

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

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

Docket No. MC2005-3

**REPLY BRIEF
OF
ADVO, INC.**

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REPLY BRIEF OF ADVVO, INC.

ADVVO, Inc. (Advo) hereby submits its reply brief in this proceeding. Advo supports the proposed negotiated service agreement between Bookspan and the U. S. Postal Service and urges that it be approved by the Commission.

A. The Bookspan Proposal Is Not “Unduly Discriminatory”

This is the first NSA presented to the Commission that is predicated on volume generation through the use of negotiated volume-based discounts. For this reason, it is the most potentially far-reaching NSA to be considered by the Commission. Predictably, NAA and Valpak (who have yet to see an NSA that they like) argue that the Bookspan volume-incentive discounts are inherently discriminatory and unlawful under the Postal Reorganization Act. Those arguments are wrong as a matter of law and policy.

NAA and Valpak’s discrimination arguments rely heavily on the Commission’s fourteen-year-old decision in Docket R90-1, rejecting the Postal Service’s proposal for Express Mail volume-based discounts. The Bookspan proposal, however, is fundamentally different from the Express Mail volume discounts at issue in Docket R90-1. There, a mailer that was already mailing sufficient Express Mail quantities to meet a specific volume level would have

received a discount on its existing volumes, without the necessity to commit to increasing its volumes to qualify for the discount. Here, Bookspan is ineligible for any discount unless it significantly increases its volumes above historic levels. The discount provides an incentive to increase mail volumes, rather than a reward for existing volume levels.

That volume-generation prerequisite, alone, guards against the possibility that the discount will “unduly discriminate” against other mailers. Similarly situated mailers that are willing to increase their volumes can qualify for a similar NSA, while other mailers face little or no risk that the proposal will result in higher rates for them.

NAA and Valpak are also wrong when they contend the Docket R90 decision is a binding precedent that legally bars any form of volume-based rate incentive. The Commission’s approach to rate and classification issues is not etched in stone, but has evolved over time. Fourteen years ago, the Commission clearly was not willing to consider negotiated service agreements of any kind. But the Commission now, quite properly, recognizes that NSAs can be beneficial to the Postal Service without unduly discriminating against other mailers.

The Bookspan volume-incentive discount, predicated on generation of new mail volumes, is, in fact, a variant of the declining block discount features of the Cap One and related NSAs recently approved by the Commission. So long as the proposal is likely to produce a net benefit for the Postal Service, the fact that the benefit accrues solely from volume generation -- rather than a mix of volume generation and cost reduction -- is of no practical or legal consequence.

The volume-generation feature is also a critical distinction as a matter of policy. In light of the stagnation and decline in First Class mail volumes over recent years – a trend that seems unlikely to be reversed in significant measure – the Postal Service must find ways to generate profitable new volumes to offset that critical lost contribution. To date, because of the Postal Service's commendable and successful cost reduction programs, mailers have not felt the full brunt of that loss of First Class contribution. But the prospect for continued cost reductions large enough to offset the contribution losses is uncertain. Unless the Postal Service is able to expand its volume and revenue base, all mailers face the risk of a return to large rate increases that in turn will cause further losses of volume.

Moreover, confining NSAs to worksharing proposals would condemn the NSA concept to the dustbin. The types of worksharing that offer meaningful cost reductions, such as presorting and dropshipping, are already reflected in the existing rate and classification schedule. New worksharing opportunities will likely be narrow in scope, either confined to a few mailers with unique mail characteristics or offering relatively small cost savings. The major potential benefit of NSAs to the Postal Service and all mailers lies in volume generation that can enhance total contribution to institutional costs.

B. The Bookspan Proposal Satisfies the Appropriate Burden Of Proof

On brief, the opponents challenge the Bookspan volume and cost projections, arguing that there may be scenarios where the net benefit to the Postal Service could be small, or even slightly negative. Valpak, in particular,

devotes much of its brief to elaborate volume migration and cost analyses, contending that under certain circumstances conversion of Bookspan's volumes from flat- to letter-shaped could increase rather than reduce costs. The merits of these contentions will be addressed by other parties, but it is important to assess these contentions in the context of the proper burden of proof.

The proper standard of proof is preponderance of the evidence: i.e., whether the Bookspan proposal is more likely than not to generate a net benefit for the Postal Service. Given the inherent complexities and uncertainties of postal volume and cost projections, it is always possible to contrive alternate scenarios where the net financial results of the Bookspan proposal would be less than that projected by the Postal Service. But the proper decisional test is not whether the Bookspan proposal will be successful under every conceivable circumstance that Valpak or others might construct (akin to the "beyond a reasonable doubt" standard employed in criminal cases), but whether it is likely to produce a net benefit for the Postal Service based on the preponderance of the evidence. By this measure, the Bookspan proposal should be approved by the Commission.