

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

Rate and Service Changes To Implement
Baseline Negotiated Service Agreement With
Washington Mutual Bank

Docket No. MC2006-3

COMMENTS AND PARTIAL OPPOSITION OF
THE NEWSPAPER ASSOCIATION OF AMERICA ON
POSTAL SERVICE PROPOSAL FOR LIMITATION OF ISSUES
(April 24, 2006)

The Newspaper Association of America (“NAA”) hereby responds to the Postal Service Proposal To Limit Issues in this proceeding. The Postal Service’s proposal is too broad, and does not address many issues that do not fit within its category of issues which purportedly have been established in prior dockets. Accordingly, while NAA has no interest in slowing the progress of this proceeding, the Postal Service’s proposed limitation of issues cannot be accepted as proposed.

The Postal Service asserts, *inter alia*, that whether NSAs are “consistent with the statutory scheme of the Postal Reorganization Act and, in particular, 39 U.S.C. § 403(c)” is an issue that has been resolved. Similarly, the Postal Service argues that the finding that an open “niche” classification “should not be preferred over an NSA in general” or the “utility” (nowhere defined) of declining block rates should not be litigated in this case.¹ Instead, the Postal Service asserts that the Commission should

¹ NAA is puzzled by the Postal Service’s further assertion that the appropriateness of the “general methodology used in Docket No. MC2002-2” to “calculate the benefits to the Postal Service” should not be relitigated. This seems odd because the Postal Service itself is not fully adhering to that methodology in this case.

limit the issues to (1) the financial impact of the NSA on the USPS; (2) the fairness and equity of the Washington Mutual NSA to other users; and (3) the fairness and equity of the NSA to Washington Mutual's competitors.

While the Postal Service's list is unsatisfactory for many reasons, in this pleading NAA will confirm itself to the following points. First, regardless of whether the Commission has in the past concluded that NSAs in general may or may not violate Section 403(c) of the Act, there has been no ruling that *this* baseline NSA for a mailer new to NSAs is consistent with Section 403(c). The proponents cannot rely on the Commission's approval of other NSAs as a general finding that all NSAs are always consistent with Section 403(c), or this one in particular. Whether this particular proposal unduly discriminates in favor of Washington Mutual or grants it an undue preference is a central issue in this proceeding and is one that is not clearly subsumed within the "fairness and equity" language proposed by the Postal Service.

Second, under the Commission's rules for considering proposed baseline NSAs, the Postal Service must justify filing an NSA instead of "a more generally applicable form of classification." 39 C.F.R. § 3001.195(a)(1). The Postal Service's "Proposal" to remove consideration of a niche classification from this case would utterly eviscerate this provision. The proponents bear the burden under the rules to justify the choice of an NSA rather than a niche classification; that burden cannot be circumvented in a baseline NSA through the device of a motion to limit issues.

Accordingly, the Newspaper Association of America respectfully opposes as overbroad the Postal Service's "Proposal for Limitation of Issues" to the extent discussed herein.

Respectfully submitted,

NEWSPAPER ASSOCIATION OF AMERICA

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Certificate of Service

I hereby certify that I have this 24th day of April, 2006, caused to be served the foregoing document upon the United States Postal Service and the Office of the Consumer Advocate in accordance with sections 12 and 20(c) of the rules of practice.

William B. Baker
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