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Notice of Market Dominant Price  
Adjustment for First-Class Mail  
and Standard Mail

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Docket No. R2011-5

**REPLY COMMENTS OF THE SATURATION MAILERS COALITION AND VALASSIS  
DIRECT MAIL, INC. TO COMMENTS OF THE PUBLIC REPRESENTATIVE**

(May 11, 2011)

Pursuant to a motion for leave to file submitted today, the Saturation Mailers Coalition (SMC) and Valassis Direct Mail, Inc. (Valassis) hereby submit reply comments to the May 2nd comments of the Public Representative concerning the Postal Service's proposal to offer a temporary two-month price incentive for commercial First-Class and Standard Mail mailers that include a two-dimensional QR barcode on their mailpieces.

In its comments, the Public Representative has taken the position that the Postal Service's proposal must be treated not as a price adjustment but as a "special classification" under section 3266(c)(10) of the Postal Accountability and Enhancement Act (PAEA). It then concludes that the Postal Service has not demonstrated that its proposal meets the requirements of that section, citing subparagraphs (A) and (B) of that section. As explained below, the Public Representative is wrong on both counts.

**A. The Postal Service's Proposal Is A Legitimate Price Adjustment, Not A "Special Classification."**

The Postal Service here has proposed a temporary two-month rate adjustment that applies broadly across entire product lines as an incentive for mailers to test and adapt QR barcodes in the expectation of enhancing the value of the mail by

bridging hardcopy and electronic communication channels. It does not in any way “redefine” or alter any existing mail classifications or postal products, nor does it in any real sense create any new products or classifications. Rather, it is in essence a pure price adjustment that applies on a temporary basis to mailers of existing products and classifications who employ two-dimensional QR barcodes during the July-August period of this year. Thus, the Public Representative’s contention that the proposal should be evaluated as a “special classification” under section 3622(c)(10) is inapplicable.

**B. The Public Representative Has Misread Section 3622(c)(10) Governing Special Classifications.**

Even if the QR barcode incentive could be construed as a “special classification,” the Public Representative has misread the statute. Among the factors set forth in the PAEA, section 3622(c)(10) states that the Commission shall take into account:

“(10) the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, *including* agreements between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that—

(A) either—

(i) improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; or

(ii) enhance the performance of mail preparation, processing, transportation, or other functions; and

(B) do not cause unreasonable harm to the marketplace.” (emphasis added).

The entirety of the language following the word “including” relates just to a *subset* of special classifications, namely, to “agreements between the Postal Service and postal

users” commonly known as negotiated service agreements or NSAs. The restrictive requirements of subparagraphs (A) and (B) cited by the Public Representative apply *only* such negotiated agreements, not more generally to all special classifications. The only criteria for *other* types of special classifications is their “desirability ... for both postal users and the Postal Service in accordance with the policies of this title.”

The legislative history of this provision is clear on this point. The 2004 Senate bill, S. 2468, treated “special classifications” and “service agreements” separately. The former were covered in proposed section 3622(c)(10), which simply carried over the then-existing language of section 3623(c)(5) of the Postal Reorganization Act (PRA) concerning “the desirability of special classifications from the point of view of both the user and of the Postal Service.” See Report of the Senate Committee on Governmental Affairs on S. 2468, August 25, 2004, at 9 and 100. By contrast, the far-more-detailed requirements relating to negotiated service agreements between the Postal Service and specific customers – which had no direct antecedent in the PRA – were set forth in a separate section 3623. *Id.* at 102-04; see *also*, discussion at 13-14 and 43-44.

In the final bill that became law as the PAEA, the language in the Senate’s proposed section 3622(c)(10) was modified in two respects. First, the general provision in the first clause concerning “special classifications” was made subject to the general requirement that they “be in accordance with the policies of this title.” Second, the Senate provisions in its proposed section 3623 governing service agreements were, in condensed form, simply appended at the end of the general provision of section 3622(c)(10) concerning special classifications, added as a separate clause starting with the word “including” to signify that negotiated service agreements are a specific subset

of “special classifications” subject to their own additional requirements. The NSA-specific requirements were clearly not intended to narrow or restrict the Postal Service’s flexibility to adopt other types of special classifications, so long as such classifications are otherwise “in accordance with the polices” of the PAEA.

As a matter of statutory construction, this interpretation is confirmed by the very structure and sequential ordering of the language of section 3622(c)(10): *first*, laying out the *general* rule that “special classifications [be] in accordance with the policies of this title;” and *then*, setting forth the additional requirements applicable to the subset of NSA-style “agreements.” Had Congress intended that the latter requirements apply to *all* special classifications, it would have reordered the clauses by referring at the beginning to:

“the desirability of special classifications, *including agreements between the Postal Service and postal users*, in accordance with the policies of this title, when available on public and reasonable terms to similarly situated mailers, that....”

Not only is this interpretation of subsection (c)(10) consistent with principles of statutory construction and the legislative history of the PAEA, but it is also entirely consistent with the overall thrust of the PAEA to give the Postal Service *greater* pricing and classification flexibility within the context of the price-cap scheme. Nothing in the legislative history or the language of the subsection supports the Public Representative’s cramped interpretation that would so narrowly limit the Postal Service’s flexibility to create special classifications beyond the subset of NSAs. As the Senate Report emphasized in its discussion of NSA-type service agreements:

“We do not intend for service agreements to be a limited substitute for more broadly applicable classifications. The Postal Service should

continue to make every effort to provide products and services of value available to as many customers as possible.” Senate Report, *id* at 14.

Even if viewed as a “special classification,” this very broadly-based QR barcode incentive proposal is the kind of classification initiative that Congress sought to encourage, not restrict.

**C. The Public Representative’s Narrow Analysis Misconstrues The Nature And Benefit Of This Proposal, And Its Opposition Does Not Serve Or Protect The Interests Of Any Mailers.**

In the face of declining volumes, the Postal Service cannot afford to wait for a gradual adoption of ideas that will enhance the value of mail as a communications medium. Here, it has taken a bold initiative to lead the way. This proposal is already creating a “buzz” within the mailing community. As a direct result of this initiative, Valassis is getting positive feedback from customers about this concept. We are also aware that other mailers and advertisers are likewise just now beginning to explore a variety of ways to maximize this linkage of mail and electronic media as a means of conveying greater and different kinds of information to consumers than can be presented in print (e.g., videos, multi-page web links, detailed product specifications and FAQ’s, online chat and product ordering, discounts or coupons, etc.), while affording greater flexibility to the mailer (e.g., permitting QR code offers to change over time, extending the shelf-life of printed pieces, offering flexibility around restrictive print deadlines, allowing better tracking of consumer responses in both mail and mobile media, facilitating greater consumer engagement, etc.). Instead of being chastised for purported noncompliance with technical regulatory rules, the Postal Service should be applauded for its forward-looking initiative.

The question becomes, whose interest is served by denial of this proposal, as

advocated by the Public Representative? The Public Representative implies that it is protecting the Postal Service's own interests, claiming that the statute requires denial of any pricing discount that is not a "win-win" for the Postal Service and mailers:

"Since the Postal Service does not demonstrate any financial or operational benefit to itself, *the initiative is not in the best interest of the Postal Service*, and therefore the instant initiative should not be approved." Public Representative Comments at 4 (emphasis added).

The Postal Service, however, in the exercise of its business judgment, has concluded otherwise. It obviously sees a longer-term benefit to itself in enhancing the value and utility of the mail as a communications medium.

The Public Representative's preoccupation with demonstration of a net short-term improvement in the Postal Service's financial position completely misses the point. While such a showing is appropriate (indeed, required by law) in the case of a customer-specific negotiated service agreement, it is neither relevant nor feasible in this case. The very purpose of this proposal is to encourage a broad spectrum of First-Class and Standard mailers to test and utilize two-dimensional barcodes as a means of enhancing the flexibility and value of mail as a communications medium by linking it with cross-channel electronic communications. Whether or not this produces a net financial benefit over the short two-month test period, it will undoubtedly have a positive effect over the longer term.

Nor is the Public Representative's position truly protective of the interests of any mailers. As the Commission is well aware, mailers are not shy about challenging proposals they believe might unfairly tilt the marketplace or put them at a competitive disadvantage against another mailer. Yet here, not a single mailer nor trade association has claimed that this proposal would harm them competitively. Indeed, no mailer party

has claimed any harm, competitive or otherwise, by virtue of being excluded from this two-month incentive program. To the contrary, the only critical comments have come from parties such as nonprofits who ask that they be able to participate. Yet even they are *not* urging that the QR barcode proposal be denied in its entirety unless they are included; instead, they simply urge that their exclusion in this instance not be deemed a precedent in the future.<sup>1</sup>

Finally, the Public Representative's position is not protecting the interests of any other mailers who are not eligible for this incentive. The Postal Service has made clear that the offering of this very short-term incentive will not have an impact on price caps, and specifically, that the incentive will not be employed to raise the price cap for any class of mail. Thus, for example, single-piece First-Class mailers and other Standard mailers will not face the prospect of higher rate caps. The Postal Service will bear the risk of its proposal.

In sum, the Public Representative's position seems to be protective only of the interest of regulation for regulation's sake, requiring adherence to formulaic tests that are inapplicable as a matter of law, irrelevant as a matter of sound public policy, and repressive of managerial initiatives to enhance the relevance, reach, and viability of mail as a modern communications medium in the 21st Century.

More importantly, we are concerned that denial of this proposal by the Commission would send the wrong signals both to the Postal Service and to the mailing

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<sup>1</sup> See Comments of Alliance of Nonprofit Mailers, May 2, 2011, at 3:

“The Commission should make clear, however, that that [sic] its approval of the promotional program proposed in this docket does not set a precedent for the exclusion of the nonprofit categories if the promotional program is extended or made permanent.”

community: that innovative ideas designed to test and expand the value of mail are to be discouraged unless they surmount rigorous regulatory barriers. For these reasons, we urge the Commission to approve the Postal Service's proposal.

Respectfully submitted,

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