

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 BRIEF OF
MAGAZINE PUBLISHERS OF AMERICA, INC.

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December 15, 2005

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Magazine Publishers of America, Inc. (MPA) respectfully submits its reply brief in support of the Negotiated Service Agreement (NSA) jointly sponsored by the Postal Service and Bookspan in this docket. MPA urges the Postal Rate Commission to recommend approval of the Bookspan NSA. MPA believes the record establishes that this particular NSA is in accordance with the policies of the Postal Reorganization Act¹ and its statutory classification and rate setting criteria. The NSA is not discriminatory and, in fact, benefits not just the parties to the agreement, but the entire postal system and users of the mail because it improves the financial health of the Postal Service.

MPA has been a consistent supporter of Negotiated Service Agreements.²

As it said in joint comments in Docket No. RM2003-5:

We agree with the Postal Service Governors that NSAs “are important tools that provide flexibility at the margin, as we transform the Postal Service into an organization with new means to be more responsive to the needs of its customers and the new demands of today’s economy.”³

The Bookspan NSA is the first *baseline* agreement proposed since the Capital One NSA, and the first baseline agreement filed under the Commission’s new rules for baseline NSAs.⁴ It is also the first proceeding in which the Commission has been asked to approve a proposed NSA consisting of volume-

¹ Postal Reorganization Act of 1970, Public Law 91-375, 84 Stat. 719, 39 U.S.C. §§ 101et. seq. (“Postal Reorganization Act” or “PRA”).

² See e.g., Docket No. MC2002-2 (Experimental Rate and Service Changes To Implement Negotiated Service Agreement With Capital One Services, Inc.), MPA et. al. Brief and MPA et. al. Reply Brief.

³ Docket No. RM2003-5 (Rules Applicable to Baseline and Functionally Equivalent Negotiated Service Agreements), *Comments of the Direct Marketing Association, Inc., Magazine Publishers of America, Inc., Mail Order Association of America, National Postal Policy Council, Parcel Shippers Association* (September 29, 2003) at 1 (footnote omitted).

⁴ See PRC Op. MC2002-2; 39 C.F.R. § 3001.195 (2005).

based discount agreements without cost-savings elements. MPA believes such volume discount agreements could be “important tools to provide flexibility at the margin” provided they are structured in a way that meets the requirements of the Postal Reorganization Act and the rules promulgated by the Commission for NSAs.

The initial briefs of the Postal Service and Bookspan discuss and explain the very detailed evidentiary record compiled in this docket. As Bookspan points out, “[w]hile in the past the Commission has expressed reservations about a customized agreement that is based solely on the provision of incentives to generate additional mail volume, the NSA and the record in this case plainly address such concerns the Commission may have had regarding volume discounts in the abstract.” Bookspan Brief at 3-4.

The Commission’s rules provide that “it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace.”⁵ In its initial brief Time Warner elaborated on the considerations that it believes should be taken into account for the Commission to recommend an NSA. As Time Warner stated, NSAs are legal and appropriate “both savings-based or volume-based--that meet the criteria of the Postal Reorganization Act, that generate a benefit--i.e., an increase in net revenues--for the Postal Service, that do not harm other customers, that are offered on a nondiscriminatory basis to other mailers able to satisfy the

⁵ 39 C.F.R. § 3001.190(b).

conditions of the agreement. . .” Time Warner Brief at 2. MPA believes the proposed Bookspan NSA satisfies these criteria.

Of particular importance to MPA is the assertion that this “NSA is a Legitimate and Necessary Tool to Increase Mail Volume and Generate Revenues at Higher Levels than Would be Achieved in its Absence.” Postal Service Brief at 5. It therefore benefits the Postal Service.⁶ The Alliance of Nonprofit Mailers points out another potential benefit to the Postal Service, the so-called “tail of the mail:”

With this NSA, the USPS has acknowledged for the first time the value of the additional First-Class Mail that Standard Mail can produce. A solicitation that garners the mailer a new customer or member can generate streams of additional First-Class invoices, statements, letters and small parcels for months, years or decades. In this circumstance, the additional high-margin volume generated by discounts on Standard Mail solicitations thus can go a long way toward increasing long-term rate stability for the USPS.

ANM Brief at 1.

Time Warner points out the “well documented, indisputably powerful multiplier effect of successful Bookspan solicitations.” Time Warner Brief at 4. The benefits of an NSA should be judged on the contribution of all of the mail that it generates, not just that which is subject to the specific agreement.

Finally, there is neither evidence in this record nor any reason to believe that other customers would be harmed. And, Bookspan explains fully why pure

⁶ See also Postal Service Brief at 9 (“Using the volume projections developed by Bookspan and reviewed by the Postal Service, witness Yorgey performed a financial analysis, which demonstrates the value of the NSA to the Postal Service to be approximately \$7.7 million over the three years of the agreement” (citing Response to POIR No. 3, question 3, attachment 1, p. 9)).

volume discounts are legal and not unduly discriminatory under section 403(c) of title 39, United States Code.⁷

Others in their initial briefs have discussed in great detail whether this particular NSA warrants a Commission recommended decision approving it. MPA believes the proponents of the NSA carry the day. MPA urges the Postal Rate Commission to recommend approval of the Bookspan Negotiated Service Agreement.

Respectfully submitted,

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⁷ Bookspan Brief at 12-15. *See also* Time Warner Brief at 6 (“In *UPS Worldwide Forwarding Inc. v. USPS*, 66 F. 3d 621, 634 (3rd Cir. 1995), the court held that purely volume-based discounts are not unduly discriminatory under § 403(c) when made available on equal terms to similarly situated customers.”)