

**BEFORE THE
POSTAL RATE COMMISSION**

Docket No. R2006-1

POSTAL RATE AND FEE CHANGES, 2006

REPLY BRIEF OF NATIONAL NEWSPAPER ASSOCIATION, INC. (NNA)

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I. The Postal Service has misinterpreted or ignored much of NNA's criticism of IOCS.

A. The Postal Service ignores a plausible alternative explanation for the appearance of rising Within-County costs: the new IOCS is flawed.

Within-County mailers face a potential rate increase that is nearly three times that of the proposed increase for the system overall. Although the Postal Service appears to have done no analysis of its impact upon small newspapers,¹ NNA's witness Sosniecki has clearly explained that regardless of the absolute dollars and cents involved in the proposed increase, the abrupt ratcheting up of a rate is difficult for a small business to absorb. NNA-T- 2 at 12-14.

The Postal Service's main evidentiary support for allegedly dramatic cost increases in this subclass is found within IOCS. Therefore, NNA has respectfully directed the Commission's attention to its flaws.

IOCS may well have been thoroughly tested, as the Postal Service claims, and NNA may indeed be the only party that has attacked it. Initial Brief of the United States Postal Service at 21-22. But regardless of the new system's possible utility for accurate cost estimates elsewhere, it is inadequate to the task to which USPS wishes to put it for this subclass. Witnesses Siwek and Heath have identified numerous reasons.

The Postal Service argues that NNA witness Siwek "avoids the obvious conclusion that the increase is due, in part, to the improved IOCS data collection instrument and that Within-County rates were understated in previous years. It asserts that NNA "is asking for 'relief from costing errors he (Siwek) has not demonstrated exist, from a costing system he has not demonstrated is inaccurate.'" USPS Initial Brief at 25. Its defense ignores the obvious alternative conclusion that the untested IOCS data collection instrument has introduced errors in the current IOCS results for Within-County

¹ See Appendix E, NNA-T-3, filed under seal.

that have resulted in cost overstatements for the Within-County subclass. As a simple matter of logic, the Postal Service cannot merely ignore this alternative explanation.

Significantly, in this case, the Postal Service has failed to identify a single error in the previous IOCS system. The Postal Service is asking the Commission to ignore the dramatically lower Within-County costs that were derived from prior IOCS studies because they were “understated.” But the Postal Service has provided no demonstration that these alleged errors exist and with no evidence that the prior results were inaccurate. The Commission cannot simply ignore the high likelihood that the Postal Service’s alleged cost increases in the Within-County subclass are due to an overestimate in the current IOCS system. NNA Initial Brief at 7-8.

B. The Postal Service glosses over witness Siwek's strong objections to the thinness of data and the high CVs for Within-County.

The Postal Service chooses simply not to mention the significant and acknowledged fact that Coefficients of Variation (“CV’s”) for the IOCS cost estimates for Within-County Periodicals are much higher than for major subclasses (USPS-T-1, Tables 1 and 2). In one sense, the Postal Service’s failure in this regard is not surprising because both Postal Service witnesses Czigler and Bozzo testified that because Within-County Periodical is such a small subclass, it is “stuck” with a high CV (Tr. 9/2438) and “less reliable data” (Tr. 36/12348).

Small subclasses may indeed be "stuck" but that does not mean that they must remain so. The Commission has the ability and obligation to seek means to unstick them, and should do so if it wishes to find solutions that preserve access to universal service without unduly burdening the postal system.

C. The Postal Service simply misinterprets NNA's concerns about the identification of IOCS tallies.

Since it can say little in its defense of the reliability from a statistical viewpoint, the Postal Service has saved its ammunition for the defense of its IOCS tally editing process. Witness Bozzo appeared in rebuttal to address NNA's observations that the tallies do not unequivocally identify a Within-County mail piece. Nothing USPS says on brief or in the rebuttal undermines NNA's point.

The Postal Service states that "witnesses Heath and Siwek suggested that mailers might gain or lose eligibility on an issue-by-issue basis during the course of the year." (Emphasis Added) USPS Initial Brief at 21. This claim is a mischaracterization of witness Siwek's testimony. In his Direct Testimony, witness Siwek specifically cited USPS Handbook DM-204 to the effect that "In-County rate eligibility is determined on an issue by issue basis." NNA-T-3 at 6. So it is the Postal Service, not NNA making this claim. Indeed Siwek does not claim that the system proves only eligibility. He claims that the system can prove neither eligibility nor postage paid. Tr. 29/9736-45, 29/9750.

Further, the Postal Service attacks Siwek's complaint about the verification of circulations through the use of industry directories. The Postal Service contends that "there is little material change from year to year in the data provided in the directories." USPS Initial Brief at 24. This statement is premised on a review of circulation figures for various Periodicals that the Postal Service extracted from various publication directories. USPS-RT-1, Table 2 at 15-16.

The problem is that the circulation data that are actually shown in Table 2 of USPS-RT-1 plainly do not support this conclusion. For example, according to Table 2, the 2005 circulation for the *Gonzales Tribune* was more than 14 times higher than the 2004 circulation for the same publication. Another publication, the *Savoy*, is shown to have sustained a 63% increase in circulation from 2003 to 2004. By contrast, the 2005 circulation for *The Jewish Week* decreased by 18% in 2005. Contrary to the claims of the Postal Service, the circulation directories relied on the Postal Service actually

support the premise that there are large and material changes in annual circulation figures for the Periodicals that are listed in Table 2 of USPS-RT-1.

Furthermore, the Postal Service seemingly does not understand the logic of NNA witness Heath's explanations of the identification problems. Heath does not dispute that inferences can be drawn as to the possibility that a mailpiece may have paid Within-County rates, but he has identified a number of circumstances in which no more than an inference can be drawn without a deeper investigation into the nature of the mailpiece. NNA-T-1 at 6-7.

These inferences might be sufficient if 2005 IOCS were not branded as the newest and best mousetrap to capture mailpiece identifications more accurately, or if USPS did not so heavily rely upon IOCS to justify out-of-range increases for the Within-County mailer. But since both circumstances are present, USPS should expect mailers to seek better proof that costs truly have risen as markedly as USPS alleges.

The Postal Service complains that NNA has not "proven" the inaccuracy of any tally. But it complains of NNA's failure to carry out a task that is impossible for an intervenor to carry out, under the rules of this game.² In order to irrefutably impeach a tally in most of the potential discrepancies, a party would have to ask the Postal Service to produce the mailpiece or its facsimile, contact the publisher, ask whether addressee was a paid subscriber at the time of the mailing in question or, if not, whether the publisher had claimed a portion of his 10 percent non-subscriber allowance in sending the piece. The Postal Service clearly has not carried out its tally-checking homework to this degree. NNA obviously would be unable to do that work either. To begin with, one would hope the mailpiece itself is no longer available. But even if a facsimile were available, there is nothing on the record to indicate that the information, along with the address and the attendant mailing statement could or would be produced. It is not hard

² The passage of Section 602 of the new Postal Accountability and Enhancement Act (PAEA), granting subpoena powers to the Commission may empower greater investigatory possibilities in the future, but those clearly are not present in the instant case.

to imagine the claims of proprietary concern from the Postal Service should the question even be asked.

While the Postal Service vaguely admits that the circumstances Heath points out could occur, it drags out the 10 percent non-subscriber allowance as cover. USPS Brief at 22. The Postal Service continues to assert that publishers have a strong incentive to mail at Within-County rates. Of course they do. But they are permitted to do so only when the mailpiece is eligible. The Postal Service wants to believe these potentially discrepant pieces will almost always travel under the 10 percent nonsubscriber allowance, but there is no evidence that they do, or could.

Clearly, the Postal Service needs its classification specialists as consultants in this proceeding. Mail pieces do not simply fall by default into the 10 percent allowance—publishers have to affirmatively claim the privilege in their mailing statements. Heath tries to explain that publishers do not typically use their 10 percent allowance for such purposes: they save it for their own marketing. Tr. 29/9597. No witness has disputed his expert opinion.

Nothing in NNA's criticisms of IOCS detracts from a recognition that the Postal Service has exerted itself to improve the identification process since witness Degen's many corrections in the supplemental testimony of Docket R94-1. Nor does NNA necessarily urge a redoubling of editing efforts. NNA does not believe the 9 digit addition USPS is considering (USPS Brief at 23) is necessarily the best solution to the problems.

The point is that, taken together with the high CV's, identification problems justify a different approach for the use of the data for this small subclass.

Siwek points out that a mailpiece check going back to the publisher is a possibility for correcting the problem, all the while acknowledging that this improvement

may not be easily achieved. Tr. 29/9740, 29/9746. The Commission could nonetheless direct that this approach be used.

Or the Commission could require a much greater sampling overall within IOCS, to improve the reliability of cost estimates for all mail.

Or It could set minimum CV standards for the smaller classes.

All of those alternatives are within the Commission's power.

However, NNA has suggested an approach through witness Siwek's pooling proposal that improves the cost estimates without adding new costs to the IOCS or increasing the burden upon the Postal Service.

It is disappointing that the Postal Service has chosen to devote its resources to defending obvious flaws rather than to consider NNA's common sense approach. Given the disproportionate burden of risk inherent in ratemaking, (see Initial Brief of NNA at 12), and the proportionately small amount of revenue involved for the Postal Service if Siwek's advice were followed, one suspects the Postal Service of going after a gnat with a cannon in this discussion. Common sense should prevail. Happily, that approach would produce better data, which also meet the spirit and letter of 39 USC 3622.

II. The criticism of NNA's argument against application of container charges does not justify the proposed charge.

A. The charges on tubs and uncontainerized bundles remain indefensible.

The Postal Service and two other periodicals intervenors have extensively discussed the proposed container charges. MPA et. al. argue that improvements in the application of the charge are needed in order to avoid unfair impact upon the smallest mailers. Initial Brief of MPA/ANM at 67.

Time Warner avers that its newest proposal moves in the direction of cost-based rates while minimizing the impact upon the smallest mailers. Initial Brief of Time Warner, Inc at 49.

The Postal Service has proposed a relatively modest container charge, given the backdrop of Docket C2004-1.

NNA has not chosen to contest the proposed 85 cent sack charge, but has instead focused upon its work in doing what the Postal Service asked: helping its members to minimize the use of sacks. Tr. 29/9599. As an alternative to the costly sack, NNA has encouraged newspapers to use flats tubs when permitted, Tr. 29-9637, and to enter mail in unsacked bundles whenever possible. NNA also has provided extensive industry training in improving mail efficiency. Tr. 29/9652-55. The proposed application of the surcharge across the board to include the tubs as well as unsacked bundles, therefore, was a great disappointment to NNA.

The Postal Service's reasoning for the container surcharge on mail that is not in a container is still unclear. It is particularly dubious that a surcharge for uncontainerized bundles is proposed, given that bundle charges are not present elsewhere in the Periodicals class.

Ironically, even Time Warner--with its fervent belief in more tightly constructed cost-based rates--believes the unsacked bundle charge is unjustified. Tr. 31/10660--10661.

And where the tubs are concerned, the Postal Service may be charging too much or too little—but no one knows because there is no cost measurement involved in either. Tr. 7/1740.

In Docket C2004-1, the Commission said:

It is clear that there is room for improvement in the Periodicals rate structure, especially in light of the new insights that the Complainants provide into the costs of bundles, sacks and pallets. At a minimum, the Time Warner et al. proposal is a more cost-based rate structure than the current structure. If it were fully implemented, it would provide financial incentives to mailers to engage in lower cost mailing practices by encouraging mailers to use more efficient bundling, containerize more efficiently, change to a more efficient zone distribution, and increase the proportion of machinable pieces. Order No. 1446, pp. 45-46.

The Commission's order was to encourage more efficient containers. Newspaper mailers using flats tubs appear to be using more efficient containers, as USPS witness McCrery agrees. Tr. 11/3279.

In addition, newspaper mailers using no containers at all have seemingly achieved complete innocence in the ongoing indictment of the problem container. And yet, the Postal Service wants to slap these practices with a charge, and claim that newspaper mailers will continue their efficiencies because service needs will require it.

It is not hard to understand why witness Heath believes the charge would discourage the conversion from sacks, and impede his efforts to propel an industry shift. NNA-T-1 at 17.

Even with the combined efforts of the Postal Service and NNA to improve mail preparation and save costs (see NNA-T-1 at 14-15), it takes a long while to get the word out in a widely dispersed mailer market, particularly when many of the mailers are in rural markets with thinly staffed post offices. It takes even longer to change behavior.

It may be true, as the Postal Service argues, that mailers will make these conversions anyway for service reasons. USPS Brief at 354. But it is axiomatic that increased cost will decrease usage. Given the complete void of evidence on costs of tubs or uncontainerized bundles in the case, the Commission is urged to follow NNA's suggestion and deny the surcharge for both preparation types.

B. MPA/ANM's proposed 5-digit pallet discount is worthy of consideration.

MPA et al. propose replacing the container charge with a pallet discount, focusing specifically upon the 5-digit pallet. MPA/ANM Initial Brief at 69. NNA has not developed evidence in this docket to test impact upon its members of the container charge overall, with the impact upon tubs and bundles noted above. Indeed, NNA has little quantifiable evidence that small newspapers are capable of using pallets. However, to the extent that some of its larger newspapers may indeed contemplate pallet usage in the future, NNA believes that an incentive to create 5-digit pallets would provide additional reason to abandon sacks and urges the Commission's consideration of this discount.

III. The Postal Service's argument for lower pass-through of cost savings for Within-County periodicals is flawed.

The Postal Service states that "Witness Siwek seeks to justify his proposal by pointing to the fact that the Within County passthroughs are much lower than the passthroughs for Outside County, even though Outside County costs are used as a proxy for Within County costs." USPS Initial Brief at 366. In fact, the USPS has stated the problem very accurately. However, the USPS' arguments for lower passthroughs of the same cost savings for Within-County periodicals are unacceptable. Its defenses are twofold: 1) it has always been that way and, 2) the Within-County Periodicals subclass does not allow as much de-averaging.

The Postal Service's initial argument misses the point. The Commission is not bound by its own precedent when sufficient reason to make changes has been presented. In this case, disruption to the mailer would be greater if the Commission were to follow precedent than if it were to consider Siwek's proposal. The simple logic prevails: if Within-County mailers are avoiding the same USPS costs as Outside-County mailers, they should be afforded the same share of those savings. Particularly in a class where passthroughs far greater than 100 percent are permitted in the name of rate stability, certainly a passthrough that comes closer to rewarding the mailer for actual costs saved is worthy of adoption.

Similarly, the claim that the Within-County subclass does not "allow" as much de-averaging is also without merit.

In its brief the Postal Service presents various calculations of the increases in Within-County piece rates that would result under the NNA rate design proposals. These increases are misleading in at least three respects.

First, they assume that the USPS will in fact be granted the full increase in subclass revenue that it requests in this proceeding. Since the Postal Service has proposed that the Within-County subclass should be given the highest increase for any subclass in this case, the individual rate design elements must necessarily be set high enough to reflect the Postal Service's large proposed increases for the subclass. Thus, to a large extent, the Postal Service's concerns as to the magnitude of Within-County rate increase are fundamentally self-imposed.

Second, Within-County mailers pay both piece and pound rates. In its comparisons, the Postal Service systematically ignored NNA's pound rate proposals. For example, in its brief at page 366, the Postal Service cites piece rate increases from witness Siwek's Appendix D. In this underlying exhibit, the witness reported his proposed piece rate for basic non-automation Within-County as 0.150, a 45% increase above the current piece rate for non-automation Within-County which is 0.103.

However, assuming this basic non-automation piece weighed six ounces, the total postage would increase from 0.15625 to 0.20475, a percentage increase of 31%.

Third, for the first time in this case the Postal Service discovers its empathy for the small Within-County mailer. Its belated appearance is welcome, but misplaced.

It cites to a passing guess by witness Heath that non carrier route mailers may include city, business and regional magazines. Tr. 29/9634. Heath was not presenting factual evidence in this circumstance--only posing a possibility. He also noted that these circulations would be small. Had he been questioned further, he might have opined that these periodicals have small circulations primarily because they use nonpostal means for their primary delivery.

It is almost a parody for the Postal Service to suddenly embrace the inefficient, small, noncarrier route mailer whose presence in this case has yet to be seen, and who may not even exist. It chooses to ignore that the non carrier route mail is mostly likely that of NNA's own members, in circumstances where they can achieve insufficient density to qualify for discounts. It also seems to wish to protect mailers that have not yet converted to PAVE certified software, even while Heath, the industry guru, is trying to urge them forward. Were the Postal Service's concern for this mythical mailer genuine, it would not so vigorously oppose NNA's recommendations in the case.

But whatever its motivation, it is within the power of the Postal Service to study these mailers if it chooses and present impact evidence, along the lines of the "homework assignment" completed by witness Tang and analyzed in Siwek's Appendix E. It has not chosen to do so. Its concerns should be allayed by the Commission's granting of NNA's rate design proposal and a subsequent demonstration in the mailer marketplace that price incentives--as USPS so vigorously insists elsewhere in the case--work where the mailer has the power to respond. NNA, therefore, urges the Commission to disregard the Postal Service's unsupported impact concerns.