

ORDER NO. 1473

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 L. Hammond

Periodicals Nominal Rate Minor
Classification Change

Docket No. MC2006-5

ORDER ON USE OF MINOR CLASSIFICATION CASE RULES
AND RELATED PROCEDURAL MATTERS

(Issued August 9, 2006)

I. Introduction

PRC Order No. 1470 informed the public that the Postal Service had filed a Request for a change in the definition of a nominal subscription rate in Periodicals and noted the Service's interest in expedited consideration under Commission rules for minor classification changes.¹ The Service's Compliance Statement (Request, Attachment C) addressed rule 64 and 69a filing requirements, explaining that in some instances certain information that was not presented was incorporated by reference in Docket No. R2006-1 submissions. Request, Attachment C at 1.²

¹ Notice and Order [No. 1470] on Postal Service Request for Minor Classification Change Affecting Periodicals, July 11, 2006 (Order). 71 FR 40172 (July 14, 2006).

² See Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, July 6, 2006 (Statement).

The Order authorized settlement proceedings, without prejudice to decisions on whether hearings would be held and on the appropriateness of considering the Request under the minor classification change (MCC) rules. This order addresses application of the MCC rules, as required by rule 69b(f), and several related matters, including the question of hearings.

II. Expedited Consideration under the MCC Rules

Commission rules set out a three-part test for application of the MCC rules and require two explicit findings. The test requires that the proposal (1) not involve a change in any existing rate or fee; (2) not impose any additional restrictions on basic conditions of eligibility for a subclass or category; and (3) not significantly increase or decrease estimated institutional cost contribution. 39 CFR 3001.69(a)(1) through (a)(3). The requisite findings pertain to whether the change is minor in nature and whether the effect of the change is limited in scope and overall impact. 39 CFR 3001.69b(f).

A conclusion regarding satisfaction of the test requires an understanding of the proposal and its anticipated impact. In this case, the Service's filing makes clear that it seeks to revise DMCS 412.33b to allow a reduction of up to 70 percent of the basic annual rate for a subscription to be counted as part of the publication's paid circulation. This provision currently allows a reduction of up to 50 percent. Significantly, the Service notes that the instant proposal does not change the overall requirement, contained in DMCS 412.31, that more than 50 percent of copies must be circulated to persons who have paid more than a nominal rate. USPS-T-1 at 2.

The Commission finds that the proposal satisfies the first criterion, as it does not alter a rate or fee. In addition, it does not impose any additional restrictions on basic conditions for eligibility for a subclass or category, and therefore satisfies the second part of the test. The third criterion — that change does not significantly increase or decrease estimated institutional cost contribution — also appears to be met. The Commission notes, in this regard, that the Service states 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 rate case testimony, beyond the additional information provided in this case. Statement at 2.

In reaching this decision on the threshold question of application of the MCC rules, the Commission is cognizant that the National Newspaper Association (NNA), in its notice of intervention, states without elaboration that it does not oppose the Postal Service's request to proceed under the expedited rules, but disagrees with its characterization of the change as "noncontroversial."³ However, review of the Request indicates that this observation apparently refers to the Service's statement that it "... believes that this request will not be controversial, since it is intended to meet the interests of the Postal Service and its Periodicals customers." Request at 1. The Commission understands this statement as part of a paragraph that addresses the Service's interest in obtaining early authorization of settlement proceedings, rather than its basic justification for the proposal. It therefore does not appear to address the question here, which is whether the MCC rules should apply. To the extent that NNA's observation bears on the merits of the proposal, the Commission acknowledges NNA's statement that it has not yet developed a position on the underlying request, and that it reserves its right to request a hearing.

Accordingly, based on the satisfaction of the applicable criteria, the Commission finds that the proposed change is a minor in character and the effects of the requested change are likely to be appropriately limited in scope and overall impact. Therefore, the proposed change may be evaluated as a minor classification change under the provisions of rule 69. The Commission also finds that the Service has complied with applicable filing requirements.

III. Related Matters

Hearings. Of the six intervenors in this case, four (the Alliance of Nonprofit Mailers, the Magazine Publishers of America, Inc., Time Warner Inc. and the Newspaper Association of America) have affirmatively stated in their notices of

³ Notice of Intervention of National Newspaper Association, July 31, 2006.

intervention that they are not requesting a hearing. NNA has stated that it is reserving its right to request a hearing, but David Popkin has not yet stated a position, nor has the Office of the Consumer Advocate. Having made the determination that use of the MCC rules is appropriate in this case, the Commission directs, in accordance with rule 69b(h), that respondents who request a hearing file a statement, within 14 days, identifying with specificity the issues of material fact that require a hearing for resolution. Respondents shall also identify the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

Settlement negotiations. The Postal Service has indicated that settlement discussions with all participants are underway, that it remains hopeful that settlement will be possible, and that it anticipates filing an update by August 14, 2006. First Status Report on Settlement Negotiations, August 4, 2006. Separately, the Service, in compliance with Order No. 1470, has filed a library reference containing information on the related definitional change mentioned in witness Yeh's testimony.⁴ The Commission appreciates the Service's cooperation.

⁴ USPS-LR-1, Audit Bureau Materials Filed in Response to Order No. 1470.

It is ordered:

1. The Postal Service's request that this docket be conducted under the Commission's rules for minor classification changes (39 CFR § 3001.69 through 69c) is granted.
2. The Commission finds that the Service has complied with applicable filing requirements.
3. Participants who seek a hearing in this case shall file, within 14 days of the issuance of this Order, a statement addressing the matters identified in the body of this Order.

By the Commission
(SEAL)

Steven W. Williams
Secretary