

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

RATE AND SERVICE CHANGES TO) Docket No. MC2004-3
IMPLEMENT FUNCTIONALLY EQUIVALENT)
NEGOTIATED SERVICE AGREEMENT WITH)
BANK ONE CORPORATION)

VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
COMMENTS ON THE UNITED STATES POSTAL SERVICE'S
PROPOSAL FOR LIMITATION OF ISSUES
(July 29, 2004)

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

("Valpak") hereby respond to the Postal Service's Proposal for Limitation of Issues filed June 21, 2004. POR No. MC2004-3/1 requested written comments to the Postal Service's proposal by July 29, 2004, with written responses by August 5, 2004.

The Postal Service, in its proposal to limit the issues in this docket, requested that the issues be limited to the following:

- "(1) the financial impact of the Bank One Corporation NSA on the Postal Service over the duration of the agreement;
- (2) the fairness and equity of the NSA in regard to other users of the mail; and
- (3) the fairness and equity of the NSA in regard to the competitors of the parties to the NSA."

These three issues are, of course, extracted from Commission Rule 196(a)(6). They are the three issues which are always relevant in a proceeding to consider a functionally equivalent Negotiated Service Agreement ("NSA").

As a protective matter, Valpak originally requested a hearing at the prehearing conference on July 15, 2004. It subsequently filed its Restated Request for Hearing and Preliminary Statement of Issues on July 23, 2004, where it identified issues as follows:

“A. Factual Differences between Capital One NSA and Bank One NSA

Significant factual differences appear to exist between the Capital One baseline NSA and this functionally-equivalent NSA for Bank One. Most of these issues relate to the financial impact of the NSA on the Postal Service.

1. The Capital One NSA involved only new First-Class volume, but the Bank One NSA involves only migrated Standard Mail, raising the issue of whether the Postal Service properly compared the contribution to institutional costs under Bank One’s current use of Standard Mail with the future situation in which Bank One would be using First-Class Mail. A number of other specific questions are presented by this fact, including:

a. Has the Postal Service correctly calculated both the total cost and the marginal cost of electronic Undeliverable as Addressed (“UAA”) information for the new First-Class volume?

b. Is it appropriate for the Postal Service model to omit the cost of free-forwarding and free electronic Address Correction Service (“ACS”) for forwarded mail?

c. Both on average and at the margin, could the Postal Service actually suffer a reduction in contribution to institutional costs as a result of the migration from Standard Mail to First-Class Mail that is being encouraged by this NSA?

2. The Capital One NSA involved a mailer which maintained its own solicitation list, while Bank One apparently relies more heavily on rented lists, raising the issue of whether any use that Bank One could possibly make of the expensive electronic UAA information is of low value, far below the cost of providing the information. A number of other specific questions are presented by this fact, including:

a. Is there any value whatsoever to the Postal Service or Bank One of Bank One obtaining UAA electronic return information, and, if so, what is that value, and how does it compare to the Postal Service’s cost of providing this information?

b. How have anticipated benefits to the Postal Service of Bank One obtaining this UAA electronic return information been incorporated into this NSA?

3. Stated differently, when Bank One achieves its maximum discount, will the **marginal** contribution to the Postal Service’s overhead from First-Class solicitation mail that converts from Standard Mail be significantly less than the average contribution when mailed at Standard Mail rates? That is, at the

margin, will the Postal Service suffer a reduced contribution to overhead as a result of implementing the NSA? If so, by how much? And, worse, will it suffer a reduced contribution to overhead even before the maximum discount is reached?

B. Other Factual issues

1. Does implementation of this NSA make a systemwide fix of the UAA pricing problem more difficult for the Postal Service, and hence, less likely?

2. Does the Postal Service now have in place the systems which it testified it did not have in place when the Capital One NSA was considered, that would allow this NSA to be offered as a niche classification, available to all similarly situated mailers who meet certain generalized criteria, rather than just this one mailer (in this docket), as the Commission anticipated could occur in the future after the Capital One NSA was in place?

3. Does the absence of any cap in the Bank One NSA violate the principles established by the Commission with its Capital One stop-loss provision?"

Valpak has considered whether the above-identified issues would fall within the limitation of issues proposed by the Postal Service, and makes these comments.

Valpak issue B.2 relates to the possibility of a niche classification. Valpak believes that the availability of a niche classification should be among the issues to be considered during the litigation of functionally equivalent NSAs. Indeed, the Commission's *Opinion and Recommended Decision* in Docket No. MC2002-2 addressed this issue, stating:

[T]he Commission will continue to allow participants to inquire into the feasibility of more inclusive classification provisions, and to propose more expansive alternatives, as it has done in this proceeding. [MC2002-2, *Op. & Rec. Dec.* at ¶ 3040.]

The Postal Service stated at the prehearing conference that it did not believe that this language applied to functionally equivalent NSAs, but only baseline NSAs. Valpak disagrees. It is not necessary, however, to resolve this disagreement in this proceeding. In Docket No. MC2002-2, Postal Service witness Michael K. Plunkett testified that such a niche was not **then** possible

[MC2002-2 *Op. & Rec. Dec.* at 34, n. 45]. In this docket, Valpak submitted an interrogatory to witness Plunkett, asking whether a niche classification was **now** possible. He responded by indicating that a niche still was not workable. *See* Response of Postal Service Witness Plunkett to Interrogatory of Valpak, VP/USPS-T1-9. Valpak does not intend to contest that answer and therefore proposes to withdraw this issue, not because the issue is impermissible in proceedings to determine functionally equivalent NSAs, but because that issue is simply not useful to be pursued if it is an impossibility in this docket.

Valpak issue B.1 relates to whether granting functionally equivalent NSAs would hinder a general fix of the problem of address correction. Valpak raised this issue in its interrogatories, and the Presiding Officer raised a related, important issue in Presiding Officer's Information Request ("POIR") No. 1, question 8, which was responded to by the Postal Service on July 26, 2004. Valpak would ask for the opportunity to address this issue in a brief or other written comments, but does not see this as an issue to be litigated, as such, during this docket, beyond having the Postal Service responses to its interrogatories and this Commission's POIR question entered into the record. So long as Valpak has the flexibility to address this issue in this limited way, it offers no objection to the issue not being expressly identified as one to be litigated in this docket. (Moreover, this issue could be said to relate broadly to both the financial impact of these NSAs on the Postal Service as well as fairness and equity in regard to other users of the mail.)

The other issues set out by Valpak all relate to the financial impact of the proposed NSA, and thus fall within the issues identified by the Postal Service and Rule 196(a)(6). So long as the Postal Service Proposal for Limitation of Issues does not preclude Valpak from

raising these financial issues that it has identified, it has no objection to the Postal Service's proposed limitation. If, on the other hand, the Commission determines that such proposal for some reason could be read to preclude consideration of the above-stated financial issues, Valpak would ask the Commission to expand the issues which may be considered to include the financial issues identified above.

Finally, Valpak agrees with the Postal Service that the Commission should wait until after August 17, 2004, before it rules on the need for a hearing in this case. *See* United States Postal Service Response to Motions for Hearing by OCA and Valpak, June 28, 2004, pp. 1 and 4.

It continues to be Valpak's hope that, having an opportunity to brief the issues above, it will not feel compelled to seek or file record evidence beyond the co-proponents' written responses to discovery, particularly in view of the helpful and forthcoming manner in which the Postal Service has been willing to share information informally during the pendency of this docket.

Respectfully submitted,

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