

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

POSTAL RATE AND FEE CHANGES, 2005)

Docket No. R2005-1

RESPONSES OF VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.

WITNESS ROBERT W. MITCHELL TO INTERROGATORIES OF
ALLIANCE OF NONPROFIT MAILERS (ANM/VP-T1-1)

(August 9, 2005)

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. hereby submit responses of witness Robert W. Mitchell to the following interrogatories of the Alliance of Nonprofit Mailers: ANM/VP-T1-1, filed on July 26, 2005. Each interrogatory is stated verbatim and is followed by the response.

Respectfully submitted,

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ANM/USPS-T1-1.

This question concerns the carryover sentence on pp. 87-88 of the direct testimony of Valpak witness Robert W. Mitchell: “My experience has been that phrases like ‘as nearly as practicable’ are always meant to allow the practicalities of rounding to be accommodated, and nothing more.”

(a) Please specify the experience on which Mr. Mitchell is relying.

(b) If the experience consists, wholly or part, of Mr. Mitchell’s understanding of one or more prior interpretations of the Postal Reorganization Act, another statute, a regulation, or another text by a court, agency or other decisionmaker, please provide a citation to the statute, regulation or other text that was construed and the decision or other document that construed it. (If a document is not readily available to the public, please produce a copy of the document as well.)

RESPONSE:

(a) and (b) These are issues on which I have worked extensively. While at the Postal Service (1975 to 1992), I developed preferred rates (both second and third class), phased rates, and rate adjustments, all to align with Congressional requirements and Postal Service policies. While at the Commission (1992-2002), I continued some of the same type work, and worked with others on related issues. As detailed below, I do not recall a time when the need to accept the effects of what have been viewed largely as statutory authority for rounding conventions was seriously questioned. Neither do I recall beyond-rounding adjustments being made under the authority of such a statute. If the Postal Service were to provide preferred categories lower rates than Congress required it to provide, it would increase the rates unfairly for other mailers and make the Postal Service less competitive and less viable in general. Also, it would inject an element of judgment into the development of the preferred rates. If judgment were injected into such a situation, it would become difficult to reach agreement on its bounds.

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The experience behind my statement includes instances where postal laws used the phrase “as nearly as practicable” and others where the guidance provided by this phrase was assumed to be the appropriate way to implement similar requirements.

- (i) Another part of the same law, which requires the Nonprofit rates to be developed according to the 60-percent formula as nearly as practicable, also requires the rates for Nonprofit Periodicals, Classroom Periodicals, and Library mail to be set so that the postage on certain rate components is 5 percent lower than it would be if the corresponding commercial rates were applied, as nearly as practicable. *See* P.L. 106-384, 114 Stat. 1460, Oct. 27, 2000. In implementing the 5-percent requirement, the Commission and the Postal Service (including in the instant case) have applied the 5-percent to the indicated components by focusing on the total postage bill, rounded to the nearest cent. This procedure provides an exacting implementation of the law’s provision.
- (ii) In previous rate cases involving the 60-percent requirement for the Nonprofit categories in Standard, the Commission has taken great care to develop a full rate schedule consistent with rounding rates to the nearest tenth of a cent. Although other concerns always existed within each Nonprofit schedule, such as concerns over the effects on mailers and on the passthroughs of cost avoidances, none of these have been traded off against the 60-percent requirement. In effect, nothing about the 60-percent requirement has ever been found to be impracticable. In Docket No. R2001-1, honoring the 60-percent requirement

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and normal rounding led to a rate increase for Nonprofit ECR of 6.5 percent, which was slightly higher than the increase for Commercial ECR of 6.2 percent. No non-60-percent adjustments were made to the Nonprofit rates.

- (iii) In carrying out the requirement of the Revenue Forgone Reform Act (“RFRA”) of 1993 (P.L. 103-123, 107 Stat. 1267, 39 U.S.C. section 3626(a)), which requires that the markup on In-county Periodicals be equal to one-half the markup on the corresponding commercial category, the Commission has followed the requirement to the maximum extent allowed by the convention of rounding to the nearest tenth of a cent. RFRA did not use the phrase “as nearly as practicable,” but it was understood. See item (ix) below on the question of this phrase being understood.
- (iv) In carrying out the requirement that the new rate relationships of RFRA be implemented in six steps, the Commission calculated each step as closely in line with a target cost coverage as could be done within the normal rounding conventions of the nearest tenth of a cent.
- (v) In carrying out the requirement of RFRA that certain rates for Science of Agriculture (“SoA”) publications be set at 75 percent of the corresponding commercial rates, the Commission has rounded the rates to the nearest tenth of a cent.
- (vi) P.L. 102-141, which was enacted on October 28, 1991, said that the appropriation for preferred third-class flats would be limited on a per-piece basis

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to the appropriation for preferred third-class letters. The words used in the section headed Title II, Postal Service, Payment to the Postal Service Fund were: “as though all such mail consisted of letter shaped pieces.” To implement this change, which reduced the appropriations received, the Postal Service increased the rates for all third-class flats, but not for letters, on November 17, 1991, with rates rounded to the nearest tenth of a cent, consistent with the bill. The alignment with the new provisions was considered to be as near as practicable. *See* USPS-LR-K-73.

- (vii) Approaching Docket No. R87-1, a shortfall in appropriations had resulted in the rates for the preferred categories being at a level such that the revenue from postage was 21 percent of the way from the revenue that would result from a cost coverage of 100 percent to the revenue that would be obtained if corresponding regular rates were applied, assuming no volume effects. P.L. 99-509, which was enacted on October 21, 1986, required that the reference point for calculating appropriations should be the revenue that would be obtained if the preferred categories were to be given the same cost coverage as the corresponding regular categories. In section 6003, the words used were: “**will bear the same ratio** to the costs attributed as required by section 3622(b)(3) of this same title to such respective categories” (emphasis added). In implementing this law, both the Postal Service and the Commission developed rates in Docket No. R87-1 for the preferred categories that were rounded to the nearest tenth of

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a cent, in line with a revenue requirement that was 21 percent of the way from the revenue that would result from a cost coverage of 100 percent to the revenue that would be obtained at a cost coverage equal to that of the corresponding regular category. These rates were viewed as aligned as nearly as practicably with the “same ratio” requirement of the public law and the then-existing procedures for developing preferred rates. *See* testimony of Postal Service witness Lyons, Docket No. R87-1, USPS-T-17, pp. 14-16 and workpapers of Postal Service witness Mitchell, workpaper II-G, p. 3.

- (viii) In adjusting rates consistent with changes in appropriation levels Congress made in 1981, which led to three rate adjustments in one year (*see* USPS-LR-K-73) for categories like Nonprofit Periodicals, the Postal Service implemented rates rounded to the nearest tenth of a cent, even in cases where the change needed was only one tenth of a cent. It was viewed as practicable to do this. In other words, the Postal Service was unwilling to absorb any burden associated with providing lower rates for the preferred subclasses. It took the position that the lower rates had to be funded entirely by Congress.
- (ix) In Docket No. R84-1, the Classroom Publishers Association noted that 39 U.S.C. section 3626(a) established a 100-percent-cost-coverage ceiling for the preferred subclasses, including classroom publications, and argued that the Commission should exercise its discretion and recommend a below-100-percent coverage. The Commission acknowledged the ceiling but noted that, at the

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same time, section 3622(b)(3) establishes a floor of a cost coverage of 100 percent. In conclusion, the Commission reasoned: “Therefore, when read together § 3622 and § 3626 create a floor and a ceiling equal to attributable costs for each preferred class of mail. The commission must recommend rates for classroom second-class mail which are equal as nearly as practicable to attributable costs (i.e., a cost coverage of 100%).” After rounding, the cost coverage of classroom came out to be 103.0 percent. *See* Docket No. R84-1, *Op. & Rec. Dec.*, p. 442 ¶ 5303 and Appendix G, Schedule 1, p. 1 of 1. The Commission held that the language in the law must be met as nearly as practicable and that rounded rates met this holding.

- (x) In carrying out the phasing provisions of the original Act, which required that any new rate levels be achieved in either 5 or 10 years (revised in 1976 to 8 and 16 years), with the “annual increases as nearly equal as practicable” (P.L. 91-375, section 3626, August 12, 1970), the Commission and the Postal Service calculated rates for each phase in an exacting way that was constrained only by the convention of rounding to the nearest tenth of a cent.