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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

ORDER NO. 1129

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Before Commissioners: Edward J. Gleiman, Chairman
H. Edward Quick, Jr., Vice Chairman
George W. Haley and W.H. "Trey" LeBlanc III

Special Services Fees and Classifications

Docket No. MC96-3

ORDER ACCEPTING CERTIFICATION AND GRANTING MOTION OF
NASHUA PHOTO INC. AND MYSTIC COLOR LAB TO
ENLARGE SCOPE OF PROCEEDING

(Issued August 8, 1996)



On July 15, 1996, Nashua Photo Inc. and Mystic Color Lab ("Nashua/Mystic") filed a motion to enlarge the scope of this proceeding to consider an alleged inequity in the fee structure for Business Reply Mail. Nashua Photo Inc. and Mystic Color Lab Motion to Enlarge Scope of Proceeding for Consideration of Classification Modification with Respect to Business Reply Mail, July 15, 1996 ("Motion"). Presiding Officer's Ruling MC96-3/4 certified the issues raised by the Motion to the full Commission. The Commission accepts certification, and grants the Nashua/Mystic Motion.

Nashua/Mystic request that this docket address the need to establish a category of Business Reply Mail (BRM) that would be eligible for a discounted advance deposit fee comparable to the current two-cent per-piece fee charged barcoded BRM. The Motion acknowledges that the BRM generated by Nashua and Mystic is not

"prebarcoded and automatable" and that such mail cannot take advantage of the Postal Service's automated Business Reply Mail Accounting System (BRMAS). Motion at 3. It argues, however, that Nashua and Mystic have a system for processing their incoming bulk non-automatable BRM mail that reduces the Postal Service's BRM-related costs below those of mail processed by the BRMAS system. For this reason, it contends, mail processed in this manner should be eligible for a discounted BRM fee comparable to that charged for barcoded BRM. Id. at 2.

Parties' Arguments. The Motion alleges that the Postal Service's refusal to charge a discounted BRM fee that reflects the costs avoided when the business reply customer handles and accounts for its own incoming mail is due, in part, to the lack of a DMCS provision for such a discount. It argues that amending DMCS Rate Schedule SS-2 to provide for a "non-automatable bulk" discount category for BRM processed by bulk handling and accounting methods approved by the Postal Service would remedy the inequity of the current fee structure. Motion at 3-4. It contends that the Commission has jurisdiction under § 3623(b) to recommend classification changes on its own initiative, and, therefore, has the authority to entertain the classification proposals of intervenors in this proceeding. It argues that this would promote the policies of the Act stated in § 3623(c)(1) ("the establishment of a fair and equitable classification schedule"), and § 3622(c)(5) ("the desirability of special classifications from the point of view of both the user and of the Postal Service"). The Motion argues that it would be inequitable not to provide them an opportunity to develop an

evidentiary record supporting its proposal in this proceeding because it is the only proceeding dealing with special services that the Postal Service has indicated it will file in the foreseeable future. Id. at 5.

The Postal Service filed its answer to the Motion on July 24, 1996. Opposition of United States Postal Service to Nashua Photo Inc. and Mystic Color Lab Motion to Enlarge Scope of Proceeding for Consideration of Classification Modification with Respect to Business Reply Mail, July 24, 1996 ("Postal Service Opposition"). The Postal Service argues that the Motion should be rejected because its Request is a set of proposals to reclassify discreet special services that have nothing to do with Business Reply Mail. Postal Service Opposition at 4. It asserts that reviewing the BRM fee structure in this docket would be premature for both practical and policy reasons.

The Postal Service warns that the Commission might have to evaluate the Nashua/Mystic proposal on an underdeveloped record, since the data necessary are not yet available. It urges that the Nashua/Mystic proposal be deferred, because relevant data "are expected to be developed during the coming months" as part of a comprehensive review of its BRM program's costs and business processes. It argues that evaluation of the Nashua/Mystic proposal is likely to delay processing of its proposals in this docket, since it is likely to raise a wide range of novel and contentious issues, including whether a bulk discount should be offered to both automated and non-automated BRM, and the costs of administering a bulk BRM discount. Id. at 4-5. It argues that it should be the Postal Service's managerial prerogative to treat

the proposals in its Request, rather than that of Nashua/Mystic, as its near-term business priorities. Id. at 1, 3. It asserts that recommending a rate for bulk BRM in this docket would violate management's statutory prerogatives, and warns that the Governors are likely to reject a shell rate category for bulk BRM, should the Commission recommend it. Id. at 2-3.

Finally, the Postal Service argues that denying the Motion would not leave Nashua and Mystic without relief. Responding to their assertion that this docket is the only reclassification case for special services that the Postal Service plans to file in the foreseeable future, the Postal Service contends that its policy statement of July 19, 1996, on BRM reform "opens the possibility that there soon will be a BRM reclassification case" in which the Nashua/Mystic proposal could be considered. Id. at 5.

The Office of the Consumer Advocate (OCA) also filed a response opposing the Motion. Office of the Consumer Advocate Response to Motion of Nashua Photo and Mystic Color Lab to Enlarge Scope of Proceeding, July 25, 1996 ("OCA Response"). The OCA states that the Nashua/Mystic proposal appears to have merit and should be investigated, citing previous expressions of Commission concern that the costs avoided by mail services that do not require delivery are not adequately reflected in their rates. OCA Response at 4-5. It contends, however, that to begin an investigation of the BRM fee structure almost two months into these proceedings might delay the processing of the Postal Service's proposals. It regards delay as unwarranted, since it sees no connection between reform of the BRM fee structure and

the Postal Service's proposals in this docket. Id. at 1. The OCA argues that it would be more appropriate to consider the Nashua/Mystic proposal in a separate complaint proceeding brought under § 3662, or in a separate phase of the current docket. Id. at 1-2.

On July 31, 1996, Nashua and Mystic filed a memorandum replying to the arguments of the Postal Service and the OCA. Nashua Photo Inc. & Mystic Color Lab Reply Memorandum Regarding Their Motion to Enlarge Scope of Proceeding for Consideration of Classification Modification with Respect to Business Reply Mail, July 31, 1996 ("Nashua Reply"). Nashua's Reply describes the procedures used to handle Nashua's BRM mail. According to Nashua, it receives its incoming film processing orders from the Postal Service in sacks by truck. It asserts that it does all remaining handling of this incoming BRM mail, including keeping an incoming manifest system that generates a daily computer report for the Postal Service of the amount of postage and BRM fees owed. It describes the Postal Service's role as limited to sampling the incoming mail to verify these reports. Nashua contends that because this system requires less BRM-related work of the Postal Service than BRMAS mail, charging it a 10-cent, rather than a 2-cent BRM fee is unfair. It alleges that the Postal Service does not believe that the current DMCS permits it to charge a reduced fee for non-automated BRM. Its proposal is intended to remove this perceived obstacle to charging it fair BRM fees. Nashua Reply at 3, n.3.

Nashua's Reply urges rejection of the Postal Service's policy argument that management's decisions concerning the scope

of its classification proposals should control the scope of the hearings in which they are considered. It warns against assuming that a failure by management to request a particular classification change means that management would arbitrarily refuse to consider a record supporting such a change. Such an assumption, it argues, would make futile the authority granted to the Commission in § 3623(b) of the Act to initiate hearings on classification proposals. *Id.* at 7-8, 9-11. Nashua cites Docket No. MC78-2 as an illustration that this authority can be productively invoked. In that docket, it notes, the Governors adopted the Commission's recommendation to create presort discount categories for non-profit third-class mail, even though the Postal Service did not propose changes to that subclass in that docket. *Id.* at 10, n.9.

Nashua's Reply challenges the Postal Service's contention that the Commission has a policy of excluding intervenors' proposals from dockets under circumstances similar to those in this docket. It notes that the Postal Service's Opposition attempts to draw parallels between Nashua's proposal in this docket, and a proposal by United Parcel Service (UPS) to expand the scope of Docket No. MC95-1 that the Commission rejected. According to the Postal Service, Nashua notes, the Commission rejected UPS's proposal to enlarge Docket No. MC95-1 because UPS proposed changes to a mail category that the Postal Service's proposals did not address, threatening to unduly burden and delay the consideration of its own proposals. The Postal Service has not proposed substantive changes to BRM, and claims that it would unduly burden and delay this proceeding to add difficult BRM

issues to the complex set of issues raised by its own proposals. Nashua Reply at 2-3.

Nashua counters that the reasons that the Commission used to restrict the scope of Docket No. MC95-1 do not apply to its proposal in this docket. It observes that in Docket No. MC95-1, the Commission evaluated proposals to reclassify "the totality of First-Class, second-class and third-class mail" in ten months. It argues that the same amount of time is available to evaluate the "vastly smaller" set of issues in this docket, which involves reclassification of only six special services. Nashua contends that the Postal Service is well aware of the contrast. It quotes from the Postal Service's letter to the participants in this docket proposing a partial settlement, which states that activity in this docket has been "relatively light, and there are many fewer issues than in an omnibus rate or classification proceeding." Under these circumstances, Nashua argues, considering a minor change in BRM is unlikely to significantly delay this proceeding. Nashua Reply at 4-5, 9.

Nashua argues that the parallel that the Postal Service attempts to draw with Docket No. MC95-1 fails in another crucial respect. It notes that the Postal Service's Opposition offers no assurance that Nashua would have other remedies if its Motion were denied. The Opposition, Nashua asserts, offers no commitment to filing a BRM reclassification case in the near future, just an expectation that later this year it will be in a position to "take appropriate action" of an unspecified nature. Id. at 6, 11.

Commission Analysis. Determining the appropriate scope of the Commission's dockets is an administrative matter generally left to the Commission's sound discretion. It involves balancing various objectives. Prominent among them is procedural efficiency, but there are others. One of them is the Commission's "affirmative duty to develop facts and make recommendations which further the goals and objectives of the Act." See Docket No. MC78-2, Opinion and Recommended Decision on Reconsideration, March 24, 1980, at 13. Among those statutory objectives are that mail classifications be fair and not unduly discriminatory [see §§ 3623(c)(1) and 403(c)], and that they be structured to fairly reflect major distinctions in costs, demand, and other § 3622(b) factors.

Nashua has alleged that its BRM requires less work of the Postal Service, and therefore imposes less cost on the Postal Service, than automated BRM. If this were shown to be true, the five-fold disparity in the BRM discount offered to these two types of BRM might indicate that this fee structure violates § 3623(c)(1), and § 403(c). Such a case might be rebutted, for example by a showing that it would be administratively impractical to establish a separate discount category for non-automated bulk BRM mail processed as Nashua describes. The important point is that not allowing Nashua to attempt to prove its case in this docket would frustrate the objectives of the Act, unless there are important countervailing considerations.

The countervailing considerations alleged by the Postal Service are not persuasive. The Postal Service argues that, as a matter of policy, the boundaries of classification proposals

selected by management should control the scope of the hearings in which they are considered. This "policy" is not consistent with the structure of the Act. The Act clearly does not assume that a failure by management to request a particular classification change means that management would arbitrarily refuse to consider a record supporting such a change. Such an assumption would make a mockery of the authority granted to the Commission in § 3623(b) of the Act to initiate hearings on classification proposals. As Nashua notes, this authority has been productively exercised in prior dockets, such as MC78-2, where the Governors adopted the Commission's recommendation to reconfigure a subclass that was not addressed in the Postal Service's initial filing. Nashua Response at 10, n.9.

Although BRM is a special service, the Postal Service argues that it is inappropriate to address it in this docket, because it is unrelated to the six special services that it proposes to modify. This argument that BRM is unrelated is valid, as far as it goes. Most of the six special services are unrelated to each other and to BRM. The Postal Service's Request proposes miscellaneous, rather than systematic classification changes to special services. Since all are essentially discreet, self-contained services, there is little procedural efficiency to be lost by considering another discreet special service in this docket. The decision to address Nashua's proposal in this docket should turn on other factors.

More significant is the Postal Service's argument that considering Nashua's proposal in this docket would be premature, because the Postal Service is currently reexamining BRM costs and

operations. The prospect of having access to more BRM cost and operational data in a subsequent case would support deferring consideration of Nashua's proposal if it were coupled with some assurance that there will be a relevant filing in the foreseeable future. As Nashua points out, however, the Postal Service has promised only that it will be in a better position "to take appropriate action" at the end of the year, action which might or might not involve a filing with the Commission. Nashua Reply at 6, 11. This contrasts with the situation in Docket No. MC95-1 in which the Commission refused UPS's request to include reform of the Priority Mail rate structure. An important factor in that decision was the Commission's belief that issues relating to the structure of Priority Mail would be reviewed in a future docket, based on the intentions expressed by the Postal Service to make a relevant filing in the near future. See Docket No. MC95-1, Order No. 1064, citing Tr. 1/30.

The other factor on which the Commission relied in refusing to enlarge the scope of MC95-1 was the impracticality of adding potentially complex reclassification issues to the sweeping classification reforms already under consideration in that docket. This contrasts with the situation in this docket, where the same amount of time is available to examine a considerably narrower set of Postal Service proposals. As the Postal Service has acknowledged, activity in this docket has been light, and there are many fewer issues to consider than in an omnibus classification docket. Notice of the United States Postal Service Regarding Partial Settlement, July 19, 1996, at 3.

The narrowness of the issues raised by Nashua's proposal further reduces the prospect that considering them in this docket will delay processing of the Postal Service's proposals. To support a recommendation that a discreet rate category be established for bulk, non-automatable BRM processed by the business reply customer, it is not essential for Nashua to show what the specific discount should be. It may be sufficient to show that the BRM costs of such mail are systematically and substantially below the BRM costs of other advance deposit non-automatable BRM. Nashua has disavowed an intent to litigate issues of the appropriate attributable cost and rate for automated BRM itself. Nashua Reply at 3, n.3.

Accordingly, it does not appear that considering Nashua's proposal in this docket is likely to significantly delay the consideration of the Postal Service's proposals in this docket. If, during the course of this proceeding, the Postal Service should demonstrate that Nashua's proposal cannot be adequately considered without a wide-ranging reexamination of the structure of BRM fees, and that such a consideration must await the outcome of its current investigations, the Nashua proposal can be severed and considered in a separate phase of this docket.

It is ordered:

1. The Nashua Photo Inc. and Mystic Color Lab Motion to Enlarge Scope of Proceeding for Consideration of Classification Modification with Respect to Business Reply Mail, filed July 15, 1996, is granted.

2. The Secretary shall cause a notice of this determination to be published in the FEDERAL REGISTER.

By the Commission

(S E A L)



Margaret P. Crenshaw
Secretary