

**BEFORE THE  
POSTAL REGULATORY COMMISSION**

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**Docket No. R2006-1**

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**POSTAL RATE AND FEE CHANGES, 2006**

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**Initial Brief of the  
National Newspaper Association, Inc.**

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## **Statement of the Case**

This Postal Service proposes a substantially higher increase for Within-County Mail than for other mail classes. The Postal Service justifies the size of increase by purported increases in mail processing costs. However, its data demonstrate that the costing systems for the subclass fail to capture adequate information to justify the conclusions reached. The Postal Service also presents volume data for the subclass showing a continued decline, but the volume measurement systems suffer from the same inadequacies as the costing systems. National Newspaper Association witnesses explain the failures and recommend methods for repairing them. NNA's impact witness shows that the size of increase is damaging to the future of small community newspapers like his own. The Commission is urged to find that the cost and volume measurement systems suffer from an inability to adequately capture data for this small subclass and that the potential for genuine harm to mailers justifies a correction in the data. The Postal Service multiplies the potential harm by proposing container charges on two methods that community newspapers have begun to use to help the Postal Service and the mailers eliminate the costs of processing mail in sacks: the flats tubs/trays and uncontainerized bundles entered at the delivery office. The Commission should decline to apply the container charge to either of these preparation methods.

### **I. The Proposed Rate Increase For Within-County Mail Should Be Rejected Or Reduced To Match The IOCS-Based Cost Levels Estimated By NNA Witness Siwek.**

#### *A. The IOCS Redesign Produced Vast But Unjustified Increases In The Postal Service's Estimates Of The Costs Of Within-County Periodicals.*

The Postal Service proposes a rate increase of 24.4% for the Within-County Periodicals subclass, nearly three times the average rate increase recommended for all postal classes in this case. The proposed rate increase for Within-County Periodicals appears to be driven almost entirely by alleged increases in attributable costs. According to the Postal Service, Within-County costs rose from \$62.803 million in FY 2004 to \$77.918 million in FY 2005. Direct Testimony of Stephen E. Siwek on Behalf of the

National Newspaper Association, NNA-T-3 at 2-3, citing to "USPS Cost Segments and Components, Fiscal Years 2004 and 2005, Direct Testimony of Miko Milanovic, on Behalf of the United States Postal Service. USPS T-9 at 4. These purported cost increases are particularly significant in C/S 3.1 and 6.1, with over 40% increases in both sub-segments. Direct Testimony of Stephen E. Siwek on Behalf of the National Newspaper Association, NNA-T-3 at 2-3.

The magnitude of the increases presents an economic threat to the viability of the community newspaper. NNA Witness Sosniecki testified that with other rising costs of doing business, the Within-County increases impose a difficult burden upon a small publisher. Direct Testimony of Gary Sosniecki on Behalf of the National Newspaper Association, NNA-T-2 at 12-14. The small publisher is completely reliant upon USPS for its distribution to subscribers because alternative delivery is "virtually impossible to set up." Tr. 28/9561.

Siwek analyzed these cost trends and concluded that, absent a known extraordinary event, cost increases of this magnitude, occurring within such a short time frame are simply not believable. Siwek concluded that these cost increases likely result from significant deficiencies in the processes and data used by the USPS to estimate the volume variable costs of the Within-County Periodical subclass. NNA-T-3 at 4.

*B. The Redesigned IOCS Cost Estimates Were Based On An "Almost Totally New" IOCS Data Collection Instrument.*

The IOCS redesign project involved substantial changes in the methods used by the Postal Service to capture "tally" information for specific postal operations and mail classes. Bozzo testified that the IOCS redesign resulted in "an almost totally new IOCS data collection instrument." Direct Testimony of A. Thomas Bozzo on Behalf of the United States Postal Service, USPS-T-46 at 4, lines 9-10. Notwithstanding the significance of these changes, the Postal Service has expressed supreme confidence in the results of the new IOCS. This confidence is particularly difficult to understand in view of the extent to which these results differ from those produced in prior IOCS studies.

## 1. The Redesigned IOCS Instrument Was Not Pre-tested For Within-County Tallies.

Bozzo has testified that the new instrument was pretested. USPS-T-26 at 17-20 But, "the small size of the Within-County subclass precluded specific testing of that subclass." USPS-RT-1 at 24. Nevertheless, this admission apparently did not trouble Bozzo because "the redesigned IOCS instrument has been tested far more extensively than its predecessor, and the testing has shown it to be more accurate." USPS-RT-1 at 24 By Bozzo's tortured logic, if the IOCS as a whole (and its largest subclasses) has been tested and found to be accurate, the untested and much smaller Within-County Periodicals subclass must also be accurate. The Commission should flatly reject the Postal Service's claim that the reliability of cost estimates for lower volume sub-classes can simply be assumed. The Postal Service is not absolved of responsibility for accurate cost measurements of a subclass simply because the subclass is small.

## 2. Notwithstanding Its Revisions To The IOCS And Its Failure To Pre-Test Those Revisions For Within-County Periodicals, The Postal Service Now Claims That Its Prior Estimates Of Within-County Costs Were Flawed.

In USPS-RT-1 at 24, Bozzo states "In recommending multi-year pooling of cost data, witness Siwek is asking for relief from costing errors he has not demonstrated exist, from a costing system he has not demonstrated is inaccurate." In the same testimony however, Bozzo asserts (at pages 21-22) that, "Since Section I above, demonstrates the absence of statistically or qualitatively significant errors in the Periodicals subclass assignment process, the appropriate conclusion is that Within-County Periodicals costs have previously been understated." (Emphasis Added).

Bozzo's rebuttal has two problems.

First, the burden of proving costs rests with the Postal Service. Intervenors may certainly raise questions about the validity of the evidence without being required to disprove the Postal Service's studies. Few intervenors are in a position to conduct similar

studies to reach different conclusions in any USPS costing system--but no intervenor has the ability to perform costing tests because all lack access to the source of data: the postal employees and operations themselves.

Second, the Postal Service has not offered a shred of evidence in this proceeding to support its claim that prior IOCS studies of Within-County costs were in error. If the Postal Service's prior studies were flawed, the Postal Service certainly has failed to explain both the source of those failures and why its revised studies correct these alleged problems. Indeed, given these omissions, Bozzo's argument applies equally to the Postal Service itself. Bozzo's argument can be equivalently re-phrased as follows: Given the absence of "statistically or qualitatively significant errors" in the prior IOCS instrument, the Postal Service must conclude that the new IOCS instrument overstates the costs of Within-County Periodicals.

But that is not the only possible conclusion. The Postal Service could have concluded--and the Rate Commission should conclude--that the new instrument simply has failed to capture adequate data to explain Within-County costs.

### 3. The New Instrument Is Additionally Flawed By The Difficulties In Accurately Observing Within-County Mail.

Random samples of mailpieces as a means to measure costs present inherent difficulties for small subclasses like Within-County. The Postal Service recognizes that Within-County mailpieces are difficult to identify in the mailstream. It carries out edit checks precisely because as witness Czigler says:

"... it is not possible to distinguish Within-County from Outside-County Periodicals solely by observation of markings and/or other physical characteristics of the mailpiece." Tr. 10/2397.

The Postal Service has developed an edit process to determine whether a tally that appears to be a periodicals tally is in fact for a Within-County periodical. Initially, if it can

confirm that the tally applies to a request publication, the tally can be coded to an Outside-County activity code. Then, it examines the ISSN or publication number to determine the origin county. If the origin county and destination county match, the piece is presumed to be a Within-County piece. The presence of Within-County volumes in Postal One is also used as a check. If no Postal One volumes exist, the Postal Service performs a manual check on the tally. For FY 2005, 174 out of 7,671 tallies required such manual treatment. Direct Testimony of Martin Czigler on behalf of the United States Postal Service, USPS-T-1, Appendix D, Page D-2-3; NNA/USPS T1-12, Tr. 10-2398.

Among the checks performed are:

Whether the destination county and origin county differ;

Whether circulation is less than 10,000 copies;

Whether a publication has local appeal;

Whether the title was identified as Within-County during the previous two years. Tr.10/2398.

NNA witness Heath affirms the difficulties in identifying Within-County mail and commends the efforts of the Postal Service in developing good faith efforts to properly identify Within-County mail. NNA-T-1 at 9. The Commission has previously noted the difficulties and suggested a marking on the mailpiece, but Heath notes that such markings are not achievable by the mailer. Id.

Considerable doubt remains that the edit checks and manual processes described by Czigler and Bozzo have cured the deficiencies in IOCS. Heath points out several areas in which the edit checks would fail to accurately identify the piece:

Outside-County pieces that are on Within-County routes for the mailer, but that fail eligibility criteria because of a phenomenon Heath calls the "wandering route." NNA-T-1 at 7. NNA witness Sosniecki confirms that such pieces are not uncommon for a newspaper, particularly if it is situated on a county line as is his *Vandalia Leader*. Tr. 28-9562.

Free copies mailed to advertisers. NNA-T-1 at 8.

Copies mailed to Within-County customers whose subscriptions have lapsed longer than six months prior to the mailing. NNA-T-1 at 9

Copies mailed at the advertisers' request to its customers. NNA-T-1 at 9.

In addition, Siwek has noted that one of the two eligibility criteria for Within-County is circulation less than 10,000 copies, DMM 707.11.2.1, which must be measured on an issue by issue basis. (NNA-T-3 at 6-7). The Postal Service has no practical way to determine whether a mailpiece captured on a given day might belong to a periodical whose circulation has risen above the 10,000 mark or emanates from a periodical that is otherwise eligible for the subclass. USPS Witness Bozzo confirms the Postal Service's concern with this deficiency. USPS RT-1 at 6.

The plain fact is, all efforts to improve the identification process notwithstanding, the IOCS does not identify eligible Within-County mailpieces at all. It captures mailpieces that might or might not be sent by an eligible Within-County mailer, but it has no way whatever to determine whether the piece itself is eligible. Whether it is a piece from a no-longer eligible Within-County mailer whose circulation rose above 10,000, a lapsed subscriber's piece, or an advertising copy piece, a piece from a wandering route or an actual mailpiece carried at Within-County rates, the best the Postal Service can do is infer that the tally belongs to an eligible mailer and is in fact an eligible piece. Bozzo confirms this in rebuttal. Tr. 36/12345.

The difficulties with accurate identification simply add fuel to the fire created by the low level of sampling that Siwek points out. Whether the incidence of the Outside-County pieces in the tally pool is high or low, the fact that the identification process can proceed only from inferences adds risk to the mailer. Witness Heath does not recommend adding additional hoops through which USPS must jump in order to identify the tallies. He

believes it would be difficult and costly to improve the identification. NNA-T-1 at 9. But the flaws in the identification system offer the Commission an additional reason, beyond the statistical reliability concerns, to accept Siwek's proposal to pool tallies, and thereby reduce the risk to the mailer.

#### 4. The Postal Service's Repeated Statements That Within-County Mailers Are "Basically Stuck With" Unreliable Cost Data Are Both Unacceptable And Inaccurate.

Both USPS witnesses Czigler and Bozzo acknowledged that because Within-County Periodical is such a small subclass, it is "stuck" with a high CV (Tr. 9/2438) and "less reliable data" Tr. 36/12348. For Within-County Periodicals subclass, the CV for mail processing costs is 11.58 percent, USPS-T-1, Table 1 at 14, and the CV for In-Office city carrier costs is 11.66 percent. USPS-T-1, Table 2 at 15

CV is an objective measure of how volatile an estimate is. It is a standardized risk measure. All else equal, estimates having a higher variation are less precise than estimates having lower variation, as USPS experts appear to agree. Tr. 10/2388. Both witness Czigler, Tr. 10/2393, and witness Bozzo seem to argue that a higher CV should be accepted for a small subclass like Within-County Periodicals whose cost is a small proportion of the total cost. USPS-RT-1 at 24. This would mean that low volume subclasses like Within-County Periodicals should always bear higher risk in USPS' cost estimates. Bozzo notes that "the *actual* IOCS CV is 0.64 percent" for "single-piece First-Class Mail." USPS-RT-1 at 19. Bozzo also argues that "the relative MOEs (Margins of Error) of the IOCS-based mail processing costs are under two percent for the two largest subclass categories" so "IOCS easily exceeds the 'standard' cited by witness Siwek." USPS-RT-1 at 19-20.<sup>1</sup> However, Bozzo has actually shown how much higher risk the Within-County Periodicals subclass bears in contrast to larger subclasses.

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<sup>1</sup> Margins of Error are used in conjunction with CVs and mean sample values in order to translate CVs into plus or minus ranges within which one is 95 percent confident that a true value can be found. As explained in witness Siwek's testimony, NNA-T-3 at 14, lines 13-18, a CV of 11.58% for Within-County mail processing costs, when combined with the mean sample value of \$19.8 million implies that the USPS was 95% confident that the true mail processing costs for Within-County mail were between \$15.4 million, and \$24.4 million, a margin of error of plus or minus 23%.

The USPS' position that small subclasses are "stuck" with higher risk is both unacceptable and inaccurate. While USPS has not been able to provide any solution to the small sample problem, the NNA below proposes a pooling method that yields an additional benefit in that it reduces significantly the Coefficients of Variation (CVs) for the cost estimates that would apply to Within-County Periodicals in this case. In this way, the NNA seeks to reduce the high risk of sampling error facing the small Within-County Periodicals subclass. Given the difficulties in the Postal Service's ability to identify Within-County tallies, and the observed inconsistencies between prior and current IOCS cost estimates for Within-County Periodicals, NNA's proposed solution is both practical and reasonable.

## 5. The Postal Service's Methodology Unduly Shifts The Burden Of Risk To The Small Mailer.

As noted before, Postal Service witnesses Czigler and Bozzo have both testified that Within-County mailers are basically "stuck with" less reliable costing data than mailers in other postal classes and subclasses.<sup>2</sup> Within-County mailers bear a disproportionate risk of sampling error in the cost estimates that are used to justify the rate levels that they pay. But Within-County mailers also bear a greater risk of error than the Postal Service itself.

In its proposed rate request in this case, the Postal Service has requested a provision for contingencies in the amount of \$784 million (TYBR) and \$767 million (TYAR).<sup>3</sup> The Postal Service argues that "there is always the potential for the unknown and the unknowable."<sup>4</sup> Assuming, as in the past that the Commission grants the Postal Service the authority to include a contingency provision in its rates, then the rates paid by mailers in all classes will exceed the mean sample values for costs derived from the IOCS and from other costing systems. For this reason, the contingency provision also protects

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<sup>2</sup> See Tr. 10/2438 (Czigler) and TR. 36/12348 (Bozzo).

<sup>3</sup> USPS-T-6, (Loutsch), page 62, lines 9-10.

<sup>4</sup> USPS-T-6 (Loutsch), page 62, lines 6-7.

the Postal Service, at least in part, from the additional risk of sampling errors in its costing procedures.

Assume that the Postal Service's sampling systems in all mail classes, other than Within-County Periodicals, have produced "mean" costing estimates that faithfully reflect the Postal Service's actual average costs. Assume further that in Within-County Periodicals, the Postal Service's sampling systems have produced costing estimates that are *far below* the Postal Service's actual costs. In this scenario, the Postal Service still does not operate at a loss since its contingency provision of \$784 million easily offsets any losses in the Within-County Subclass.<sup>5</sup>

By contrast, there is no contingency provision to protect Within-County mailers from sampling risk in the other direction. If the Postal Service's sampling systems produce Within-County cost estimates that *exceed* the Postal Service's actual costs, these excess costs will be borne solely by the mailers of Within-County Periodicals. The risk of sampling error disproportionately falls on mailers rather than on the Postal Service. This problem is then greatly exacerbated for the lower volume mail classes because in these classes, the potential for large sampling errors is vast. The Commission should utterly reject the contentions of witnesses Czigler and Bozzo that Within-County mailers are simply "stuck" with unreliable costing estimates.

*C. The NNA's Pooling Proposal Would Establish Within-County Costs That Lie Within The 95% Confidence Intervals Of Both IOCS Measurements.*

A confidence interval around an average estimate shows how accurate the estimate is. The 95% confidence interval is the most commonly used criterion and shows that one is 95% confident that the true value lies between the lower limit and the upper limit of this interval. NNA-T-3 at 11.

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<sup>5</sup> In TYAR 2008, the Postal Service estimates total Within-County postage and fees in the amount of \$79.5 million or 10.3 % of the contingency provision requested by Postal Service in this case.

As noted above, the redesigned IOCS instrument produces vast increases in the reported costs of Within-County Periodicals. Indeed, the alleged costs of Within-County Periodicals in this proceeding are well outside even the 95% confidence intervals that had been calculated for the prior IOCS results.

Though the Postal Service has not attempted to correct this problem, NNA has. The NNA pooling proposal resolves the problem of widely disparate IOCS cost estimates in this proceeding. In the pooling proposal, the mail processing and In-Office city carrier costs for Within-County Periodicals that are used to set rates in this case reflect data from both FY 2004 and FY 2005. More specifically, the Within-County Periodicals costs as a proportion of the total costs for FY 2004 and FY 2005 are averaged, using the implied sample size under random sampling for the two years as the weight. NNA-T-3, Appendix B.

On the basis of its pooling proposal, NNA's proposed Within-County cost estimate for Segment 3.1 is \$16.013 million. NNA-T-3 at 17 and Exhibit 1 in Appendix B. This value is within both the 95% confidence interval of the adjusted Shaw estimate (\$9.300 million to \$16.047 million), NNA-T-3 Table 1A at 1, and the 95% confidence interval of the Czigler estimate (\$15.429 million to \$24.422 million). USPS-T-1 Table 1 at 14. In other words, NNA's proposed Within-County cost estimate for Segment 3.1 cannot be rejected statistically based on the conventional 5% significance level using either the FY 2004 data or the FY 2005 data.

Similarly, NNA's proposed Within-County cost estimate for Segment 6.1 is \$8.623 million. NNA-T-3 at 17 and Exhibit 2 in Appendix B. This value is within both the 95% confidence interval of the adjusted Shaw estimate (\$5.275 million to \$9.505 million), NNA-T-3 Table 1B at 13, and the 95% confidence interval of the Czigler estimate (\$7.480 million to \$11.905 million). USPS-T-1 Table 2 at 15, Tr. 10/2396. Again, NNA's proposed Within-County cost estimate for Segment 6.1 cannot be rejected statistically on the basis of the conventional 5% significance level using either the FY 2004 data or the FY 2005 data.

## **II. The Commission Should Use A Four-Year Average Of Within-County Volumes In Calculating After-Rates Forecasts, Because Statistical Unreliability Continues To Pervade Postal Service's Estimates.**

### *A. BRPW Fails To Accurately Measure Much Of The Within-County's Volume.*

The Postal Service provides estimates of Within-County mail volume from Bulk Revenue, Piece and Weight systems through witness Pafford. (Direct Testimony of Bradley Pafford on behalf of the United States Postal Service, USPS T-3), that are then used by its forecasting witness Thress to predict the after-rates volume basis. Tr. 7/1364. The after-rates volume must bear the revenue requirement for Within-County in final rates. The accuracy of both estimates is important for mailers, because too few pieces in a subclass will mean higher rates for the existing volume.

Either estimate may be subject to flaws, but for Within-County, problems are evident in both the before-rates and after-rates data. As in many other areas involving this subclass, insufficient input produces unreliable output. As a result, the subclass may suffer from declines in volume that are more apparent than real.

The weakness in the entire equation from before-rates to after-rates begins with the data produced by the Bulk Mail Revenue, Pieces and Weight System (BRPW). Because the Postal Service's revenue accounting system does not provide information on mail volumes, the BRPW system fills in the blanks. USPS T-3 at 6. The system captures mail piece data from postage statements as an ongoing census of samples from about 8,400 post offices on the PostalOne automated office program. Tr.9/2259.

For non-automated post offices, a supplemental probability-based sample is drawn. USPS-T-3 at 7. These offices are drawn from a population with revenues greater than \$100. The sampling frame has five strata based upon revenues, Tr.9/2258, with the smallest offices defined within boundaries of \$101-\$600 and the largest at \$8,151 and over, Tr. 9/2255. Tr. 2295. Pafford believes these offices are not automated precisely

because they are so small. Tr. 9/2258. The sample is drawn from only 44 out of 5,141 post offices. Tr. 9/2259, LR-L-17, Table 1 at 2.

While the offices in the sample may be small, they are not of small importance to the subclass. They represent an important population for Within-County volumes, reporting nearly 40 percent of the Within-County volumes in the system. Tr. 9/2256.

But the sample, Pafford admits, Tr. 9/2250, does not produce data that are as reliable as the data output from PostalOne. The PostalOne census data provide information with CVs for revenue estimates of .10 and volume estimates of .07. But the stratified sample produces revenue estimates with a CV of 1.93 respectively, Tr. 9/2251, and for volume estimates of 2.29. Tr. 9/2252.

The Postal Service evidently has made an attempt to improve the quality of the data out of the non-automated office. Pafford confirms that in 1999, the Postal Service set up a separate Account Information Code (AIC) for the subclass, to attempt to tie the BRPW estimates to a revenue account. The AIC approach seems to work for other categories of Periodicals, Pafford reports, producing ratios of BRPW data to revenue data of 1.0 on a consistent basis. But for Within-County, the AIC verification process did not work. In FY 2005, the AIC revenue for Within-County was \$67,517 million, but the stratified sample reported revenues of \$71,714. In FY 2004, BRPW reported \$72,127 million, but the AIC found \$66,241 million. Thus, the AIC verification was discarded because it did not produce reliable data. Tr. 9/2254.

The difficulties with producing accurate data from small, probably rural, post offices where much of Within-County mail is entered are not foreign to the rate dockets. NNA has been bringing concerns about the reliability of the data to the Commission since at least Docket R94-1. Opinion and Recommended Decision, Postal Rate and Fee Changes, 1994, Docket No. R94-1 at V-73. In R97-1, NNA again questioned the volume figures. The Commission noted the absence on the record of evidence that USPS had attempted to work out NNA's concerns from the previous docket. Again the Commission urged a

cooperative effort to resolve concerns. It responded to NNA's concerns by using an average of the volumes for FY 1994 through 1997, thereby increasing the volumes and lowering unit costs. Opinion and Recommended Decision, Postal Rate and Fee Changes, Docket No. R97-1 at 546.

In that docket, Witness Heath testified to NNA's determination to develop the record on this matter by conducting a survey of 1,600 newspapers. However, he said, the results were inconclusive because of the difficulties in getting busy publishers to answer the survey. NNA-T-1 at 10. The Commission noted the attempt, criticized flaws in the design and execution but recognized that NNA continued to refute the reliability in the data systems. It decided to continue its practice of using a four-year average of volumes. Opinion and Recommended Decision, Postal Rate and Fee Changes, Docket R2000-1 at 451.

In this case, Heath has testified that his expert opinion, bolstered by data from his own community newspaper company, is that Within-County mail volumes are at least holding steady, though BRPW shows a continual downward trend (which it cannot explain). NNA-T-1 at 12. In fact, of the two opinions interpreting the volume trend that are available to the Commission--that of witness Heath and that of witness, Thress (Tr. 6/1360-1361) --neither provides the Commission with a real-world explanation for the decline. Heath believes it isn't happening and Thress thinks he sees a decline but has no idea why, except for his belief that if it always happened, it always will. The only contrary view is that of the BRPW and its high CVs.

Like the IOCS data, the absolute answer to Within-County volumes probably is not to be found, or at least not without significant expense in improving the sample. Certainly if the Postal Service, with its access to real-time data, is unable to produce a census of the subclass, the intervenor is in no position to do so. NNA's research efforts have been sufficient to cast doubt upon the bumpy ups and downs of the data as well as upon the general direction of decline. However, even if NNA were able to survey its publishers with a higher degree of reliability than the Postal Service is able to survey its post offices, the

data available to the Commission would do no better than to provide an inference that the USPS data were being wrongly interpreted.

In the face of the logic available, the Commission in the past has given the mailer the benefit of the doubt. It set a useful precedent in employing this blending of data to set the final baseline for Within-County rates, and thereby altering the after-rates forecast and adjusting the rates accordingly. The Commission has clear authority to adjust rates by blending data when precise information eludes both the Postal Service and the Commission. As the Court of Appeals for the DC Circuit has commented:

No one who seeks fairly and equitably to determine a complicated rate structure ought to suppose that there is a correct answer, or even that in the final mix there should have been added a specified number of spoonfuls of each of the ingredients. A conscientious, competent rate-making body proceeds by opening its mind to relevant considerations, and closing its ears to irrelevant ones. Association of American Publishers v. Governors of the United States Postal Service, 485 F.2d 768 (D.C. Cir. 1972) at 774.

The Commission should follow its precedent and accept Heath's recommendation for the use of the four year average.

*B. Thress's Heavy Reliance Upon The Flawed BRPW Casts Doubt On The Accuracy Of His Forecast.*

USPS Witness Thress takes on the task of predicting the volumes of Within-County mail that will be available in the after-rates cycle to produce the revenue requirement for the subclass. The reported volume projections follow a general trend line of decline, from a high of 1,739,723 in 1970, which also has occurred in the other mail class used by newspaper periodicals, the Outside-County rate. But a marked difference in the trend is demonstrated by witness Thress's table of historic volumes and their declines: while Outside-County periodicals volume has typically fallen 2-4 percent in a given year, the Within-County volumes show dramatic peaks and valleys. USPS-T-7, Table 50 at 205. Examples of comparative years from Thress's history where volume swings are markedly different are below.

Year	Outside-County Changes over years	Volume previous	Within-County Changes over years	Volume previous
1971	.83%		-1.72%	
1974	1.18%		-6.05%	
1980	-1.19%		-12.47%	
1984	2.19%		4.35%	
1985	4.36%		34.80%	
1987	-.18%		-14.78%	
1991	2.48%		-14.09%	
1992	-5.38%		-0.67%	
1995	.82%		-11.20%	
1997	3.55%		8.15%	
1998	-.60%		-4.51%	
1999	.72%		-2.80%	
2004	-.85%		-4.22%	

He believes the subclass is relatively inelastic, Tr. 6/1261, but has no explanation for why Within-County volumes are so erratic.

One plausible explanation for the problems with Thress's data is that he relies almost completely upon the accuracy of witness Pafford's BRPW data in his analysis. Interestingly, his volume chart, which purports to rely upon the Pafford data, shows slightly lower volumes in most years dating back to 1990 than the volumes confirmed by Pafford in response to NNA's question, NNA/USPS T3-29. Tr. 9/2308.

Volume year	Pafford's estimate	Thress's basis
2001	879,101	884,908
1999	893,454	894,488
1998	923,865	920,217
1997	947,047	945,056
1996	877,829	873,823
1995	907,187	893,943
1994	1,006,421	1,006,731
1993	1,057,671	1,054,294
1992	1,192,671	1,176,758
1991	1,179,504	1,184,679
1990	1,382,914	1,378,944

*Comparing Tr. 9/2308 (Pafford) to Thress Testimony, Table 49 at 204.*

The differences in the base year volumes are troubling but are less significant than the Thress's admission that after he examined the variables he found useful in Outside-County trends and discovered they were of little use in this subclass, he looked at no others. Tr. 6/1262

He has examined the overall Periodicals class in some detail. He finds that the class overall has seen a downward trend, USPS-T-7 at 203. He recognizes that both newspapers and magazines drive the Periodicals class and believes that the depressive pressures upon volume have come primarily from long-run demographic shifts away from reading that he believes has gone on for decades, although he also believes personal income and pulp and paper prices play a role. USPS-T-7 at 206-207. Though he provides only circulation data from the magazine industry to support his belief, he cites examples from the newspaper industry to explain his findings, suggesting that he finds the two media moving generally in tandem. USPS-T-7 at 208. He believes the Internet has played a role in latter years by providing near-perfect electronic substitutions for print

media, particularly as high speed connections have reached readers, USPS T-7 at 209-210, but not for Within-County. Tr. 6/1262.

But he cannot explain why the decline in reading and the rise of Internet that affect both newspapers and magazines in Outside-County seem to have such dramatically different effects upon Within-County than upon Outside-County. He looks at pulp and paper prices and decides they are not material forces in the apparent Within-County decline and discards that variable. He examines inflation, but finds that inflation actually has helped this subclass. NNA/USPS T7-2, Tr. 6/1262. But he is seemingly indifferent to the possibility that he finds no explanation because the curve of the trend may itself be illusory. Why, for example, would Outside-County mail have grown modestly in 1995, while Within-County experienced a 11.20% decline in the same year? Why does volume for Outside-County decline more in 2002 (-4.58%) than Within-County (-3.95%), but the following year, the slump hits harder on Within-County (-6.63%) compared to Outside-County (-3.98%)?

In the end, although he admits to some frustration that he lacks the data he would like to have, Tr. 6/1364, he turns to the easy answer. He cites Total Employment and Own Price Elasticities as two relevant variables, but then lands upon a Time Trend analysis as the real explanation. Tr. 6/1262 NNA/USPS T7-2. It seems sufficient to infer that because volumes have declined in the past, they will continue to decline. Tr. 6/1361.

Thress recognizes that this heavy reliance on the Time Trend leaves him vulnerable to the accuracy of the BRPW data, because if the basis is wrong, the forecast will be wrong, Tr. 7/1364 but he must treat the numbers given to him "as if they were given by God." Tr. 9/2273. No divinity, unfortunately, appears to dwell in the details of this data system.

Thress's after-rates volume projection is 700,140 million pieces. Thress Testimony, USPS T-7 at 224. If the Commission elects to follow its own precedent in setting the base year volumes at the four-year average, it should then apply the same treatment to the

after-rates volume. NNA's Witness Siwek, NNA-T-3, at Table 2 (page 20) reported Within-County piece volume figures for BY 2005, TYBR 2008 and TYAR 2008. Siwek used for BY 2005 a piece count of 762,673 million, a value very close to Heath's 2005 figure of 762,763 million. If Siwek had used the four year average of 791,553 for his BY 2005 calculation, the Within-County BY 2005 volume would add 28,880 million pieces or 3.79% higher than the BY 2005 volume reported by the Postal Service.

The Postal Service projected that piece volume for Within-County would decline by 40,242 million pieces (From 762,673 million to 722,431 million) or -5.28% from BY 2005 to TYBR 2008. If this percentage decline were applied to the four year average volume, the TYBR 2008 volume for Within-County would be 749,759 million pieces or 41,794 million more pieces than the USPS now projects for TYBR 2008.

This change would provide the USPS with nearly \$3 million more in Within-County revenue in TYBR 2008. NNA believes the Commission should give the mailer the benefit of the considerable doubt in the volume data accuracy and adjust the base and test years accordingly.

### **III. Imposing Container Charges On Flats Tubs And Unsacked Bundles Deters Mailers From Achieving Cost Reduction Goals.**

The Postal Service proposes for the first time a container charge on periodicals containers of 85 cents per container. USPS Witness Tang explains that the intention is to impose the fee upon each sack or pallet containing Periodicals mail. The Postal Service hopes to generate \$43,319,140 in revenues from the charge.

But the charge is not intended to apply only to sacks and pallets, nor only to containers containing only Periodicals mail, even though no container charge is proposed for other mail classes. A fee is contemplated for flats tubs, (Tr. 7/1696), unsacked bundles, Tr.7/1657, Tr. 7/1739, and even containers that contain one Periodicals mailpiece and otherwise Standard Mail. Tr. 7/1678-79, Tr. 7/1702.

NNA has not addressed the charge for sacks in this case. But it has taken issue with imposing the charge upon alternative containers, such as flats trays or tubs, as well as with unsacked bundles on the grounds that the charge contradicts the Postal Service's stated purpose for imposing the container charge. NNA-T-1 at 14 et seq.

This portion of the container proposal contains two serious flaws.

First, it is not properly presented to the Commission within the bounds of 39 U.S.C. 3922.

Second, it contradicts the Postal Service's own stated rationale for imposing a container charge: to send price signals that encourage more efficient mail preparation.

*A. The Charge Is Not Properly Presented To The Commission.*

The imposition of a postage charge upon mail without presentation of information on the costs created by that type of mail is fundamentally beyond the authority of the Postal Service. Courts have reaffirmed repeatedly the role of the Commission in reviewing the manner in which rates are set to cover the criteria in 39 U.S.C. 3622, which emphasizes subsection (3) as the most important. [National Association of Greeting Card Publishers v. United States Postal Service, 186 U.S. App. D.C. 331, 569 F.2d 570 \(D.C. Cir. 1976\)](#). The Postal Service's attempts to short-circuit the review of costs and assignment of institutional expenses have been turned back as invalid. [Associated Third Class Mail Users, et al v United States Postal Service, 405 F. Supp. 1109 \(D.C. 1975\)](#) (Overturning temporary rates imposed by USPS without following the requirements of the statute). While the Commission has been given broad authority to accept the Postal Service's attribution and assignments of costs, [Association of American Publishers, Inc. v. Governors of United States Postal Service, 157 U.S.App.D.C. 397, 485 F.2d 768 \(1973\)](#), it has not been authorized to give the Postal Service leeway to apply rates ex post facto where no costing data and, indeed, no rate specifics have been provided to the Commission.

Here, while some cost basis for a container charge has been supplied by the Postal Service, the Postal Service has failed to articulate in any way how several types of containers create that cost. Nor does it have studies on mail that is in no container--such as bundles delivered directly to the delivery office. It candidly admits it has no studies on the costs of flats tubs or trays. Tr. 7/1740. It does not even attempt to explain why a container charge should be imposed upon mail that is not in a container, other than to say the charge is in the proposal because it is necessary to complete the math for the revenue requirement. Tr. 7/1863. Perhaps the fact that it knows neither what the cost of a tub/tray or an unsacked DU bundle is explains the absurdity of applying a container charge to mail that is not in a container.

Finally, the Postal Service here proposes at least one scenario where a rate would be applied to mail for which no costs have been identified, no rate review has been requested and no recommended decision by the Commission is contemplated. Witness Tang affirmed that the Postal Service's proposal would include a rate for containers provided by the mailer on a piece of rolling stock. On questioning by NNA, Witness Tang explained that she did not know whether the rate there would be one 85 cent charge for the one piece of rolling stock or multiple charges for the containers placed on them:

Q. What if the mailing consists of many tubs, let's say six tubs and the postmaster has asked the newspaper to please deliver these tubs onto an all-purpose container, a piece of rolling stock at the post office, which will actually be taken into that post office for the processing and distribution. What would the charge be in that case?

A. Well, again, I think the response we gave today to Ruling Number 20 listed in general how that container rate is going to be assessed and what the application is going to be. That scenario you just described happened to be those that's very rare and it's going to the specific regulations will be published in the Federal Register next month.

Q. So is your answer you don't know yet how the rate would apply in that case?

A. I do not want to be the implementational mail acceptance spokesperson here.

Q. So you don't know yet. Is that what your answer is?

A. I know as a general rule it's all listed here and I really can't provide any information to tell it regarding to the specific scenario you just laid out.

Q. Does the Postal Service intend to come back to the Commission with any costing data before it applies rates to this kind of mail?

A. Relating to what?

Q. To the hypothetical I just asked.

A. Well, 85 cents container rate, as I said, is more a price signal than something trying to reflect the actual container handling cost... Tr. 7/1858-59.

And again NNA asked:

Q. I understand the characterization of the charge. My question is the process the Postal Service intends to follow. Does the Postal Service intend to come back to the Commission before actually applying the rate to that type of mail? In any proceeding other than this rate case, or in this rate case, for that matter?

A. Not to my knowledge. Tr. 7/1860.

*B. The Charge Contradicts The Only Stated Basis For The Request: To Encourage More Efficient Mail.*

The Postal Service says it needs to impose container charges to encourage better mail preparation. USPS-T-35, at 6. But there is very little rationale offered for extending the charge to the tubs/trays or the unsacked bundles. To the extent that a rationale exists at all, the answer varies with the questions posed. In initial testimony, Tang professes a desire to "send an appropriate price signal to encourage better mail preparation, benefiting the entire Periodicals community." USPS-T-35 at 4-5. The theme is repeated throughout her testimony. Tr. 7/1702, 1735. Later in response to NNA's question, she says, "the container rate is intended to make Periodicals more efficient and affordable." NNA/USPS T35-20, Tr. 9/1736. But still later, the proposed rate is justified because it lowers the cost for other elements in the rate structure. Tr. 7/1741. Finally, it is justified because it is an "integral part of the rate structure and therefore must be included." Tr. 7/1740, Tr. 7/1770.

The record is replete with the indictment of sacks.

NNA witness Heath describes in detail the steps NNA has taken, in the wake of the Commission's decision in its review of the Complaint of Time Warner et. al, Concerning Periodicals Rates, Docket No. C2004-1. He explains that NNA believed that by encouraging publishers to shift from sack usage to tubs/trays and unsacked bundles, it was doing what the Postal Service had asked the industry to do. NNA-T-1 at 14. He believes both preparations improve service for mailers, NNA-T-1 at 15, but that significant industry education still must be done to encourage the sack alternatives. NNA-T-1 at 17. He is emphatic in urging the Commission not to turn back the clock by imposing a charge on these alternatives.

When not trying to justify its revenue requirement math, the Postal Service seems to agree. Witness McCrery confirms that the Postal Service has encouraged the entry of newspaper mail in unsacked bundles because it avoids processing steps. Tr.11/3272. Although the procedure has been permitted for more than two years, Tr. 11/3271, only small quantities of mail are yet entered in that manner. Tr. 11/3273.

He further explains how a tub/tray (which he confirms to be an interchangeable term, Tr. 11/3275) moved smoothly through a plant on rolling stock and saves handling steps. Tr. 11/3279). He believes greater use of these containers would provide a "lasting benefit" to the Postal Service, Id.

The Postal Service seems to be mindlessly engaged in a duel with itself on this issue. While it wishes to send a price signal to eliminate the sacks, it at the same time figures in minor revenue from the alternatives and tautologically justifies itself for so doing because it has then included a negative signal in its "integral" price structure. Unfortunately, it also sends a negative signal to the behavior it wishes to encourage.

In this case, the charge on tubs/trays is unarticulated and, therefore, not properly presented. But it is also contrary to the clear intent of both the pricing witness and the

operational witness: to discourage the use of sacks. The Commission should deny both charges.

#### **IV. The Commission Should Adopt Siwek's Passthroughs For Within-County Mail.**

The Postal Service's proposed rate structure for Within-County mail makes little more sense than its container proposals.

First, despite much rhetoric about the newly efficient flats mailstream being created in this docket, it seems to reward the less efficient mail by suggesting steeper increases for better presorted and drop-shipped mail, a fact that NNA's Heath finds perplexing. NNA-T-1 at 19-20.

Second, although the Postal Service uses Outside-County cost avoidances to measure Within-County cost avoidances, USPS-T-35 at 14, it chose nevertheless to propose Within-County passthroughs of those cost savings that differed substantially from the passthroughs proposed for Outside-County Periodicals. Tang testified that "...as a general matter, the cost avoidance passthroughs proposed for Outside-County Periodicals differ from the cost avoidance passthroughs that were proposed for Within-County" Tr. 7/1727. Justifying this inconsistency Tang first asserted that "the rate design objectives sometimes dictate that the rate designer use the flexibility that comes with having two separate subclasses, and choose different passthroughs for different subclasses." Tr. 7/1727. However, she later explained that the different passthroughs that she had proposed for Within-County Periodicals resulted from the fact that "...I don't have much room to give out high passthroughs because the revenue per piece for Within-County periodicals is already so low."<sup>6</sup> Tr. 7/1867.

Siwek demonstrates that the Within-County Periodicals rate schedule does offer ample room to increase passthroughs in order to better match the passthroughs proposed in this case for Outside-County Periodicals. USPS-T-3 at Appendix D. Heath explains

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<sup>6</sup> Hearing Transcript page 1867, lines 21-23.

why it is important for the Postal Service to recognize mailers' efforts with proper rate design:

Work-sharing is extremely important in Within-County mail. Because of the Postal Service's legendary problems in controlling mail processing costs for flats, NNA urges its members to do all they can afford to do to make its mail easy to handle. The billing determinants supplied by Witness Tang in LR-L-126 show how highly efficient this subclass has become. In 2005, the total of pieces presorted to carrier route rates equaled 596,043, 496 in a subclass reporting 762,709,809 pieces. So 78.1 percent of the subclass qualifies for carrier route rates. Of the carrier route category about 25% of the pieces qualify for either high density or saturation discounts. NNA-T-1 at 21-22.

He explains how he provides industry training to encourage small publishers to invest in PAVE certified software, and to keep up with the Postal Service's changing requirements. But the Postal Service is working at cross-purposes with his efforts: first, by relying too heavily upon the pound rate for revenue; second, by discouraging automation, third, by not providing sufficient incentive for high density mail, which he believes publishers should be aiming for by increasing their readership on routes where they could achieve the density targets. NNA-T-1 at 22-23.

Siwek's alternative rate structure corrects the deficiencies pointed out by Heath. It should be adopted by the Commission.

## **V. The Postal Service Has Not Met The Requirements Of 39 U.S.C. 3622(4).**

Among the criteria for evaluation of a rate proposal is the following requirement for the Postal Service's analysis and the Commission's review:

(4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters

NNA Witness Sosniecki testified extensively upon the impact of the proposed 25-30 percent rate increase for Within-County Mail, and also on the deterioration of service--not

only the usual problems with Outside-County delivery, but also for his Within-County customers. Tr. 28/9571.

The Postal Service's analysis of the impact upon these small mailers has been more than negligent. It has been insulting.

The Presiding Officer's insistent pursuit that the Postal Service follow up on its homework assignment from Docket C2004-1 regarding impact upon small publications shed much enlightenment upon the impact studies on small newspapers. Tr. 28/1884. Filed under seal and, therefore, not recited in detail in this document was the witness's homework. NNA Witness Siwek makes short work of the application of the witness's homework analysis of impact upon small community newspapers. There was none. See Appendix E, NNA-T-3.

The Postal Service's back of the hand was delivered to the mailers in Tang's suggestive testimony that the Within-County mailers should not complain of the magnitude of the increase because of a small rate reduction passed along in Docket R2005-1. Tr. 28/1871.

The witness considered the decrease "worth noting," Tr. 28/1873. But she was unable to provide the Commission with any lawful basis for so noting. In fact, when counsel suggested she had written an additional criterion into Section 2622, the witness was unable to deny it.

The small decrease from Docket R2005-1 resulted from the same statistical flaws as NNA has experienced in this case and is not only not worth noting as a rationale for the hefty increase proposed here, it is in fact additional justification for making the corrections NNA's witnesses propose. But, were it a valid consideration, would the Postal Service find it "worth noting" in the next rate increase that it proposed such a costly new price tag in this docket? Perhaps, but no guarantees. It will be "taken into consideration." Tr. 28/1874.

The statute requires a reasonable attribution of costs and a fair assignment of institutional expenses. Nowhere does it give the Postal Service the supreme powers to "giveth" and "taketh away" as its whim may dictate.

The impact of the proposal is a legitimate concern of the mailer and must be fairly considered in the case. In light of the substantial flaws in both data and analysis of this case, the Commission would be justified in denying any postage increase at all for this subclass. However, if it does recommend an increase, it should follow the wisdom of Siwek and Heath and make the adjustments they suggest.

## CONCLUSION

The problems of achieving accurate and fair measurements of Within-County mail, as required by 39 U.S.C. 3622 have been presented to the Commission in numerous dockets. The Commission has taken steps in recent years to introduce new methodologies that are specifically designed to cure flaws in the measurement systems without adding substantial extra cost into the instruments used by USPS for the rest of the domestic mail volume. This case is no different. Although USPS has made strides in better identification of Within-County mail, the system may not be capable of actually determining whether an observed mailpiece is or is not eligible for the subclass nor whether it is actually mailed at the subclass rates. The IOCS tallies allegedly captured for mail processing cost measurement therefore are flawed by potential identification inaccuracies as well as by simply being too few to meet the general reliability expectations for data quality. NNA has recommended corrections in the system. It also has recommended an averaging of volume data over a four year period to correct for inadequate sampling of the volumes entered into small, rural post offices that are the entry point for much of the subclass. Finally, NNA has objected to the Postal Service's proposal to apply container charges to flats tubs/trays and to unsacked bundles, arguing that the Commission should reject both proposed charges. The industry is endeavoring to encourage more efficient container use. The surcharges discourage the industry's efforts.

Overall, the nearly 25% increase proposed for this small subclass is unjustified and unfair and it should be rejected or substantially modified.