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ANNUAL COMPLIANCE REPORT

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Docket No. ACR2011

**REPLY COMMENTS OF L.L.BEAN, INC.**

(February 17, 2012)

L.L.Bean, Inc. hereby submits its reply comments addressing the initial comments of American Catalog Mailers Association (ACMA) and Valpak concerning the Postal Service's Annual Compliance Report.

A. Reply to ACMA

ACMA's initial comments focus on questions concerning the attributable costs of the Standard Flats product. It identifies a significant upward trend in the indexed costs of Standard Flats since FY 2005 that substantially exceeds the nearly flat rate index for this product. It then suggests several possible causes – that the Postal Service is “going backwards technologically” with higher-cost operational systems for flats; that “excess costs” are being assigned; or that “something is awry” in the costing systems. Dismissing the former, ACMA assumes that the problem is more likely the latter two: excess cost assignment and faulty cost systems. ACMA Comments at 24.

L.L.Bean is likewise concerned about the cost trends for Standard Flats. However, the Postal Service has presumably been diligently investigating these costs and the reliability of its costing systems. Yet so far, no one has shown that these costs are incorrect by a magnitude sufficient to overcome the 20-percent shortfall in the Standard Flats cost coverage. Until such time, they are the best estimates of the true operational costs of Standard Flats.

ACMA then argues that the below-cost pricing of Standard Flats does not involve any cross-subsidy by other products. It reaches this conclusion by posing application of an incremental cost test that hypothesizes the elimination of the Standard Flats product. Reasoning that such elimination of Standard Flats “makes no sense at all” because of collateral effects on other products, ACMA concludes that “no finding of cross-subsidy can be supported.” ACMA Comments at 30-32.

L.L.Bean disagrees. The plain fact is that under the Postal Service’s application of the CPI-based rate cap, maintaining below-cost rates for Standard Flats has necessarily resulted in other Standard products as a whole being charged higher rates than would otherwise be warranted. That does indeed constitute an unfair cross subsidy. No one is arguing that the Standard Flats product should be discontinued, but simply that the rates for this below-cost product be transitioned to full cost coverage.

B. Reply to Valpak

In its initial comments, Valpak urges the Commission to again make a formal noncompliance finding with respect to the below-cost prices for Standard Flats. In our own initial comments, we suggested that “[b]ecause the Commission’s prior noncompliance determination in Docket No. ACR2010 is currently under judicial review, it is not necessary for the Commission to here again issue another formal noncompliance determination.” L.L.Bean Initial Comments at 4. This was based on the premise that:

“If upheld by the Court, that earlier determination will become effective and binding on the Postal Service. Nevertheless, the Commission should reaffirm the factual basis for that determination. Since ACR2010, the Standard Flats cost-coverage gap and losses have widened.” *Id.*

On further thought, we agree with Valpak that the Commission should again make a formal finding of noncompliance. Otherwise, someone might be tempted to argue that a failure to find noncompliance in this Docket ACR2011 proceeding would be tantamount to a finding of compliance that supersedes the Commission's ACR2010 ruling. The pendency of judicial review can be accommodated by staying the effectiveness of the Commission's remedial actions until the Court of Appeals has issued its decision on appeal.

Respectfully submitted,

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