

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

RATE AND SERVICE CHANGES TO) Docket No. MC2004-3
IMPLEMENT FUNCTIONALLY EQUIVALENT)
NEGOTIATED SERVICE AGREEMENT WITH)
BANK ONE CORPORATION)

VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
COMMENTS IN RESPONSE TO NOTICE OF INQUIRY NO. 1
REGARDING STATUS OF SETTLEMENT AGREEMENT
(October 14, 2005)

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc.
("Valpak") hereby respond to questions posed by the Commission in Notice of Inquiry
("NOI") No. 1 (issued September 27, 2005).

Valpak was a signatory to the Stipulation and Agreement in Docket No. MC2004-3. In
deciding to join in that Stipulation and Agreement, Valpak relied heavily on the language cited
by the Commission in NOI No. 1, that "the resolution of such [non-litigated] matters will not
be entitled to precedential effect in any other proceeding." To the extent that reopening of the
record and reconsideration by the Commission relates solely to the Negotiated Service
Agreement ("NSA") with Bank One in Docket No. MC2004-3, Valpak stands by its
agreement. That is, it supports the NSA that was the subject matter of the Stipulation and
Agreement.

However, in signing the Stipulation and Agreement in Docket No. MC2004-3, Valpak
did not agree to the establishment of any precedent authorizing "pure volume-based Negotiated
Service Agreements." Valpak is concerned with the statement contained in question 6 of the

NOI that opening the record as requested by Bank One would allow for consideration of novel issues not raised in the context of a functionally equivalent NSA. That is, the Bank One NSA was considered to be functionally equivalent to the Cap One NSA, and it would seem clear on its face that the Cap One NSA neither contemplated nor set any kind of precedent for “pure volume-based NSAs.” Valpak’s agreement to the Stipulation and Agreement in this docket should not be viewed as restricting its ability to challenge “pure volume-based NSAs.” Indeed, any effort to restrict its ability to make such a case would have the effect of inhibiting intervenors from joining future settlements for fear that the case may later morph into something that it was not when the settlement was reached.

Commission Order No. 1443 suggested a different procedure for considering issues that are raised by consideration of pure volume-based Negotiated Service Agreements. That Order stated:

The Commission will also promptly issue a notice of rulemaking to initiate a **separate rulemaking docket** to consider the third issue raised by the Governors, the applicable **evidentiary standard** that must be met to substantiate a volume-based discount provision without the application of a stop-loss cap. A separate rulemaking docket will allow thorough consideration of this important issue by all interested persons, including present and potential Negotiated Service Agreement partners. [Order No. 1443, p. 5 (emphasis added).]

Although concerned about litigating free-floating policy dockets not connected with actual proposals, convening a separate docket on the issue of the **broad evidentiary standard** would be much preferable to resolving it in the context of the Bank One NSA.

Further, as to one of the other issues on which the Governors sought guidance, the **role of settlements** in uncontested functionally equivalent NSAs, Valpak also would not want that issue addressed in the instant docket.

Then, only the third issue on which advice was sought by the Governors, the Bank One NSA stop loss cap, should be decided in the context of this docket.

Valpak has a number of considerations that it would want to raise concerning pure volume-based NSAs. These considerations have nothing to do with issues such as Bank One's volumes, its volume-estimating procedures, or the Postal Service's procedure for vetting volume estimates by Bank One. Pure volume-based NSAs raise several important issues that deserve to be aired *ab initio* in a separate proceeding, including whether such NSAs would comport with the Postal Reorganization Act.

Valpak does not object to reopening the record in Docket No. MC2004-3 to consider new evidence that relates specifically and exclusively to Bank One. To the extent that any resulting Commission Opinion and Recommendation Upon Reconsideration pertains specifically and exclusively to the Bank One NSA, and does not alter that proposal, Valpak does not object and would not contemplate litigating any issue. However, Valpak would object to any reopening of the record in Docket No. MC2004-3 in a manner that could be considered as setting a precedent for pure volume-based NSAs.¹

¹ Nevertheless, if its position were overruled and this record should be reopened to address this issue, Valpak then would want it reopened fully, to allow discovery on all testimony and record evidence submitted to support any such position, plus an opportunity to file rebuttal testimony even by settling parties who would be free to challenge approval of pure volume-based NSAs in this docket.

Respectfully submitted,

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