

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 THE
UNITED STATES POSTAL SERVICE**

UNITED STATES POSTAL SERVICE

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I. THE NSA IS NOT UNLAWFULLY DISCRIMINATORY OR PREFERENTIAL

A. The Act Prohibits Discrimination and Preferences Only When Unreasonable and Undue

It is well established that the Postal Reorganization Act does not prohibit preferences to a mailer that are reasonably justified by the circumstances. Both the language of the Act¹ and the Commission's interpretation of it, particularly in the previous NSA cases, provide support for this proposition. The simple fact of providing a preference to a specific mailer, even when that preference is some form of a volume discount or declining block rate, does not render this or any other NSA illegal, unless it is unreasonable or undue.²

The preference provided by the NSA is an attempt by the Postal Service to address the particular business challenges that an important customer faces in order to avert the negative consequences on postal revenues that would result if Bookspan's downward volume trend continues. The Postal Service is acting as any rational business would, *i.e.*, devising a method to stimulate net revenue from a customer that is providing declining revenues. Moreover, because of Bookspan's unique place in the market, no harm to any competitor has been alleged or is likely to exist as a result of providing incentives to Bookspan alone at this time. And the possibility is always open that another mailer could be found to be eligible to negotiate a functionally equivalent NSA.

The challenges faced by Bookspan, its particular business model, its efforts in address hygiene and mail preparation, and its loyalty to postal services, to a very large

¹ 39 U.S.C. §§ 403(c).

² PRC Op., MC2002-2, at 27-30.

degree for so many aspects of communications with its customers and potential customers,³ are all factors that support this NSA. The NSA is neither corporate welfare nor unbridled favoritism. It is to the benefit of the Postal Service and to all mailers to provide incentives for the reversal of Bookspan's downward trend in Standard Mail member solicitation volumes. Decreasing solicitation volume results in decreased revenue to the Postal Service, decreased membership levels for Bookspan, and a failure to generate the steady stream of various types of mailings (First-Class Mail, Standard Mail, and Bound Printed Matter) for each new customer that is not gained. No rational business in the Postal Service's position would fail to take action to deal with this situation. Indeed, for the Postal Service to conduct business as usual could be said to be an abrogation of its responsibilities and more subject to approbation than any of the speculative scenarios of harm that have been formulated by the opposing participants in their arguments against this Postal Service's request to implement this NSA.

B. Declining Block Rates Are Lawful, Even When Not Conjoined with Unrelated Cost Savings

The arguments against this NSA have confused the type of "cost savings" that the Commission has stated are necessary to support what are called "pure" volume discounts with the type of cost savings that the Commission relied on in approving the Capital One NSA and its progeny. As the Commission has explained when it rejected Express Mail volume discounts because there were no cost savings demonstrated, it referred specifically to the lack of demonstrated savings that directly result from the

³ "Virtually all of Bookspan's business is conducted through the mail." Tr. 2/274.

volume level.⁴ The discrimination in the case of pure volume discounts is that a small mailer pays more for its first piece of Express Mail than a large mailer receiving discounts pays for its first piece of Express Mail. Declining block rates ameliorate this inequity by providing discounts only on pieces above certain thresholds, so that the large mailer receiving discounts on its millionth piece still pays the same for its first piece as does the small mailer.⁵ Declining block rates are justified if they bring in additional volume and additional net revenue beyond that which would have resulted in the absence of the declining block rates. This is a net benefit that needs no justification, given that there is no inherent discrimination in declining block rates, as contrasted with “pure” volume discounts, so long as the declining block rates are available on an equitable basis.

It is not entirely accurate, as NAA and NNA state, that in “past NSAs,” the Postal Service “justified” the volume discounts “on the basis of the cost savings.”⁶ Unlike the cost savings the absence of which led the Commission not to recommend the proposed Express Mail volume discounts, the cost savings in the Capital One NSA and its progeny are completely unrelated to the volume-based rates, except for the fact that

⁴ See PRC Op., MC2002-2, at 30. Even then, it noted that the rate discounts could, alternatively, be based on some “other empirical justification.” This is consistent with the conclusions in *Postal Ratemaking in a Time of Change—A Report by the Joint Task Force on Postal Ratemaking* at 43 (June 1, 1992): “Where rate differentials as between customers are not based on cost differences, they must have some other adequate justification.”

⁵ *Id.* at 43-44.

⁶ NAA/NNA Brief at 3. It is true that the Commission stated: “Here, by contrast, the agreed-upon declining block rates are justified by Capital One’s agreement to take measures that will avoid the potential costs of physical return.” In essence, the Commission was relying on the alternative “other empirical justification” since the savings are not a result of the higher volume levels *per se*.

they are two aspects of a single NSA. Indeed, when the Postal Service filed its request for changes to implement the Capital One NSA, there was controversy over and confusion as to what the cost savings had to do with the declining block rates. The OCA, in fact, filed testimony proposing to separate the two parts of the Agreement into two experimental classifications.⁷

The Commission took notice of the idiosyncrasy of an agreement that provided declining block rates to stimulate additional volumes in the context of cost savings resulting from actions completely unrelated to the mailer's tender of additional volumes.⁸ Indeed, the Postal Service had found it necessary to argue on brief that "the Act is flexible enough to permit seemingly disparate elements to be joined together in one NSA."⁹ The Postal Service noted the benefit of this unusual situation in that "joining the declining block rates and ACS into an NSA reduces the risk of unintended consequences."¹⁰ The Commission took this one step further by capping the value of the discounts at the total amount of cost savings.¹¹ This was done to address the risks inherent in volume estimation, and is not directly related to the original issue of the potentially discriminatory nature of volume discounts.¹²

Valpak's argument¹³ that by recommending the changes requested to implement the Bookspan NSA, the Commission will somehow be bound by this precedent to

⁷ Docket No. MC2002-2, Tr. 7/1360-61.

⁸ PRC Op., MC2002-2, at 37-40.

⁹ Docket No. MC2002-2, USPS Reply Brief at 30.

¹⁰ *Id.* at 31.

¹¹ PRC Op., MC2002-2, at 86-91.

¹² *Id.* at 86 ("The function of the stop-loss cap is to prevent a large loss in net revenue if it turns out that the Postal Service has seriously underestimated Capital One's derived demand for First-Class presorted mail.")

¹³ Valpak Initial Brief at 39-40.

approve “pure” declining block rates or pure volume discounts with neither cost savings nor other risk-mitigating features is simply a red herring. If in the future the Postal Service proposes pure discounts in a new baseline NSA, interested participants will have the opportunity to address whatever issues such a proposal raises and the Commission will be free to distinguish such a proposal from the Bookspan NSA, if that is the appropriate conclusion. To suggest otherwise is to suggest that the Commission would suddenly, after 35 years, abrogate execution of its statutory responsibility to independently determine the facts and law applicable to a Postal Service request.

C. It Cannot Be Discriminatory to Tailor An NSA for One Company that Might Be Unique

Beyond the broad assertion that all volume-based discounts without cost justification are unduly discriminatory, NAA and NNA in their joint brief also contend that the specific proposed NSA with Bookspan is particularly discriminatory.¹⁴ In reaching this conclusion, however, the brief espouses views that are not entirely consistent. First, it appears to endorse the common perspective that, by itself, the bare possibility of recipient responses generating additional mail volumes (i.e. the multiplier effect) is likely insufficient to create clear lines of demarcation among mailers.¹⁵ Like others, NAA and NNA note that many types of mail from many types of mailers can potentially trigger subsequent transactions and communications that could translate into numerous additional mail pieces. Thus, they argue, the mere identification of a potential generic

¹⁴ NAA/NNA Brief at 10-18.

¹⁵ *Id.* at 11-12.

multiplier effect cannot serve to entitle Bookspan to rate discounts unavailable to other mailers.¹⁶

But NAA and NNA then jump to the opposite extreme. Having acknowledged that it is reasonable to require something beyond a mere generic multiplier effect, they challenge the NSA proponents' attempt to craft an agreement appropriate for Bookspan's unique circumstances.¹⁷ The core of their challenge is the contention, acknowledged by witness Plunkett, that "few companies" are likely to be able to use the Bookspan NSA as a baseline for their own agreement.¹⁸ This situation, they claim, should disqualify Bookspan and the Postal Service from obtaining the benefits of the deal they have negotiated:

But defining an NSA in such a way that only one company could satisfy its terms does not comply with the Section 403(c) prohibition of undue discrimination.¹⁹

This claim is specious, and would turn section 403(c) on its head. The fundamental purpose of allowing NSAs is to obtain the potential benefits of arrangements that are not possible under a traditional "one-size-fits-all" tariff structure.²⁰ More broadly applicable arrangements are likely to support a niche classification, rather than an NSA. Yet under the approach advocated by NAA and NNA, the more

¹⁶ *Id.*

¹⁷ *Id.* at 16-18.

¹⁸ *Id.* at 16. NAA and NNA do not suggest (nor would the Postal Service) that this tentative conclusion depends on whether functional equivalence is measured under the Postal Service's initial DMCS proposal, or under the substitute DMCS language suggested by the Commission in NOI No. 1. See NAA/NNA Brief at 13-15.

¹⁹ *Id.* at 18.

²⁰ These benefits accrue not only to the NSA partners, but to all mailers in the form of increased contributions to institutional costs that would otherwise not be recovered. The Commission has created procedural safeguards to ensure that claims of countervailing harm from any quarter be examined before the NSA is approved.

innovative a deal is, in order to take advantage of more unique circumstances, the more likely the NSA is to be barred as unduly discriminatory, regardless of the magnitude of the potential benefits to everyone. Such a suggestion does not withstand scrutiny.

The mere fact that a mailer has relatively unique circumstances may properly *enhance* its prospects for obtaining an NSA, and certainly should not act as a bar. The only situation in which the concerns raised by NAA and NNA might possibly have any resonance would be if the rare or unique circumstances pertaining to the NSA partner were not critical to the generation of benefits, but were incorporated into the structure of the deal merely for the purpose of excluding others. Such is not the case here, and NAA and NNA are not alleging that it is. Instead, they advance the much more simplistic argument that, if a deal is narrowly tailored for one mailer so as to only “work” for that mailer, it is *per se* unduly discriminatory. Section 403(c) requires no such result. If there truly are no similarly situated mailers, section 403(c) simply does not come into play. NAA and NNA seem to totally misapprehend the proper role of a section 403(c) analysis. The extent to which the proposed NSA with Bookspan has been carefully tailored to fit the circumstances of that one mailer is a factor which commends Commission approval, not a factor which conflicts with section 403(c) as NAA and NNA contend.

II. THERE IS SUFFICIENT EMPIRICAL JUSTIFICATION FOR THE DECLINING BLOCK RATES

A. Novel Features of this NSA Mitigate the Risks of Misestimation of Volumes

NSAs could potentially contain numerous features, depending on the unique circumstances of the mailer. It makes no sense to construe the risk-reduction

formulation adopted in the one and only existing baseline NSA and its progeny as creating a *sine qua non* that must inevitably be extended to all subsequent baseline NSAs. In lieu of the unrelated ACS cost savings that exist in the prior NSAs, the Bookspan NSA contains numerous novel provisions that address the issue of risk directly, rather than in the indirect way the cost savings ended up being used to address risk in the Capital One NSA and its progeny. These are summarized at pages 7-8 of the Postal Service's initial brief and need not be repeated here. The important point is that the agreement was structured so as to allow any unintended or adverse consequences to be avoided or mitigated.

B. The OCA's Criticisms of the Volume Estimates Are Not Supported on the Record

A substantial portion of the OCA's Initial Brief consists of material that it should have filed as testimony, rather than as part of a legal brief.²¹ The brief is chock full of plots of demand curves, analyses asserting their meaning and plausibility, citations to and interpretation of selected economic sources,²² assessment of business strategies, etc. These matters are not the province of lawyers and are not appropriately first introduced in a brief in a case in which the OCA declined the opportunity to submit testimony presenting them. By using its brief as a substitute for testimony, the OCA has put the Postal Service, Bookspan, and other parties who support the proposal in this

²¹ This material is contained, together with legal argument—some based on the inappropriate analysis and some based on the actual factual record in this case—in section II of the OCA's Initial Brief, at 7-39.

²² If economists never disagreed with each other or advanced competing theories, this would be less problematic. Even "accepted" economic theories are merely attempts to model human behavior which may never, and certainly at our present state of knowledge cannot, be accomplished so as to provide the near-perfect assurances that the OCA seems to demand.

case at an unfair disadvantage. A full opportunity to subject the OCA's analysis to discovery and testing on the record and to draw on our own experts to provide their own analysis of the OCA's analysis has been denied.

The Postal Service refrained from filing a motion to strike this improper material, not only because of the more pressing need to concentrate on drafting a reply brief, but also because ultimately the OCA's energetic and imaginative use of this material amounts to criticism that can be dismissed in the real world. The OCA's fears regarding this NSA boil down to one of two alternative scenarios. Bookspan's projections are an unscientific "overreaction" to a small discount which are exposed by the inexplicable "kink" in its demand curve and the asymmetry of its responses to price decrease versus price increases. If indeed the unkinked demand curve is right and Bookspan's projected volumes are wrong, then it will never reach the volume commitments, no discounts will be paid, and the agreement will have no effect upon postal finances. Not a good outcome, but hardly one to justify rejecting the proposal in this case.

That is, unless, as scenario two envisions, Bookspan is "gaming" the Postal Service in order to get discounts for mail that it was planning to mail even without an NSA. First, it is simply implausible that Bookspan would reduce or hold back increases in its volume of membership solicitations over the last few years—thereby causing its own revenues to decline—with the intent of springing all the mail they held back once they duped the improvident Postal Service into giving them discounts. The complete implausibility that a business would over the course of several years, put its profitability and viability in jeopardy with such a modest and elusive goal in mind is simple ludicrous. Moreover, one would think that if Bookspan were indeed operating with such focused

duplicity, they would have done a better job of it and not “created” numbers that demonstrated the asymmetry of demand about which the OCA complains. If Bookspan were manipulating the process and cooking the books, one assumes they would have manufactured a more “plausible” scenario based on a smooth demand curve in order to increase their chances of actually getting discounts.

Yet at the same time, the OCA notes that “Bookspan’s intentions are unknowable—even *by Bookspan*.”²³ If that is true, then it cannot, at the same time, implicitly be accused of holding back volumes to create the appearance of declining volumes until it gets a discounted price for them or of planning to re-invent itself as a presort bureau who for the payoff of one cent per piece convinces Standard Mail users to stop their independent advertising and become one of two subordinate after-thoughts in a Bookspan book club promotion. This level of speculation on top of speculation, based on no record evidence or analysis is on its face less credible than the explanations on the record of Bookspan’s expected reaction to the discounts and the reasons therefore.

The OCA finds it “incredible” that Bookspan, as a result of an agreement that allows for discounts of slightly less than a million dollars, would spend increase its total postage by more than a million dollars.²⁴ The OCA asks: “What type of business logic would drive such unfathomable economic behavior?”²⁵ and says that “Bookspan has not furnished an explanation.” This is bizarre, since several pages earlier, the OCA quotes the explanation at some length:

²³ OCA Initial Brief at 8.

²⁴ OCA Initial Brief at 18.

Witness Epp states that there exists no direct relationship or quantifiable elasticity of mail volume in relation to postage. He elaborates on this point by stating that postage is an important factor in driving mail volume, but other factors are also important. They include the costs of books and paper, royalty rates, list costs, rental terms, other media costs, and marketing goals. Furthermore, witness Epp testifies that *if the NSA is approved, Bookspan might shift money from other channels in order to achieve the commitment goals set by the NSA. As well, corporate strategy could direct higher marketing goals, possibly resulting in an increase in the overall marketing budget.*²⁶

Not only does this paragraph seem to provide the allegedly missing explanation, but the behavior discussed seems to be both fathomable and logical.²⁷

The OCA's actual beef is revealed in the preceding paragraph of its brief:

Witness Epp has presented a variety of considerations for developing and implementing a marketing budget. He does not, however, present in analytical form—for example, a model or a spreadsheet—the information indicating how marketing budgets and programs, media purchases, and the overall profitability of marketing efforts result in decisions on the mix of mail.²⁸

Ah! If it can't be reduced to a spreadsheet, then it can't be believed. This approach is reflected in the OCA's apparently inability to accept that neither it, nor anyone, will ever know the unknowable: “[W]e do not have the tools to predict independently whether

²⁵ Obviously, no one at the OCA has ever gone out to Macy's to buy a new \$500 leather coat because they got a \$50-off coupon in the mail.

²⁶ OCA Brief at 11.

²⁷ Indeed, it has been noted, by persons not unfamiliar with postal demand, that “[a]nalysis shows that when a new category was introduced there was a volume response that exceeded the response expected from ordinary own price elasticity.” Robert H. Cohen, Matthew H. Robinson, John D. Waller, and Spyros S. Xenakis, “Worksharing: How Much Productive Efficiency, at What Cost and What Price” in M.A. Crew and P.R. Kleindorfer (eds.), *Progress Toward Liberalization of the Postal and Delivery Sector* © 2006 Springer (citations omitted).

²⁸ Id.

future mail volume would increase or decrease absent an NSA.”²⁹ Yet the Postal Service has used the best information and tools available, including Bookspan’s historical volumes, and concluded, in its business judgment, that any risk in this agreement is worth taking, especially in light of the various novel risk reduction features that it includes. Indeed, under the terms of the NSA, the volume commitments, which are set significantly higher than past volume levels, may make the Postal Service a big “winner.” If one imagines a scenario in which Bookspan tries to reach the “stretch goals” of the volume commitments, but falls short, then the Postal Service gains volume, but pays no discounts. Surely this possibility is more plausible than those preferred by the OCA. Ultimately, given the lack of record evidence to support the OCA’s speculative scenarios, the business judgment of the Postal Service, as actually supported on this record, that the NSA is much more likely to benefit the Postal Service overall and that risks have been minimized to the extent humanly possible, should be accepted.

C. The Record Demonstrates that the Multiplier Effect Will Provide Additional Benefits to the Postal Service Beyond the Increased Net Revenue from Additional Standard Mail Letters Mailed in Response to the Declining Block Rates

One of the important risk reduction aspects of this NSA is the existence of the multiplier effect. Valpak’s exaggerated claim that the record not only does not quantify but does not “demonstrate” the multiplier effect³⁰ is unfathomable. As witness Plunkett explained, “The testimony of witness Posch describes the multiplier at length. ... Irrespective of the precise magnitude of the effect, if the multiplier effect did not exist, then

²⁹ *Id.* at 12.

³⁰ Valpak Initial Brief at 31.

Bookspan would not exist.”³¹ Similarly, the record indicates unequivocally that, without the multiplier effect, this NSA would not exist.³² The multiplier effect, as explained on the record, is simply a direct result of Bookspan’s doing business as it does. It is axiomatic that the more book club members Bookspan obtains, the greater the multiplier effect for the Postal Service.

In arguing that quantification of the multiplier effect is required to support the NSA,³³ Valpak has confused reliance on the multiplier effect as a necessary foundation of the NSA with reliance on the quantitative *results* of the multiplier effect as part of the *financial analysis* of the NSA. It was, and remains, the Postal Service’s view that the financial effects of the NSA can and should be evaluated on the results of the declining block discounts alone. As witness Plunkett testified, “The incentives we provide within a subclass have to be profitable for their own sake and not rely on contributions from other subclasses”³⁴ Witness Plunkett testified: “The Postal Service believes that the financial benefits of increased letter-size Standard Mail alone is sufficient to make the NSA a worthwhile venture. Moreover, the Postal Service does not have independent verification of volumes associated with the multiplier effect.”³⁵ For these reasons, and because of the need to rely on confidential data, the Postal Service originally decided not to attempt to provide a calculation of the multiplier effect, despite expressed interest in that from some participants.

³¹ Tr. 2/274.

³² Tr. 2/217.

³³ Valpak Initial Brief at 13-17.

³⁴ Tr. 2/353-54.

³⁵ Tr. 2/25.

It is disingenuous for opponents of the NSA to rely on the asserted lack of quantification of the multiplier effect. In response to several matters raised by the participants at the second settlement conference as needing further explanation on the record, the Postal Service filed revised and supplemented material that included a spreadsheet that could be used to quantify the multiplier effect, based on data already on the record and data readily available from the concurrent omnibus rate case.³⁶ Those same participants—who had sought the information and had criticized the Postal Service for not providing it—then objected to its inclusion in the record on the day of hearings as part of the designated written cross-examination, even though the opportunities to cross-examine the witness concerning the material and subsequently to offer evidence rebutting it still remained. Rather, the participants chose the strategy of objecting to the inclusion in the record of information they had sought from the Postal Service, thus allowing themselves now on brief, without the burden of having to file their own evidentiary rebuttals, to criticize the Postal Service for not having provided the information.

D. Valpak’s Doomsday Scenario on Conversion of ECR Flats to Letters Is Implausible

Based upon Bookspan witness Epp’s testimony that the NSA will accelerate Bookspan’s trend towards reliance on letter rather than flat shape marketing pieces, witness Yorgey calculates the financial impact by calculating the net contribution for the “converted” mail pieces. She does so by computing the difference between the

³⁶ Revised Response of Postal Service Witness Plunkett to Interrogatory of the Office of the Consumer Advocate Redirected from Witness Yorgey (OCA/USPS-T2-6) (October 18, 2005).

weighted average unit costs for Bookspan's letter and flat mail based upon FY2004 distribution by rate category multiplied by the volume of the "converted" mail pieces.

In section II C of its brief, Valpak attempts to cast doubt on the financial analysis of the flats-to-letters contribution by spinning a scenario where, mathematically, it might be possible for the contribution to be negative. Valpak challenges witness Yorgey's use of weighted average costs by examining unit costs at the rate category level and notes that *if* ECR flats convert to Nonauto ECR letters, then the unit contribution would be negative. Valpak Brief at 24-25. Valpak then further hypothesizes that, since it is mathematically possible for the volume of converted flats to fall into this scenario, the Postal Service might lose \$784,000.³⁷ Valpak's suppositions, suggestions, and insinuations simply do not hold up.

The chance that Valpak's doomsday scenario will come to pass is extremely remote because of the nature and pricing of ECR mail, the way that Bookspan chooses flats or letters for a given campaign, and Bookspan's mail preparation practices. Moreover, almost every other conversion scenario yields positive contribution and, in many cases, significantly higher contribution than witness Yorgey's estimate. Finally, the data collection plan will provide a public report of letter and flat mail *by rate category*. Thus, the trends of flat and letter mail can be monitored by all interested parties to ensure that the Postal Service is properly protected.

The crux of Valpak's worst case scenario is that only ECR Basic flats would convert and all would convert to ECR non auto letter. ECR Basic rate is only available to mail packaged with 10 or more pieces *to a given carrier route*. At first blush, it may

³⁷ Valpak Initial Brief at 28.

seem possible that an ECR flat would migrate to an ECR letter. However, this would only be true if Bookspan make its shape-based mailing decisions *by carrier route*. But it does not. Bookspan has 35 book clubs and marketing campaigns are planned for each club. Bookspan plans hundreds of campaigns each year.³⁸ Each list in each direct mail campaign is evaluated by applying a common set of business metrics, such as expected cost per mailing, response rate, and average revenue contribution. *Id.* In choosing what shape to use for a campaign, Bookspan bases its decision on the type of list (external list addressees typically receive flat-shaped mailings), and response rate for a given shape.³⁹ It does not make decisions based upon carrier route.

Thus, if Bookspan decides that a certain list should be mailed as a letter rather than a flat, then it would only be mailed at the ECR letter rate if it is part of bundle of at least 10 pieces for a given carrier route. With 35 book clubs and several hundred campaigns a year, it would seem highly improbable that every piece in the campaign would have enough density to each carrier route to convert to an ECR letter rate. While some may, it is more likely that pieces would convert to Standard Regular rate.

Moreover, Valpak's focus on the conversion of ECR flats to ECR non-auto letters, belies other combinations that would yield positive contribution. Approximately 60 percent of the total number of flats are 3/5 digit auto Standard Regular flats (97 million of the 164 million total flats). If they convert to letters, the additional contribution

³⁸ Tr. 3/381.

³⁹ Tr. 3/443, 446.

ranges from 9.5 cents for Nonauto Basic ECR letters to 14 cents for Auto AADC.⁴⁰

Conversion to Auto 3-digit, which had the greatest letter volume in FY04, would yield a contribution of 12.1 cents. For Valpak's worst case scenario to prevail, no Standard Regular flats would convert, and all flats would convert to non-auto basic ECR letters. Such a scenario does not raise even a reasonable doubt about the conversion analysis.

What is reasonable and fully supported by the record is witness Yorgey's use of weighted average unit costs which assumes that the shift in volume from flats to letters would yield a distribution that essentially mirrors the current mailing profile. Some ECR flats will convert, but even more standard Regular flats would. Some would convert to ECR letters but most would convert to Standard regular letters. While it is true that the Postal Service "assumes the risk" that contribution from conversion could possibly be negative,⁴¹ it is a very reasonable risk to take given that the much more likely outcome is a reward of significant contribution.

Furthermore, what is troubling is that Valpak seems content to raise the specter of a factual issue without exploring it on the record. Had it asked in discovery for the historical disaggregated unit costs, volumes, and revenues for letters and flats, the record would have shown trends that add further support to witness Yorgey's analysis and use of the weighted average costs for letters and flats. While Valpak is not obligated to explore any particular issue, neither should it be rewarded for presenting

⁴⁰ The unit contribution of 3/5 digit auto Standard Regular flats is -.9 cents. Conversion to nonauto Basic ECR letter with a unit contribution of 8.6 cents, yields a net contribution of 9.5 cents. Conversion to Auto AADC with a unit contribution of 13.1 cents, yields a net contribution of 14 cents. Valpak XE-2, Tr. 194.

⁴¹ Valpak Initial Brief at 27.

only a mere scintilla of a possibility of a negative contribution. Valpak has failed to rebut the evidence on the record.

Finally, the data collection plan specifically provides that the Postal Service will collect and report: “The volume of solicitation Standard Mail letter-size and Flat-size (non-letter) by rate category in eligible Bookspan account[s].”⁴² Thus, if the Postal Service is truly headed for doomsday, it will become apparent and the Postal Service will be able to protect itself by terminating the agreement.

E. APWU’s Argument Could Preclude NSAs Between Rate Cases

The American Postal Workers Union (APWU) argues in its brief that, to the extent that a portion of the financial benefits of the NSA estimated by witness Yorgey relate to net contribution improvements generated by the anticipated conversion of some flats to letters, such estimates may be based on data that are, in the view of APWU, “flawed.” APWU Brief at 6-9. Yet even APWU must acknowledge (*id.* at 7) that witness Yorgey’s testimony in this case declined to confirm APWU’s characterization of the data as flawed. Of course, it would always be preferable to have an independent explanation of why reported costs moved in one direction or another, to a greater or smaller degree. But the mere fact that no such explanation can be identified does not translate into a basis to state that the new reported costs are “flawed.” Perhaps there are entirely valid reasons for observed changes which simply are not obvious, or perhaps it was previous cost estimates that were flawed.

Moreover, even if not all issues relating to the cost estimates from the recently concluded rate case were resolved in that case, APWU’s position is tantamount to a

⁴² USPS-T-2, Appendix E. (as revised October 18, 2005).

claim that all potential NSAs making use of such estimates would necessarily be barred until after the next omnibus rate case. While that may be a result that APWU would prefer, it does not provide a reasonable basis to deprive the Postal Service, aspiring NSA partners, and all other mailers of the potential benefits of NSAs that could appropriately be implemented before that time. APWU's brief, which is unsupported by any testimony of a witness on behalf of APWU, does not establish a reasonable connection between tangential issues raised in the rate case, and its claim that the cost data submitted with this case to quantify some of the NSA benefits are so flawed as to preclude entirely recommendation of the proposal.

CONCLUSION

The Postal Service believes that the record more than adequately supports its proposals legally and factually and that the speculative criticisms of the NSA are neither record based nor of sufficient plausibility to cause hesitation on the Commission's part. In such a situation, the Commission should defer to the Postal Service's business judgment and recommend the changes in rates and classifications needed to implement the NSA with Bookspan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

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