

COMMENTS

Valpak has raised problems associated with including underwater Standard Mail Flats in previous mobile barcode discount promotions (Docket No. R2011-5¹ and Docket No. R2012-6²). Consistent with its prior opposition, and largely for the same reasons, Valpak opposes extension of the “Holiday Mobile Shopping Promotion” to Standard Mail Flats.

1. The Postal Service Should Comply with the Letter and Spirit of the FY 2010 ACD.

In its FY 2010 Annual Compliance Determination (“ACD”), the Commission made its first-ever finding of noncompliance under the Postal Accountability and Enhancement Act (“PAEA”), concluding that pricing for Standard Flats violated 39 U.S.C. section 101(d). *See* FY 2010 Annual Compliance Determination, p. 106. The U.S. Court of Appeals for the D.C. Circuit upheld the Commission’s finding in the FY 2010 ACD, but remanded for the Commission to iron out some of the details, specifically “for a definition of the circumstances that trigger § 101(d)’s failsafe protection, and for an explanation of why the particular remedy imposed here is appropriate to ameliorate that extremity.” USPS v. PRC, No. 11-1117, at 7 (D.C. Cir. Apr. 17, 2012). The Commission made a further finding of noncompliance in its FY 2011 ACD. *See* FY 2011 ACD, pp. 16, 119.

¹ Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. Comments on the United States Postal Service Notice of Market-Dominant Price Adjustment (May 2, 2011) <http://www.prc.gov/Docs/72/72644/Valpak%20R2011-5%20comments.pdf>.

² Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. Comments on the United States Postal Service Notice of Market-Dominant Price Adjustment (Mar. 12, 2012) <http://www.prc.gov/Docs/81/81074/Valpak%20R2012-6%20comments.pdf>.

The portion of the FY 2010 ACD ordering general remedial pricing action was never stayed. The Commission's May 27, 2011 stay was limited to the portion of FY 2010 ACD's remedial order to file a compliance schedule, and it expired "30 days following resolution of the 2010 ACD petition for review," or May 17, 2012, and the Postal Service has not asked that the stay be extended. Therefore, the Postal Service is now under the Commission's original order to file that schedule as well as the remedial pricing order. Nevertheless, the Postal Service's Notice dismisses the Commission's remedial order as irrelevant due to the Court's remand, asserting: "Consequently, the status of the ACD Order will remain in question until such time as the Commission has issued its explanation." Notice, p. 11. The Postal Service misunderstands the scope of the Court's ruling as well as the scope of the remand. The Court specifically upheld the Commission's ability to find noncompliance of Standard Mail Flats with respect to 39 U.S.C. section 101(d), "finding the Commission's interpretation a reasonable one." USPS v. PRC at 6. Indeed, the Court remanded the case, only for the Commission to explain "why the particular remedy imposed here is appropriate to ameliorate that extremity." *Id.* at 11. Thus, although the Postal Service questions the entire FY 2010 ACD order, the only question that remains is the Commission's explanation for ordering above-cost pricing. With an FY 2011 coverage for Standard Mail Flats of 79.5 percent and revenues of \$2.5 billion, we are far away from pricing which will get this product anywhere near break even, to say nothing of exceeding that level.

2. The Postal Service Insists on Providing Discounts to an Underwater Product.

In the Postal Service's discussion of Standard Mail Flats in its Notice, it specifically mentions Valpak's previous comments, stating that "such criticisms fail appreciate [sic] the

fact that efforts to improve profitability of a product must go beyond simply increasing prices and cutting costs.” Notice, p. 12 and n.22 (citing Valpak’s Docket No. R2012-6 comments: “Nothing about the Postal Service’s discount proposal [2012 Promotion] contributes to cost control or in any way helps solve the cost coverage problem”).

There is no logical nexus between offering discounts to Standard Mail Flats and increasing profitability of that product other than some vague, unsupported notion that the discount “improve[s] the long-term value of Standard Mail Flats.” Notice, p. 12. Instead, the Postal Service’s only argument in this docket is that the discount for Standard Mail Flats will have a *de minimis* effect on the Postal Service’s financial losses. Compared to the entire Postal Service budget, the loss of millions could be said to be *de minimis*, but to justify this program on that basis demonstrates a spirit of financial recklessness. Until Standard Flats cover their attributable costs and start making a positive contribution to overhead, no legitimate purpose is served by discounts that encourage the volume of that product. The Postal Service asks the Commission to approve a discount for an underwater product that has been found by the Commission to be out of compliance, all while the Postal Service is in a financial crisis. The Postal Service has ignored the Commission’s order for remedial pricing using the excuse of the Court’s decision. And the Postal Service has no clear plan for the future for making Standard Mail Flats profitable. The Commission should not sanction the Postal Service’s bad pricing judgment and should just say no to making the problem worse.³

³ Even if mailers prepare catalogs sent as Standard Mail Flats and Carrier Route together, the mobile barcode can be printed on both, but the discount limited to the Carrier Route product.

CONCLUSION

While Valpak supports the Postal Service's Holiday Mobile Shopping Promotion, the reasons for including Standard Mail Flats in the program remain unpersuasive, and deliberately exacerbate the subsidy extracted from other Standard Mail users.

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