Postal Regulatory Commission
Submitted 6/1/2012 4:19:56 PM
Filing ID: 82857
Accepted 6/1/2012

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

VALASSIS NSA	Docket No. MC2012-14
VALASSIS NSA	Docket No. R2012-8

UNITED STATES POSTAL SERVICE REPLY COMMENTS
(June 1, 2012)

On April 30, 2012, the United States Postal Service ("Postal Service") filed its "Notice of the United States Postal Service of Filing of Contract and Supporting Data and Request to Add Valassis Direct Mail, Inc. Negotiated Service Agreement to the Market-Dominant Product List" ("Notice"). In Order No. 1330, the Postal Regulatory Commission ("Commission") scheduled the deadline for comments from interested parties for May 23, 2012. Thirty-two comments were filed.[1] Reply comments are due today.

[1] The following mailers filed comments with the Commission: (1) Newspaper Association of America ("NAA Comments"); (2) Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak Comments"); (3) William C. Miller ("Miller's Comments"); (4) Minnesota Newspaper Association; (5) Kansas Press Association, Inc.; (6) Gannett Company, Inc.; (7) Community Newspaper Holdings, Inc. ("CHNI Comments"); (8) Illinois Press Association; (9) McClatchy Company; (10) The Miami Herald; (11) Austin American-Statesman; (12) South Carolina Press Association; (13) The Washington Post; (14) The Daily Leader; (15) The Seattle Times; (16) Fort Worth Star-Telegram; (17) A.H. Belo Corporation; (18) Landmark Media Enterprises, LLC; (19) The Atlanta Journal-Constitution; (20) Advance Publications, Inc.; (21) The Kansas City Star (5/22); (22) News and Record (5/22); (23) Senator Charles E. Schumer (5/22); (24) Milwaukee Journal Sentinel (5/22); (25) Times Publishing Co. (5/22); (26) Tribune Company (5/22);

Many of the comments, particularly from newspapers, opposed the Notice on the basis that they believed the Valassis Negotiated Service Agreement ("Valassis NSA") would harm their businesses through the loss of volume to the NSA and, as a direct result, would negatively impact the Postal Service's expected revenue if it loses their business. There were also several commenters who argued that the Valassis NSA unreasonably and unduly discriminated among Standard Mail mailers in favor of Valassis. All of these criticisms reflect a similar concern that the Postal Service is improperly using its monopoly to create an opportunity for a private business to segment off a part of a market through its use of reduced postal rates, which are not available to other businesses. The Postal Service acknowledges these concerns, but thinks that they are fueled by a misconception that the Valassis NSA was designed to unfairly compete with newspapers or shared mail mailers, as opposed to creating opportunities for new postal revenues and competitive distribution alternatives that will benefit, rather than harm, the marketplace.

The Postal Service was approached by Valassis to enter into an agreement, estimated to bring in a total of between $33.8 million to $107 million of new revenue over the next three years, for the creation of new shared mail programs. This program would consist of heavier mailpieces containing advertisements not currently mailed or a part of an existing Valassis shared mail program. The new volume would include advertising circulars from national retailers who presently underutilize the mail.

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(27) Cox Media Group Ohio (5/21); (28) Vertis Communication (5/24); (29) National Newspaper Association ("NNA Comments"); (30) Comments of the Public Representative ("PR Comments") (5/24); (31) Senator John Tester (5/31); and (32) McKenzie Banner (5/31).

Advertisers have expressed an interest in this new service to complement, not compete, with their current distribution mediums. The Valassis NSA reflects the realization that the Postal Service must continue to be given the flexibility to offer these types of new products should it wish to remain a competitive and viable entity for the public. While the proposed agreement is the outcome of specific negotiations with Valassis, the Postal Service is always willing to consider any NSA which will generate new volume and revenue to improve its finances on a case by case basis, whether it is an agreement similar to the Valassis NSA or a totally new agreement.

In view of that, the Postal Service will focus its reply on the merits of the Valassis NSA and why, if approved, it will benefit the marketplace by offering more competitive pricing with other private delivery alternatives and, ultimately, improve the finances of the Postal Service. It will also discuss the reasons behind the structure of the NSA as it applies to Valassis' business and the Postal Service's financial interest. In this regard, the Postal Service emphasizes the importance of its obligation and ability to negotiate agreements that will improve its financial condition. Especially in the current, challenging economic conditions, and in light of the evolving trends involving alternative means of delivery that have undermined the Postal Service's revenue base, it is extremely important that the Postal Service be permitted to move forward with agreements like the Valassis NSA, which will generate new incremental Standard Mail Saturation volumes and revenues and provide contributions to covering postal institutional costs.

I. This NSA Will Not Cause Significant Harm to the Marketplace

Consistent with 39 U.S.C. 3622(c)(10)(B), the Valassis NSA will not cause unreasonable harm to the marketplace. With the introduction of any new competitive product, there are bound to be some businesses which could be impacted. The Postal Service believes that competition is not synonymous with unreasonable harm, nor does a single industry represent the marketplace. Thus, the Commission must find that the Valassis NSA will do more than just potentially impact a competitor, but that it will unreasonably harm the marketplace, if approved. The Postal Service does not believe there has been persuasive evidence presented, in this case, which would support such a finding.

A. The NSA is designed to limit the impact on the marketplace.

The increased use of private delivery alternatives poses a challenge to the Postal Service to maintain and grow its volumes. As a result, the Postal Service is taking advantage of recent market trends and making the best use of Postal Service capabilities by establishing rates that are competitively priced for high value delivery service. To date, newspapers have taken many steps to extend their advertising reach, including Total Market Coverage ("TMC") programs, which use both private newspaper contract employees and postal delivery, as well as fully private alternatives, such as Sunday Select (distribution to non-subscribers) delivered via non-postal carriers. The Postal Service is trying to generate new incremental Standard Mail Saturation volumes and revenues that will provide contributions to postal institutional costs and will not harm the marketplace - including newspapers and other direct mail mailers.

Valpak asserts that this NSA is legally insufficient because the Postal Service did not perform any meaningful analysis of the harm that this NSA could inflict on other mailers, particularly small businesses, and on the marketplace.[2] In particular, NAA purports that the NSA would affect downstream markets if newspapers respond by moving midweek TMCs out of the mail, which, Valpak alleges, would result in less mail and postage revenue than there is today, leaving the Postal Service and newspapers worse off.[3] Valpak also questions why the Postal Service makes no attempt to explain why current postal prices constitute no impediment to consumable goods retailers and non-national durable and semi-durable goods retailers, but do represent an impediment to usage of shared saturation mail by national durable and semi-durable goods retailers.

Despite Valpak and the Public Representative's suggestion that this NSA may not result in appropriate prices for specific companies within a submarket, the NSA is designed to narrowly define the product and limit any impact on existing mailers or their mail service providers and, in turn, the marketplace.[4] The NSA also is designed to attract advertisers who are either underutilizing the mail, or moving to alternative delivery options, which is why the scope of advertisers is limited to retailers of durable or semi-durable goods with a physical retail presence in 30 or more states. These requirements disqualify advertisements from all local and regional retailers, as well as from all retailers of non-durable goods, all of whom typically advertise with small businesses.

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[2] Valpak's Comments at 8-11 and NNA at 6-9.

[3] NAA at 3 and PR Comments at 3.

[4] PR Comments at 15.

The PR suggests that the Postal Service should disclose the names of the retailers who will qualify as advertisers and provide historical information regarding their use of the mail.[5] First, beyond the general limiting conditions in the agreement, the Postal Service will not dictate, nor does it know with certainty, the specific retailers that Valassis will include in the new shared mail programs. Furthermore, any attempt to identify specific advertisers or provide any information that might be available about their prior mail usage would disclose confidential commercial information inappropriately. Providing a record of mail volumes from individual companies would also disclose confidential marketing plans that could be used by such advertisers' own competitors. In any event, given the uncertainty surrounding which specific advertisers Valassis might recruit for its programs, it would be highly speculative to attempt to provide such information, even if it were available.

Allegedly because there is no penalty associated with terminating the contract, CHNI and NAA claim that Postal Service is giving Valassis a subsidized marketing tool to use in competing against newspapers risk free. NAA also inaccurately states that the rebate is guaranteed because there is no minimum volume threshold beyond the modest initial 1,000,000 pieces, and that Valassis will be able to use the knowledge of the impending year-end rebate, in effect to finance and subsidize disruptive rates offered to advertisers in the current year.[6] They believe that this will cause havoc in the marketplace because Valassis can just walk away if it is not able to secure enough business to comply with the NSA. At the same time, they allege that people in the

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[5] PR Comments at 16.

[6] NAA Comments at 16.

newspaper industry will be losing their jobs, thereby, preventing newspapers from delivering valuable information to the public.[7]

Notwithstanding the speculative and unreliable nature of these claims, the NSA contains features that could militate against the dire predictions advanced in opposition to the NSA. The Postal Service can terminate the NSA within 30 days to protect its interests, or in response to adverse consequences, such as those described in the comments.[8] The rebate also is only awarded on the volume specified in the agreement and is only guaranteed if the mail meets all the requirements of the agreement. Thus, the assessment of "risk free" is misleading and disregards the risk and investment incurred by Valassis to bring the product to market. Any NSA involves some degree of business risk. But, the risk of doing nothing and losing revenue to alternative delivery options is greater risk. Besides, the terms of the agreement define the product narrowly to protect the Postal Service and the market.

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[7] CHNI Comments at 2 and NAA 10-11 and 16.

[8] The Postal Service is keenly aware of the characterizations of the public policy implications raised by the newspapers and other opponents of this NSA. In this regard, the Postal Service is highly sensitive to the importance of print news media, and the Postal Service's role in disseminating information and in binding the nation together. At the same time, the Postal Service does not conclude that fair and reasonable competition for advertising is inconsistent with the policies embodied in the PAEA. To the contrary, it believes that those policies obligate it to pursue reasonable pricing practices that will support the Postal Service's financial health and enable it to continue to accomplish its own public service mission.

B. The NSA will complement, not eliminate, existing advertising distribution channels

The Postal Service understands that the distribution of news and information is vital to the citizens of the United States, and that advertising revenue makes up the vast majority of funding for newspapers. However, the Postal Service also believes the distribution of mail to all citizens is a vital service and can only continue by raising revenues. Accordingly, the Postal Service must consider all appropriate ways to raise revenue. In the Postal Service's view, the narrow focus of the Valassis NSA will raise its revenue without unreasonably harming the marketplace. This NSA supplements existing distribution channels, and is not intended to replace the Washington Post, or any other newspaper for that matter. Viewing this NSA as a replacement ignores the current practice of advertisers who use multiple newspapers or newspaper-owned methods to distribute advertising circulars. Enabling a more competitive price through this NSA will affect just one additional channel of distribution, which will inject more competition in the marketplace, while countering private delivery carriers' inclination to undercut current postal delivery prices.

Several newspapers have pointed out that advertising revenue makes up the vast majority of the funding required in gathering, printing and distributing the news, and that the majority of this advertising comes from merchants and individuals who are selling durable or semi-durable goods.[9] The Washington Post specifically asserts that the Valassis NSA poses a direct threat to its business and would, at a minimum, enable

[9] See generally comments from Community Newspaper Holdings, Inc., The Miami Herald, Austin American-Statesmen, The Washington Post, NAA, A.H. Belo Corporation, Advance Publication, News and Record, Senator Schumer, Milwaukee Journal Sentinel, and Cox Media.

Valassis to replace it as a distribution channel for preprinted advertisements for durable and semi-durable goods.[10]

This NSA will not affect those businesses who deliver advertising through TMC vehicles or other similar delivery vehicles. The entire universe of newspaper insert or other shared mail program revenue would not be at risk. Only a very small number of retailers would actually be eligible to participate in the new shared programs, as confirmed by the Public Representative, so the effect on the existing market is not expected to be significant. Furthermore, no evidence has been presented that would establish that advertisements would be diverted from existing TMC products or other shared mail programs. Even if there were diversion, there is no reason to conclude that it would be substantial, in light of the narrow range of eligible advertisements created by the NSA. Any limited diversion, moreover, would not mean that the existing “host” piece in these other programs would go away. The “host piece” could vary in weight, but the Postal Service expects that the piece as a whole would continue.

The false assumption that this NSA will have a vast and wide-spread impact on all markets, large and small, ignores the existing competition between newspapers, and presents a worst case scenario. The NSA does not automatically provide the means for Valassis to offer predatory rates, but rather to offer a competitive rate to advertisers that is familiar and consistent with existing prices.

The wide range of rates charged by newspapers, large and small, suggests that the entry of one more competitively priced alternative will not disrupt this market. If competition for this type of advertising were extremely price sensitive and unaffected by

[10] The Washington Post Comments at 4-5.

other factors, such as service quality, location and coverage, one might conclude that larger newspapers, which offer considerable discounts in certain areas, would have already driven smaller newspapers out of business. These worst case scenarios, furthermore, ignore advertisers' practice of using multiple vehicles to reach their desired audience. Speculating that this NSA would cause the complete migration of all newspaper advertising to private delivery is simply unwarranted. Some newspapers have already moved to private delivery, and will continue to do so, with or without this agreement. Continued circulation decline and consumer readership patterns will drive advertiser dollars away from newspapers in far more dramatic fashion than might be possible under this NSA.

William C. Miller correctly asserts that compliance measures will sufficiently prevent a significant level of diversion of existing volume to the new program as long as the NSA is carefully monitored by both parties to ensure the desired result. In this regard, the Postal Service will track the specific advertisers that are included in the new shared mail program under the NSA to ensure that they comply with the requirements of the NSA. It is also willing to put in place any other reasonable data collection measures to ensure that the NSA stays true to the spirit of the contract.

Although not specifically relevant to the analysis of the Valassis NSA, NAA insinuates that Postal Service pricing initiatives have favored saturation mailers by providing rate advantages and incentives to take business from newspapers, and that these incentives have driven some TMC programs out of the mail.[11] This unsupported contention, however, ignores the fact that numerous newspapers, both small local and

[11] NAA Comments at 7.

large market newspapers, have participated and benefited from initiatives like the 2009 to 2010 Saturation Incentive and the 2011 Saturation & High Density incentive programs. Furthermore, newspapers represent declining postage revenue and, according to their own statements in the comments, they continue to move to alternate forms of delivery. Postal Service data indicates that the downward trend for newspaper use of High Density and Saturation flats continued from FY 2010 to FY 2011. However, the total High Density and Saturation flats product experienced positive revenue growth during FY 2011 by 3.2% and 0.8% respectively.[12] Newspapers use both Saturation and High Density mail categories, not just High Density, and the revenue from Saturation flats mailed by the newspaper industry far exceeds the revenue from High Density. During FY 2011, Postal Service data indicates the Saturation and High Density Flats revenue was approximately 66% from Saturation and 34% from High Density.[13] NAA's website (www.naa.org) also includes references to the migration of TMC from the mail to alternate or private delivery companies. The NAA site includes the reference to a NAA-commissioned study by Mather Economics entitled "How Are USPS Rates Affecting the Preprint Advertising Market?," which details the movement or planned movement of TMC programs to alternate delivery. In light of this, it would be reasonable to conclude that the migration of newspaper's business to TMC programs was not caused primarily by the Postal Service, but rather, resulted from business decisions voluntarily made by the newspapers.

[12] USPS internal data – Newspaper Industry Customer List based on Industry Classification codes, FY2010 & FY2011 - Compiled by Business Customer Intelligence, on 3-19-2012.

[13] Id.

C. Any actual harm to competitors in the marketplace is not expected to be significant

NNA mistakes the Postal Service's lack of a specific market analysis as disregard for its obligation to closely examine the marketplace. Yet, attempting to analyze impact on the revenue of an unidentified group of mailers would be highly speculative and likely unreliable. Such an analysis would require in-depth financial knowledge of impacted mailers not yet identified. The Postal Service would not have access to such data. Such an analysis would also be based on the assumption that in the event of limited diversion by a few advertisers, a mailer would terminate the mailing without regard to the other advertisers within the shared mail program. In the Postal Service's view, this result would not be a realistic expectation.

Many of the newspapers insist that the data demonstrating the lack of significant harm to the marketplace that the Postal Service did proffer inappropriately compares its postage revenue to the newspapers advertising revenue. They suggest that the Postal Service should offer more data that examines Valassis advertising revenues versus local newspaper advertising revenue for durable and semi-durable goods.[14] The advertising forecast cited in the Notice from Magna Global explains that the high forecast of gross revenue of $107 million during year three of the agreement is only 0.6 percent of the total forecasted newspaper advertising revenue of $17.2 billion in 2014.[15] This statement was not offered to demonstrate financial impact, but rather to contrast the amount of revenue expected from this agreement with overall newspaper advertising revenue. This comparison is relevant since retailers have many options to

[14] See CHNI Comments at 2 and Fort Worth Star- Telegram's Comments.

[15] Magna Global US Media Forecast, January 2012.

spend their advertising dollars. Valassis only represents a very small portion of a much larger universe of advertising revenues. Moreover, the most pertinent comparison is with revenues expected to be generated by the Valassis NSA, which is not projected to be substantial enough to significantly impact the market. Contrary to NAA's belief, one to four billion new advertising inserts will not suddenly be created, but rather, through a limited and staged growth during the life of the agreement.[16]

II. This NSA Will Improve the Postal Services' Finances

The Commission has previously acknowledged that the Postal Service should have considerable latitude to appropriately formulate its response to the characteristics of a particular proposal when providing a financial analysis.[17] It has noted that the Postal Service is sufficiently sophisticated to know generally what information is relevant, and must be submitted, and what is not relevant and need not be submitted.[18] When developing the rules for NSAs, the Commission also accepted the Postal Service's view that it might not know every aspect of a mailer's costs but may undertake reasonable agreements in light of its understanding and assessment of known mailer-specific costs and other factors where they have a bearing on a request.[19] In this instance, the Postal Service has determined that anecdotal speculation about loss of revenue from the newspapers should be given less weight that its own analysis of costs and revenues based on reasonable proxy data and volume projections. In the Postal Service's view, the Valassis NSA and newspaper TMCs could easily coexist.

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[16] NAA Comments at 6.

[17] Docket No. RM2003-5, Order No. 1391, Order Establishing Rules Applicable To Requests For Baseline and Functionally Equivalent Negotiated Service Agreements, February 11, 2004

[18] Id.

[19] Id. at 34.

A. The potential loss of postage from other mailers is anecdotal and not the basis of actual market analysis

NAA believes the Postal Service should have considered the potential loss of postage from other mailers, particularly the newspapers, which they allege amounts to more than 25 percent, or $500 million, of the revenue in the product represented by the NSA. Incidentally, the Postal Service estimates that this agreement will generate an additional $13 million to $42 million in contribution. Based on Valassis' volume and revenue trends and expectations for current and future economic conditions, the Postal Service projects that during the 3 year term of the agreement, the value of the contract may exceed $107 million gross revenue and provide net revenue contribution exceeding $15 million, after rebate expense and attributable cost. By contrast, NAA speculates that the financial impact of the NSA could rise to nearly $1 billion in lost newspaper insert advertising nationwide if it shifts from local newspapers to Valassis.[20]

The Postal Service is confident that this NSA will improve its finances. Valassis is the single largest Saturation flats mailer and represents 36 percent of all Saturation Flats revenue. NAA's estimation that the newspaper industry represents 25 percent of pertinent revenue combines hundreds or potentially thousands of newspapers as revenue sources as compared to one mailer. The Postal Service is unable to validate the claim of 25 percent of revenue reported by the NAA, but data gathered by the Postal Service by industry classification indicates that newspapers contribute less than NAA's claim of 25 percent.

[20] Gannett Company, Inc. Comments at 1-2, The Washington Post Comments at 3 and NAA Comments at 2 and 15.

Further, the Postal Service has no knowledge of the identities of newspapers that would actually resort to private delivery, cancel a shared mail program without regard to the other advertisers within the program, or lose one of its advertising inserts, if any at all, as a result of this NSA. The Postal Service does not believe that the NSA will cause such movement, and, if it did, it would not cause current TMC mailers to end their programs over the loss of the one or few advertisers that might be expected to divert. For example, in the unlikely event an isolated advertiser were to move its volume from a multi-advertiser shared mail product, the current TMC mailer would likely continue its TMC package, and the piece would migrate to the new Valassis package. In this scenario, the USPS would retain the existing TMC package, as well as, the new Valassis package. Even if the Postal Service could make reasonable assumptions about those assumed few mailers who might leave, reliable analysis would require in depth financial knowledge of these mailers to which the Postal Service does not have access.

In addition, the $107 million is not necessarily a measure of financial impact, but rather an example of the amount of revenue expected from this agreement. As NAA fittingly highlights, the "new" volume under the NSA, like the mail under TMC programs, is expected to weigh above the breakpoint and thus pay rates that include a larger unit contribution.[21] NAA's $1 billion estimate of risked revenue also rests on the assumption that the advertisers will completely abandon Free Standing Insert ("FSI")

[21] NAA Comments at 22. In fact, this logic supports the Postal Service's use of the proxy as described in Attachment F (Analysis Footnote Tab) of the Notice.

advertising. This speculation ignores the common practice for such advertisers to place inserts in multiple newspapers in any geographic market.

B. Discussions related to "anyhow" volume or impact on operations is not required to analyze this NSA

Valpak suggests that the Postal Service fails to consider "anyhow" volume or the impact of this NSA on operations in its assessment of the value of the NSA. Discussions related to anyhow volume or the impact on operations represent a flawed understanding of this NSA. The Valassis NSA will generate entirely new volumes and revenues that would not exist absent the NSA. Therefore, a discussion of anyhow volume is irrelevant. Also, any questions regarding capacity and processing ignore current operations conditions.   Standard Mail volumes have decreased by 18.2% (18.8 billion pieces) since 2007, while capacity for volume has remained virtually unchanged. Saturation & High Density Flats decreased by 15.9% (2.2 billion pieces) since 2008 (2008 is the first year Saturation/High Density reported in RPW). In any event, as noted in the Postal Service's responses to Chairman's Information Request No. 3, Question 3, speculation about the specific effects of the anticipated volume increases is not feasible without particular reference to local operating conditions. Based on reasonable expectations about the volume impact, and assuming application of current policies and practices for saturation mailings, the Postal Service does not anticipate operational problems arising from the Valassis NSA.

III. This NSA Does Not Unreasonably Discriminate Against Other Standard Mail Mailers

Many of the interested parties who commented allege that the Valassis NSA embodies unreasonable discrimination among users of the mail by offering a discount to

Valassis under terms and conditions that would exclude other mailers from comparable agreements.[22] In particular, NAA argues that the post-rebate prices available to Valassis discriminate unreasonably against full-rate Standard Mail mailers of the same durable and semi-durable goods advertising.[23]

The Valassis NSA is aimed at enabling a right-priced saturation shared mail program for national durable and semi-durable goods retail advertisers that are currently underutilizing Saturation Standard Mail flats for their general-distribution advertising. Underutilizing does not mean “no use”, as implied by the Public Representative; it means not using mail to its full utility.[24] The terms of the NSA reflect the mutual conclusion that the conditions in the NSA are designed to account for the market characteristics of a particular advertising segment in a manner that will foster the new mailing programs and generate incremental contribution for the Postal Service.

In spite of the statements by the PR and Washington Post that Valassis is somehow getting a certain amount of ounces for free to mail package inserts, the NSA calls for incentives and provides nothing for “free”.[25] By the terms of the agreement, Valassis pays the full postage at the time of mailing and receives a rebate at the conclusion of each 12 month period in the agreement. The incentive will provide Valassis the ability to offer a competitive rate that is not predatory. Moreover, if the newspapers are contending that the price structure is flat with respect to weight for certain weight ranges, that is not a new phenomenon, and is a feature that newspapers

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[22] PR Comments at 3.

[23] NAA Comments at 25-28.

[24] PR Comments at 11.

[25] PR Comments at 18 and Washington Post Comments at 5.

may avail themselves of today with respect to the flat rate from 0 to 3.3 ounces in Standard Mail.

As discussed in the Notice and responses to Chairman's Information Requests, the Valassis NSA is a specific contract with a particular mailer and was never intended to interpret "similarly situated" for any hypothetical purpose. Mailer eligibility, mail eligibility, mailing and volume commitments, and rebates are main elements of the contract with Valassis.[26] Beyond that, it would be premature to speculate on how each of the elements of this specific agreement with Valassis would be interpreted in assessing whether a comparable agreement would be available to another, similarly situated mailer. Also, any arguments related to discrimination would not be ripe until the Postal Service were approached by a mailer and it were to deny a similarly situated mailer a functionally equivalent NSA.

The Postal Service emphasizes that the terms and conditions in the NSA were drafted to reflect the relationship between the Postal Service and Valassis. These terms do represent operational and economic conditions that favor this particular agreement, but they are not intended to be exclusive parameters that would deprive other mailers of a comparable agreement. In other words, Valassis' unique identity will not disqualify other potential NSA partners, including newspapers, from consideration if favorable terms for other NSAs can be negotiated. The Postal Service is always willing to explore NSA opportunities with other mailers, especially Saturation and High Density mailers, which provide positive cost coverage. As with the Valassis contract, the

[26] Notice at 6.

circumstances and factors that might condition such agreements will be assessed on a case-by-case basis.

IV. This NSA Was Approved by the Governors and is Properly Before the Commission

Valpak contends that the Governors did not authorize the Postal Service to enter into this specific NSA, approve the specific prices that would be charged, or establish the effective date on which revised prices would be changed.[27] Valpak's contention focuses on Governor's Resolution No. 11-4, Attachment A to the Notice, which was decided on March 22, 2011. Contrary to Valpak's assertions however, the Governors did authorize the Postal Service to enter into this NSA and reviewed the specific terms and prices that would be charged prior to filing the Notice. Thus, the Valassis NSA is properly before the Commission.

Valpak correctly cites section 404(b) and Chapter 36 of Title 39, United States Code, which requires the Governors to establish the mail classification and rates corresponding to Domestic Market-Dominant Agreements. The Postal Service shares Valpak's view that this authority cannot be delegated. However, the Governors did not delegate such authority to Postal Service management.

The purpose of Governor's Resolution No. 11-4 was to eliminate the need for a specific resolution with each and every contract. Through the Resolution, the Governors authorized the Postal Service to negotiate service agreements so long as the prices established in those agreements conformed to the requirements of 39 U.S.C. Sections 3622 and 3626, as applicable, and 39 C.F.R. Sections 3010.5 and 3010.40.

[27] Docket Nos, MC2012-14/R2012-8, Valpak Direct Marketing Systems, Inc. And Valpak Dealers' Association, Inc. Initial Comments, May, 23, 2012, at 3.

The Resolution further gives senior management authorization to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to present such product description to the Commission so long as the product meets the requirements of the PAEA.

Further, the Resolution imposes additional obligations on Postal Management in order to insure that the Governors can exercise adequate oversight over negotiated service agreements. In that regard, the Resolution requires Postal management to report on these initiatives on a quarterly basis. Pursuant to the Resolution, the Governors are required to review of the approval process on an annual basis.

More importantly for purposes of this case, the Resolution preserves the obligation for postal management to furnish to the Governors information regarding any significant, new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including matters that are within the scope of Resolution No. 11-4 itself. Section 3.7(d) of the Board's bylaws requires management to inform the Governors *before* implementing significant new programs and initiatives that might impact corporate visibility or the Postal Service operating budget.

Consistent with the requirements of the Resolution, Postal Service management presented the terms and prices contained in the Valassis NSA to the Governors in advance of the filing and the Governors authorized management to move forward with filing the NSA. Given the terms of the Resolution and the manner in which it was applied in this instance, it is beyond dispute that the Governors properly established the mail classification and rates corresponding to the Valassis NSA. Legally, the Governors have broad discretion to establish prices and classifications, and this is a reasonable way for the Governors to interpret and carry out the statute. Furthermore, the Governors have reasonably determined that this approach is consistent with the terms of 39 U.S.C. § 402, and in such matters of internal Postal Service governance the Commission owes the Governors deference in such matters of internal Postal Service governance.

V. Conclusion

As explained above and in the Notice, the Postal Service believes that this agreement will improve the net financial position of the Postal Service and that it is appropriate to add it to the market-dominant products list. The Commission should therefore approve this request as set forth in its rules.

Respectfully submitted,

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June 1, 2012