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

REPOSITIONABLE NOTES PROVISIONAL SERVICE

Docket No. MC2004-5

**INITIAL BRIEF OF THE
UNITED STATES POSTAL SERVICE**

UNITED STATES POSTAL SERVICE

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I. INTRODUCTION

The proposal in this case is a simple one. The Postal Service has been testing, and now seeks recommendation of a formal, although temporary, classification, with attendant rates, for the attachment of Repositionable Notes (RPNs) to the exterior of non-parcel bulk mailpieces sent as First-Class Mail, Standard Mail, and Periodicals. As witness Holland testified, a “Repositionable Note (“RPN”) is a Post-it™-type self-adhesive note that mailers can affix to the outside of a mailpiece.”¹ A mailer might choose to do so as a means of calling attention to its mailpiece among all the others in a recipient’s mailbox and ultimately increasing response rates to its solicitation. RPNs also have the unique ability to “extend the life of the message, since the recipient can remove the note and re-attach it to a computer, telephone, day-timer, or refrigerator.”² “The RPN then serves as a reminder to respond to the advertisement or solicitation beyond the time the original mailpiece is retained.”³ Catalog mailers can use RPNs to correct minor errors in catalogs, instead of the expensive process of reprinting replacement pages.

Extensive engineering and pilot testing has shown that RPNs do not result in any increased costs to the Postal Service. Market research has shown that mailers are

¹ USPS-T-1, at 1. The Postal Service believes it is clear, but wishes to state specifically, that the proposed classification applies only to notes of this type and not to any other type of peel-off label. It also applies only to an RPN attached to the *exterior of the mailpiece*. Thus, for instance, a similar type of note applied to the front of a catalog or other item which is then enclosed in a polybag is not considered an RPN subject to the rates proposed herein, since it is not on the exterior of the mailpiece.

² USPS-T-1, at 1.

³ *Id.*

willing to pay a nominal price for using RPNs, in addition to the production costs they incur and the applicable postage for the mailpiece.

Accordingly, the Postal Service is proposing to test, for one year, mailers' reactions to the product and a set of prices in the actual marketplace. The information collected in the test can be used to determine whether to propose a permanent service and, if so, to formulate a request to do so. The provision of this additional service should have no effect on any mailers not interested in the service, other than the potential, though small, benefit or offsetting the institutional cost burdens of the subclasses involved.

Since there are no identified costs, the rates proposed are based on the non-cost factors of the Act, including overall fairness and equity, and the specific value of the mail service actually provided to both sender and recipient.⁴ As the Commission has determined, nothing in the Postal Reorganization Act prohibits "rate elements to be based primarily on characteristics other than cost."⁵ In refusing to dismiss the proceeding at an early stage, the Commission stated that the determination of "[w]hether a particular rate distinction may be based entirely on value of service differences requires consideration of all the classification and the ratemaking factors articulated in the Act."⁶ Indeed, the Act specifically "cites the 'value' and 'desirability' of mail as something to be considered" in the rates and classification process.⁷ The Postal

⁴ 39 U.S.C. § 3622(b)(1) & (2).

⁵ Order No. 1417, at 5.

⁶ *Id.*

⁷ *Id.*

Service believes that the record clearly shows how those factors support its proposal for an RPN classification and rates, as explained in this brief and more specifically in the testimony and responses to written cross-examination provided by its witnesses cited herein.

II. PROCEDURAL HISTORY

The Postal Service filed its Request for a Recommended Decision on a Market Test of Repositionable Notes on First-Class Mail, Standard Mail, and Periodicals on July 16, 2004. The Request indicated the Postal Service's intention for the Commission to apply its expedited rules of practice and procedure for market tests, §§ 3001.161 – 166 of Title 39, Code of Federal Regulations. The Request noted that the rules pertaining to market test filings are designed to facilitate the Postal Service's compliance with its statutory duty to "plan, develop, promote, and provide adequate and efficient postal services," 39 U.S.C. § 403(a), by allowing it to change classifications and rates expeditiously in order to test customer response in the marketplace for the purpose of developing information necessary to support a permanent change. The one-year market test requested would establish new classifications and rates for the attachment of Repositionable Notes (RPNs) on the covers of First-Class Mail, Standard Mail, and Periodicals.

The Request was accompanied by two testimonies. The testimony of Darron K. Holland (USPS-T-1) addressed the characteristics of RPNs, the Postal Service's and mailers' experiences with RPNs, the reasons for the proposed expansion of the RPN program as a market test, and the Postal Service's plans for data collection and reporting during the proposed market. The testimony of Kirk Kaneer (USPS-T-2) presented the Postal Service's pricing and classification proposals for a market test of RPNs and addressed the statutory criteria for their evaluation.

The Postal Service noted in its Request that it was not filing a concurrent request for a permanent change, as contemplated by the market test rules, and sought waiver of

those rules to that extent in a separate Motion for Waiver of Request for Permanent Change as a Condition for Market Test Procedures, filed with the Request. The motion explained that a formal request for a permanent change would be unnecessary, in light of the purpose of the market test requested, its prior history, the simplicity of the proposal, and the fact that any permanent request filed concurrently would have been congruent with the market test request. The Postal Service also filed a Conditional Motion for Waiver and a Motion for Establishment of Settlement Procedures.

The Commission, in Order No. 1413, determined that it would apply its rules for provisional services, in place of the rules for market test. The Commission noted:

The Postal Service's RPN proposal would add to the rate and service options under the DMCS rather than alter or reconfigure existing rate and classification schedules. It is a simple change, limited to one year, that is expected not to adversely effect [sic] any stakeholder. Therefore, it appears well suited for processing under the streamlined and accelerated procedures of the Commission's provisional service change rules. See 39 CFR § 3001, subpart J.

Order No. 1413, at 5 (July 21, 2004).⁸ Therefore the Commission dismissed the Postal Service's Motion for Waiver of Request for Permanent Change as a Condition for Market Test Procedures as moot.

⁸ That Order contained a misstatement of the Postal Service's request that should be clarified. At page 2:

[The Postal Service] states that Domestic Mail Manual provisions authorizing RPNs for bulk letter mail are currently in place. Its proposed market test, therefore, is not expected to alter the status quo, except to allow bulk flat mail to carry RPNs, and to charge fees for their use. [USPS-T-1,] at 2-3.

The current stage of testing that is embodied in the DMM allows mailers to affix RPNs only to *automation-compatible* First-Class Mail and Standard Mail letters. The instant
(footnote continued...)

The Postal Service also had filed a Statement Concerning Compliance with Filing Requirements and a Conditional Motion for Waiver of those parts of the Commission's rules governing the filing of rate and classification requests that were not applicable to a minor filing such as this. The Commission granted that motion after allowing parties an opportunity to comment.⁹

In response to the Postal Service's Motion for Establishment of Settlement Procedures, the Commission appointed Postal Service counsel to serve as settlement coordinator. Order No. 1413, at 9. A settlement conference was held on August 10, followed by the prehearing conference on August 11.

The Commission set August 16 as the end of the discovery period. Order No. 1415, at 3. Interrogatories were filed during the discovery period by the OCA and NNA and responses were provided by the Postal Service's witnesses.

On August 11, a joint motion to dismiss was filed by the Association for Postal Commerce, the Direct Marketing Association, and the Mailing & Fulfillment Service Association. The joint movants argued that the Commission did not have the authority to recommend a classification and rates for a service that has no identified attributable costs and for which rates are based on value of service and other non-cost factors of the Act. The Postal Service filed a response in opposition to the motion on August 19, arguing that the motion was both procedurally and substantively unfounded. The joint

(...footnote continued)

request, therefore, seeks to expand the availability both to flats and to all rate and processing categories of letters in all three classes (First-Class Mail, Standard Mail, and Periodicals), and to establish rates. See *a/so* OCA/USPS-T1-1, 2.

⁹ Order No. 1415 (August 16, 2004)

movants filed a reply to the Postal Service's response on August 25. In Order No. 1417 issued on August 30, the Commission denied the joint motion, finding that the Act allows for classification distinctions to be based on grounds other than cost differences, including value of service differences. The Commission found that the issue of whether RPN mail has "value" or "desirability" under the Act that should be reflected in classifications and rates is "something that should be examined in a proceeding where there is an opportunity to make a record, rather than be determined in summary fashion at the outset." Order No. 1417, at 5.

Order No. 1415 had set September 2 as the deadline for filing requests for evidentiary hearings. No party requested hearings by that date. One party, National Newspaper Association indicated on that date that it wished to submit written testimony on its own behalf. The Commission set September 21 as the deadline for filing such testimony. Order No. 1418 (September 9, 2004). On September 21, NNA filed the Direct Testimony of Jerry Tidwell (NNA-T-1). Mr. Tidwell stated that he is the publisher of the *Hood County News* and the *Extra*, a total market coverage product serving non-subscribers, in Granbury, Texas. He indicated his interest in using RPNs on his publications and his desire for a rate lower than that proposed by the Postal Service for Periodicals, both Within County and Outside County, and for Enhanced Carrier Route Standard Mail.

On September 22, Direct Marketing Association filed a Motion for Permission to Conduct Limited Cross-Examination of Postal Service Witnesses Holland and Kaneer.

The Postal Service filed an accelerated response¹⁰ on September 27, opposing DMA's motion as untimely and unjustified. In its response, the Postal Service offered to work informally with DMA to supplement and clarify the record as needed. In Order No. 1420 (September 30), the Commission denied DMA's motion in part and adopted the Postal Service's proposal. As a result, the Postal Service and DMA developed a set of interrogatories to which responses were filed by the Postal Service on October 8, 2004.¹¹

Order No. 1420 also directed the participants to designate testimony and written cross-examination for inclusion in the evidentiary record by October 8, 2004. Following receipt of such designations, including those filed late by NNA and DMA, the Commission placed the designated testimony and written cross-examination into the evidentiary record and closed the record. Order No. 1421 (October 15, 2004). In Order No. 1420, the Commission had set the due dates for briefs and reply briefs at seven and fourteen days following such closure. Order No. 1422 re-opened the record temporarily on October 20 for the purpose of including several interrogatories that had inadvertently been excluded from the list of those accepted into evidence in Order No. 1421.

¹⁰ In accordance with Order No. 1419 (September 23, 2004).

¹¹ Response of United States Postal Service Witness Holland to Interrogatories of the Direct Marketing Association (DMA/USPS-T1-1-2); Response of United States Postal Service Witness Kaneer to Interrogatories of the Direct Marketing Association (DMA/USPS-T2-1-7); and Response of United States Postal Service to Interrogatories of the Direct Marketing Association (DMA/USPS-1-6).

III. THE COMMISSION SHOULD RECOMMEND THE PROVISIONAL REPOSITIONABLE NOTES SERVICE IN ACCORDANCE WITH THE CLASSIFICATIONS AND RATES PROPOSED BY THE POSTAL SERVICE

The Repositionable Notes (RPN) classifications and rates proposed by the Postal Service are in accordance with the Act and should be recommended by the Commission as a provisional service in accordance with its rules.¹² RPN service will further the policies of the Postal Reorganization Act by creating an additional type of mail service designed to meet the specific needs of mail users:¹³ advertisers and publishers who find that the attachment of an RPN on the exterior of the mailpiece successfully encourages recipients to open, read, and respond to its internal contents. The Postal Service believes that the rates and classifications embodied in its proposal will be attractive to mailers and will contribute, even if in a small way, to the long-term viability of the postal system. The requested changes specifically conform to the classification and rate criteria set forth in the Act,¹⁴ as explained in the Postal Service's testimony.¹⁵

As witness Holland testified, the RPN program has successfully undergone several phases of testing that were designed to gauge preliminary mailer interest and to determine that the attachment of RPNs to the exterior of various types of mailpieces does not cause additional handlings or other problems when being run on postal automation or during other stages of processing, including carrier operations.¹⁶

¹² 39 C.F.R. §§ 3001.171 – 3001.176.

¹³ See 39 U.S.C. § 403(b).

¹⁴ 39 U.S.C. §§ 3622(b) and 3623(c)

¹⁵ See USPS-T-2, at 5-11.

¹⁶ USPS-T-1, at 2-4; OCA/USPS-T1-7, 13-16.

“Because RPNs are applied as part of a mechanical process using air pressure, and may have an adhesive strip that is wider than on notes typically used in office settings, they are unlikely to become detached from the mailpiece, as experience ... has borne out.”¹⁷ Accordingly, the Postal Service has a solid foundation for its conclusion that there are no additional costs associated with the use of RPNs.

To further investigate mailers’ potential interest in RPNs, and their reactions to prices for the service, the Postal Service commissioned qualitative market research. The results of this research confirmed mailers’ willingness to pay a nominal price for using RPNs, in addition to the production costs they incur and the applicable postage for the mailpiece.¹⁸ The Postal Service therefore decided to propose a test, in the actual marketplace, of mailers’ reaction to paying a rate for the use of RPNs. Having rates in effect for RPNs would have the direct benefit to the Postal Service of additional revenue from the RPN price. In addition, RPNs could potentially drive the growth of advertising mail, thereby increasing the volume, revenue, and contribution of the relevant mail classes.¹⁹

Based on his analysis that RPNs increase the value of the mailpiece to both the sender and recipient, and based on the prices tested in the market research, witness Kaneer proposed prices for RPNs of 0.5 cents on First-Class Mail and 1.5 cents on Standard Mail and Periodicals.²⁰ Witness Kaneer analyzed both the classifications and

¹⁷ USPS-T-1, at 1.

¹⁸ USPS-LR-1; see USPS-T-1, at 4-5; USPS-T-2, at 2, 7, 6, 8, 9; DMA/USPS-T2-3(c).

¹⁹ USPS-T-1, at 3; USPS-T2-2-4.

²⁰ USPS-T-2, at 2.

rates proposed and concluded that they conform to the policies of the Act.²¹ He explained the rate differential between RPNs on First-Class Mail and on the other classes on based on differences in value.²² He noted that “[o]ne of the purposes of the proposed RPN market test is to collect additional information about market acceptance of the initial prices and quantity demanded” and that “[i]f needed, the market test rates can be adjusted as part of any permanent classification filing for RPNs in light of the market test results.”²³

Before the service is actually provided in the marketplace, it is not possible to project its volume or revenues.²⁴ Witness Holland set forth the Postal Service plan for collecting data, including volume and revenue data by type of mail.²⁵ This plan is in accordance with the Commission’s rules for provisional services.²⁶ During the one-year course of the test, as witness Holland testified, “the Postal Service will endeavor to determine, before the end of that year, whether: (1) it wishes and is able to file a request for a permanent service, (2) it needs to request either an extension of the market test in order to determine the contours of a permanent service, or a revised test which might include other prices or features, or (3) it prefers to simply let the market test expire.”²⁷ The plan will also allow the Postal Service to monitor whether RPNs remain problem-free throughout the processing and handling of the mailpieces to which they are

²¹ USPS-T-2, at 5-11.

²² USPS-T-2, at 2-3.

²³ USPS-T-2, at 3; DMA/USPS-T2-1.

²⁴ USPS-T-1, at 5-6; USPS-T-2, at 4-5.

²⁵ USPS-T-1, at 6-7.

²⁶ 39 C.F.R. §§ 3001.172(a)(7), 3001.175.

²⁷ USPS-T-1, at 6.

attached. The Postal Service intends to periodically poll field operations to ask for a report that specifically states whether or not there have been problems with RPNs during the test period, in accordance with part 5 of the data collection plan.

CONCLUSION

For the reasons set forth above, the Commission is respectfully requested to recommend the proposed classification and rates set forth in the Postal Service's request as a provisional service for one year in accordance with the Commission's rules applicable to such services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

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