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Annual Compliance Report, 2007) Docket No. ACR2007

SUPPLEMENTAL REPLY COMMENTS
OF
AMERICAN BUSINESS MEDIA
(February 13, 2008)

American Business Media, which is a signatory to the joint reply comments submitted today by the Alliance of Nonprofit Mailers, et al., hereby submits these Supplemental Reply Comments limited to an issue not addressed in those joint reply comments: Val Pak's ill-considered suggestion that, if the Commission finds that the price cap indeed "trumps" the cost-coverage factor found at 39 U.S.C. § 3622(c)(2), the Commission should "focus the entirety of its [cap-limited] rate increases" on "low volume, high cost magazines that are circulated nationally." It should come as no surprise that American Business Media finds the result sought to be unwise, ineffective and unlawful as well as outrageous.

Consider that Val Pak's proposal is conditioned by the explicit assumption of a Commission finding that the Postal Accountability and Enhancement Act does not require in this situation that Periodicals revenues cover attributable costs, if reaching that result requires piercing the price cap established by 39 U.S.C. § 3622(d)(1). It further assumes, but does not do so explicitly, that focusing the rate increase essentially on the same publications that bore the brunt of the last increase will improve the revenue/cost relationship, an assumption that is questionable, at best. Finally, Val Pak assumes without stating that, if a CPI-limited increase does not result in at least 100% cost coverage, the Commission—rather than Postal Service management—is authorized to determine how the Postal Service should work toward elimination of the gap between attributable costs and revenues. That assumption, of course, flies in the face of the PAEA and Congress's intent to leave management prerogatives in the hands of management.

We will focus on Val Pak's assumption that increasing rates dramatically for a small segment of the Periodicals industry will either cure or, at least, markedly improve what Val Pak assumes but does not prove would be a revenue shortfall from the Periodicals class if the increase is spread across the class equitably. American Business Media submits that the rate increase proposed by Val Pak would have little, if any, impact on the assumed revenue shortfall.

Even Val Pak would have to agree that, if the Postal Service were to comply with Val Pak's request, and if those upon whom the totality of the cap-limited increase is imposed simply pay the increased rates, costs and revenues for the class will be precisely the same as those produced by the equitable increase proposed two days ago by the Postal Service. Any gap will remain. So Val Pak must be positing one or both of two different scenarios. In one, at least some of those faced with a second punishing rate increase in one year change their mailing practices to a greater extent than they would have in any event, and such new mailing practices produce cost savings to the Postal Service greater than rate savings to the mailer. In the other, publications simply go out of business. Yet there is no evidence that the first of these scenarios will in fact transpire, and there is substantial evidence in the record of Docket No. R2006-1 that the very mailers that Val Pak seeks to punish (1)already have more than sufficient incentive to seek such services as co-mailing, and (2) are not likely to find sufficient co-mailing capacity to satisfy an increased demand beyond that now pent up, at least over the next several years.[1] Thus, while American Business Media expects that there will be an increase in so-called "efficient" mailing practices irrespective of future rate design (that will reduce the historic cost/revenue gap), limitations on the supply end will prevent still greater demand to be satisfied.

Accordingly, it is reasonable to conclude that the Val Pak proposal would cause a good many adversely affected publications to cease publication in the face of yet another double-digit postal rate increase. We suppose that if those publications were among those whose revenues may well fall short of the attributable costs of handling them, their disappearance would be applauded by Val Pak as eliminating a portion of the Periodicals revenue shortfall. What Val Pak proposes is analogous to amputating an infected limb rather than administering antibiotics. We doubt that Congress sought to accomplish this result when it passed the PAEA.

To summarize, there are three theoretical reactions by Periodicals that under Val Pak's alternative proposal would bear the entire capped increase, all of which are likely to occur in some unknown ratio: (1)they could pay the new rates (despite the burden), (2) they could change their mailing practices or (3)they could throw in the towel. In the first of these, the principle Val Pak espouses would not be advanced. In the second, it is possible in theory that the revenue/cost gap would be diminished, although there is

[1] See American Business Media's Initial and Reply Briefs in Docket No. R2006-1.

good reason to believe that the impact would be minimal. And in the third, the gap might be narrowed, but the Periodicals class and the American people would be irreparably injured.

Closing the circle back to Val Pak's threshold assumption for its alternative proposal—namely, that the price cap intended to make rate increases predictable indeed trumps the cost coverage factor—American Business Media submits that the highly discriminatory rate increase for some Periodicals proposed by Val Pak would be unjust and unreasonable, and therefore unlawful, under any reading of the applicable law.

Respectfully submitted,

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