

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

POSTAL RATE AND FEE CHANGES, 2006)

Docket No. R2006-1

VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC. OPPOSITION TO
MOTION TO REOPEN AND SUPPLEMENT THE RECORD
BY COALITION OF CATALOG MAILERS
(April 19, 2007)

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

(hereinafter "Valpak") oppose the Motion of Coalition of Catalog Mailers to Reopen and Supplement the Record ("Motion") filed April 12, 2007.

On April 13, 2007, Valpak filed its opposition to the Motion for Late Intervention filed by Coalition of Catalog Mailers ("CCM"), which motion has not yet been ruled upon by the Commission. It appears clear that if the CCM motion for late intervention (filed April 3, 2007) were denied, the CCM Motion to Reopen and Supplement the Record would become moot.¹

¹ As explained in Valpak's Opposition to Late Intervention by Coalition of Catalog Mailers (filed April 13, 2007), Valpak understands the Decision of the Governors the same way as does the Postal Service (Initial Statement of the United States Postal Service on Reconsideration, March 28, 2007, pp. 9-12) and the Commission (Notice of Request for Reconsideration and Order Establishing Procedures, March 29, 2007, p. 4, n.6) that only Standard Regular Mail rates were remanded by the Governors (and therefore Standard ECR rates are not now before the Commission).

The Motion of Coalition of Catalog Mailers to Reopen and Supplement the Record is in accord with this view: "On February 26, 2007, the Commission recommended rates for Standard Mail Regular flats that represented significant increases over the rates proposed by the Postal Service." *Id.*, p. 1. *See also* pp. 8-9.

Although Valpak primarily uses Standard ECR mail, not Standard Regular mail, many of the same principles involving the appropriate passthroughs of letter-flat cost differences apply to both subclasses of Standard mail. Therefore, if the record involving Standard Regular

Valpak incorporates by reference the arguments made in its previous Opposition to Late Intervention by Coalition of Catalog Mailers as to why it believes that re-opening the record would be detrimental to mailers that participated in the litigation of the docket during the period that the rules of the Commission gave mailers that opportunity to do so. Valpak reiterates only that:

- All mailers have been on express notice from the Commission that rates in Docket No. R2006-1 could result in rate shock, largely because current rates were recommended at the urging of many mailers and associations of mailers that did not want rates to be correlated to costs following Docket Nos. R2001-1 and R2005-1.
- Any mailer which observed the progress of Docket No. R2006-1 had to be aware that the Postal Service proposed rates were not the only rates proposed on the record before the Commission. Over seven months ago, on **September 6, 2006**, Valpak witness Robert W. Mitchell submitted a comprehensive set of Standard Regular and ECR rates in his testimony, VP-T-1, which would have resulted in significant increases in Standard Regular flats rates.

Beyond this, the CCM Motion raises three arguments which must be addressed separately.

First, the CCM Motion speaks repeatedly of its goal as being “transitional rate relief” or the equivalent (“the need for a reasonable transition period,” p. 1; “a gradual transition,” p. 2; “a reasonable transition period,” p. 2; “adequate lead time,” p. 2; “transitional rate relief,” p. 5; “reasonable transition period,” p. 6; “the transitional problems,” p. 6; “making the transition,” p. 8; “phased in over a reasonable period,” p. 8; “a transitional approach,” p. 9).

The CCM Motion further explains that:

[a]lthough catalog companies have had since May, 2006 to plan for the rate increases originally proposed by the Postal Service,

mail were now reopened, Valpak would need to participate actively to seek to defend the interests of letter mailers.

they have had only a few weeks to address the much higher rates actually recommended by the Commission. [p. 6.]

Therefore, it appears clear that the objective of CCM is to achieve an additional unspecified period of presumably some months to “transition” to the Commission-proposed rates. Even assuming that this position is well taken and this need is demonstrated, **CCM has addressed these arguments to the wrong agency.** It is the Board of Governors of the Postal Service — not the Commission — that determines when new rates go into effect. 39 U.S.C. § 3625. For example, the Board of Governors, in an appropriate exercise of its discretion, has given Periodicals mailers until July 15, 2007 for implementation of higher rates. It is also within the Board’s authority to do so for catalog mailers. However, it is beyond the scope of the Commission’s authority to either entertain or grant CCM’s request for a temporary transition period before higher rates are implemented. Accordingly, it would be without any legitimate purpose to reopen the record to lay the foundation for a decision to delay a rate increase that is not within the purview of the Commission. After this case is returned by the Commission to the Governors, these arguments can be made by CCM in that venue.

Second, CCM asserts (as it did in its motion for late intervention) that: (i) “did not have a meaningful opportunity to enter the proffered evidence;” (ii) “most catalog companies were unaware;” (iii) “[t]o organize companies to participate in an expensive rate proceeding in Washington, D.C. is practically impossible without a ‘clear and present danger’;” (iv) “[t]echnical arguments raised during the course of a rate case are inadequate to motivate mailers to underwrite the costs of lawyers and expert witnesses;” and (v) “[n]either CCM, nor any other cataloger, can be expected to have introduced testimony on difficulties in

transitioning to rate levels that were unannounced and unanticipated.” (CCM Motion, p. 9).

Not one of these statements even begins to meet the Commission’s requirement that:

[e]ach participant ... seeking to reopen the record **must provide thorough justification** for its request, including ... **why that participant did not proffer** the purportedly necessary materials **during the hearing**. [PRC Order No. 8, p. 2 (emphasis added).]

Indeed, if these weak assertions were accepted by the Commission as providing a “thorough justification” of why the evidence had not previously been submitted, then every record of every evidentiary proceeding could be opened on the whim of a few aggrieved mailers.

Indeed, by their own admission, at least some of these members of CCM **were** aware that the rate case was pending and Standard Regular and flat rates were at risk, but deliberately **chose** to sit on their hands while dozens of other mailers and mailer associations actively litigated the case. Explaining that a decision to sit and watch from the sidelines was made is not the same as presenting a compelling justification for having done so. It is simply untrue that these particular mailers could not “be expected” to litigate the docket, as dozens of other mailers and mailer associations have done in this docket.²

Lastly, CCM states that the “Standard Mail Regular flats rate issue can be resolved by mid-June unless other parties seek to expand this proceeding.” (CCM Motion, p. 9.) This time frame is **wholly unrealistic**. It is impossible to believe that flats mailers would introduce evidence to demonstrate the adverse effect of high flats rates without letter mailers (whose

² On March 28, 2007, the Postal Service filed its “Initial Statement” on Reconsideration, indicating its position that “reconsideration in this instance can be conducted without the need to reopen the record.” Valpak agrees.

rates could increase significantly) wanting to introduce evidence about the adverse effect of high letter rates. Indeed, unless the due process rights of the parties to fully litigate the new issues were curtailed, resolution of the issues that would be raised by reopening the record could be expected to take until August, or perhaps even September, 2007. Higher rates are now scheduled to be effective for all classes (except Periodicals) on May 14, 2007. By the time a reopened docket could again reach its conclusion (after the filing of testimony by CCM, written interrogatories, oral cross-examination, rebuttal testimony, oral cross-examination of rebuttal witnesses, initial briefs, and reply briefs), catalog mailers would have been paying higher rates for several months, making it impossible to achieve the relief they are now seeking — a “transitional” period before the new higher rates for Standard Regular flats are implemented.

For all of the foregoing reasons, the Motion of Coalition of Catalog Mailers to Reopen and Supplement the Record should be denied, and any request by CCM for a transitional period before the implementation of higher rates for Standard Regular flats should be redirected by CCM to the Board of Governors.

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.