

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Report on Universal Postal )  
Service and the Postal Monopoly )

Docket No. PI2008-3

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND  
VALPAK DEALERS' ASSOCIATION, INC.  
COMMENTS REGARDING UNIVERSAL POSTAL SERVICE  
AND THE POSTAL MONOPOLY  
(June 30, 2008)**

**BACKGROUND**

On April 18, 2008, the Postal Regulatory Commission issued Order No. 71, opening Docket No. PI2008-3 to receive comments for its consideration and preparation of a report on universal postal service and the postal monopolies. Attached to Commission Order No. 71 was a discussion memorandum setting out topics and questions on which the Commission sought comments. Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (hereafter "Valpak") submit these joint comments in response to the Commission's request for comments.

The Postal Accountability and Enhancement Act ("PAEA"), Public Law 109-435, requires the Commission to "submit a report to the President and Congress **on universal postal service and the postal monopoly** in the United States ... including the **monopoly on the delivery of mail** and on **access to mailboxes.**" *Id.*, § 702(a)(1) (emphasis added). Also required to be included in the report are "any recommended changes to universal service and the postal monopoly as the Commission considers appropriate, including changes that the Commission may implement under current law and changes that would require changes to

current law, with estimated effects of the recommendations on the service, financial condition, rates, and security of mail provided by the Postal Service.” *Id.*, § 702(b)(1).

As minimum contents of the Commission’s report on universal postal service and the postal monopoly, PAEA section 702(a)(2) requires:

- (A) a comprehensive review of the history and development of universal service and the postal monopoly, including how the scope and standards of universal service and the postal monopoly have evolved over time for the Nation and its urban and rural areas;
- (B) the scope and standards of universal service and the postal monopoly provided under current law (including sections 101 and 403 of title 39, United States Code), and current rules, regulations, policy statements, and practices of the Postal Service;
- (C) a description of any geographic areas, populations, communities (including both urban and rural communities), organizations, or other groups or entities not currently covered by universal service or that are covered but that are receiving services deficient in scope or quality or both; and
- (D) the scope and standards of universal service and the postal monopoly likely to be required in the future in order to meet the needs and expectations of the United States public, including all types of mail users, based on discussion of such assumptions, alternative sets of assumptions, and analyses as the Postal Service considers plausible.

Professor Kielbowicz’s Universal Postal Service: A Policy History, 1790-1970 (Nov. 15, 2002), points out that the Postal Reorganization Act of 1970 (“PRA”) never uses the phrase “universal service” — as that term “did not enter popular discourse until ... the late 1970’s.” (*Id.*, p. 1.) Nevertheless, PRA had what he termed an “unmistakable mandate to provide universal service.” (*Id.*) The two sections referenced in PAEA section 702(a)(2)(B) are generally recognized as starting points for understanding the universal service obligation.

## a. 39 U.S.C. section 101:

**Postal policy**

(a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function **the obligation to provide postal services to bind the Nation together** through the personal, educational, literary, and business correspondence of the people. **It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.** The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the over-all value of such service to the people.

(b) The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that **effective postal services be insured to residents of both urban and rural communities.**

(c) As an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States. It shall place particular emphasis upon opportunities for career advancements of all officers and employees and the achievement of worthwhile and satisfying careers in the service of the United States.

(d) Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.

(e) In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.

(f) In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail and shall make a fair and equitable distribution of mail business to carriers providing similar modes of transportation services to the Postal Service. Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of important letter mail

to all parts of the Nation shall be a primary goal of postal operations.

(g) In planning and building new postal facilities, the Postal Service shall emphasize the need for facilities and equipment designed to create desirable working conditions for its officers and employees, a maximum degree of convenience for efficient postal services, proper access to existing and future air and surface transportation facilities, and control of costs to the Postal Service. [Emphasis added.]

b. 39 U.S.C. section 403  
**General duties**

(a) The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees. **The Postal Service shall receive, transmit, and deliver throughout the United States, its territories and possessions,** and, pursuant to arrangements entered into under sections 406 and 411 of this title, throughout the world, written and printed matter, parcels, and like materials and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest. **The Postal Service shall serve as nearly as practicable the entire population of the United States.**

(b) It shall be the responsibility of the Postal Service--

- (1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;
- (2) to provide types of mail service to meet the needs of different categories of mail and mail users; and
- (3) to establish and maintain postal facilities of such character and in such locations that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.

(c) In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user. [Emphasis added.]

PAEA section 702(a)(1) expressly requires the Commission's report to address two aspects of postal monopoly: the monopoly on "the delivery of mail" and the monopoly on "access to mailboxes." The provisions that establish the Postal Service's monopoly on:

a. **the delivery of letter mail** are found in 39 U.S.C. sections 601-606, and 18 U.S.C. sections 1693-1697.

b. **access to mailboxes** is established by 18 U.S.C. section 1725, "Postage unpaid on deposited mail matter":

Whoever knowingly and willfully deposits any mailable matter such as statements of accounts, circulars, sale bills, or other like matter, on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter on any mail route with intent to avoid payment of lawful postage thereon, shall for each such offense be fined under this title.

These comments begin by addressing the monopoly on access to mailboxes.

## COMMENTS

### **I. The Monopoly on Access to Mailboxes Is Vitaly Important to the Postal Service and to Mailers.**

Any Congressionally-mandated Universal Service Obligation ("USO"), no matter how defined, imposes costs on the Postal Service that would not exist otherwise. Congress has the option of funding this USO directly, with an annual appropriation equal to the additional costs imposed, but it has not chosen to do so. Rather, Congress took steps to protect Postal Service

revenues, so that it could earn sufficient funds to support the “unfunded mandate.” This section addresses a vitally important component of that Congressional protection.

The monopoly on access to mailboxes (sometimes called the “Mailbox Restriction”) “originated in 1934, to protect postal revenue by preventing delivery of unstamped matter to mailboxes, which reportedly was having a considerable impact on postal revenues.” United States General Accounting Office (“GAO”), Information About Restrictions on Mailbox Access (May 1997), p. 2. The Mailbox Restriction was placed into the federal criminal code, and Congress demonstrated its revenue-protection purpose in establishing, as an element of the offense, that the government must show the particular use was “with intent to avoid payment of lawful postage thereon....” 18 U.S.C. § 1725.<sup>1</sup>

The constitutionality of this provision was upheld by the U.S. Supreme Court in U.S. Postal Service v. Council of Greenburgh Civic Associations, 453 U.S. 114 (1981). There, then-Justice Rehnquist summarized the Postal Service’s justifications as follows:

(1) that § 1725 **protects mail revenues**; (2) that it **facilitates the efficient and secure delivery of the mails**; and (3) that it **promotes the privacy** of mail patrons. More specifically, the Postal Service argued that elimination of § 1725 could cause the **overcrowding of mailboxes** due to the deposit of civic association notices. Such overcrowding would in turn constitute an **impediment to the delivery of the mails**. Testimony was offered that § 1725 **aided the investigation of mail theft** by restricting access to letterboxes, thereby enabling postal investigators to assume that anyone other than a postal carrier or a householder who opens a mailbox may be engaged in the violation of the law. [*Id.* at 117 (emphasis added).]

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<sup>1</sup> There have been only minor changes to this statute since its enactment as the Act of May 7, 1934, 48 Stat. 667, former 18 U.S.C. section 321a. Related Postal Service regulations appear at Domestic Mail Manual (“DMM”) section 508.3.1.3.

Further, Justice Rehnquist stated: “The Postal Service introduced testimony that it **would incur additional expense** if § 1725 were either eliminated or held to be inapplicable to civic association materials.... The extra time resulting from these additional activities, when computed on a nationwide basis, would add substantially to the daily cost of mail delivery.” *Id.*, at 118 (emphasis added). Likewise, in his concurring opinion, Justice Brennan said that he believed the Mailbox Restriction should be upheld due to the fact that it “advances a significant governmental interest — preventing loss of mail revenues.” *Id.*, at 135.

Yet the significance of the Mailbox Restriction has not always been recognized. For example, Professor Kielbowicz’s Universal Postal Service: A Policy History, 1790-1970 never even referenced the Mailbox Restriction. Other than the May 1997 GAO study cited above, the literature on the Mailbox Restriction is limited.<sup>2</sup>

Valpak believes that the Mailbox Restriction provides a vital protection for Postal Service revenues. Without the Mailbox Restriction, competitors delivering anything other than what is considered “letter” mail under the Private Express Statutes could selectively serve only the most profitable portions of the postal network, and deprive the Postal Service of the financial means necessary to support the USO.<sup>3</sup> Without the Mailbox Restriction, competitors

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<sup>2</sup> One exception is an early GAO report, entitled Postal Service Reform: Issues Relevant to Changing Restrictions on Private Letter Delivery (Sept. 12, 1996), pp. 8, 15-16, 19, and 30.

<sup>3</sup> As recently as May 8, 2008, the House Subcommittee on Federal Workforce, Postal Service and the District of Columbia held a hearing on “The U.S. Postal Service, Post PAEA: What’s Next?” The subcommittee learned from Postmaster General Potter that operating costs are growing at a rate that far exceeds the Consumer Price Index (“CPI”) price cap applicable to 90 percent of postal products. Thus, even with the mailbox monopoly, the Postal Service may find it difficult, or even impossible, to meet the USO, however defined.

could engage in classic “cream skimming” activities, depriving the Postal Service of revenue necessary to fulfil its mandated level of service.

Beyond that, Valpak believes that postal services are protected in another manner, not generally recognized — the Mailbox Restriction is an important part of the Postal Service brand. The Mailbox Restriction adds value to all pieces that lawfully are placed in the mailbox, with evidence of payment affixed. Without the Mailbox Restriction, the perception of the sanctity and security of the mailbox will be harmed. This value is reflected in the fact that the Postal Service is frequently rated as the most trusted government agency.<sup>4</sup> A recipient would face a cluttered mailbox,<sup>5</sup> and would need to wade through low-cost fliers to find the mail that he or she values. Sorting daily through this clutter would increase the risk that many pieces, even pieces now valued by recipients, simply would be discarded. Mailers would see a decline in value in distributing through the Postal Service channel. This could result in entry into the often-discussed “death spiral” of reduced volume, increased average costs, rate increases, and the cycle beginning again with reduced volume.

Rather than being secondary to other statutory components of the monopoly on letter mail, the Mailbox Restriction could actually be the most critical component of the postal monopoly, and afford the most important protection of postal revenues. Without it, we might

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<sup>4</sup> The Ponemon Institute ranked the Postal Service as the “Most Trusted Government Agency” for the fourth straight year. See [http://www.usps.com/communications/newsroom/2008/pr08\\_033.pdf](http://www.usps.com/communications/newsroom/2008/pr08_033.pdf).

<sup>5</sup> Indeed, a mail carrier who confronts a mailbox already full with other items would have a problem in delivering the mail.

find the Private Express Statutes inadequate to protect postal revenue, and any Congressionally-mandated USO would need to be funded with appropriated funds.

**II. The Postal Service Should Have Latitude to Constrain Six-Day-per-Week Delivery as May Be Required to Achieve Success of its Business, Consistent with Maintaining a Properly-defined USO.**

It would be legally incorrect to view the USO, as expressed in sections 101 and 403 of Title 39 of the U.S. Code, as being completely inflexible, requiring six-day-per-week delivery to all addresses. Indeed, there have been in the past, and are currently, many exceptions to six-day-per-week delivery. Businesses (including a law firm which does postal law in McLean, Virginia) that are believed to usually be closed on Saturdays (even if they are not) currently receive only five-day per week delivery. On Saturday, mail can be picked up by these businesses at the local post office. A Postal Service official testified at the Commission's hearings in this docket in New Hampshire that two-day-per-week delivery is provided to a "small rural town" known as Escourt Station, Maine. Testimony of Laurie Timmons (June 19, 2008), p. 1. These and other delivery decisions are made by the Postal Service, in the exercise of its best judgment, based on a balancing of cost and other factors. No apparent good reason exists for questioning the Postal Service's business judgment in these situations.

Neither PRA, nor PAEA, prohibits the Postal Service from making other adjustments to the frequency of delivery, especially as it faces reduced volume and higher costs. Indeed, PAEA requires the Postal Service to "plan, develop, promote, and provide **adequate** and **efficient** postal services at **fair and reasonable rates and fees....**" 39 U.S.C. § 403 (emphasis added).

Postal Service flexibility is particularly important at this time. The Postal Service has been facing declining volumes for several years. Also, as mentioned above, Postmaster General Potter recently testified that costs for market dominant products were increasing faster than the Consumer Price Index (*see* footnote 1).

While Valpak would prefer the Postal Service to continue six-day service at current levels, Valpak believes that the Postal Service should have the flexibility to reduce delivery frequency on certain lower volume and higher cost unprofitable routes. Valpak also believes that if, in the future, the Postal Service needs to make the business decision to reduce delivery frequency overall from six to five days per week, it should be able to do so in order to maintain universal service at “fair and reasonable rates.” Such reductions would result in cost savings from reduced fuel consumption and carrier costs.<sup>6</sup>

One study contends that “about half of city residential delivery routes ... and only 27% of rural carrier routes were unprofitable in 1997.... Because the volume of mail delivered on them is low, the revenues generated do not cover their cost. Many routes which are unprofitable at a delivery frequency of six days per week would become profitable with less frequent delivery.” It has been estimated that moving from six- to five-day-per-week delivery

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<sup>6</sup> The House Appropriations Committee recently approved an appropriations bill containing a provision requiring the Postal Service to study the cost savings of a five-day-per-week delivery system and consumer demand for Saturday delivery. *See* <http://kingston.house.gov/News/DocumentSingle.aspx?DocumentID=95382>.

would add \$1.5 billion of “delivery profit.”<sup>7</sup> Robert H. Cohen, *et al.*, Universal Service Without A Monopoly (Nov. 1999), pp. 8-9.

Part of the value that the Postal Service provides is derived from delivery sufficiently frequent that consumers continue to look in their mailboxes on a regular basis. If delivery on current six-day routes were to be reduced significantly, Valpak questions whether consumers would become increasingly “disconnected” from their mailboxes and the perceived value of the Postal Service would decline. If that were to occur, it would damage the public’s view of mail, mailers, and the Postal Service. It would impair the value of the Postal Service brand, and impair the health of the Postal Service.

However, if the Postal Service is permitted to, and decides to, reduce frequency of delivery, the modern service standards for market dominant products (set forth in 39 C.F.R. §§ 121.1-121.4) should not be redefined in terms of “delivery days.” Any effort by the Postal Service to define the terms of service standards this way should be deemed by the Commission and mailers as an effort to reduce the service provided to mailers.

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<sup>7</sup> There are estimates of the cost that the universal service obligation imposes on the Postal Service, but it is difficult, if not impossible, to make such an estimate with any certainty or accuracy. When assessing the cost, it should be borne in mind that mailers (*i.e.*, senders) pay the full cost of delivery, and recipients are entitled to free delivery everywhere. The only time recipients pay a fee is when they rent post office boxes, which are usually optional, and have their mail delivered to those boxes. Since mailers pay the full cost of delivery, **the delivery portion of the USO cost should be related to the needs of senders, not the desires of recipients** who do not pay for delivery.

It would be possible to set up a two-price market, where five-day-a-week delivery is standard, and any mailer desiring six-day-a-week delivery pays an extra fee for the service. Thus, if some senders — *e.g.*, those entering Standard Mail — would be satisfied with five-day-a-week delivery, while other mailers require six-day-a-week delivery — *e.g.*, those entering First-Class Mail or Periodicals — the extra cost of six-day-a-week delivery should be borne by those mailers who insist on a full delivery schedule.

Furthermore, the Postal Service should be required to meet current service standards. A reduction in the frequency of delivery, as a method for cutting costs, should not be accompanied by a reduction of service performance.<sup>8</sup>

### **III. The USO, However Defined, Should Not Restrict the Postal Service from Realigning its Network of Processing Plants.**

As stated in section II, *supra*, the statutes pursuant to which the Postal Service operates provide sufficient operational flexibility for the Postal Service to exercise its **business judgment** regarding **delivery** in order to provide “adequate and efficient” services at “fair and reasonable rates.” This is also true with respect to the Postal Service’s mail processing **network**. Modernizing and optimizing the network are essential to controlling costs and, hence, are required for the Postal Service to achieve required **affordability**. Moreover, modernizing and optimizing the network are essential to maintaining **quality of service**. *See* 39 U.S.C. § 3622(c)(12).

Unfortunately, the Postal Service has faced opposition in its efforts to improve its network. It is Valpak’s view that such parochial interests, although sometimes presented as protecting the USO, should not be allowed to constrain the Postal Service’s business judgment in rationalizing and improving its network.

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<sup>8</sup> With fewer delivery dates, meeting service standards becomes even more important. For example, if mail currently required to be delivered Saturday is shifted to Monday, a delay to Tuesday becomes even more problematic.

The Postal Service's submission to Congress, entitled Postal Accountability and Enhancement Act § 302 Network Plan (June 2008), sets out a current example of "Congressionally-imposed delays of potential [Area Mail Processing] consolidations." The Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844 (Dec. 26, 2007), "directs the Postal Service not to initiate implementation of these AMP consolidations until the Government Accountability Office evaluates..." certain matters. Network Plan, pp. 34-35. Clearly, this is the type of constraint (constituting a barrier "to effective and timely implementation of critical decisions," Network Plan. p. 35) on Postal Service cost containment which needs to be avoided in the future.

Respectfully submitted,

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