

ORDER NO. 1470

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: George Omas, Chairman;
Dawn A. Tisdale, Vice Chairman;
Ruth Y. Goldway; and
Tony Hammond

Periodicals Nominal Rate
Minor Classification Change

Docket No. MC2006-5

NOTICE AND ORDER ON POSTAL SERVICE REQUEST
FOR MINOR CLASSIFICATION CHANGE
AFFECTING PERIODICALS

(Issued July 11, 2006)

I. INTRODUCTION

Notice is hereby given that on July 6, 2006, the Postal Service filed a request with the Postal Rate Commission for a recommended decision on a proposal to amend the definition of a “nominal rate” subscription for publications in the Periodicals class.¹ The Service filed its Request pursuant to section 3623 of the Postal Reorganization Act, 39 U.S.C. § 101 *et seq.* It has denominated its proposal as a minor mail classification

¹ Request of the United States Postal Service for a Recommended Decision on Change of Definition of Nominal Rate for Periodicals Subscriptions, July 6, 2006 (Request). The Request includes three attachments. Attachment A to the Request sets out the proposed change to the text of the Domestic Mail Classification Schedule. Attachment B is an index of testimony. Attachment C contains the Service’s Compliance Statement addressing the filing requirements of rules 64 and 69a, or noting a request for waiver of certain filing requirements.

change and has requested expedited consideration under Commission rules governing such requests.²

The Request was accompanied by witness Yeh's supporting testimony³ and several contemporaneous filings. The latter are identified as Notice of Filing of Request of the United States Postal Service for a Recommended Decision on Change of Definition of Nominal Rate for Periodicals Subscriptions (Notice); Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver (Combined Pleading); and United States Postal Service Request for Establishment of Settlement Procedures (Settlement Request).⁴

II. PROPOSAL

The Service, through witness Yeh, proposes revising the definition of a nominal rate subscription to allow a reduction of up to 70 percent of the basic annual subscription rate for a copy of a Periodicals publication to qualify as part of paid circulation. The current reduction is 50 percent. The proposal affects only the definition of a nominal rate subscription; it does not alter a requirement (in DMCS § 412.31) that more than 50 percent of the copies of a publication be circulated to persons who have paid more than a nominal rate. USPS-T-1 at 1-2.

Witness Yeh identifies the applicable DMCS provisions (DMCS § 412.33b) and describes the rationale for the change. The latter includes, among other points, Yeh's assertion that the change would allow publishers to take advantage of the elimination of a similar nominal rate definition in the bylaws and rules of national audit bureaus and to offset loss of subscriptions from recent sweepstakes legislation. Yeh also reviews classification criteria and issues, addresses the consistency of the proposal with the

² 39 CFR § 3001.69a.

³ Direct Testimony of Nina Yeh on Behalf of United States Postal Service, July 6, 2006 (USPS-T-1).

⁴ All filed July 6, 2006.

Commission's criteria for an expedited minor classification change, and asserts that the Service foresees no measurable financial impact from adoption of the proposal. *Id.* at 5.

III. GROUNDS FOR CHARACTERIZING THE REQUESTED CHANGE AS MINOR

The Request asserts that the proposed change conforms with the criteria for consideration of expedited minor mail classification changes, noting that it does not involve a change in any existing rate or fee; does not impose any additional eligibility restrictions; and will not significantly change the estimated cost contribution of the affected subclasses. Request at 2. See *also* USPS-T-1 at 4-5.

IV. AUTHORIZATION OF SETTLEMENT PROCEEDINGS

The Postal Service asks that the Commission establish settlement procedures in this case. In support of this request, the Service asserts that it does not believe the proposed change will be controversial, as it is intended to meet the interests of the Postal Service and its Periodicals customers. It notes that the proposal would relax an eligibility requirement, and is not expected to harm any mailers. Request at 1-2; Settlement Request at 1.

Given the limited nature of the proposal, the Commission authorizes settlement proceedings in this case and appoints Postal Service counsel to serve as settlement coordinator. This authorization is without prejudice to the right of a participant to request a hearing under rule 69b(h) and the Commission's right to determine that a hearing shall be held. The Commission directs the Postal Service to file a written status report on settlement negotiations by 12 noon, August 4, 2006.

V. COMPLIANCE WITH (AND CONDITIONAL REQUEST FOR WAIVER OF) FILING REQUIREMENTS

In the Combined Pleading, the Postal Service notes that its Compliance Statement (Request, Attachment C) identifies information contained in witness Yeh's testimony and supporting documentation intended to satisfy the filing requirements of pertinent provisions of Commission rules 64 and 69a. Combined Pleading at 1. In

particular, it notes that it has supplemented materials developed specifically for this filing by incorporating documentation it submitted in connection with Docket No. R2006-1, the recently-filed omnibus rate proceeding. It asserts that it believes that most of the specific requirements pertaining to classes of mail and special services are met by incorporating the materials from that case. *Id.* The Service further contends that in assessing compliance, substantial weight should be given to the extremely limited nature of the proposed classification change and the tiny magnitude of its impact on costs, volumes and revenues in total and for particular mail categories and services. *Id.* at 2. It notes that in the event that total cost-revenue relationships might be affected by the changed definition, any changes to those relationships are likely to be so minor as not to warrant amendment of the rate case testimony beyond the additional information provided in this docket. *Id.*

In the event the Commission concludes that the materials from other dockets or filed in the instant docket fail to satisfy the filing requirements of rules 64(b)(1)-(4); 64(c)(1)-(3); 64(d); 64(h) and 69a(a), the Service requests that those requirements be waived in full or in part. It also requests that the Commission confirm that the Postal Service has complied with the filing requirements. *Id.* at 2-3.

VI. INTERVENTION; COMMISSION DETERMINATION ON APPLICATION OF EXPEDITED PROCEDURES

Rule 69b affords interested parties 26 days after the filing of the Service's Request to intervene and respond to the Postal Service's proposal to have this request considered under rule 69's expedited procedures. The Service's Notice accurately notes that this equates to a deadline of August 1, 2006 for filing notices of intervention. A companion provision (in rule 69b(f)) provides that within 28 days after publication of this notice, the Commission shall decide whether the Request will be considered under rule 69 through 69c, and issue a notice incorporating that ruling. That requirement equates to an August 7, 2006 issuance date for the Commission's determination and ruling.

VII. PUBLIC PARTICIPATION

In conformance with section 3624(a) of Title 39, the Commission designates Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

VIII. REQUEST FOR SUPPLEMENTATION OF THE RECORD

Given the Service's interest in expedition and the likelihood that settlement negotiations may limit or preclude discovery, the Commission requests that the Service supplement the record by filing a library reference containing documentation related to the definition change referred to at USPS-T-1 at 2-3. This library reference should be filed no later than July 25, 2006.

It is ordered:

1. The Commission establishes Docket No. MC2006-5, Periodicals Nominal Rate Minor Classification Change, to consider the Postal Service Request referred to in the body of this Notice and Order.
2. The Commission will sit *en banc* in this proceeding.
3. Notices of intervention shall be filed no later than August 1, 2006.
4. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

5. Participants' statements addressing the Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, July 6, 2006, are due August 1, 2006.
6. The Commission authorizes settlement proceedings in this proceeding, subject to a subsequent determination that a participant has lodged a meritorious request for a hearing. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for settlement conferences at such times deemed necessary by the settlement coordinator.
7. The Postal Service is directed to file a written status report on settlement negotiations by 12 noon, August 4, 2006.
8. The Service is requested to file, in the form of a library reference, documentation relating to the related definition change adopted by national audit bureaus referred to in witness Yeh's testimony by July 25, 2006.
9. The Secretary shall arrange for publication of the Notice and Order in the *Federal Register*.

By the Commission
(SEAL)

Garry J. Sikora
Acting Secretary