

PRESIDING OFFICER'S
RULING NO. MC2002-2/3

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

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

Docket No. MC2002-2

PRESIDING OFFICER'S RULING
ON USE OF RULE 67 PROCEDURES
AND INITIAL PROCEDURAL SCHEDULE

(Issued October 29, 2002)

This ruling addresses the appropriateness of proceeding in accordance with the provisions available for considering experimental mail classification requests in sections 67 through 67d of the rules of practice,¹ and the adoption of a suitable procedural schedule for the initial stages of this proceeding.

A. Use of Rule 67 Procedures

As the Commission noted in Order No. 1346, the Postal Service's Request in this docket states a belief that it would be appropriate for the Commission to consider the operative rate and classification elements of its NSA-based proposal as an experimental classification, under the streamlined and expedited rules codified in sections 67 through 67d. If applied, these rules would provide for the limitation of issues to be addressed in

¹ 39 C.F.R. §§ 3001.67 through .67d.

hearings; allow the Service to explain the absence of otherwise-required but unavailable data; and adopt a decisional timetable of 150 days.

The Postal Service's invocation of the experimental rules triggers scrutiny of the substance of its Request under the standards set out in section 67(b). I described the nature of the Commission's analysis under this section in a parallel ruling in Docket No. MC2001-3:

The Commission's rules make clear that use of these rules is not simply a matter of preference, but a choice to be made after consideration of four standards in rule 67(b). These standards (novelty, magnitude of the change, data collection issues, and duration) allow the Commission to consider relevant factors and strike a balance between the Service's legitimate interests in expeditiously pursuing field tests of potential offerings, and users' and competitors' legitimate concerns about the potential impact of the experiment.

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Under Rule 67(b), the Commission may require that the normal procedures applicable to nonexperimental classification requests be used to consider a request for an experimental classification.

Presiding Officer's Ruling No. MC2001-1/3, April 20, 2001, at 9, 2. Accordingly, the following discussion assesses the Service's filing in light of the four considerations specified in section 67(b), giving due consideration to the proposal's potential effects on other interested parties.

Novelty of the proposal. In its Request, the Service identifies several features that, in its view, establish the novelty of its proposal. These include an exchange-of-service element to promote more efficient address correction while avoiding the cost of returning undeliverable-as-addressed mail, and declining-block rate discounts to be available when volume thresholds are exceeded by Capital One. First and foremost, the Service cites the proposal's basis on an agreement with a single mailer, rather than a narrow but generally applicable classification change. Request at 3-4.

In past proceedings, the “novelty” criterion has been applied to assess whether a given proposal is sufficiently innovative to qualify as genuinely experimental, rather than a minor adjustment in existing mail classifications.² However, the extremely novel—indeed, unprecedented—character of the Service’s proposal appears to provide a more persuasive basis for declining to apply the rules’ streamlined procedures than for employing them in this instance. As intervenor Newspaper Association of America (NAA) has argued, it is important to “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 [an expedited schedule] in order to ensure a full and fair consideration.” Comments of the Newspaper Association of America on Order No. 1346, October 17, 2002, at 2. For much the same reason, it would appear to be premature to attempt to limit the issues to be addressed in this proceeding, especially in view of the broad range of apparently legitimate questions identified by NAA. *Id.* at 2-3.

Magnitude of the proposed changes. In the Request, the Postal Service asserts that the proposed changes conform to the logic of the experimental approach, as their overall cost, volume, and revenue effects would be relatively minor. The Service notes that the experimental changes would apply only to the rates, fees, and classifications for Address Correction Service and First-Class Mail, and that no other classes or services would be altered. It also notes that they “would apply only to one, discretely-positioned mailer.” *Id.* at 4. (Footnote omitted.)

The Service provides estimates of the financial impact of the experiment, and the projected net effect over its course can fairly be characterized as modest. However, preliminary analysis of the underlying calculations indicates that this moderate estimate of financial impact depends on the cost savings produced by forgoing return of undeliverable-as-addressed pieces to offset the revenue leakage resulting from declining-block discounts at estimated volumes. Potential uncertainty regarding the projected level of volumes during the experiment would appear to justify providing an

² See, e.g., Presiding Officer’s Ruling No. MC2001-1/3, *supra*, at 9-10.

opportunity for thorough exploration of the bases of the estimated impact of the experiment.

Ease or difficulty of generating and gathering data. The Request also states that the prospects for producing data and gathering information demonstrating the effects of the proposed changes warrant adopting an experimental approach. The Service claims that Capital One's own historical volume and cost data provide a sufficient foundation for the Capital One NSA as an experiment, but also recognizes that the effects of implementing the proposed NSA "will arise from changing mailer behavior in a fluid business environment, so as to induce new volume that avoids Postal Service return and forwarding costs, improves address quality, and increases overall contribution from Capital One." Request at 4. The Service represents that more complete data would be generated and analyzed annually to determine how the Capital One NSA affects postal costs and revenues during its proposed three-year term. *Id.* at 4-5. The Service's data collection plan is described in the testimony of witness Plunkett.

No participant has challenged the data collection plan presented in the Service's direct case. However, it must be recognized that the proposal may present unusual challenges in gathering and reporting data, in part because that process would appear to require discriminating between a single mailer's baseline volumes and incremental volumes that arguably result from performance under the NSA. This aspect of the proposal would appear to warrant opportunity for careful scrutiny by interested participants.

Desired duration of the experiment. The Service's Request notes that the duration of the experiment would be limited to three years, as provided by the terms of the Negotiated Service Agreement. According to the Service, this duration also conforms to the logic of the experimental approach. *Id.* at 4.

A proposed three-year duration is not unprecedented in the recent history of proposals considered under the experimental classification rules.³ However, three

³ For example, a three-year experiment was recommended for the Mailing Online service. PRC Op. MC2000-2, June 21, 2000, Appendix Two, Page 7, DMCS § 981.71.

years is at the outer limit of duration for recently recommended experiments. The proposed duration also exceeds the period of effectiveness for permanent rates in some recent omnibus ratemaking cycles, which may be significant in light of the deepened discounts made available under the proposed experiment.

Conclusions under the section 67(b) standards. On balance, application of the relevant standards in section 67(b) to the joint proposal does not support streamlined and expedited consideration under the experimental rules. The extreme novelty of the NSA-based proposal militates against limiting or foreshortening exploration of the issues that it may entail. The magnitude of the proposed changes is narrow in scope, but somewhat uncertain in financial impact. Generating and gathering data during the proposed experiment appears feasible, but may involve difficulties in disaggregating Capital One's volumes of First-Class Mail. Finally, the proposed duration of the changes are at the outer limit of recently-approved experiments, and its length would tend to amplify uncertainty regard the potential impact of the proposed discounts.

In light of the above determination, the normal procedures for considering mail classification requests will be applied in this case, except where specific rulings provide otherwise. For example, participants should note my ruling during the prehearing conference granting the Postal Service's motion for waiver of certain filing requirements under sections 54 and 64 of the rules.

RULING

Subject to rulings already rendered or to be rendered in response to motions pending on this date, this proceeding will be conducted in accordance with the rules generally applicable to mail classification proceedings pursuant to 39 U.S.C. § 3623.

George Omas
Presiding Officer