

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

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

Docket No. MC2004-4

UNITED STATES POSTAL SERVICE RESPONSE  
TO COMMENTS ON ITS PROPOSAL FOR LIMITATION OF ISSUES  
(August 5, 2004)

As requested by the Presiding Officer's Ruling No. MC2004-4/1 (July 20, 2004) at 1, the Postal Service respectfully submits this response to comments made by the Office of the Consumer Advocate ("OCA"), and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (collectively, "Valpak"), regarding the Postal Service's proposal to limit the issues in this case. The Postal Service based its proposal on Rule 196(a)(6), 39 C.F.R. § 3001.196(a)(6).

To further the goal of expedited procedures for functionally equivalent agreements, the Commission established Rule 196(a)(6), which states that the Postal Service may propose to limit issues in proceedings to consider functionally equivalent NSA proposals, not including those issues addressing (1) the financial impact of the Discover 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. In its Order proposing the rule, the Commission explained:

[t]he purpose of proposing rules that expedite procedures for considering functionally equivalent negotiated service agreements is to assure that similarly situated mailers are given timely consideration and not placed at an undue disadvantage when seeking to secure a negotiated service agreement with the Postal Service.

Order No. 1383, Docket No. RM2003-5 (68 Fed. Reg. 52546, 52551

(August 27, 2003)). In its Order adopting the final rule, the Commission further stated:

[t]he purpose of § 3001.196 is to provide an opportunity to expedite the review of a request for a functionally equivalent Negotiated Service Agreement by allowing the proponents of the agreement to rely on relevant record testimony from a previous docket. This potentially could expedite the proceeding by avoiding the need to relitigate issues that were recently litigated and resolved in a previous docket.

Order No. 1391, Docket No. RM2003-5, at 48 (February 11, 2004).

The Postal Service fully supports the goals on which this rule is founded. As the Postal Service, Discover Financial Services, and J.P. Morgan Chase & Co., have previously noted in this docket, and in Docket No. MC2004-3, expedited consideration of proposals for functionally equivalent NSAs represent a critical element of the NSA approach. Unless procedures calculated to provide efficient review of functionally equivalent NSAs are followed, the foundation supporting particularized rate agreements as to means fine tune and improve postal rates and classifications will be seriously undermined.<sup>1</sup> Effective limitation

---

<sup>1</sup> See Comments of the United States Postal Service in Regard to Its Proposal for

of issues and procedural restraint must play key roles in realizing the promise of NSAs.

In this connection, the Postal Service, has reviewed the issues proposed by the OCA and Valpak as worthy of further proceedings. As effectively acknowledged by their proponent, Valpak,<sup>2</sup> two clearly fall outside the categories delineated in Rule 196(a)(6) for consideration in functionally equivalent review. Whether an alternative niche classification approach should be considered, and the issue of “a general fix of the problem of address correction,” present questions clearly not contemplated in an expedited review of the Discover NSA proposal. The Commission should therefore exercise its discretion to limit its consideration in this docket by excluding these issues.

Regarding the other issues raised in the OCA’s and Valpak’s pleadings, the Postal Service believes that pursuit of these matters through extended hearings is neither necessary, nor advisable in the context of the specific objectives of functionally equivalent proceedings to consider the mailer-specific elements of the proposed NSAs, and the overall goals of the NSA approach, including the need for efficiency and expedition in effectively extending the benefits of baseline NSAs to similarly situated mailers.

---

Limitation of Issues, Docket No. MC2004-4, at 2 (July 29, 2004).

<sup>2</sup> Regarding niche classifications, Valpak itself has stated that it intends to withdraw this issue and therefore there should be no further discussion of this issue. Valpak’s Proposal For Limitation of Issues (July 29, 2004) at 4. Regarding “a general fix of the problem of address correction”, Valpak merely wants to reserve an opportunity to address this issue in a brief or other written comments. Id.

Rule 196(d) states that, after determining an NSA to be functionally equivalent, the Commission will issue a recommended decision after 60 days have elapsed, if no hearing is held, or after 120 days have elapsed if a hearing is scheduled. The OCA, in its Answer to Postal Service Motion to Limit Issues (July 29, 2004), has defined “hearing” as an opportunity to provide further evidence and briefs. While it is somewhat unclear what constitutes “hearings” in the context of the Commission’s rules or the statutory framework in this instance, if we were to accept the OCA’s definition, no firm justification has been established for further testimony or proceedings, beyond briefs, which we anticipate will be received in every case. In this case, neither the OCA nor Valpak have demonstrated why, considering the record already created, they need to provide additional testimony. In this regard, none of the remaining issues related to the financial consequences of the Postal Service’s proposal, including the issues related to the cap negotiated by the parties, will require additional testimony.

If the Commission does decide to grant a hearing, we urge the Commission to defer a scheduling order until after August 17, the date by which OCA and Valpak have agreed to decide whether they will even seek to cross-examine the witnesses of the Postal Service and Discover. If there is no oral cross-examination, the proceeding can be expedited. If the Commission decides to grant the chance for oral cross-examination, we urge the Commission to strictly apply Rule 30(3) which limits oral cross-examination to clarifying written cross-examination and for testing assumptions, conclusions, or other opinion evidence.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

---

Brian M. Reimer

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1134  
(202) 268-3037; Fax -5402  
August 5, 2004

### **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 M. Reimer

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
August 5, 2004