

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Rate and Service Changes to
Implement Baseline Negotiated
Service Agreement with Bookspan

Docket No. MC2005-3

PRESIDING OFFICER'S RULING ON MOTION TO LIMIT ISSUES
AND GRANTING MOTION FOR LATE ACCEPTANCE OF FILING

(Issued November 7, 2005)

On October 12, 2005, as part of its second settlement conference report, the Postal Service filed a motion seeking to limit the cross-examination of the co-proponents' witnesses to the topics listed in its Motion to Limit Issues.¹ It identifies the following topics:

- The definition of functional equivalency for this proposed baseline agreement;
- The financial impact of the multiplier effect on the Postal Service;
- The reliability and implied elasticity of Bookspan's volume forecasts;
- The extent that inserts for Bookspan's strategic business alliances may be included in solicitation mailings eligible for discounts under the proposed Negotiated Service Agreement (NSA); and
- Whether the rate structure issues raised in the omnibus rate case affect the analysis in this case.

Three participants filed objections and comments to the Motion to Limit Issues: Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (collectively, Valpak) and the Newspaper Association of America (NAA).

¹ Report on Second Settlement Conference and Motion to Limit Issues, October 12, 2005 (Motion to Limit Issues).

Valpak opposes the motion and identifies four factual issues that it seeks to explore during cross-examination: (1) the financial effects of the Bookspan NSA on the Postal Service; (2) the mailer elasticity of demand in the Bookspan NSA and the Commission's consideration of that elasticity of demand; (3) the role and operation of the termination clauses included in the Bookspan NSA; and (4) the impact on the Postal Service of mailer conversion from flats to letters under the Bookspan NSA.²

NAA comments that while it expects to limit its oral cross-examination questions to those issues identified by the Postal Service in its Motion to Limit Issues, in particular, the definition of functional equivalency, it opposes the Postal Service's motion to the extent it is seeking to limit written cross-examination to those issues.³ NAA believes that many of the interrogatory responses obtained in this case that are outside the scope of the issues identified by the Postal Service nonetheless "are admissible evidence, important to the development of a full record, and relevant to whether the proposed NSA is consistent with the Postal Reorganization Act."⁴ As such, NAA argues, these interrogatory responses are admissible as written cross-examination pursuant to Commission Rule 30(e)(2), even if those issues are not chosen to be the subject of oral cross-examination. It asserts that the interrogatory responses it designated are relevant to a complete and proper understanding of the factual statements that have been made in this case, although such responses may not be genuine issues of material fact in the sense that they require resolution by a trier of fact.⁵ Accordingly, NAA states that it may wish to cite them on brief even if it does not choose to explore those issues during oral cross-examination.⁶

The issues identified by the participants in their pleadings are very useful to the Commission in framing the important issues that affect this proceeding. Motions to limit

² Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Opposition to United States Postal Service Motion to Limit Issues, October 17, 2005.

³ Newspaper Association of America Comments on Motion to Limit Issues, October 17, 2005.

⁴ *Id.* at 1.

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

issues help focus the Commission on what is important to the participants and may facilitate expediting the procedural schedule by removing issues from consideration. In a case considering a request for a functionally equivalent NSA, where most issues previously have been identified, eliminating issues from consideration usually is straightforward and should considerably aid in expediting the schedule. In a case considering a new baseline, as with this case, many new issues can present themselves, and it may be more difficult to eliminate issues from consideration.

The Motion to Limit Issues has been overtaken by recent events. Hearings were held on October 19-20, 2005, where issues important to the participants were discussed. Soon after the hearings, the Commission learned that no further testimony would be filed in this case. Deadlines for filing briefs and reply brief have been scheduled.⁷

NAA's concern that a ruling to limit issues may affect its ability to include desired interrogatory responses in the record is no longer an issue. NAA had the opportunity prior to the October 19-20, 2005, hearings to designate any interrogatory response that it desired as written cross-examination. NAA also has the opportunity to further designate material pursuant to Presiding Officer's Ruling No. MC2005-3/15. The scope of the evidentiary record is complete. To the extent NAA, Valpak, or any other participant wishes to utilize the existing record to frame arguments on brief, they should be allowed to do so. Therefore, the Motion to Limit Issues is denied.

On another matter, on October 14, 2005, in response to Order No. 1445, the Postal Service filed a Motion for Late Acceptance of Response of the United States Postal Service to Motion of the Office of the Consumer Advocate to Strike the Testimony of Witness Yorgey or, Alternatively, Suspend the Procedural Schedule. The delay was due to administrative error and is unopposed. This motion is granted.

⁷ P.O. Ruling No. MC2005-3/15, November 4, 2005.

RULING

1. The Motion to Limit Issues, filed October 12, 2005, is denied.

2. The Motion for Late Acceptance of Response of the United States Postal Service to Motion of the Office of the Consumer Advocate to Strike the Testimony of Witness Yorgey or, Alternatively, Suspend the Procedural Schedule, filed October 14, 2005, is granted.

George Omas
Presiding Officer