

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 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
UNITED STATES POSTAL SERVICE (USPS/VP-T1-9-12)

(August 22, 2005)

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

("Valpak") hereby submit responses of witness Robert W. Mitchell to the following interrogatories of the United States Postal Service: USPS/VP-T1-9-12, filed on August 8, 2005. Each interrogatory is stated verbatim and is followed by the response.

Respectfully submitted,

William J. Olson
John S. Miles
Jeremiah L. Morgan
WILLIAM J. OLSON, P.C.
8180 Greensboro Drive, Suite 1070
McLean, Virginia 22102-3860
(703) 356-5070

Counsel for:
Valpak Direct Marketing Systems, Inc. and
Valpak Dealers' Association, Inc.

Response of Valpak Witness Robert W. Mitchell to Interrogatory of Postal Service

USPS/VP-T1-9.

On page 17 of your testimony, you state:

Focusing on settlement as a goal in such a situation introduces a dynamic that may be out of line with appropriate ratemaking. It is altogether possible that the Postal Service, in negotiating with intervening parties, who may represent the interests of some mailers to the neglect of others, will find that it can achieve settlement by proposing rates that it cannot justify as most appropriate, in hopes that the Commission will do little more than certify that the rates in the settlement are within a range allowed by law instead of being the best for the nation. The incentives of such a dynamic are unacceptable and should not be allowed to dictate the nation's postal rates and fees.

- (a) Please explain fully your words "a range allowed by law."
- (b) Please explain fully your words "best for the nation."
- (c) Please identify and explain every consideration, factor, or criterion encompassed by your use of the words "incentives of such a dynamic."

RESPONSE:

- a. My conception is that the Act provides both guidance and strictures, that neither of these are precise, and that more than one set of rates is consistent with them. Also, as I explain further in my response to part b of this question, I define a best set of rates as the result of the Commission's deliberative process, when that process is supplied with a full record and no settlement agreement. I take it as obvious that the best set of rates should be one of the sets that is not inconsistent with the Act.

Although I do not want to be accused of practicing law, the courts have been presented with cases relating to whether specific sets of rates are inconsistent

Response of Valpak Witness Robert W. Mitchell to Interrogatory of Postal Service

with the Act. In NAGCP-III, the court said: “In considering the various challenges to the assignment of service related costs, we recall that we judge a particular ratemaking methodology by whether it is reasoned, nonarbitrary and congruent with the statutory mandate.” National Association of Greeting Card Publishers v. United States Postal Service, 607 F.2d 392, 407-08 (D.C. Cir. 1979). In Newsweek, the court said: “The selection of one approach from among acceptable alternatives is a matter for agency expertise.” Newsweek v. United States Postal Service, 663 F.2d 1186, 1194 (2d Cir. 1981). In the AAP case, the court said: “But, though courts hesitate so to admit, they know that in the rate-making area, John Selden was prophetic in declaring that in governing it is not juggling, but too much juggling that is to be blamed” and “Ours is only to determine whether the Postal Service lacked substantial evidence for rates it prescribed, took into account irrelevant considerations, omitted relevant considerations, flouted a statutory command, acted *ultra vires*, or denied a Constitutional right.” Association of American Publishers, Inc. v. Governors of the United States Postal Service, 485 F.2d 768, 773 and 775, respectively (D.C. Cir. 1973). I take these to mean that many sets of rates might be consistent with the law and that too much juggling involves such things as lacking substantial evidence, as the court explained further.

Response of Valpak Witness Robert W. Mitchell to Interrogatory of Postal Service

The heading of Section I of the Postal Service's Reply Brief (p. I-1) in Docket No. R94-1 was: "THE PROPOSED SETTLEMENT SHOULD BE ACCORDED GREAT WEIGHT BY THE COMMISSION." On the next page it said: "No one is attempting to bind anyone's hands here. The settlement parties always have recognized that the Commission cannot – even in the face of a unanimous settlement proposal – dispense with an independent assessment that the settlement rates and fees are in full compliance with the criteria of the Act." (*Ibid.* at I-2.) I take "full compliance" to mean that it is reasoned and nonarbitrary, and that it does not involve too much juggling. When the Commission is asked to give "great weight" to a settlement proposal, whether unanimous or not, I believe it is being asked to find that the rates, fees, and DMCS language in the settlement are in full compliance.

- b. The Act establishes a set of guidelines for setting rates and provides for review and decision-making by five commissioners. The process is guided as well by Commission rules and by principles the Commission has adopted. The usual procedure is for the Commission to be presented with proposals and testimony from the Postal Service and interested parties. When the Commission is presented with a complete record and makes an unincumbered recommendation (meaning, for present purposes, that it is not presented with a settlement agreement, unanimous or not), I view a recommended decision coming from

Response of Valpak Witness Robert W. Mitchell to Interrogatory of Postal Service

such circumstances as the best for the nation. I understand that a different record or different commissioners could lead to a different recommendation.

But the process I have described is the process that Congress put in place, and it must be defined as the reference point and the collective judgment on what is best.

- c. I take it as evident that it is possible for the Postal Service to have a strong preference for working out a settlement agreement. It seems clear on its face that the proposal viewed by the Postal Service as most likely to achieve settlement might differ from the proposal that it would view as best for the nation, under the guidance in the Act, developed objectively and independently. Viewed in terms of the Act's ratesetting scheme, I don't see anything good about having this difference occur. And if the Postal Service were to negotiate in any way with mailers to improve the chances for settlement, and in the process were to make adjustments to any rate package it is considering for submission to the Commission, then I think the difference between what is proposed and what the Postal Service really views as best under the Act could become greater.

If the Postal Service were to believe that when it can obtain a settlement, the record need not be fully developed, and the Commission's review will be less

Response of Valpak Witness Robert W. Mitchell to Interrogatory of Postal Service

thorough, the Postal Service's freedom to deviate from what it might view as most appropriate under the Act will be greater. This is the incentive I have in mind. The possibility of any of this happening makes it all the more important for the Commission to seek a complete record and undertake a thorough review.

Response of Valpak Witness Robert W. Mitchell to Interrogatory of Postal Service

USPS/VP-T1-10.

Please identify specifically all criteria you would use to determine whether a particular set of rates would be, in your words, “best for the nation,” or whether the nation would be “worse off” with an alternative set of rates. In your answer, please explain specifically the roles of the following factors in reaching a determination:

- (1) Cost coverages;
- (2) Markup indices;
- (3) Relative rate levels;
- (4) Evaluation of specific factors identified in 39 U.S.C. § 3622(b);
- (5) Other policies in specific provisions of title 39, United States Code;
- (6) Other policies or considerations.

RESPONSE:

(1) - (6) Your question is not aligned with my notion of what is best for the nation. I do not contend that one can focus on the items you identify, or on any other list, and specify how certain treatment of them would lead to the best rates. Rather, I define rates that are best for the nation in terms of the result of a deliberative process. Please see my response to USPS/VP-T1-9.

Response of Valpak Witness Robert W. Mitchell to Interrogatory of Postal Service

USPS/VP-T1-11.

In evaluating whether proposed rates would be “best” or “worse” for the nation, to what extent is the determination objective and quantifiable, and to what extent is it subjective and influenced by judgment and perspective?

RESPONSE:

Please see my response to USPS/VP-T1-9. I believe ratemaking involves both aspects. Typically, cost and demand analysis are more objective and quantitative than decisions on which rate categories should exist and what the relative markups should be. Generally, I believe the Commission should rely on objective analysis to the extent that it can, and rely on judgment where final decisions call for it.

Response of Valpak Witness Robert W. Mitchell to Interrogatory of Postal Service

USPS/VP-T1-12.

On page 34 of your testimony, you state

from Docket No. R90-1 to date, a period of approximately 15 years, there have been only two normal rate cases....”

Please list and explain specifically every characteristic of a rate case that would lead you to conclude that it was or would be “normal.”

RESPONSE:

The first paragraph of Section II-9 of my testimony lays the foundation for the second paragraph, which contains, at its end, the phrase you quote. The first part of the second paragraph explains that there were four omnibus rate cases (Dockets No. R94-1, R97-1, R2000-1, and R2001-1) and one important mail classification case (Docket No. MC95-1) between Docket No. R90-1 and the instant case. It further explains that (i) Docket No. MC95-1 was contribution neutral, (ii) Docket No. R94-1 was filed as an across-the-board case, (iii) Docket No. R2001-1 was settled, and (iv) Dockets No. R97-1 and R2000-1 were normal, with it being noteworthy that an important cost update occurred during the latter docket.

I refer to Dockets No. R97-1 and R2000-1 as normal because complete cases were presented to the Commission (with all required cost studies), the cases were examined thoroughly by a number of intervening parties, cases-in-chief and rebuttal testimony were presented by the parties, briefs were filed, and, importantly, the cases were left with the Commission to decide, without the incumbrance of any settlement agreement. This means that the Commission, based on the Act, the record, and its principles, was completely free to develop and recommend a set of rates and fees.