

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Notice of Price Adjustment for)
Standard Mail High Density Flats) Docket No. R2009-4

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
COMMENTS REGARDING PRICE ADJUSTMENT FOR
STANDARD MAIL HIGH DENSITY FLATS
(June 22, 2009)**

BACKGROUND

On June 1, 2009, the Postal Service filed with the Commission a Notice of Market-Dominant Pricing Adjustment of its intention to change the price of Standard Mail High Density Flats with an implementation date of July 19, 2009. On June 4, 2009, the Commission issued Order No. 220, Notice and Order Concerning Price Adjustment for Standard Mail High Density Flats, and set June 22, 2009 as the deadline for public comment.

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (hereinafter "Valpak") jointly submit these comments in response to Order No. 220.

COMMENTS

The Postal Service's Notice stated:

Because these proposed High Density flat price adjustments are **decreases**, and are not part of the annual CPI-cap price change, the Postal Service considers this price adjustment to be **outside the current Commission's Rules** which do not specifically address this situation. The Postal Service proposes that the adjustments have no impact on price cap issues, but would welcome other views. Therefore, the Postal Service had made no

calculation of cap or price changes described in Rule 3010.14(b)(1) through (4). [Notice, p. 3 (emphasis added).]

Subsequently, the Presiding Officer asked the Postal Service to provide the appropriate calculations of the effect on the price cap. *See* Chairman's Information Request No. 1 (June 5, 2009). The Postal Service responded to that request on June 12, 2009.

As always, analysis should begin with the statute. PAEA establishes that the price cap is an "annual limitation on the percentage **changes** in rates ... will be equal to the **change** in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation" and that the Commission shall "establish procedures whereby the Postal Service may **adjust** rates not in excess of the annual limitations...." 39 U.S.C. § 3622(d)(1)(A) and (D) (emphasis added).

Although the Postal Service did not argue that PAEA is inapplicable to price decreases, its apparent position that the Commission's Rules do not apply to price decreases is incorrect. The Commission Rules should be read to be consistent with PAEA.

Indeed, the Commission's Rules for applying the price cap apply to both increases and decreases. Generally, they are not discussed as increase and decreases, but as "adjustments," a term independent of the direction of the adjustment. *See* 39 C.F.R. Part 3010. Although at various points the Rules refer to "increase" (*e.g.*, "Rate increases for each class of market dominant products in any 12-month period are limited" (39 C.F.R. § 3010.11(a))), the Rules are clear that they cover adjustments of all types ("Rates of general applicability are subject to an inflation-based limitation computed using CPI-U values as detailed in rule 3010.12" (*Id.*, § 3010.11(b))).

The Postal Service's second reason that the Commission's Rules are not applicable is that the High Density Flats decrease is "not part of the annual CPI-cap price change." As discussed *supra*, the Rules sometimes use the word "increase." 39 C.F.R. section 3010.22, "Calculation of less than annual limitation" (the Rule applicable to calculating the cap in this docket), refers to a general rule for calculating the price cap when a price adjustment has taken place less than one year previously; Rule 3010.22(a) refers to "increases" rather than "adjustments." However, the specific calculations in Rule 3010.22(b) and (c) are not so confined and apply to both increases and decreases.¹

We now see that, in abnormal economic circumstances, application of the Rules can create strange results, as demonstrated by the Postal Service's response to Chairman's Information Request No. 1, and the proper response may be to modify those Rules. The Postal Service price adjustment causes problems, since inflation and annual increases were contemplated. The Rules might work as written where the Postal Service wants to raise rates six months into the year. But where the Postal Service decides in June that rates implemented in May were not ideal and should be changed as soon as possible, this raises questions. For example, is there a way to do this without triggering section 3010.22? If 3010.22 is triggered, can it be triggered for only one class and have the result that the classes are then on different

¹ It should be noted that the instant price decrease for High Density Flats is differs from the Saturation Mail incentive and the Summer Sale programs. First, the tariff rates do not change during the incentive periods, participants pay tariff rates for all mail, and discounts are refunded after the incentive periods. Second, for participation in those programs, mailers need to meet certain criteria. Third, those incentive rates are temporary. Finally, the incentive programs do not change the base rates for future annual increases (*see* Postal Service Response to Chairman's Information Request No. 1, question 4 (June 4, 2009)).

bases for the next annual change? Is there a way to redo the May 11 changes using the price cap applicable then? Is some other procedure available? For example, assume that there is no banked pricing authority and that the 3010.22 cap is -2 percent (negative), which can be applied to only one class. Is the Postal Service required to reduce the rates at least 2 percent? The cap clearly provides constraints on Postal Service pricing flexibility which need to be thought through carefully before any interim price changes are approved as being compliant with the cap.

CONCLUSION

Certain Commission Rules may need modification in view of the current economic circumstances, but surely the Commission did not intend to permit all types of rate decreases without any Commission review. For this reason, the better approach may have been for the Postal Service to file a motion to waive the filing requirements, or request some other sort of one-time relief.

Respectfully submitted,

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