

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

NOTICE OF UNITED STATES POSTAL SERVICE OF FILING ERRATA TO
UNITED STATES POSTAL SERVICE RESPONSE
TO COMMENTS ON LIMITATION OF ISSUES (ERRATA)
(August 6, 2004)

The United States Postal Service hereby gives notice that it is today filing errata to the United States Postal Service Response to Comments on its Proposal for Limitation of Issues, which was originally filed on August 5, 2004.

The response that was filed on August 5, 2004, was a non-final draft that contained mistakes or omissions, which have been corrected as follows:

- The document has been paginated.
- On page 2, the citation for the first indented quotation has been left-justified.
- On page 2, the spacing after the second indented quotation has been corrected.
- On page 2, on the fifth line from the bottom, the word "represent" has been corrected to read "represents."
- On page 2, on the second line from the bottom, the phrase "to means" has been corrected to read "means to."

On page 2, footnote 1, a citation to a pleading that was previously filed in this docket by the Postal Service on July 28, 2004 -- the United States Postal

Service Response to Motions for Hearing by OCA and Valpak -- has been added.

None of these changes are substantive.

The corrected Response follows.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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August 6, 2004

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RATE AND SERVICE CHANGES TO IMPLEMENT
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UNITED STATES POSTAL SERVICE RESPONSE
TO COMMENTS ON ITS PROPOSAL FOR LIMITATION OF ISSUES
(revised August 6, 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 represents 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 means to fine tune and improve postal rates and classifications will be seriously undermined.¹ Effective limitation

¹ See Comments of the United States Postal Service in Regard to Its Proposal for Limitation of Issues, Docket No. MC2004-4, at 2 (July 29, 2004); United States Postal Service Response to Motions for Hearing by OCA and Valpak, Docket No. MC2004-4 (July 28, 2004).

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,² 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.

Rule 196(d) states that, after determining an NSA to be functionally equivalent, the Commission will issue a recommended decision after 60 days

² 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.

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:

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August 6, 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.

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August 6, 2004