

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

NOTICE OF MARKET-DOMINANT
PRICE ADJUSTMENT

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Docket No. R2013-10R

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
REPLY COMMENTS IN RESPONSE TO ORDER NO. 2586
(August 31, 2015)**

Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc.
(hereinafter "Valpak") hereby submit these Reply Comments pursuant to Commission Order
No. 2586. Valpak's principle interest continues to be in ensuring that Postal Service rule
changes do not operate to circumvent the statutory cap.

I. U.S. Postal Service Initial Comments

The Postal Service rejects the Commission's four-factor framework outright, claiming
that the Commission proposal "compounds, rather than cures, the problems," and that the
proposed "framework is vague, unworkable, and non-compliant with the statute or the
Commission's own" precedents. *Id.* at 1.

The Postal Service presents examples of what it perceives as inherent uncertainty in the
application of the Commission proposal to future decisions by not having a bright-line test.
The Postal Service claims that when it submits a notice of a market dominant price increase, it
runs the risk of a remand if it excludes a proposed rule change in the price cap calculation, and
runs the risk of losing immediate implementation of pricing authority if it does include a rule
change that turns out not to be a price change. *See id.* at 10-11.

The Postal Service’s “reasonable alternative” to enforcing the price cap is “to limit it to changes in posted rates.” *Id.* at 21. The Postal Service also presents an alternative proposal, which would include changes in “the size, weight, and minimum-volume eligibility thresholds.” *Id.*

Much like its approach in Docket No. R2013-11R, the Postal Service is attempting to relitigate issues that were decided and upheld on appeal. Order No. 1890 already determined that the Commission has the authority to declare some rule changes to constitute price changes. On appeal of that order, the Court of Appeals found that although the PAEA is somewhat vague with regard to application of the price cap, the court upheld the Commission’s exercise of authority over mandatory Full-Service IMb:

[T]he Commission points out that the purpose of the price cap statute is to prevent the Postal Service from using its market-dominant power to charge customers unreasonably high prices. **The Commission’s interpretation of the statute prevents the Postal Service from evading the price cap** by shifting mailpieces to higher rates through manipulation of its mail preparation requirements. The Commission’s interpretation is therefore consistent with the price cap’s language and purpose, and the Commission’s delegated authority to administer the cap.... **The Postal Service’s arguments to the contrary are unavailing.** [*U.S. Postal Service v. Postal Regulatory Commission*, 785 F.3d 740, 751 (D.C. Cir. 2015) (emphasis added).]

Neither of the Postal Service’s two proposals are consistent with Order No. 1890 and the Court of Appeals’ decision, and thus should be rejected.

II. Initial Comments of PostCom, *et al.*

PostCom, *et al.* describe the Commission’s statutory task in simple terms: “whether the [mail preparation requirement] change will impose significant enough costs on mailers....” *Id.* at 4. Thus, they conclude that “the test proposed by the Commission is unnecessarily

complex and unlikely to enable [anyone] to distinguish between mail preparation changes which do and do not have significant rate effects.” *Id.* at 8. PostCom, *et al.*’s proposed solution is to treat all rule changes as rate changes, and then examine all to determine whether they are significant enough to trigger a price cap calculation.

This proposal is consistent with the Postal Service’s request for a bright-line test — albeit completely opposite of what the Postal Service had in mind. As between the Postal Service’s and PostCom, *et al.*’s bright-line proposals, only the latter proposal furthers the Commission’s goal to protect circumvention of the price cap through rule changes.

III. Public Representative Initial Comments

The Public Representative (“PR”) proposes a variation of PostCom, *et al.*’s proposal, but with a twist: *ex post facto* review of *de facto* price changes. The PR rejects the Commission’s proposal, stating: “A more simplified version of this test is to treat all changes as having a potential impact, and measure the revenue impact for changes during the ACD as evidence is available.” *Id.* at 3.

Instead of requiring the Postal Service to file a pricing notice with the Commission every time it changes its mail preparation rules, the PR proposes that the Postal Service provide notice of such changes that occurred in between regular price adjustment dockets in the ACR, such changes to be reviewed as part of the ACD process. Although this might solve the Postal Service’s concern of having to “file a rate case every time it issues a DMM change throughout the year” (Postal Service Initial Comments at 12), it ignores the fact that the Commission does not have the statutory authority to approve price changes without knowing whether they are in violation of the price cap.

IV. Conclusion

The Postal Service's primary argument is that the Commission's proposed framework does not enable the Postal Service to predict what mail preparation rule changes will be considered a change in rates. If the Postal Service continues to insist on a "bright-line rule" (Initial Comments at 29), then the only way the Commission could agree would be to require the Postal Service to submit price cap calculations with all mail preparation requirement changes as proposed by PostCom, *et al.* and the PR.¹ *See also* Valpak Initial Comments at 2. In the absence of a better approach, at least this approach would protect the price cap — deemed by the Commission to be the "cornerstone" of PAEA.²

Respectfully submitted,

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¹ The Commission would need to revisit its statement: "The Commission has not and will not indiscriminately treat all new mail preparation requirements as rate adjustments." Order No. 1980 at 25. The Court of Appeals' decision neither endorses nor mandates a conclusion consistent with this statement from Order No. 1980. *See* USPS v. PRC, 785 F.3d at 753-54.

² Docket No. R2010-4R, Order No. 864 (Sept. 20, 2011) at 3.