

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001**

***Comments of the National Newspaper Association on
Proposed Negotiated Service Agreement Rules***

Pursuant to the Postal Rate Commission's notice of August 27, 2003, (68 Fed Reg 171, pgs 52546-52555), the National Newspaper Association hereby submits comments on proposed Negotiated Service Agreement rules under 39 CFR part 3001.

Background and Summary

The National Newspaper Association represents approximately 2,500 local, community newspapers that rely heavily upon the Postal Service's distribution services and, in many cases, compete with national mailers in markets where Negotiated Service Agreements are likely to be proposed. NNA has appeared in virtually every omnibus rate case since reorganization, and in many classification cases.

Most NNA members are the largest customers in their respective post offices, using within county and outside county periodicals rates to reach subscribers and Enhanced Carrier Route Standard mail rates to reach nonsubscribers or to distribute full saturation shopper publications. They are susceptible to the effects suggested by witness John Panzar in Docket MC2002-2: an NSA for a large national mailer could drive smaller volume mailers from the mailstream, or from the marketplace altogether.

NNA has consistently expressed serious reservations about the Postal Service's interest in NSA's. Where NSA's are created to provide additional opportunities for worksharing, a niche classification will achieve the same ends without the discriminatory effects of an NSA. Where NSA's are created to provide purported incentives for volume growth, many dangers are ahead:

- the Postal Service cannot be reliably protected from the damage to small-volume mailers that Panzar foresees,
- no scheme of functionally-equivalent NSA's will perfectly enable smaller mailers to participate; and
- as the Postal Service cannot be clairvoyant about its NSA partner's future, it may provide discounts for volume that would have developed without the discounts.

Here NNA reiterates its concerns. However, if NSA's are to be permitted, strong protections for competing mailers--particularly those competing on a smaller or a regional/local basis--are essential. It urges the Commission to be cognizant in its definitions of "functionally-equivalent" that small competitors of the national companies must be provided the means to participate in whatever arrangements USPS and its NSA proponents may make, but on a smaller scale.

Specifically NNA urges the following:

- 1. Institute a strong preference for niche classification proceedings over NSAs.**
- 2. Require each NSA filing to contain a breakdown of costing by cost segment (or, in the alternative, savings by cost segment).**
- 3. Require the Postal Service to specify how a local mailer equipped to take advantage of one or more segments of an NSA may apply--either by contract or through a niche classification--for a functionally-equivalent arrangement.**
- 4. Require an NSA mailer to make USPS fully aware of NSA proponent's plans and its effects upon future volumes and costs, and to disclose those plans in the filing, using confidentiality agreements, if required, sparingly.**

The Commission's decisions in this rulemaking could be the most important ones it will make in this decade. Caution is essential, because embarking upon mailer-specific contracts has taken the Postal Service down the first road for unraveling universal service. At its end, the largest customers will be able to unburden themselves of the responsibilities for supporting a nationwide mailing system, and leave the obligation upon those without the wherewithal to enter into contracts.

With the granting of the NSA in Docket MC 2002-2, the system has already gone down this road. How the Commission governs the journey from here will dictate whether mailers will be able cherry-pick the system--and, if so, whether the cherry-pickers will be only those with the tallest ladders. NNA would rather have avoided this road altogether, but recognizing the reality ahead, it now recommends a series of provisions in part 3001 to assist the Commission in establishing fairness for smaller mailers, particularly for competitors of NSA partners. NNA encourages the Commission to revisit these rules periodically as NSA's develop, to see whether further protections are necessary while the Postal Service, the Commission and the mailers wait to see how an NSA-driven Postal Service can provide universal service.

1. Institute a strong preference for niche classifications over NSAs.

The Commission recognizes that, "negotiated service agreements by their nature have features that are discriminatory and have potential to cause harm to the marketplace," (68 Fed Reg 171, pg 52547) The Commission should make clear in its rules that NSA's will not be entertained unless the Postal Service can clearly demonstrate that reasonably equivalent effects upon costs or revenues cannot be achieved through less discriminatory means. Where a significant element of an NSA involves work-sharing discounts, a heavy presumption in favor of a classification change--such as a niche classification--should reside in the rules. The Postal Service should be required to prove that a niche classification case would not be an equally reasonable approach.

The highlighted language should be added to Section **§ 3001.190** (b)

In administering this subpart, it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend Negotiated Service Agreements of more than three years duration ***OR IF A GENERAL OR NICHE CLASSIFICATION CHANGE WILL ACHIEVE SUBSTANTIALLY SIMILAR EFFECTS UPON THE POSTAL SERVICE'S REVENUES OR COSTS ...***"

NNA is concerned that three years is too long for small competitors in a marketplace to survive, unless strong protections are in the Commission's process and functionally-equivalent arrangements can be made for local mailers. The presumption for niche classifications is one of several protections that the Commission must adopt. Also, wherever the Commission is prepared to entertain a "functionally-equivalent" NSA, it should also be prepared to entertain a niche classification that is companion to a baseline NSA, since the latter may prove to be equally effective and less burdensome to the Postal Service.

In all events, the burden should be upon USPS to explain why its arrangements are being offered only to one mailer and not to a larger class of mailers. Where the Postal Service may have information from an NSA proponent, but be unsure of the application of a potential work-sharing opportunity to other mailers, the Commission's experimental docket is an ideal venue for testing impacts and gathering data. Because of the discriminatory impact of NSA's, the Commission should insist that such avenues are at least explored.

In instances where the Commission suspects a niche classification is possible, but USPS has not applied for one, the Commission can use its statutory powers to institute a classification case. Each docket should contain a procedural opportunity for potential users of such a classification to petition the commission to use its own classification authority.

2. Require each NSA filing to contain a breakdown of costing by cost segment (or, in the alternative, savings by cost segment).

The Postal Service's data systems are now well-developed to track and analyze costs within the various costing segments. Indeed, much of the 10 months required for omnibus rate cases is consumed by participants' thorough examination of the cost segments and the statistical systems that construct them.

NNA believes that by requiring cost-segment-specific detail in NSA petitions, the Commission may be able to build in some protections for smaller, more local mailers.

For example, each NSA mailer will present mail that creates/saves costs in one or more of the four general areas of postal operation: collection, transportation, processing or delivery. An NSA mailer might propose a work-sharing arrangement involving drop-shipping that bypasses certain transportation costs, or an arrangement involving addressing schemes that better utilize automation (or mechanization) equipment. The contracts may also involve a volume incentive that accompanies the work-sharing agreement--such as the declining block discount accompanying a better address hygiene practice involved in the Capital One contract reviewed in Docket MC2002-2.

If the proponents are required to explain their contracts in this manner, both small competitors and the Commission will be better able to identify potentials for

functionally-equivalent arrangements. For example, a local bank wishing to compete with the flood of credit card solicitations now flowing from the Capital One agreement might be able to petition to perform the same address hygiene, and to grow its volume by 10 percent a year to take advantage of a block discount. Sufficient transparency in the NSA proponents' filing should be available to enable that local bank to petition for an equivalent deal.

Similarly, a large national advertising company might request an NSA for drop shipping that bypasses certain transportation costs, along with a volume incentive to increase its volume by 10 percent a year. A small advertising mailer might be equally able to drop ship--and to grow its own volume by the same proportion.

Added to section § 3001.193, therefore, should be a requirement for all costs created or saved by a work-sharing type NSA to be presented by the cost-segment scheme employed in the most recent omnibus rate case.

3. Specify how a local mailer equipped to take advantage of one or more segments of an NSA may apply--either by contract or through a niche classification--for a functionally-equivalent arrangement.

To proposed section 3001.193(e)(6), the Commission add a requirement for the Postal Service to provide a plan demonstrating how it will make equivalent work-sharing discounts, volume incentives or other rate or service enhancements in a proposed NSA available to mailers not party to the agreement. Specifically, where a competitor of an NSA partner is able to take advantage of some components of an NSA, along with proportionate volume growth if a volume incentive is in an NSA, the competitor must be permitted to do so. This rule must emphatically hold true if the competitor seeks to compete only on a regional or local basis.

The Postal Service may be expected to recoil at the notion of receiving hundreds of small mailers' petitions to participate in functionally-equivalent NSAs. The potential complexity of such equivalencies simply underlines the very problem with NSA's: they discriminate in favor of large mailers. The potential for a flood of such petitions will be controlled if the Commission maintains a preference for niche classifications over NSA's in work-sharing agreements. But if work-sharing and volume incentives are going to be combined, as in MC2002-2, the Postal Service and/or the Commission will have to create a simplified process of certification for functionally-equivalent, but smaller, mailers to utilize. If no such process is simultaneously created, the Panzar effect will be virtually guaranteed, and the unraveling of universal service will proceed apace.

4. Require an NSA mailer to make USPS fully aware of NSA proponent's plans and its effects upon future volumes and costs, and to disclose those plans in the filing, using confidentiality agreements, if required, sparingly.

NNA agrees that effects of an NSA upon the Postal Service over the multiple years of an agreement must be shown. Moreover, the Postal Service and the other NSA proponents must certify in a volume-incentive contract that the Postal Service was fully informed of the mailer's known and potential volume needs during the period of the contract.

If an NSA partner, for example, is aware of a pending merger with another mailer, an acquisition, a major project or a new business plan that will enable it to achieve the volume goals in a contract, it must disclose such plans or potentialities to the Postal Service, and those disclosures must be made part of the request to the Commission. Such disclosures to the Postal Service must be under oath, and the filing must be subject to all sanctions for full and truthful disclosure.

The Commission has established sufficient procedures for confidentiality to protect competitive information on behalf of the NSA mailer, if necessary. However, these agreements should be used sparingly, as public oversight of these proceedings will be essential to public understanding of NSAs, their impact, and the degree to which forecasts of the beneficial impact upon the Postal Service come true.

Conclusion

NNA does not warrant that it has considered or can fully predict all of the impacts upon small mailers that NSA's might bring to the marketplace. It does have numerous concerns that neither the concept of a "similarly-situated" or a "functionally equivalent" mailer will fully protect its members from loss of mail volume because of an NSA competitor. It suggests here some improvements upon the proposed rules that it believes might help. It urges the Commission to consider them, and to revisit the rules following each NSA for the foreseeable future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tonda F. Rush', written in a cursive style.

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