

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Market Dominant Product Prices	)	Docket No. MC2014-21
Standard Mail	)	
PHI Acquisitions, Inc.	)	
	)	
Market Dominant Product Prices	)	Docket No. R2014-6
PHI Acquisitions, Inc. (MC2014-21)	)	
Negotiated Service Agreement	)	

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND  
VALPAK DEALERS' ASSOCIATION, INC.  
SUPPLEMENTAL INITIAL COMMENTS ON PHI ACQUISITIONS, INC.  
NEGOTIATED SERVICE AGREEMENT  
(April 10, 2014)**

On March 27, 2014, Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (hereinafter "Valpak") filed Initial Comments on the PHI Acquisitions, Inc. Negotiated Service Agreement ("PHI NSA"), pursuant to Order No. 2009. That same day, the Public Representative ("PR") filed a motion for extension of time to file comments to two days after the Postal Service submits the complete responses to the Chairman's Information Requests. The Postal Service filed a response to the PR's motion on April 3, 2014, representing that it would file all outstanding responses on the next day, April 4, 2014, and opposing any delay of the Commission's decision. On April 4, 2014, based on the Postal Service's representation that it would file all outstanding ChIR responses on that day, the Commission issued Order No. 2039, extending the deadline for Initial Comments to April 8, 2014. However, the Postal Service did not file the responses as promised, delaying its response until April 8, 2014. In its motion for late acceptance, the Postal Service stated that it

“expects that the deadline for initial comments will be moved April 10, 2014, two days from today....” Valpak hereby submit these Supplemental Comments regarding the PHI NSA.

**I. The Postal Service Has Failed to Demonstrate the NSA Will Improve the Net Financial Position of the Postal Service.**

PAEA requires each NSA either to (i) “improve the net financial position of the Postal Service” or (ii) “enhance the performance of mail preparation, processing, transportation, or other function.” 39 U.S.C. § 3622(c)(10)(A). Although its initial filing was ambiguous on which test it was relying, on March 26, 2014, the Postal Service stated it had no information to support reliance on the performance justification. *See* Postal Service Response to ChIR No. 1, question 4.

To demonstrate improved net financial position, the Postal Service Notice projected an aggregate net increase in contribution **over the five-year contract of \$10.748 million**. The Commission already rejected that projection, as the “methodology in the Postal Service’s workpapers ... does not conform to the Commission approved methodology affirmed in Order No. 738.” ChIR No. 2, question 1.

ChIR No. 2 asked the Postal Service to calculate the projected change in the net financial position of the Postal Service using Commission approved methodology. The Postal Service’s response — filed on April 8, 2014, fully 34 days after the Postal Service’s Notice — purports to be based on Commission-approved methodology, and projects an increase in the net value to the Postal Service of the NSA **during the first year of \$735,682**. Estimates for the effect of the NSA on volume or contribution in years 2-5 are pointedly omitted, which makes informed comment impossible. By ignoring years 2-5 of the NSA, the Postal Service

failed to provide a complete response to the Commission's question. Therefore, on the current record, the Postal Service has not provided to the Commission the necessary statutory predicate for approval — a showing that over the life of the NSA it would improve Postal Service net finances.

Lastly the Commission cannot approve the NSA without knowing about any possible loss of contribution from mailers not party to the NSA, a consideration which was ignored by the Postal Service. *See* Valpak Initial Comments. Therefore, the Postal Service submission is inadequate for the Commission to even consider this NSA, and it should be dismissed.

**II. The Commission Has No Authority to Disregard 39 U.S.C. § 3622(c)(10)(A) As It Did in Approving the Discover NSA.**

In the Discover NSA, Docket Nos. MC2011-19/R2011-3, the Postal Service's Notice estimated a total net increase in contribution of \$2.4 million to \$14.9 million over the three-year term. The Commission determined that the Postal Service's projections were faulty, and using its own approved methodology, determined that the Discover NSA was "unlikely to increase the net contribution to the Postal Service." Order No. 694, p. 14. There was no contention the NSA would enhance performance. Nevertheless, the Commission approved the NSA, ignoring the statutory requirement that an NSA either make a net contribution or improve the operations of the Postal Service. The Commission found the NSA met a new standard not found in the statute: "the Commission finds that allowing this negotiated service agreement to proceed will allow management to enhance its knowledge of potential tools to slow the overall declining trend for First-Class Mail volume." *Id.*, p. 15. As the NSA progressed, not only did the Commission not require that the statutory prerequisite be met, it

has not required the Postal Service to report whether it has, in fact, acquired enhanced knowledge. **The first two years** of the Discover NSA has resulted in net **losses over \$11 million**, using Commission methodology. The Commission's FY 2013 ACD found that "the NSA is inconsistent with section 3622(c)(10)" (p. 68), yet since the NSA was about to end, the ACD contained no remedial action, only an order to provide a detailed analysis with the FY 2014 ACR. The reason the Postal Service was allowed to lose substantial money on the Discover NSA was the Commission's disregard of the statutory requirements. It must not take this path again.

Respectfully submitted,

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