

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes, 2005

)

Docket No. R2005-1

**REPLY BRIEF OF
ALLIANCE OF NONPROFIT MAILERS**

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October 3, 2005

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The Alliance of Nonprofit Mailers (“ANM”) respectfully submits this reply brief. ANM replies here to Section VI of the initial brief of Valpak Direct Marketing Systems, Inc., and Valpak Dealers’ Association, Inc. (collectively “Valpak”), which argues that the rates proposed by the Postal Service for nonprofit Standard Enhanced Carrier Route (“ECR”) Mail violate 39 U.S.C. § 3626(a)(6)(A). Valpak reasons as follows:

- (1) Section 3626(a)(6)(A) requires that rates for the nonprofit subclasses of Standard Mail be set to that the average revenue per piece for each subclass equals, “as nearly as practicable,” 60 percent of the average revenue per piece for the corresponding commercial subclass. This is a binding statutory requirement, and may not be subordinated to other ratemaking policies.
- (2) The proposed rates for the ECR subclass of nonprofit Standard Mail violate this requirement because they are expected to generate average revenue per piece equal to only 56 percent of the average revenue per piece from the corresponding commercial ECR rates.

- (3) The Commission should remedy this violation by increasing nonprofit ECR rates by 5.9 percent, while “making no change in Commercial ECR rates.”

Valpak Br. VI-1 through VI-11.

ANM completely agrees with the first of these propositions. Like Valpak, ANM reads the qualifier “as nearly as practicable” as allowing deviations from the 60 percent ratio only to the extent required by the tenth-of-a-cent rounding convention for rate elements.

For the reasons explained in ANM’s September 23 Comments, however, ANM does not share the concerns reflected in Valpak’s second proposition. The other subclass of nonprofit Standard Mail, the regular subclass, also deviates from the 60 percent ratio, but in the opposite direction: the proposed nonprofit regular Standard rates would produce average revenue per piece of about 60.9 percent of their commercial counterparts. Comments at 2 n. 2.¹ Because this subclass includes a much larger volume of mail than the nonprofit ECR subclass, the net revenue effect of the two deviations from the 60 percent ratio is virtually a wash. Because of this happenstance, ANM is concerned less with the financial effect of these disparities than with the potential precedential effect of allowing them. Because the commitment of the Postal Service set forth in the letter of September 19, 2005, from Postmaster General allays these concerns, and because of the other unique circumstances of this case noted in ANM’s Comments, ANM has joined the Postal Service and the other

¹ The most up-to-date and accurate calculations of these ratios appear in the Revised answer of USPS Taufique to Valpak interrogatory VP/USPS-T28-52. The Presiding Officer granted the Postal Service’s motion to admit the revised answers into evidence in Presiding Officer’s Ruling No. 2005-1/79 at 3 (ordering paragraph 2).

signatories to the Stipulation and Agreement in asking the Commission to recommend without modification the rate changes proposed by the Postal Service.

Valpak unsurprisingly disagrees. See Valpak Br. VI-1 n. 1 (asserting that “settlements, hurricanes, and promises not to violate the law in the future” cannot “suspend the requirements of federal law”). Valpak never explains, however, why the particular relief it seeks—leaving unchanged or even reducing the rates for commercial ECR mail—would be the appropriate remedy, even assuming *arguendo* that the proposed rates would in fact violate 39 U.S.C. § 3626(a)(6)(A).

If the proposed rates for the ECR and regular subclasses of nonprofit Standard Mail in fact violated the law, the most logical remedy would be to increase the former by more than 5.4 percent; increase the latter by less than 5.4 percent; and increase the rates for the commercial subclasses of Standard Mail by 5.4 percent as originally proposed. This remedy would have the virtue of confining the departures from the 5.4 percent across-the-board increase to the nonprofit Standard subclasses, without any spillover into rates for commercial Standard Mail or any other non-preferred subclasses. This remedy would also be virtually revenue neutral for both the nonprofit mailing community as a whole and the Postal Service.

By contrast, the alternative proposed by Valpak—achieving compliance with the 60 percent ratio in substantial part by adjusting the corresponding commercial rates—would frustrate the settlement expectations of users and competitors of the commercial mail classes by requiring a smaller-than-5.4 percent (or even negative) increase for commercial ECR mail, and a larger-than-5.4 percent increase for the regular subclass of commercial Standard mail. Why would the Commission want to jeopardize the

settlement in this way, when the alternative of offsetting adjustments confined to the nonprofit Standard subclass is available?

For the foregoing reasons, and for the reasons stated in ANM's September 23 Comments, ANM renews its request that the Commission recommend the rate changes proposed by the Postal Service herein. If the Commission agrees with Valpak that the proposed changes cannot be reconciled with 39 U.S.C. § 3626(a)(6)(A), however, ANM requests that the Commission, rather than frustrating the settlement expectations of other postal stakeholders, adopt the less drastic remedy of offsetting adjustments confined within the two nonprofit subclasses of Standard Mail.

Respectfully submitted,

/s/

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