

Postal Rate Commission  
Submitted 9/15/2004 3:57 pm  
Filing ID: 41733  
Accepted 9/15/2004

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

Rate and Service Changes To Implement  
Functionally Equivalent Negotiated Service  
Agreement With Discover Financial Services, Inc.

Docket No. MC2004-4

REPLY BRIEF OF  
THE MAGAZINE PUBLISHERS OF AMERICA, INC.

September 15, 2004

## TABLE OF CONTENTS

INTRODUCTION .....	1
ARGUMENT.....	2
1. There is No Need to Change the Terms of the Agreement Negotiated by the Parties.....	2
2. To Reduce Transaction Costs, NSA Litigation Should Be Limited to Essential Issues.....	3
CONCLUSION.....	4

## INTRODUCTION

The Magazine Publishers of America, Inc. (MPA) is a strong proponent of Negotiated Service Agreements (NSAs). MPA's comments, filed with others, in Docket No. RM2003-5 "strongly support the use of Negotiated Service Agreements."<sup>1</sup> MPA also supported, again with others, the approval of the NSA proposed in Docket No. MC2002-2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One.<sup>2</sup> In this docket MPA requests that the Postal Rate Commission (PRC) recommend, as requested, the NSA between the Postal Service and Discover Financial Services, Inc. (Discover).

The Discover NSA, as one of the first two functionally equivalent NSA requests, will set an important precedent. For NSAs to achieve their considerable promise they must be litigated quickly and efficiently. This is particularly true for functionally equivalent ones. MPA commends the Postal Rate Commission for its management of this proceeding. Just 3 months have passed since the Postal Service filed its Request and the docket is moving quickly to final decision. MPA also believes that the parties, regardless of their position on the merits, have acted to advance this docket as quickly as possible, consistent with the requirements of due process. This reduces the transaction costs associated with NSA requests. Minimizing these costs is essential to encourage future NSAs which MPA believes, under the rules promulgated by the Commission, will benefit not just the parties to the NSAs but the mailing community generally. MPA encourages the Commission to recommend this NSA.

Two issues raised in initial briefs require reply: (1) the modification to the requested NSA proposed by the Office of Consumer Advocate (OCA), and (2) the deviation from the true issues at hand led by Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak).

---

<sup>1</sup> Comments of The Direct Marketing Association, Inc., Magazine Publishers of America, Inc., Mail Order Association of America, National Postal Policy Council, and Parcel Shippers Association, September 29, 2003, at 1.

<sup>2</sup> See Brief of the Alliance of Nonprofit Mailers, The Direct Marketing Association, Inc., Magazine Publishers of America, Inc. and Parcel Shippers Association, April 3, 2003.

## ARGUMENT

### **1. There is No Need to Change the Terms of the Agreement Negotiated by the Parties**

In its initial brief, the OCA argues that the contribution of pieces in the highest discount bracket is too low. For the most highly discounted pieces under the NSA proposed rates (4.5 cents discount per piece) the unit contribution declines from 2.2 cents per piece in the first year, to 2.0 cents in the second year, and to 1.8 cents in the third year. OCA Brief at 9-10. The OCA worries that pieces in higher discounted brackets could actually lose money. “Mis-estimation of the costs of providing forwarding and return of switched volumes (from Standard Mail to First Class) could actually erode the unit contribution altogether turning the deal into a money losing venture for the Postal Service.” OCA Brief at 10.

To address its concern, OCA proposes a “stop-loss mechanism” which would require discounts under the NSA to be reduced if necessary to maintain the “profit margin (unit contribution to institutional costs)” on Discover’s First-Class marketing pieces at no less than 2 cents. It argues “...the Commission should recommend the submitted NSA to the Governors of the Postal Service—with an amendment...” OCA Brief at 1. “[T]he provisions of the Domestic Mail Classification Schedule (DMCS) should be modified so that a meaningful unit contribution is ensured at the margin.” *Id.* at 1-2.

In effect, OCA wants the deal renegotiated to guaranty a minimum “profit” to the Postal Service. The Commission has indicated it is not interested in rearranging the individual elements of a deal if it is satisfied that the NSA in its entirety is at least contribution neutral (thereby ensuring that other mailers are not worse off).

Therefore, the Commission is not so concerned with determining the most appropriate divisions of costs, revenues or contributions. The two participants in the NSA have already done that to their satisfaction. Furthermore, it can be assumed that both Capital One and the Postal Service consider the agreement beneficial to themselves as institutions. Instead, the Commission’s focus in this case is on assuring that the NSA will not make mailers other than Capital One worse off. PRC Op. MC2002-2, para. 8006.

As the Commission noted in its Order Establishing Rules Applicable to Requests for Baseline and Functionally Equivalent Negotiated Service Agreements (Docket No. RM2003-5), as long as it decides that an NSA in its entirety is at least contribution neutral (thereby ensuring that other mailers are not worse off), it should not rearrange individual elements of the deal:

The Commission anticipates that negotiating a multi-element Negotiated Service Agreement will involve some give and take for the parties to reach agreement. Requiring each element to benefit the Postal Service could hinder this give and take process, and eliminate many possible arrangements from consideration. The Commission will review each element of an agreement, and integrate each element into a review of the agreement as a whole. The overall agreement must benefit the Postal Service. An individual element that does not benefit the Postal Service or that represents a high risk may receive added attention, and potentially could prevent a positive Commission recommendation. However, the OCA's policy proposal to require at the outset every element to benefit the Postal Service, without looking at the element's relationship to the overall agreement, is too restrictive. It will not be incorporated into the final rule. PRC Order No. 1391, February 11, 2004, at 11.

MPA believes the record in this docket establishes that the overall NSA agreement will be at least contribution neutral, thereby benefiting the Postal Service. Therefore it is not necessary or appropriate to recommend modification of the terms (individual elements) of the agreement negotiated by the parties.

## **2. To Reduce Transaction Costs, NSA Litigation Should Be Limited to Essential Issues**

On brief, Valpak discusses what it asserts is anomalous pricing for Postal Service First-Class return services. Valpak Brief at 28-39. Valpak has been interested in and has probed return service pricing throughout this proceeding. The Commission allowed Valpak to brief this issue:

Valpak also has identified two issues that go beyond the parameters of the Postal Service's request. Valpak is interested in the relationship between the Discover Negotiated Service Agreement and addressing a system-wide fix to the UAA pricing problem. It does not propose to present evidence on this issue in this docket, other than what has already been

obtained through discovery. Valpak would like the opportunity to discuss this issue on brief.

\* \* \*

Such discussion will help the Commission deal with future requests for functionally equivalent Negotiated Service Agreements. However, such discussions shall not form the basis of the Commission's recommended decision on this Negotiated Service Agreement. P.O. Ruling MC2004-4/2, August 11, 2004, at 4-6.

While MPA appreciates the efforts of Valpak to inform future requests involving First-Class return services, generally (such as in the next omnibus rate case), it is concerned about burdening NSA proceedings with discussion of issues that "shall not form the basis of the Commission's recommended decision on this Negotiated Service Agreement." Valpak's contributions may inform the Commission, but issues raised are often issues that require response or a party is at risk of having its failure to respond prejudice it in later proceedings. But, in NSA proceedings (particularly functionally equivalent ones where issues are supposed to be limited) response requires resource commitment that cannot be justified if it does not address the issue at hand—informing the Commission on matters related to the basis for the recommended NSA decision. NSAs will provide their maximum benefit to all mailers and the Postal Service only if transaction costs are kept to a minimum. MPA believes, therefore, that litigation should address only the NSA at hand and not be broadened to address wider issues.

### **CONCLUSION**

Negotiated Service Agreements have the potential to benefit the parties to the agreements as well as the mailing community as a whole, particularly if they meet the requirements of the Commission rules governing such agreements and can be achieved without excessive transaction costs. In this docket, MPA supports the NSA as requested without the modifications suggested by the OCA. Those modifications are not appropriate and are unnecessary. MPA also suggests that future NSA dockets, particularly functionally equivalent ones, be strictly limited to those issues required for determining whether the NSA in question should be recommended.

Respectfully submitted,

James Pierce Myers

Counsel for  
MAGAZINE PUBLISHERS OF AMERICA, INC.

James Pierce Myers  
Attorney At Law  
1211 Connecticut Ave., NW  
Suite 610  
Washington, DC 20036-2701

September 15, 2004  
Washington, DC