

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

**Proposed Rules Applicable To
Baseline And Functionally
Equivalent Negotiated Service
Agreements**

Docket No. RM2003-5

Reply Comments Of Major Mailers Association

In accordance with the procedural schedule contained in Order No. 1383,¹ Major Mailers Association (MMA) hereby submits its reply comments on the proposed new procedural rules governing the submission and processing of Negotiated Service Agreements (NSA).

MMA and most of the other parties that filed initial comments (IC) recognize the value of clear procedural rules that will make submission and approval of future NSAs more efficient, less time consuming, and less expensive. These parties urge the Commission not to impose unduly rigid or restrictive requirements for NSAs.

A few parties apparently take a dim view of NSAs. For example, the Office of the Consumer Advocate (OCA), which considers NSAs a “last resort” (IC at 2), suggests that the Commission impose a requirement that future NSAs must make a “material additional contribution to institutional costs” of the Postal Service. OCA IC at 9).² Similarly, National Newspaper Association (NNA) sees NSAs as the first step down “the road for unraveling universal service.” NNA IC at 3. Among other things, NNA urges the Commission to require that NSA mailers disclose their most confidential business “plans *or potentialities*” (IC at 8 (emphasis added)).

¹ Proposed Rules Applicable To Baseline And Functionally Equivalent Negotiated Service Agreements, Docket No. RM2003-5, Order No. 1383, issued August 27, 2003 (**NOPR**).

² OCA goes further, suggesting that the participating mailer(s) and the Postal Service must prove that “each major service element is making a material additional contribution to institutional costs” so as to “preclude contribution neutral NSAs (or elements thereof).” OCA IC at 2-3.

MMA submits that fear and mistrust of NSAs is baseless. No one maintains that NSAs should be the Postal Service's *first* or only option. However, among all options available to the Postal Service, no single option should be relegated to a "last resort" status. Omnibus rate and classification proceedings serve valuable purposes; so do proceedings involving experimental rates and niche classifications. NSAs too have a valuable, and rightful place in the continuum of postal regulation. The point is that the Postal Service, mailers, and the Commission should have available all appropriate tools for the job of optimizing the efficiency and fairness of postal operations.

Adopting rigid and unduly complicated threshold filing requirements and/or imposing NSA-specific evidentiary requirements that go beyond the general substantive standards of the Act will not serve any legitimate purpose. Indeed, imposing such requirements will only serve to guarantee that the NSA never develops into a valuable, mutually beneficial mechanism for the Postal Service and mailers.

There is no logical reason for the Commission to adopt a rule that explicitly or implicitly outlaws contribution neutral NSAs. An NSA that does not necessarily result in additional "profit" for the Postal Service may nonetheless provide other tangible or intangible benefits that warrant going forward with the NSA. Similarly, an NSA that may involve a lower contribution for the Postal Service in the short run, may offer offsetting or greater benefits in the long run. Even if an NSA reduces the contribution that a particular mailer makes to recovery of institutional costs, the NSA may provide a greater contribution than the Postal Service would realize in the absence of the NSA.³ In sum, it makes no sense for the Commission to make a firm rule that only certain very specific NSAs will be entertained. The NSA rules should encourage submission of all innovative proposals. The Commission can and should examine all such proposals and judge them by the commonsense standards of the Act.

³ For example, the Postal Service and the postal system as a whole may be better off with a reduced level of contribution from a particular mailer if the alternative is loss of all or a substantial part of that mailer's business.

NNA's suggestion that mailers must disclose all confidential business information, including "potentialities,"⁴ in order to obtain an NSA is ludicrous. As the initial comments of Capital One make clear, negotiating and obtaining approval of an NSA is and likely will remain an arduous, time consuming, expensive, and uncertain undertaking. The virtual certainty that they will be exposed to serious competitive harm as the result of disclosing confidential business plans and strategies will prevent mailers from even considering an NSA.

The Commission has proposed rules that should make it easier and less expensive to implement NSAs. Adoption of the rule changes urged by OCA and NNA would make the process of obtaining an NSA more difficult, more expensive, and less certain. Accordingly, the suggestions of OCA and NNA should not be adopted.

CONCLUSION

For the foregoing reasons, the Commission should implement reasonable rules that encourage the further evolution and development of Negotiated Service Agreements.

Respectfully submitted,

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⁴ It is not entirely clear what NNA means by "plans or potentialities." It appears, however, that NNA intends a far reaching requirement that, as a part of an NSA request, mailers must disclose, among other things, merger plans even though they may not have been disclosed to investors and that mailers must speculate about the effects of their business plans and strategies. Disclosures of the type NNA suggests may well violate applicable rules and regulations regarding the timing, content, and venue of public disclosure of sensitive business information and subject mailers to liability for making such disclosures prematurely.