

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

RATE AND SERVICES CHANGES TO
IMPLEMENT FUNCTIONALLY EQUIVALENT
NEGOTIATED SERVICE AGREEMENT WITH
DISCOVER FINANCIAL SERVICES, INC.

Docket No. MC2004-4

UNITED STATES POSTAL SERVICE RESPONSE TO
MOTIONS FOR HEARING BY OCA AND VALPAK
(July 28, 2004)

The United States Postal Service hereby responds to the motions of the Office of the Consumer Advocate ("OCA") and Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. ("Valpak"), filed on July 23, 2004, requesting a hearing in the instant proceeding.

The Postal Service respectfully submits that neither the OCA nor Valpak has demonstrated that there is a need for a hearing in this case. The Postal Service suggests, however, that the most prudent course of action is for the Commission to defer ruling on these motions until it has had the opportunity to review the comments and reply comments on the limitation of issues in this docket, which are due by July 29 and August 5, respectively. See Presiding Officer's Ruling No. MC2004-4/1 (issued July 20, 2004) at 3. Moreover, as OCA and Valpak have agreed to decide by August 17 whether they will even seek to cross-examine the witnesses of the Postal Service and Discover, it may be prudent to defer a ruling until after that date.

In Docket No. RM2003-5, the Commission noted that once it has decided

to proceed under Rule 196, as it has in the instant case, "the Commission must then determine whether or not to schedule a hearing." Order No. 1391 at 58. The Commission pointed out that the requirement in Rule 196(c) that parties "identify any issue(s) that would indicate the need to schedule a hearing" would "provide the Commission with the required basis on which to make this determination." Id.

The Postal Service believes that a determination on a proposal for limitation of issues should precede a determination as to whether those issues that survive such a motion warrant a hearing, since many issues appear to be policy questions rather than factual disputes, or do not appear to raise any material issues of fact. Indeed, Valpak has indicated that it intends to further address its identification of issues in its response to the proposal for limitation of issues (Valpak Motion at 2). Thus, the Postal Service believes that the best course of action is to defer ruling on the motions for a hearing until after the Commission has ruled on the proposal for limitation of issues.

The Postal Service also suggests that in cases under Rule 196, the Commission should take into consideration whether a party requesting a hearing has shown that oral cross-examination is necessary. In the instant case, the Postal Service believes that neither Valpak nor the OCA has shown that oral cross examination, as opposed to interrogatory responses, will be necessary.

In an omnibus rate case, where the dollar amounts at stake are in the billions, it has been the experience that virtually any time any participant requests a hearing, such hearing will be granted. The Postal Service encourages the

Commission to be more restrictive, however, in an NSA case, especially a functionally equivalent NSA case. While the mailer in the instant proceeding is a major corporation that participates in the highly competitive credit card industry, the benefit of this case to the Postal Service (estimated by the Postal Service to be \$6.8 million over the life of the NSA) is significantly lower than the aggregate value of an omnibus rate case.

More importantly, if the Postal Service, in the long run, is to extend the benefit of baseline NSAs to smaller mailers who agree to functionally equivalent contracts, the potential litigation costs to be incurred by the mailers need to receive serious consideration. Granting a hearing whenever requested could discourage the extension of baseline NSAs to mailers who can meet the requirements of functional equivalency.

It is worth noting that Valpak has indicated that it hopes discovery could result in an evidentiary record that is sufficient and obviates its perceived need for a hearing. (Valpak Motion at 2).

The Commission has set September 8 or 9 as the hearing date. Thus, there will be ample time between the date on which responses to comments on the proposal for limitation of issues are due (August 5), as well as the date by which parties can request oral cross examination (August 17), and the scheduled hearing, for any party who seeks oral cross-examination to demonstrate that a hearing is required.

The Postal Service requests that the Commission rule on the need for a hearing after August 17, and that it require a party requesting a hearing to show with specificity what issues warrant a hearing.

Respectfully submitted,

U.S. POSTAL SERVICE

By its attorneys:

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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.

Brian Reimer

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