

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

**EXPERIMENTAL RATE AND SERVICE
CHANGES TO IMPLEMENT NEGOTIATED
SERVICE AGREEMENT WITH
CAPITAL ONE SERVICES, INC.**

DOCKET No. MC2002-2

**RESPONSE OF CAPITAL ONE SERVICES, INC.
TO COMMENTS, FILED ON OCTOBER 17th, 2002
BY THE NEWSPAPER ASSOCIATION OF AMERICA
AND OFFICE OF THE CONSUMER ADVOCATE**

I. Comments of Newspaper Association of America

The Newspaper Association of America (NAA) lodged a document which purports to be Comments on procedural issues raised by Order No. 1346 in this proceeding.

Aside from overwrought rhetoric and hyperbole (“proceeding is unprecedented,” “never before has the Postal Service ... so dramatically departed from its statutory obligation,” “special deal negotiated in secret”), the pleading offers little insight into procedural issues but rather makes a number of unsubstantiated and inaccurate allegations about Negotiated Service Agreements (NSAs), and the Capital One NSA in particular. By some interesting logic the Comments somehow link the alleged removal of collection boxes around the country to “offering rate breaks to a large corporate First-Class mailer.” The Postal Service is charged with requesting specific authority from the Congress for NSAs. That did not happen; nor, as alleged, did Congress reject NSAs. The Postal Reform Bill that was rejected in Committee did not contain a proposal relating to NSAs.

The Comments also claim that the NAA has “consistently and historically opposed” negotiated deals. Where and when?

In its pleading, denominated as Comments on procedural issues, the Comments say that the central procedural question ruled on in Order No. 1346, a provisional ruling that the proceeding would be treated as “experimental,” is irrelevant. Why is it irrelevant? According to the Comments, because such proposals are not only illegal, but they are also “unwise.”

The Comments actually do address one procedural matter raised in Order No. 1346, and that is the expeditious nature of the proceeding. The Comments advise that the Commission should take its time and that there should be no rush to get this done within the 150 day deadline prescribed by the Commission’s own rules regarding experimental procedures. The Comments say that it “may require additional time beyond that period in order to ensure full and fair consideration.” One wonders, if the NAA is truly concerned about the Commission having sufficient time to consider this matter, then why did the NAA wait 24 days, until the very last day allowed, to file its Notice of Intervention? The Office of the Consumer Advocate had already filed its second round of interrogatories on Capital One and the Postal Service before NAA had even intervened.

While the Comments assert that “it is not possible, at this stage, to limit issues,” the Comments then proceed to define every likely issue of fact that might require a hearing, including other issues which are legal issues, not factual¹. It would appear that the NAA

¹ Among the issues listed on page 3 of the Comments, which are not issues of fact, although alleged to be, are the following:

1. “Whether the proposed limitation of the negotiated benefits to Capital One alone instead of to a wider range of First-Class mailers is reasonable.” That is a legal question which goes to the lawfulness of NSAs, per se. By definition, a Negotiated Service Agreement is an agreement reached through negotiation between a mailer and the Postal Service. Either the Postal Service has the authority to negotiate such agreements and the PRC to recommend their adoption, or neither entity has such power under the PRA. It is not a factual issue.

2. “Whether there is any reason to limit the cost savings for undeliverable as addressed mail to one mailer”. This is simply the same issue as 1 above, framed differently. An agreement with one mailer, by definition, limits the immediate cost benefit to the Postal Service to savings from that one mailer. Nothing in the Agreement limits the postal Service from entering into multiple arrangements with other mailers to reap the same savings. This is not a factual question.

pleading has done, in fact, what it says cannot be done, that is limit the issues that might need to be tried, assuming that an intervenor wishes to challenge Postal Service and Capital One evidence on the issues identified.

II. Comments of Office of the Consumer Advocate

The essence of the Comments of the Office of the Consumer Advocate (OCA) are that the proposed Negotiated Service Agreement contains three essential elements, each of which is worthy of an experimental procedure on its own. Presumably, each would be generally available to all mailers and not limited to the single mailer that negotiated the agreement with the Postal Service. While we do not disagree that the constituent elements of the NSA might, on their own, be attractive, we can only point out that the Postal Service and Capital One have indicated to each other that they are only willing to do the various things undertaken in the agreement in exchange for considerations offered by the other party. The OCA comment is *de facto* a suggestion that the Commission not confront what the OCA states is the uncertain issue of approving a Negotiated Service Agreement, but take the safer course and consider each of these features as a separate experiment.

We could not disagree more with the suggestion that the Postal Rate Commission should duck the issue of approving Negotiated Service Agreements and the proper framework for their negotiation and approval, an opportunity that is now presented for the first time to the Commission.

We understand why Postal Service competitors, for example, the members of the NAA, would oppose arming the Postal service with the ability to be more efficient and more customer-sensitive, because that might mean less business for them. However, the OCA should welcome NSAs on behalf of consumers. It is the case that this is an opportunity for the Postal Service to be able to benefit all stakeholders in the Postal Service by entering into smart special

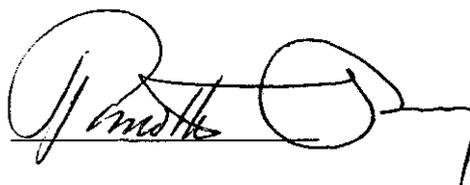
3. "Whether the proposed NSA is fair and equitable to other mailers". This is a legal and not a factual issue.

The remaining issues could give rise to genuine issues of material fact.

arrangements with customers, customized to the needs and abilities of those customers. It seems to us that the Commission need not concern itself with whether or not the individual mailer who is a party to an NSA is making a good or bad deal for itself. Rather, we would suggest that the Commission's task is to ensure that the Postal Service and its stakeholders will benefit from these specialized arrangements. If they benefit then it is axiomatic that all of the consumers of the Postal Service, in contra-distinction to the competitors of the Postal Service, will benefit.

Of course, one criterion of the Act is that the Commission shall weigh the impact upon competition (not competitors) of rates and classifications that it recommends. We would note that the NAA has not listed the effect upon competition as an issue in this proceeding. That is understandable, because this NSA, and others that could be negotiated in the future, would promote competition and not stifle it, an objective of the NAA. At heart, this agreement is one which cuts the Postal Service's costs, cuts the mailers' costs, and contributes a greater amount to the overhead margins of the Postal Service, a benefit to all rate payers.

Respectfully submitted

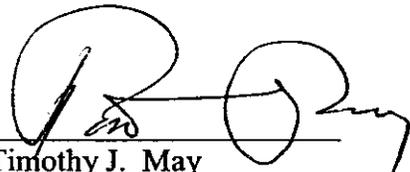
A handwritten signature in black ink, appearing to read "Timothy J. May", written over a horizontal line.

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Dated: October 21, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this date served six (6) copies of the foregoing document upon the United States Postal Service by hand in accordance with Section 12 of the Rules of Practice.



Timothy J. May

Dated: October 21, 2002