

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

**RATE AND SERVICE CHANGES TO
IMPLEMENT BASELINE NEGOTIATED
SERVICE AGREEMENT WITH BOOKSPAN**

DOCKET NO. MC2005-3

REPLY COMMENTS OF BOOKSPAN ON NOTICE OF INQUIRY NO. 1

Bookspan hereby provides its reply comments to Notice of Inquiry No. 1, issued on November 3, 2005. Bookspan disputes the Newspaper Association of America's (NAA) position that the Postal Service's formal request provided notice only of Bookspan's potential eligibility for discounts from the Standard Mail Regular rate schedule. Bookspan opposes any change to the proposed DMCS language that would limit the definition of eligible mail to Standard Mail Regular letters (and thereby exclude from that definition Standard Mail ECR).

The proposed DMCS Section 620.11 clearly refers to "Standard Mail", of which both Standard Mail Regular and Standard Mail ECR are by definition subclasses. That provision is alone sufficient to put the public on notice that the scope of this case extends to *all* of Bookspan's Standard Mail new member letter solicitations, and not only those that are sent using Standard Mail Regular rates. In addition to explicitly specifying the Standard Mail classification by name in not one, but two sections of proposed DMCS language, the Postal Service's request indicates that this NSA pertains to all of "Bookspan Letter Mail Solicitations" sent as "Standard Mail" (Request at 5). From the

very beginning of this case, Witness Yorgey's testimony overtly and explicitly identifies volumes and costs associated with all of Bookspan's Standard Mail new member letter solicitations, including Standard Mail Regular and ECR, by rate category (Attachment A, Exhibit USPS-T-2, received at Tr. 2/50), and assesses the financial benefits of a discount applied to all of Bookspan's Standard Mail new member letter solicitation volumes.

Moreover, nowhere in the record of this case did Postal Service Witness Plunkett confirm any limitation of this NSA to Standard Mail Regular. Interrogatories VP/USPS-T1-1 (Tr. 2/269) and NAA/USPS-T1-8 (Tr. 2/223) (which the NAA cites in support of its position) inquire only regarding the salient characteristics of a functionally equivalent NSA. That Mr. Plunkett identifies "Standard Mail Regular" in response to these interrogatories can only be interpreted to mean that in his opinion, sending Standard Mail Regular solicitations is a pre-requisite for functional equivalence; in other words, sending Standard Mail ECR is not a pre-requisite.

The NAA's cross-examination of Mr. Plunkett similarly attempts only to elicit Mr. Plunkett's understanding of functionally equivalent agreements. Consider the following dialogue (which the NAA comments cite, devoid of context) during the October 19 hearing. After making clear that he was inquiring about his "understanding of what a functionally equivalent NSA to this one might look like" and referring the witness to DMCS Section 620.12 (Tr. 2/323-6), counsel for NAA continues:

Q I notice that the proposed EMCS [*sic*] language refers to standard mail letter solicitations. In your answer to interrogatory eight, you stated that you would expect any mailer qualifying as functionally equivalent would be producing standard mail regular letters for the purpose of acquiring customers and you made a similar response to ValPak one.

I don't see the word "regular" in the DMCS section [620.12]. Is it your intent to limit functionally equivalent NSAs to standard regular solicitations?

A As a general rule, I'm not inclined to place such limits. As a practical matter I don't know that, I have to confess we've not analyze all possible comers to a functional equivalent definition. As a practical matter, I'm not sure there would be any standard mail ECR customers that would in any way fall under this category. I can't say that absolutely, but –

Q Okay.

As a policy witness here, would the Postal Service oppose or support inserting the word "regular" in this language?

A I'd have to take that up with the people who worked in crafting this. I'm at a loss to think of a reason why we would object strongly. I haven't really given it much thought.

Tr. 2/323-6. Contrary to the NAA's position that upon this cross-examination Mr. Plunkett "could think of no reason why the NSA should not be limited to Standard Regular letters" (NAA Comments on NOI at 3, citing Tr. 2/325-6), the full exchange shows that Mr. Plunkett was *not asked* to address the applicability of the Bookspan NSA's discounts; rather, he was asked to address the nature of functionally equivalent NSAs.¹ Like proposed DMCS Section 620.12, proposed Section 620.11 (establishing the applicability of this NSA's discounts) also identifies "Standard Mail" without listing each of its subclasses, but, despite the opportunity, counsel for the NAA did not seek Mr. Plunkett's views concerning limiting the applicability of that provision to Standard Mail Regular.

¹ And on that point, Mr. Plunkett even said that he was *not* inclined to limit functionally equivalent NSAs to Standard Mail Regular. Tr. 2/325-6

Any due process claim with respect to the Postal Service's notice is wholly unfounded. As a practical matter, the Commission may observe that the NAA's own attempt to limit the applicability of proposed DMCS Section 620.12 (see dialogue above) suggests that the proposed DMCS language (Sections 620.11 and 620.12) gave the public adequate notice that the Bookspan NSA and functionally equivalent NSA discounts may be applied to both Standard Mail Regular and ECR. Throughout the discovery period and during the hearings, the NAA and all other parties had the opportunity to interrogate any of the witnesses regarding the applicability of proposed Section 620.11 to specific subclasses of "Standard Mail", just as the NAA actually did with respect to DMCS Section 620.12, but, unfortunately, the NAA did not. The NAA now seeks a second bite at the apple, which due process obviously does not require.

That said, Bookspan does not object to amending the proposed DMCS Section 620.23 to identify all of the applicable Standard Mail rate schedules (including, among the others, Rate Schedule 322).

Respectfully submitted,

Ian D. Volner
Rita L. Brickman
Matthew D. Field
Venable LLP
575 7th Street, NW
Washington, DC 20004-1601
(202) 344-4814
idvolner@venable.com
Counsel to Bookspan

November 21, 2005

DC2:\699066