

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

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Experimental Rate and Service Changes To
Implement Negotiated Service Agreement With
Capital One Services, Inc.

Docket No. MC2002-2

**COMMENTS OF THE
NEWSPAPER ASSOCIATION OF AMERICA
ON ORDER NO. 1346
October 17, 2002**

The Newspaper Association of America ("NAA"), by its attorneys, hereby respectfully submits its comments on the procedural issues raised by Order No. 1346. NAA will focus these comments on the classification of the proceeding and the range of issues.

This proceeding is unprecedented in the more than 30 years of experience under the Postal Reorganization Act. Never before has the Postal Service, a taxpayer-built public service, so dramatically departed from its statutory obligation of providing postal services to customers on a nondiscriminatory basis. Indeed, at a time that it is curtailing service to ordinary First-Class mailers by removing collection boxes around the country, it is offering rate breaks to a large corporate First-Class mailer. Earlier this year the Postal Service was requesting specific authority from the Congress for domestic negotiated service agreements; that Congress chose to reject such proposals seems only to have encouraged the Postal Service to shop its ideas in a different forum.

NAA has consistently and historically opposed the Postal Service entering into a negotiated deal on a selective and discriminatory basis to a single customer. Whether this proceeding is designated "experimental" or not is essentially an irrelevant question – the proposal is both illegal and unwise and should be rejected regardless of the

procedural posture. Categorizing the proceeding as “experimental” does not evade the Postal Service’s legal responsibilities; there is no “experimental” exception to the Postal Reorganization Act in general and Section 403(c) in particular.

The major consequences of designating this proceeding as “experimental” are procedural: the 150 days deadline and the possibility of limiting issues. As for the timing of the proceeding, the Commission should not feel compelled to rush to judgment on a proposal of this magnitude. Although the Commission may propose a schedule based on the 150 days from its decision to classify the proceeding as experimental, it should also recognize that the unprecedented nature of this proceeding, and the Postal Service’s clear desire to negotiate still more special agreements in the future, may require additional time beyond that period in order to ensure a full and fair consideration.

As for the Commission’s inquiry about whether issues can be limited and whether a hearing is required, it is premature even to consider that there is any possibility for limiting issues. As a preliminary matter, NAA notes that that the Postal Service has not filed a signed and dated copy of the Negotiated Service Agreement that purportedly underlies this proceeding,¹ and therefore the Commission cannot be entirely certain of its terms. Even more importantly, it appears that there may be a number of important issues requiring a full hearing.

In addition to the fundamental question of whether a special deal negotiated in secret with a large domestic customer has any legal legitimacy, NAA submits that

¹ Appendix G to the Request has a blank in its very first sentence, which purports to indicate when the agreement was made, and is unsigned by the Postal Service. In addition, there appear to be inconsistencies between some of its provisions and the description of the NSA in witness Plunkett’s testimony. NAA is filing contemporaneously herewith interrogatories directed at these matters.

among the issues that, upon discovery, are likely to give rise to genuine issues of material fact, or mixed law and fact, requiring a hearing are:

- whether the proposed limitation of the negotiated benefits to Capital One alone instead of to a wider range of First-Class mailers is reasonable;
- whether the Postal Service's estimates of costs avoided is accurate;
- whether the Postal Service's estimate of new revenues is reliable;
- whether the Postal Service has properly estimated the costs of the proposed agreement;
- whether the Postal Service's estimate of net contribution is accurate;
- whether there is any reason to limit the cost savings for Undeliverable As Addressed mail to one mailer; and
- whether the proposed NSA is fair and equitable to other mailers.

NAA has commenced discovery on these and other issues.

Accordingly, NAA submits that a hearing is required and that it does not appear possible, at this stage, to limit issues.

Respectfully submitted,

NEWSPAPER ASSOCIATION OF AMERICA

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Certificate of Service

I hereby certify that I have this 17th day of October, 2002, caused to be served the foregoing document upon the United States Postal Service and the Office of the Consumer Advocate in accordance with sections 12 and 20(c) of the rules of practice.

William B. Baker
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