

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

SERVICE STANDARDS AND)
PERFORMANCE MEASUREMENT FOR)
MARKET DOMINANT PRODUCTS)

Docket No. PI2007-1

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
REPLY COMMENTS
(July 30, 2007)**

On June 13, 2007, the Postal Regulatory Commission issued Order No. 21, Notice of Request for Comments on Modern Service Standards and Performance Measurement for Market Dominant Products ("Notice"), which, *inter alia*, stated:

Interested persons are invited to provide written comments and suggestions on what the modern service standards should be and what system or systems of performance measurement should be utilized to evaluate whether those service standards have been met. [Order No. 21, p. 2.]

Initial comments from interested parties were submitted on July 16, 2007. Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. (hereafter "Valpak") hereby submit these joint reply comments in response to Order No. 21 and the initial comments submitted previously.

1. Service Standards and the Tail of the Mail

Valpak has participated in the ongoing work by Mailers' Technical Advisory Committee ("MTAC") Subgroup #114, and concurs generally with the initial comments of

other parties concerning appropriateness of initial standards for all Standard Mail being created by the group.

At this time, the standards being developed are focused on the time within which mailers should expect each category of Standard Mail (*e.g.*, origin-entered, DSCF-entered, DDU-entered) to be delivered. Since it obviously is not feasible to establish a standard for 100 percent timely delivery, whatever standards that finally are developed will need to allow for some degree of failure to meet the standard, *i.e.*, mailers realistically can not expect 100 percent of the mail to be delivered within whatever time limit the service standard stipulates. With respect to this “tail of the mail,” or that portion which is not delivered within the stipulated service standard, Valpak suggests that accountability requires an additional standard to be established — *e.g.*, all mail not actually delivered within the time set by the appropriate service standard must be delivered in no more than, say, two additional delivery days. Valpak suggests that the existence of such an additional service standard would eliminate the incentive to ignore already-late mail in order to achieve timely delivery on newly-arrived mail. Also, a fallback standard would make it easier to evaluate performance data after they become available.

2. Performance Measurement of all Standard Mail

Valpak concurs that the Intelligent Mail Barcode (“IMB,” sometimes referred to as the 4-State barcode), in conjunction with Seamless Acceptance, should become the basis for tracking and measuring performance of all machine-processed Standard Mail.

Valpak would focus attention on the fact that some Standard Mail routinely bypasses all plants and all machine processing — most notably, ECR saturation flats that are entered at DDUs and are taken directly to the street as third bundles.¹ Service performance of mail not processed on any automation equipment cannot be recorded or measured in the same way as machine-processed letters and flats.² At the same time, 39 U.S.C. section 3691, which requires that service standards and performance measurement be developed for market dominant products, does not provide exceptions for such mail, which should be expected to have its delivery performance measured to the same extent as other mail.

It will be necessary, therefore, to develop some other means of measuring delivery performance for such mail — *i.e.*, recording the time when the mail is entered and when carriers take it out for delivery. One solution would be, first, to require Intelligent Container Barcodes on pallets of saturation flats, which then could be scanned upon entry at DDUs, and second, require an Intelligent Tray Barcode on trays or bundles of saturation flats, which then could be scanned by carriers just prior to the time they are taken to the street. Other solutions may be possible, and that which is presumably most cost-effective should be selected. Failing to develop such an alternative method of service measurement would result in over 11 billion

¹ All Standard ECR letters, and most Standard ECR flats, will be required to have an IMB in 2009. However, it is believed that **saturation flats will be exempt** from that requirement.

² Small Standard Mail (under 1 lb.) parcels that are hand-sorted will require a separate scheme for performance measurement.

pieces of Standard ECR mail escaping measurement, threatening the credibility of the entire measurement system.³

3. Service Complaints by Individual Mailers.

In its initial comments on “the establishment of service standards and performance measurement systems for market dominant products” (p. 1), the Association for Postal Commerce (“PostCom”) states that “[t]he Commission must make it very clear,” indeed “absolutely clear through its rules and its public pronouncements,” “that it will not **entertain** complaints from an individual mailer — no matter how large or small — about service received by that mailer” (p. 5, emphasis added). It goes on to state that a service problem experienced by an individual mailer “simply [would] not constitute a failure of service” (*id.*) under, presumably, section 3662. In other words, according to PostCom, the reason the Commission should bar such complaints is not that they are not broad enough or significant enough or pervasive enough to warrant Commission attention, but rather that they are not in fact a “failure of service.”

Postal Accountability and Enhancement Act (“PAEA”) section 3662(a) states:

Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) **may lodge a complaint** with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.
[Emphasis added.]

³ GFY 2005 volume of Standard ECR saturation non-letters includes 10.646 billion ECR and 0.460 billion Nonprofit ECR. *See* USPS-LR-L-77, Docket No. R2006-1.

Interestingly, section 3662 does not even require that the “person” filing the complaint be a mailer, a mailing organization, or an organization of mailers. There is certainly no basis in the text of PAEA to bar the Commission door to individual mailers. Service failures experienced by individual mailers should be viewed as indicators of broad, endemic problems.

There is even less basis in law for the other conditions which PostCom seeks to impose on the process. PostCom proposes that service failures under section 3662 can only exist at the level of a product. Suppose part of a product is sent in sacks and another part on pallets. If the sacks consistently were receiving poor service but the pallets were not, would it seem reasonable to bar the filing of a complaint on the grounds that the problem does not exist at the “product level”? Similar questions could be asked about letters and flats, or about dropshipped and non-dropshipped mail.

In fact, under PAEA, it may be troublesome on its face to place considerable emphasis at this point on the notion of a product. Section 3642(c), regarding transfers between market dominant products and competitive products, for example, points out specifically that the rules should apply to “subclasses or other subordinate units.” PostCom does not say how it would define a product in its rule, but the PostCom-suggested hurdle would establish a strange situation whereby if a subordinate unit were transferred to the competitive category, the focus of service failures would change. In other words, the service failure would be acceptable as long as a subordinate unit were in a certain market dominant subclass, but might become unacceptable were the subordinate unit to be made into its own subclass or transferred to the competitive category. Such an approach could allow situations of egregiously poor service to be overlooked, and appears to be unreasonable.

Finally, suppose a service failure exists for a product category. PostCom's suggested rule would seem to require either a "class action" type complaint (perhaps by a large mailer association) or no complaint at all. At best, complaints are both expensive and demanding. Individual mailers filing complaints would not do so lightly, but when compelled to do so should be viewed as volunteering a service that would help all mailers involved, a step mailers would not be expected to take lightly. But if a mailer did decide to take such a step, it is difficult to see why such a complaint should be rejected on the ground that a single mailer sponsored it. The better course would be for the Commission to keep its doors open to all complaints permitted by PAEA, and then to exercise its prerogatives under section 3662 to either dismiss the complaint or to pursue the matter in an appropriate proceeding.

Respectfully submitted,

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