

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Temporary Waivers from Periodic Reporting of Service Performance Measurement)))
Docket No. RM2011-7

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
COMMENTS REGARDING REQUEST FOR
TEMPORARY WAIVER FROM PERIODIC REPORTING
OF SERVICE PERFORMANCE MEASUREMENT
(February 15, 2011)**

On February 3, 2011, the Postal Service filed a Request for Temporary Waivers from Periodic Reporting of Service Performance Measurement (“Request”) for various market dominant postal services, or components of postal services, pursuant to Commission Order No. 465. On February 4, 2011, the Commission issued Order No. 664 setting February 15, 2011, as the due date for comments in this docket. (Order No. 664 notes that two other dockets concerning performance measurement are still pending — Docket Nos. RM2011-1 (also captioned “Temporary Waivers from Periodic Reporting of Service Performance Measurement” in which Valpak filed brief Comments¹) and RM2011-4 (“Semi-Permanent Exception from Periodic Reporting of Service Performance Measurement”) — and encourages interested parties “to review the filings presented in both related dockets when considering the instant request for waivers.” Order No. 664, p. 3.)

¹ Valpak Initial Comments (Nov. 24, 2010).
<http://www.prc.gov/Docs/71/71027/Valpak%20RM2011-1%20Initial%20Comments.pdf>

BACKGROUND

The Postal Service Request for a Temporary Waiver explains that for a number of products in First-Class Mail and Standard Mail it has encountered problems with respect to maintaining the previous schedule for development of the performance measurement system. And, indeed, serious problems appear to exist. Some problems discussed by the Postal Service are of a strictly technical nature. However, it is suggested here that the most troublesome “problem” identified by the Postal Service as causing severe slippage in the schedule leading to this request for a temporary waiver might well be viewed as the Postal Service’s reluctance to offer mailers adequate incentives to participate in the performance measurement system. The purpose of these comments is to suggest that a ready solution exists for the problem of mailer participation — providing pecuniary incentives sufficient to induce timely, perhaps even enthusiastic, participation by mailers.

COMMENTS

1. **Postal Service Filings Provide Candid Testimony to Problems with Mailer Participation.**

In Docket No. RM2011-1, the Postal Service repeatedly pointed to the fact that the performance measurement system under development depends requires and heavily on extensive mailer participation and cooperation, which, to date, has not been forthcoming. For example:

The Postal Service proposes to use the first en-route scan to start the clock because of **problems** that have arisen with the **use of [mailer supplied] electronic documentation**, as originally planned. [Docket No. RM2011-1, Postal Service Reply Comments, p. 4 (Dec. 6, 2010) (emphasis added).]

However, reliance on such a method for commercial parcels would require **mailer adoption** of the Intelligent Mail package barcode (IMpb) format, the corresponding file format, the Intelligent Mail container placard, and nesting of item-level information to respective pallets and container placards with sufficiently high data quality. It is possible that **not enough mailers would adopt** the IMb barcode and file formats to allow reliable reporting for some time, resulting in a situation similar to that described in the Postal Service's temporary waiver request for Standard Mail letters and flats and Periodicals. [*Id.*, p. 5 (emphasis added).]

It hardly need be said that the intent behind the Postal Service's first en-route scan proposal is not to increase inaccuracy or to game an internal measurement system, but to seek a relatively reliable fallback for the previous start-the-clock method, which **low mailer adoption has rendered elusive**. [*Id.*, p. 5 (emphasis added).]

The Postal Service is implementing systems changes to enable this functionality in January and May 2011, but the actual generation of reliable, reportable data **depends on the pace of mailer compliance**. [*Id.*, p. 7 (emphasis added).]

The Postal Service has been frank in its belief that two or more years is a realistic estimate for **mailer adoption in light of past experience [with mailer participation]**. If meeting the Commission's preferred timetable of December 2011 is an unmitigated priority for the Commission, the mailing industry, and the public, however, then the Postal Service would **welcome the mailing industry's commitment to prompt cooperation** in advance of that deadline. **Without that commitment**, the Postal Service is compelled to abide by its request that the Commission's timetable account for the practical reality of mailer-dependent data availability. [*Id.*, p. 7 (emphasis added).]

The same theme is repeated in this docket. For Presort First-Class Mail, Standard Mail, and Bound Printed Matter Flats, the Postal Service states:

In Quarter 1, the FY2010 Quarter 4 service performance scores led the Postal Service to reassess the quality of service performance data. This review revealed that, **among the [small]**

portion of commercial mailers using the Full-Service Intelligent Mail barcode and therefore enabling their mail to be measured, **insufficient mailer compliance** with Full-Service Intelligent Mail requirements was challenging the reliability of performance measurement results... As of the end of Quarter 1 of FY2011, **no Standard Mail or Bound Printed Matter Flats customers** had met the criteria for certification, and **only 11 Presort First-Class mailers did**. [Docket No. RM2011-7, Postal Service Request, pp. 1-2 (Feb. 3, 2011) (emphasis added).]

The Postal Service requests a temporary waiver for all Standard Mail and Bound Printed Matter Flats until such time as significant data exist in measurement systems, due to **mailers' certification as actually compliant** with the start-the-clock and other requirements for Full-Service Intelligent Mail. The Postal Service cannot, at this time, predict the timing of **mailer certification**, which is partially dependent on the pace of **mailers' cooperation** to remediate issues identified in the certification review. [*Id.*, p. 3 (emphasis added).]

Unquestionably, serious problems in obtaining mailer participation and adoption of the Intelligent Mail Barcode (“IMb”) and the Full Service option have been encountered by Postal Service officials working on performance measurement. Problems of mailer participation are a direct result of decisions made elsewhere within the Postal Service.² The obvious solution is to use the pricing system to provide mailers with much stronger incentives. Failure to provide adequate incentives now could, in the not too distant future, prove to be a costly error. As explained in section 5, *infra*, the Postal Service could be forced to jettison its investment to

² The Postal Service should not disavow all responsibility for delayed implementation, as it attempted to do in Docket No. RM2011-1:

These allusions could be read to suggest that perceived Postal Service dilatoriness is somehow responsible for the pace of implementation thus far and for any further delay in reporting at the levels now required by the Commission's rules. This suggestion would be erroneous and unfair, however. [Docket No. RM2011-1, Postal Service Reply Comments (Dec. 6, 2010), p. 12.]

date and incur far greater expenditures in order to provide a workable alternative capable of providing results that comply with the statutory requirement in the Postal Accountability and Enhancement Act (“PAEA”).

2. Incentives Inadequate to Offset the Required Investment for IMb Predictably Fail to Induce an Enthusiastic Mailer Response.

The National Postal Policy Council (“NPPC”) recently discussed some of the unfunded requirements which the Postal Service has placed on mailers, and stated that:

Even in the one instance in which the Postal Service offers rate recognition – full-service Intelligent Mail Barcode – the **rate differential is commonly far less than the mailer’s costs**. The IMb rate differential is 0.003 cents [sic] per piece. Compare that to mailers’ costs of complying with IMb requirements, which can run into seven or even eight figures. Such sums simply **cannot be recouped at 0.003 cents [sic] per piece**. The net result is an uncompensated cost imposed on the mailer, which equates to a shadow rate increase. [Docket No. ACR2010, Comments of NPPC, p. 8 (Feb. 2, 2011) (emphasis added).]

NPPC elaborates on how an inadequate incentive adversely affects internal decision making in large organizations.

The Postal Service plans to retain the current 0.003 cent [sic] per piece full-service IMb rate incentive.... NPPC members (and others) have explained to postal management on many occasions that **complying with IMb requirements is quite difficult**, requires much time and planning (not to mention justifying the expense to corporate financial leaders in order to obtain the necessary budget during a difficult economy), and **involves substantial costs**, often running into the **seven or even eight figures for large mailers**.

The Postal Service should seriously consider increasing the IMb differential. The current 0.003 cents [sic] per piece simply **does not allow most mailers to recover their costs of investing** in the software and making all of the other operational and equipment changes necessary for IMb. Mailing departments have **difficulty obtaining the corporate funding** necessary to

implement IMb when they **cannot demonstrate** that, at the Postal Service rates, **IMb will show a return on the mailer's investment**, or that any return will not happen until well beyond a business's normal budgetary horizon. [Docket No. R2011-2, Comments of NPPC, pp. 5-6 (Feb. 2, 2011) (emphasis added).]

These thoughtful comments by NPPC throw considerable light on the frustrations expressed by the Postal Service in the filings cited in section 1, *supra*. Noticeably missing from the Postal Service's recitation of its problems with mailers is any mention of the considerable expense that its IMb-based performance system would impose on mailers who elect to cooperate. If a rate differential of \$0.003 is not an adequate incentive in First-Class Mail, then a rate differential of \$0.001 in Standard Mail is woefully inadequate — small wonder the Postal Service needs a waiver for all Standard Mail products.

The Postal Service sometimes seeks to achieve changes in mailer behavior through regulations and requirements when it should use the pricing mechanism to provide incentives. As a government monopoly, that may be among its prerogatives. But with protection of the monopoly diminishing, continued reliance on regulations, in lieu of market-based incentives, could be self-defeating. Much of the mailer cooperation and participation to date may have been driven by fear — *i.e.*, that after May 2011, mail without an IMb would not qualify for automation prices. The Postal Service recently withdrew its proposed regulation, so mail with a POSTNET code will continue to qualify for automation prices after May 2011, dissipating any such motivational fear. Withdrawal of that proposed regulation, which mailers have generally applauded, could adversely affect continued cooperation by users of presort First-Class Mail and Standard Mail, causing still further slippage in the performance measurement implementation schedule. That possibility makes it all the more necessary for the Postal

Service to reconsider the meager price differentials currently in effect and implement adequate price incentives. Otherwise, this year's request for a temporary waiver could well be prologue to next year's request.

3. Prices, Including Price Differentials for Adoption of the IMb and Participation in the Full Service Option, Need to Be Set in an Artful Manner so as to Generate Desired Responses from Mailers.

The price differential for adopting IMb (and the Full Service option) can be viewed as a “discount,” or “reward,” for participation. Alternatively, that same price differential can be viewed as a “surcharge,” or “penalty,” for not participating. When a price differential is identified in the tariff schedule as a “discount,” use of that term can have an unfortunate connotation — namely, that the Postal Service somehow is “giving away” net revenues that it otherwise might have retained. However, any such connotation clearly is wrong.

Prices, including price differentials, can be adjusted in a manner that is revenue-neutral. The revenue effect of a larger price differential, or reduction in prices, for those who elect to use IMb and the Full Service option can be offset by an increase in prices for those who elect not to participate. In other words, it is possible to expand price differentials for using or not using IMb and the Full Service option without the Postal Service either losing or gaining net revenue. By avoiding mandatory regulations, mailers are given a choice.³ Those mailers who prefer to make the investment necessary to adopt the IMb in return for the lower price can do so, while those who believe that the lower price is not worth the necessary investment can choose to abstain.

³ To qualify for lower price differentials, mailers of course would have to comply with all applicable requirements.

Within Standard Mail, a price differential of \$0.001 per piece for using IMb, whether viewed as a “reward,” or a “penalty,” is a small difference. As a hypothetical, suppose that in Standard Mail the Postal Service were to substantially expand the price differential (in a manner that is strictly revenue neutral) to \$0.005 for mail with an IMb that meets all requirements (for readability, etc.), and \$0.010 for mail with an IMb that also qualifies for the Full Service option. Were the Postal Service to offer such a larger price differential, many of those mailers who are now participating only reluctantly, or not at all, likely would be aggressively seeking to adopt the Full Service option. When dealing with mailers, prices are important.

4. Price Differentials Pertaining to the Service Performance Measurement System Should Be Viewed as an Incentive.

The Postal Service’s tariff schedule contains price differentials in the form of both discounts and surcharges. Many existing surcharges are imposed on mail that causes the Postal Service to incur additional handling costs (similar to mail that is less workshared). Nevertheless, no surcharge is classified as worksharing-related, and none of the statutory restrictions applicable to worksharing discounts are applicable to surcharges.

The price differential for mailers that use IMb is now shown in the tariff schedule as a “discount.” At the same time, it is not a worksharing activity — defined as a mailer undertaking to supply an activity that the Postal Service otherwise would have to supply — *e.g.*, sortation, transportation, or the POSTNET barcode. The IMb contains information that only a mailer can supply. The Full Service option likewise requires details and preparation that only a mailer can supply. Consequently, if a mailer does not print an IMb on its mail, the

Postal Service could not do so. Since the Postal Service cannot print an IMb on mail, nor do the additional work involved in preparing a mailing to comply with the Full Service option, it should be obvious that price differentials for IMb and the Full Service option have nothing to do with the **Postal Service's cost** of anything. Accordingly, any attempt to develop a "cost-based" discount would be nonsensical. The Postal Service needs to view price differentials for IMb and the Full Service option solely in relation to **mailers' costs**, and the incentive which those differentials provide vis-a-vis those costs.

Mailers of course have disparate costs. The Postal Service needs to experiment and adjust the price differential as appropriate until it achieves the desired degree of mailer participation. The Postal Service's submission in Docket No. RM2011-1, quoted *supra*, can be read as testimony (or as an admission) that it has failed to set the differential sufficiently high to achieve its own purpose. Fortunately, it now has pricing flexibility to do so, and urgently needs to use that flexibility constructively.

For those mailers who elect not to use IMb, *i.e.*, who prefer to continue using the POSTNET code, it seems eminently reasonable to impose on them what might be perceived as a "surcharge" because (i) in its wisdom, Congress in PAEA required a performance measurement system to be established, and (ii) mail not switching to IMb now can have rather high cost implications that did not exist before PAEA. Mailers who do not switch with respect to the way they barcode their mail should not be entitled to a "free ride." Collectively, too many such mailers could doom the PAEA-mandated performance measurement system now being implemented. That, in turn, would force the Postal Service to adopt some alternative

that might be even more costly for everyone. *See* the following section for more discussion on this topic.

5. What Are the Alternatives, and What Would They Cost?

The Postal Service's performance measurement system for letters and flats, when implemented, should rank among the world's best. Alternatives do exist, though. One alternative would be to put electronic tracking devices in the mail to provide a record of mail as it moves through the network.⁴

In Docket No. RM2011-1, the Initial Comments of the Public Representative ("PR") (Nov. 24, 2010) notes the problems arising from extensive dependence on mailer cooperation. The PR has suggested that an external measurement system be created in lieu of one dependent on IMb and extensive mailer documentation.

The system changes and **changes in mailer behavior** that must occur are too numerous to make Full-Service Intelligent Mail® barcodes and corresponding documentation methods a useable, let alone reliable, platform for service performance measurement.

Given these circumstances, the Public Representative suggests requiring use of an **external measurement system** for these products. The **Postal Service is quick to object** to an external system **on grounds of cost**. However, the Postal Service's objections as to cost lack documentation. More importantly, it appears the Postal Service currently **expends** (or proposes to spend) **considerable resources** massaging the systems supporting Full-Service Intelligent Mail® barcodes for purposes of service performance measurement, **which has yet to produce any service performance results by product**. [Docket No. RM2011-1, Public Representative Initial Comments, p. 4 (emphasis added).]

⁴ Such electronic tracking systems are said to be used by Posts in Europe.

As the PR predicted, the suggestion drew a critical response from the Postal Service, while noticeably failing to offer any constructive action that might enhance mailer cooperation.

The Public Representative recommends either scrapping the Postal Service's measurement plans altogether in favor of **an external measurement system** or, apparently as a less preferred alternative, establishing a permanent docket to receive the Postal Service's quarterly status reports.... More importantly, **the system's scope and cost would likely be staggering** in light of the disaggregated reporting levels required by the Commission's rules and the need for sufficient measured volume to achieve statistical reliability. Therefore, **external measurement should not be a leading contender** for the goal of product-specific Standard Mail measurement. [Docket No. RM2011-1, Postal Service Reply Comments (Dec. 6, 2010), pp. 7-8 (emphasis added).]

With service performance mandated by Congress in PAEA, the Commission needs a workable system capable of producing results. The Postal Service's inability to produce reliable data, even if the result of mailer non-cooperation, could force abandonment of the IMb-based system in favor of a more expensive alternative.⁵

CONCLUSION

The requirement for a performance measurement system was not just an expensive burden imposed on the Postal Service as an afterthought by Congress in PAEA. It was a critical adjunct to the price-cap mechanism sought after by most mailer associations as the panacea for all postal problems. Under a cap-based system, without good performance

⁵ Increasing the price differential for mailers who participate in IMb and the Full Service option need not involve any revenue loss, or cost, to the Postal Service, for the reasons explained above.

measurement, service degradation can occur, which has the effect of a hidden price increase that evades the cap.

In response to the PAEA requirement that the Postal Service develop and implement a service performance system for all of its products, the Postal Service has set out to implement a rather complex, state-of-the-art system based on use of IMb and other mailer-provided documentation that required a substantial investment of money and effort by mailers. Concurrently, the Postal Service reluctantly established the most meager price incentives for mailers to participate. Predictably, implementation is lagging badly behind schedule. The Postal Service is forced to request a waiver for every product that depends on the new IMb-based system, but it has not addressed its own role in precipitating that systemic failure or indicated that it will implement corrective pricing.

PAEA was enacted over four years ago. The Postal Service issued modern service standards designed to “provide a system of objective ... performance measurements” under 39 U.S.C. section 3691(b)(1)(D) over three years ago. The Commission issued final service performance measurement regulations nine months ago. The new system covering the vast majority of products has yet to generate reliable performance data. The Commission already is working on its first 5-year report to Congress on the working of PAEA, and not only does the Commission have no reliable data on speed and reliability of service received by most products, it will have to acknowledge that development of the system is woefully behind schedule.

Valpak does not oppose the requested waiver. If the Postal Service does not now possess reliable performance data, and cannot obtain such data from the system as it currently

exists, then clearly the Commission cannot compel the Postal Service to produce such data in this docket. However, Valpak does believe that the Commission can and should make the approval of any waiver contingent on immediate steps by the Postal Service to establish price incentives sufficient to assure participation by enough mailers to provide an adequate data base to measure and report on performance, as required by PAEA. If the Commission fails to take such action now, it should consider how it will respond to a series of similar requests for “temporary” waivers in the future.

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