

**BEFORE THE
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. MC 2002-2

**STATEMENT IN LIEU OF BRIEF AND OPPOSITION TO STIPULATION AND
SETTLEMENT BY NATIONAL NEWSPAPER ASSOCIATION**

The National Newspaper Association hereby notifies the Commission that it does not intend to file a brief in this docket because of budgetary constraints. It wishes to direct the attention of the Commission to the testimony of Jeff M. David, NNA T-1, in its entirety.

1. No NSA procedures will be adequate to protect small mailers.

Nothing in the proceeding has thus far assuaged NNA's concerns about this proposed NSA or about the dangers of the genre. In particular, we wish the Commission to note NNA's belief that developing future NSA regulations and guidelines to extend benefits of a single NSA to similarly situated mailers will be difficult. But adequate protections for small mailers that will never be similarly situated with a large volume mailer, yet harmed by an NSA nonetheless, will inevitably elude the Postal Service and the Commission, no matter how hard they try to develop them.

If the key element in NSAs is volume incentive, it should be self-evident that small mailers will be unable to participate. In this context, a small mailer need not be a country weekly newspaper such as NNA typically represents. It may be merely a mailer unable to provide the saturation coverage that a large USPS customer is interested in providing. There will be no procedure that enables this Commission to make these mailers whole again, once the doors to volume-based NSAs are fully opened.

NNA remains unopposed to the concept of NSAs that are built upon work-sharing, although it might take issue with individual proposals. But it has become clear that the main attraction of NSAs is the reward for volume. If this Commission permits USPS to go down that road, there will be no turning back. Both the USPS infrastructure and the beneficiary companies will become dependent upon the enticements and incentives—and a USPS catering primarily to very large customers will take the place of the service we now know.

2. Even if procedural protections were built, small mailers might never benefit from them.

One of the largest barriers to such protection for small volume competitors with NSA partners should be evident by NNA's own level of participation in this case. Although NNA endeavors to provide its testimony and viewpoint to this Commission whenever it can and has invested heavily over the past 30 years in building the expertise to do so, the process of appearance is costly. This is not the first case in which NNA was forced to a lower level of participation because of the cost of proceeding. Undoubtedly NNA is not the only representative of small mailers for which this statement is true.

Some parties to the docket clearly envision a groundswell of NSAs if this one goes according to their visions. If multiple NSAs were to appear on the Postal Service's screen and the Commission's docket, the need for a constant presence at the Commission by mailers' groups—either to support or oppose the NSAs--would burden all in the system—the mailers, the Postal Service and the Commission itself. But whether small volume mailers will be able to keep up with these dockets is questionable.

It should be obvious that small mailers will rarely, if ever, be able to supply the mailing volumes that make NSAs attractive to USPS. The logic should follow that if the small mailers' groups appear at all, it will be to oppose. But a small mailer might be unable to avail itself of any protections in the process to object, even if the Commission were able

to divine a set of rules to make NSA's arguably more fair. Indeed, a small mailer might be unable to keep track of the proceedings sufficiently to know of the need to appear.

It is hard to imagine, therefore, how such individualized deals as the type of NSA proposed here could ever be fair to parties with few resources. The ticket price for protecting fairness in the marketplace may simply be too high.

Supporters of NSAs, as well as the Postal Service, have argued that NSAs are appropriate because private sector industries use them, even some that are regulated. But the Postal Service is not a private sector entity. It is the sole provider, and largest player in the marketplace of print distribution in most areas served by NNA members. Despite its usual support for new USPS initiatives to benefit mailers, NNA is regrettably unable to do so here.

3. Settlement in this docket is wholly inappropriate.

NNA has willingly participated in settlement of many dockets to which it has been a part, the most recent being MC2002-3. Settlement helps to address the financial burden noted earlier. However, settlements have typically occurred in cases in which no major new issues appeared, when financial exigency demanded rapid action—such as in R2001-1, or when the potential impact of new ventures would be small, such as the co-palletization case noted above.

This case has none of those elements.

Major new issues are presented. Indeed, the case asks the Commission to state whether volume-based incentives are ever appropriate, and to establish clear precedents for future NSAs, if there are to be any.

The Postal Service is not in extreme financial jeopardy, as it was in late 2001. Indeed, it appears to have exceeded its financial expectations for the year so far.

And the impact upon the system, non-NSA mailers, and the American public from this case could be stunningly permanent.

This is not the case where the Commission should accept an agreement by a portion of the mailers that the case has been discussed to their satisfaction and therefore need not continue. Grave and enduring issues have been raised in the case.

Furthermore, it should be clear that none of the parties who believe their own interests will be harmed by this NSA and/or the precedent it sets are consenting to the proposed settlement. To permit a settlement only by the parties whose interests might be promoted by a docket would further the very harms that some parties to the case envision—a deal struck between USPS and large mailers that benefits principally the mailers who agree to its wisdom.

For the benefit of all mailers, including smaller mailers like those NNA represents, the Commission owes it to the future to face the issues in this docket squarely and recommend a solid course for the Postal Service in dealing with requests for individual deals. NNA therefore opposes the stipulation and proposed settlement.

Tonda F. Rush
King & Ballow
PO Box 50301
Arlington, VA 22205
(703) 534-5750; (703) 241-1480
(703) 534-5751 fax
NewsBizLaw@aol.com

Respectfully submitted,

Tonda F. Rush
Counsel for
NATIONAL NEWSPAPER ASSOCIATION,
INC.

Tonda F. Rush
King & Ballow
PO Box 50301
Arlington, VA 22205
(703) 534-5750; (703) 241-1480
(703) 534-5751 fax
NewsBizLaw@aol.com

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document in accordance with Section 12 of the Commission's Rules of Practice.

Tonda F. Rush
Counsel for National Newspaper Association

April 4, 2003
Arlington, VA 22205