

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

Rules Applicable to Baseline
And Functionally Equivalent
Negotiated Service Agreements

Docket No. RM2003-5

SUPPLEMENTAL COMMENTS OF THE UNITED STATES POSTAL SERVICE
(October 17, 2003)

For the reasons explained in its Motion for Leave to File Supplemental Comments, filed separately today, the Postal Service hereby provides supplemental comments in response to Order No. 1383, proposing new rules to govern Commission proceedings relating to Negotiated Service Agreements (NSAs). These supplemental comments address one narrow provision of the proposed rules.

The provision in question consists of the words “and currently in effect,” which appear in the first sentence of proposed Rule 196(a), regarding what is currently styled as “functionally equivalent” agreements. As proposed, the sentence reads:

This section governs Postal Service requests for a recommended decision in regard to a Negotiated Service Agreement that is proffered as functionally equivalent to a Negotiated Service agreement previously recommended by the Commission and currently in effect. ...

The first sentence of Rule 195(a) includes virtually parallel language – “currently in effect” – also for purposes of defining baseline NSAs. While the language appears in two places, the issue presented in both instances is the same, and whatever conclusion the Commission reaches on the issue should apply to both portions of the rules where

the language appears. The issue presented is whether, for purposes of expediting the litigation of follow-on NSAs predicated on approval of a previously-litigated NSA, it is necessary to explicitly require that a baseline NSA currently be in effect, or whether a rule without that restriction would be preferable.

The Postal Service favors a definition for a baseline NSA without that restriction. As the rule is proposed, it appears that, even if a previous NSA were only recently expired, the Postal Service and any new NSA partner could not treat it as a baseline NSA for purposes of developing a request for a new agreement. The benefits intended to be afforded by Rule 196 would thus be unavailable in such instances, and the result could be unnecessary relitigation of issues addressed and resolved in the previous proceeding. Such a result would be undesirable.¹

To avoid such a result, several incentives would be created, each with potentially detrimental consequences. For example, limiting eligibility for baseline status in this fashion might encourage the Postal Service to maximize the duration of any agreement it hoped might subsequently function as a baseline NSA, even in situations in which a shorter duration might actually be more appropriate. Furthermore, as the expiration date of what had been intended to be the baseline NSA for a new agreement approached, negotiations on the subsequent deal might be pushed to a premature conclusion. Alternatively, allowing the earlier NSA to expire under these circumstances

¹ Of course, the Postal Service expects that, in more instances than not, the proposed baseline NSA would still be in effect. Circumstances in which that might not be the case, however, need to be considered.

and seeking to circumvent the effects of this through some sort of waiver would inject yet more uncertainty into the NSA development process.

Given the proposed structure of Rule 196, the Postal Service submits that the “currently in effect” restriction can appropriately be dropped. Rule 196 already encompasses recognition that baseline NSAs and derivative NSAs will be similar in some respects, required to be identified in response to proposed paragraph (a)(1), and different in other respects, required to be identified in response to proposed paragraph (a)(2).² In situations in which parties intend to contest the proposal, such parties are already afforded, under paragraph (c), an opportunity to challenge whether proceeding under Rule 196 is appropriate. Thus, if those parties are of the opinion that any factors relating to the expiration of the baseline NSA present grounds to disfavor consideration of the request under Rule 196, the proposed rules already would afford them a suitable opportunity to make those arguments. In this fashion, expiration of the proposed baseline would be but one factor to be considered by the Commission in deciding whether to proceed under Rule 196, as opposed to what appears under the rule as proposed to be an absolute bar.

Wherefore, the Postal Service respectfully suggests that the language

² As shown on pages 5 of the Attachment to its initial comments, the Postal Service suggested that those two paragraphs be combined, but that suggestion would have no material effect on this discussion.

indicating that a previously-recommended NSA may function as a baseline NSA only if still currently in effect be removed from proposed Rules 195(a) and 196(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice.

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