

Alliance of Nonprofit Mailers

March 1, 2005

Steven W. Williams
Secretary
Postal Rate Commission
1333 H Street NW
Suite 300
Washington, DC 20268-0001

Re: Docket No. RM2005-2, *Solicitation of Comments on First Use of Rules Applicable to Negotiated Service Agreements*

Dear Mr. Williams:

Pursuant to Order No. 1429, published at 70 Fed. Reg. 4802 (Jan. 31, 2005), the Alliance of Nonprofit Mailers respectfully submits these comments on the Commission's rules applicable to Negotiated Service Agreements (NSAs).

The Alliance of Nonprofit Mailers is a nonprofit corporation, chartered in the District of Columbia, representing the interests of nonprofit organizations in postal matters. Alliance members include many of the nation's best-known charitable, religious, educational, scientific and other nonprofit organizations, as well as smaller community organizations and their umbrella groups.

The Alliance believes that NSAs have an enormous potential to transform how the Postal Service does business, and to benefit all mailers, regardless of whether they are parties to an NSA. NSAs should enable the Postal Service, through narrowly targeted rate reductions on First-Class Mail and other high-margin services, to increase the volume and net contribution generated by these services and to slow the diversion of bill payment mail to the Internet. These outcomes would benefit all mailers by reducing the share of Postal Service institutional costs that must be covered by other mail classes.

However, in the three years since the Commission announced it would look favorably on such agreements, only four NSAs have been submitted by the Postal Service for approval by the Commission. All four NSAs involve the same industry (financial services), the same kind of mail (First-Class credit card solicitations), and the same general set of contract terms.

The low priority given by the Postal Service to NSAs is not entirely irrational, for approval of NSAs is an arduous and costly process. The financial and other data

that the proponents must submit in support of NSAs are comparable in detail to those required for a traditional rates or classification proposal. Third parties are entitled to intervene, challenge a proposed NSA, and embroil its proponents in a full-blown rates and classification case without any showing of probable cause to believe that the NSA provisions would violate the Postal Reorganization Act.

Furthermore, discounts based on additional volume — the NSA feature with the greatest potential gain for the Postal Service — have been limited to the level of the Postal Service's projected *cost savings*. Indeed, in the recent Bank One case, the Commission unilaterally imposed such a cap on the theory that it was necessary to “provide . . . adequate protection of mailers not party to the agreement”—even though no participant sought such a cap, and the proposed NSA was supported by a near-unanimous and unopposed settlement among all the participants, including the Alliance.

We are concerned that the risks, costs, and limited upside potential of NSAs may soon douse mailer interest in NSAs. According to the February 22 decision of the Governors in Docket No. MC2004-3, “many firms with whom the Postal Service has been pursuing ideas for NSAs have either now lost interest, as a result of the artificial constraints the Commission has imposed, or have been deterred by the complications and expense that future NSA litigation promises, with little assurance of ultimate success.” The Alliance is, of course, not privy to the negotiations between the Postal Service and any of its commercial mailers. To the best of our knowledge, however, no nonprofit mailer—even the largest and most sophisticated—is currently pursuing an NSA.

The Alliance suggests that the USPS and the PRC should consider reducing the data requirements for initial requests. We also believe that the material-issue-of-fact requirement needs serious consideration before allowing intervenors to get a hearing on the merits.

The Alliance also recommends reducing the advance scrutiny of the financial impact of the NSAs on the USPS and requiring after-the-fact reporting instead. Even the biggest individual NSA is likely to have only a small financial impact on the USPS if it is not successful. With the implementation of its Transformation Plan, the USPS has recently shown marked improvement in its management and business dealings.

We commend the Commission for its desire to avoid having the Postal Service “give away the store” and we urge the Commission to maintain its regulatory responsibilities. NSAs, however, will never be more than an expensive novelty unless the complexity and burden of the approval process is lessened and the Postal Service has leeway to make reasonable risk/reward tradeoffs.

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We are not recommending that the Commission deregulate NSAs, a course that in any event would require legislative action. As suggested above, however, there are several ways by which the Commission can modify its existing regulatory oversight to make NSAs less burdensome and more attractive for mailers. We urge the USPS and the Postal Rate Commission to consider these improvements.

Respectfully submitted,

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