

ORDER NO. 1441

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

George Omas, Chairman;
Tony Hammond, Vice Chairman;
Dana B. Covington, Sr.;
Ruth Y. Goldway; and
Dawn A. Tisdale

Rate and Service Changes To Implement
Baseline Negotiated Service Agreement
With Bookspan

Docket No. MC2005-3

NOTICE AND ORDER ON FILING OF REQUEST
SEEKING RECOMMENDATION OF
BASELINE NEGOTIATED SERVICE AGREEMENT

(Issued July 19, 2005)

On July 14, 2005, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a Negotiated Service Agreement with Bookspan.¹ The Negotiated Service Agreement is proffered as a new baseline agreement. This is the first new baseline agreement filed since the Capital One Negotiated Service Agreement, Docket No. MC2002-2, and the first baseline agreement filed under the Commission's new rules for baseline Negotiated Service Agreements. Rule 195 [39 CFR § 3001.195]. The Request, which includes

¹ Request of the United States Postal Service for a Recommended Decision on Classifications and Rates to Implement a Baseline Negotiated Service Agreement with Bookspan, July 15, 2005 (Request).

six attachments, was filed pursuant to Chapter 36 of the Postal Reorganization Act, 39 U.S.C. § 3601 *et seq.*²

The Postal Service has identified Bookspan, along with itself, as parties to the Negotiated Service Agreement. This identification serves as notice of intervention by Bookspan. It also indicates that Bookspan shall be considered a co-proponent, procedurally and substantively, of the Postal Service's Request during the Commission's review of the Negotiated Service Agreement. Rule 191(b) [39 CFR § 3001.191(b)]. An appropriate Notice of Appearance and Filing of Testimony as Co-Proponent by Bookspan, July 14, 2005, also was filed.

In support of the direct case, the Postal Service has filed Direct Testimony of Michael K. Plunkett on Behalf of the United States Postal Service, July 14, 2005 (USPS-T-1) and Direct Testimony of Michelle K. Yorgey on Behalf of the United States Postal Service, July 14, 2005 (USPS-T-2). Bookspan has separately filed Direct Testimony of Robert J. Posch, Jr. on Behalf of Bookspan, July 14, 2005 (Bookspan-T-1) and Direct Testimony of Matthias Epp on Behalf of Bookspan, July 14, 2005 (Bookspan-T-2). The Postal Service has reviewed the Bookspan testimony and, in accordance with rule 192(b) [39 CFR § 3001.192(b)], states that such testimony may be relied upon in presentation of the Postal Service's direct case.³

The Postal Service has submitted a contemporaneous filing which requests the establishment of settlement procedures.⁴ The Postal Service believes that this agreement should not be particularly contentious given that the agreement is straightforward and the substance of the agreement concerns the availability of

² Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the Negotiated Service Agreement.

³ Request at 6; USPS-T-2 at 1.

⁴ Request of the United States Postal Service for Establishment of Settlement Procedures, July 14, 2005.

declining blocks, which were an integral part of all previously approved Negotiated Service Agreements. However, if the parties do have issues that they want to explore, settlement discussions might provide a convenient forum to resolve those issues or facilitate a limitation of the issues that need to be litigated.

The Postal Service's Request, the accompanying testimonies of witnesses Plunkett (USPS-T-1), Yorgey (USPS-T-2), Posch (Bookspan-T-1), and Epp (Bookspan-T-2), and other related material are available for inspection at the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's website (www.prc.gov).

I. The Bookspan Negotiated Service Agreement

The Postal Service proposes to enter into a new baseline three-year Negotiated Service Agreement with Bookspan. Unlike the Capital One baseline Negotiated Service Agreement, the Bookspan Negotiated Service Agreement is based solely upon a declining block rate volume discount available to qualifying Standard Mail letter pieces.

The declining block rate volume discount feature provides Bookspan with a per-piece discount for Standard Mail letter volumes that exceed specified volume thresholds. Discounts are payable only after certain specified minimum volume commitments have been reached. During the first year of the agreement, discounts may be earned for annual volumes above 87 million pieces once a volume commitment of 94 million has been reached. During the second year of the agreement, discounts may be earned for annual volumes above 85 million pieces once a volume commitment of 95 million has been reached. During the third year of the agreement, discounts may be earned for annual volumes above 94 million pieces once a volume commitment of 105 million has been reached. Discounts, under a declining block rate structure, range from 2 to 3 cents in the first two years of the agreement, and from 1 to 3 cents in the third year of the agreement.

The minimum commitment levels for the second and third years of the agreement are subject to adjustment based on the actual volumes mailed in the previous years. If at the end of the first or second years, the actual volume is 12% or more above the prior year's commitment, the following year's commitment will be revised to be the average of the prior year's actual volume and the following year's original commitment. If at the end of the first or second years, the actual volume is 5% or more below the prior year's commitment, the following year's commitment will be decreased by the percentage difference between the prior year's actual volume and the prior year's original commitment. In any event, the volume commitments will never be less than 90 million pieces.

This agreement provides for several other risk mitigation features to protect the Service's financial interests. If Bookspan sends more than 150 million qualifying pieces in any one year, the agreement automatically terminates. Either party may also unconditionally cancel the agreement with 30 days' written notice. Additionally, the agreement contains a mechanism to adjust the volume blocks to the extent that Bookspan merges or acquires an entity with an annual Standard Mail letter volume exceeding 5 million pieces, or merges or acquires multiple entities with a combined annual Standard Mail letter volume exceeding 10 million pieces.

The Postal Service estimates it will benefit by \$7.4 million over the life of the Negotiated Service Agreement. This is based on estimates of \$3.3 million in increased contribution due to additional volume for new Standard letter mail, \$5.1 million in increased contribution due to a net contribution gain from converting Standard Mail solicitation flats to letters, and lost revenue from total incremental discounts of \$0.96 million.

II. Commission Response

Applicability of the Rules for Baseline Negotiated Service Agreements. For administrative purposes, the Commission has docketed the instant filing as a request for

a new baseline Negotiated Service Agreement pursuant to rule 195 [39 CFR § 3001.195].

Settlement. The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions. The Postal Service requests that a settlement conference be held immediately following the deadline for intervention. The Commission authorizes the settlement coordinator to hold a settlement conference on August 8, 9, or 10, 2005, and at such times as scheduled by the settlement coordinator. Authorization of settlement discussions does not constitute a finding on the proposal's procedural status or on the need for a hearing.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Intervention. Those wishing to be heard in this matter are directed to file a notice of intervention on or before August 5, 2005. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's website (www.prc.gov), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR §§ 3001.9(a) and 10(a)]. Notices should indicate whether participation will be on a full or limited basis. See rules 20 and 20a [39 CFR §§ 3001.20 and 20a]. No decision has been made at this point on whether a hearing will be held in this case.

Prehearing conference. A prehearing conference will be held August 11, 2005 at 10:00 a.m. in the Commission's hearing room. Participants shall be prepared to identify any issue(s) that would indicate the need to schedule a hearing, along with other matters referred to in this ruling.

It is ordered:

1. The Commission establishes Docket No. MC2005-3 to consider the Postal Service Request referred to in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for a settlement conference on August 8, 9, or 10, 2005, and at such times as scheduled by the settlement coordinator.
4. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
5. The deadline for filing notices of intervention is August 5, 2005.
6. A prehearing conference will be held August 11, 2005 at 10:00 a.m. in the Commission's hearing room.
7. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

By the Commission.

(S E A L)

Steven W. Williams
Secretary