contention that the rates for each type of mail within a subclass must meet the §3622(b)(3) criteria is clearly erroneous.

IV. CONCLUSION.

For the above reasons, it is clear that the Postal Service has made its case and the CMM proposal should be approved.

Respectfully submitted,

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