

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Modification of Mail Classification Schedule)
Regarding Bound Printed Matter)

Docket No. MC2008-3

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
COMMENTS ON MODIFICATION OF MAIL CLASSIFICATION SCHEDULE
REGARDING BOUND PRINTED MATTER
(July 16, 2008)**

ISSUE PRESENTED

On March 20, 2008, the Postal Service filed a Notice of Classification Change modifying the means by which mailers may pay for Bound Printed Matter ("BPM"). The change was set to go into effect at the same time as the May 12, 2008 rate increase. The Commission issued a Notice on March 21, 2008, setting April 3, 2008 as the deadline to submit public comments. The Postal Service then filed a Notice of Amendment to its Notice of Classification Change on March 27, 2008, and the Commission issued a second Notice on March 28, 2008, resetting the comment deadline to April 9, 2008.

Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. (hereinafter "Valpak") hereby submit these joint comments.

BACKGROUND

Prior to May 12, 2008, an annual mailing permit fee was required for destination-entered BPM. However, this annual fee was not required for nonpresort (*i.e.*, single-piece) BPM or presort (but not destination-entered) BPM. The Postal Service's first Notice would

have required an annual mailing permit fee for all BPM, including nonpresort. The Postal Service's amended Notice modified the change so that the annual mailing permit fee would continue to be required for only destination-entered BPM, but would require **all** BPM to be paid for by permit imprint only. The effect of this change is that any mailer sending BPM will be required to (i) pay a permit-imprint application fee (currently \$180), (ii) pay BPM postage by permit imprint, and (iii) enter the mailpiece at a Business Mail Entry Unit.

The Postal Service filed this change pursuant to 39 C.F.R. Part 3020, Subpart E (sections 3020.90-91), a request initiated by the Postal Service to change the **Mail Classification Schedule** — rules applicable to a “correction” of the Mail Classification Schedule, not applicable to a price change,¹ nor a proposal to modify the product list (*i.e.*, add a product, remove a product, or move a product from one list to another), nor a proposal affecting service. The Commission's Rules with respect to these types of “corrections to market dominant product descriptions in the Mail Classification Schedule” provide for only modest public input and Commission review. *See* 39 C.F.R. §§ 3020.92-93.

Valpak has no direct interest in BPM, and does not oppose the specific change the Postal Service is implementing in this docket. Therefore, these comments are not focused narrowly on whether the changes to BPM are consistent with 39 U.S.C. section 3642, but instead address the broader policy issues presented by the Postal Service's change to BPM in this docket.

¹ The Commission raised important issues in Commission Information Request No. 2 (Apr. 18, 2008) (“CIR No. 2”), to which the Postal Service responded on May 2, 2008. The Commission recognizes the price change characteristics of the Postal Service's proposed change in this docket.

COMMENTS

At least some, and perhaps many, nonpresort BPM mailers now will have to pay a \$180 fee in order to continue using that product. Although that is a one-time fee, it would take some time before such mailers begin to recover the cost savings of using BPM, and this is especially so for those who mail a relatively small volume of BPM. This fee therefore has strong attributes of a price increase, and for some mailers, a substantial increase amounting to rate shock.² If those mailers decide **not** to apply for a permit imprint, they will be forced to use other, higher-priced options, such as (some) Media Mail and Parcel Post.

Additionally, although the Postal Service eliminates retail window availability of nonpresort BPM (mooting Docket No. C2008-2), this does not appear to be the appropriate procedure for the Postal Service to use to effectively raise the price and reduce the service for users of an existing product.

The Postal Service filing has several interesting attributes:

1. The Postal Service, in a simple view, has not increased any BPM rate.
2. Nevertheless, the Postal Service essentially has eliminated the retail BPM product which formerly was available to thousands of retail counters, forcing some mailers to use other products with higher rates, some of which are substantially higher than the now unavailable BPM rate.
3. The Postal Accountability and Enhancement Act (“PAEA”) CPI rate cap has not provided affected BPM mailers with any protection.
4. PAEA has not provided affected BPM mailers with any predictability concerning rate increases.

² See, for example, Comments of Sass Pugh (May 12, 2008) (noting that his postage costs will increase 250 percent to shift his former BPM mailings of collectible magazines to Parcel Post).

5. The Postal Service filing triggers Commission Rules which provide affected BPM mailers with only limited recourse and due process rights and avoids any inquiry of the rate effects.

The Postal Service presents its proposal in this docket solely as a **classification change**, but for all affected BPM mailers, it certainly is also a **price and fee change**. Further, it has elements of a **service change** since it severely restricts the locations at which BPM mailers will be able to enter their BPM mail. These effects raise serious concerns for the Commission's consideration.

The Postal Service has used the procedures under the Commission's Rules, Part 3020, Subpart E. These Rules provide for the most minimal input from the public, and appear to be geared for the Postal Service to "provide corrections to the market dominant product descriptions."³ In using these Rules, the Postal Service avoids the more detailed filing requirements, the more involved public input, and the stricter Commission scrutiny of the Rules for rate adjustments of general applicability for market dominant products (Part 3010, Subpart B) and the Rules concerning requests initiated by the Postal Service to modify product lists described within the Mail Classification Schedule (Part 3020, Subpart B).⁴

³ As of this date, the Commission and the Postal Service have not finalized the Mail Classification Schedule, making it somewhat more difficult to have a proper context for the Postal Service's actions in this docket.

⁴ If the Commission in the future were to determine that the Postal Service's action in such dockets constituted the removal of a product (*e.g.*, Retail BPM), even though the Postal Service has not removed any specific rate "cells," it could require compliance with Part 3020, Subpart B. Further, it is an open question for the future whether the Postal Service's removal of the availability of the retail window for BPM would constitute what Congress described as a "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis," triggering a requirement for an advisory opinion from the Commission and a hearing on the record (39 U.S.C. § 3661).

CONCLUSION

In future situations along the lines of that presented here, the Commission might consider requiring the Postal Service to follow both mail classification and price change rules. Alternatively, perhaps there should be a new Commission procedure specifically addressing such a Postal Service change. Certainly, after-the-fact complaints are neither the most efficient nor the fairest way to deal with the unilateral imposition of service changes. Nor should they be the only procedure available for mailers to express their views on these types of changes.

At a minimum, Valpak would ask the Commission to state that it will not treat this docket as precedential in any way that could jeopardize mailers' due process rights, under PAEA and the Administrative Procedures Act in the future. Preferably, the Commission could entertain a discussion in another docket of how such changes should be evaluated in the future. Price, fee, service, and product changes should not be allowed to be passed quickly over public and Commission scrutiny under the Rules for making minor classification changes. It is submitted that this was neither the intent of PAEA, nor the Commission's Rules established in Docket No. RM2007-1.

Respectfully submitted,

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