

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

Before Commissioners:

Dan G. Blair, Chairman;
Dawn A. Tisdale, Vice Chairman;
Mark Acton; Ruth Y. Goldway; and
Tony L. Hammond

Rate and Service Changes to Implement
Functionally Equivalent Negotiated Service
Agreement With The Bradford Group

Docket No. MC2007-4

NOTICE AND ORDER IN FILING OF REQUEST
SEEKING RECOMMENDATION OF
FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT

(Issued August, 8, 2007)

On August 3, 2007, the United States Postal Service filed a request seeking a recommended decision from the Postal Regulatory Commission approving a Negotiated Service Agreement with The Bradford Group.¹ The Negotiated Service Agreement is proffered as functionally equivalent to the Bookspan Negotiated Service Agreement recommended by the Commission in Docket No. MC2005-3 (baseline agreement). [70

¹ Request of the United States Postal Service for a Recommended Decision on Classifications and Rates to Implement a Functionally Equivalent Negotiated Service Agreement with Bradford Group, August 3, 2007 (Request).

FR 42602.] The Request, which includes six attachments, was filed pursuant to chapter 36 of title 39, United States Code.²

The Postal Service has identified The Bradford Group, along with itself, as parties to the Negotiated Service Agreement. This identification serves as notice of intervention by The Bradford Group. It also indicates that The Bradford Group shall be considered a co-proponent, procedurally and substantially, of the Postal Service's Request during the Commission's review of the Negotiated Service Agreement. Rule 191(b) [39 CFR § 3001.191(b).] An appropriate Notice of The Bradford Group of Appearance and Filing of Testimony as Co-Proponent, August 3, 2007, has been filed.

In support of the direct case, the Postal Service has filed Direct Testimony of Broderick A. Parr on Behalf of the United States Postal Service, August 3, 2007 (USPS-T-1) and library reference USPS-LR-L-1, MC2004-3 Opinion and Further Recommended Decision Analysis for The Bradford Group NSA. The Bradford Group has separately filed direct testimonies of Steve Gustafson (BG-T-1) and Wendy Ring (BG-T-2) both on behalf of The Bradford Group, August 3, 2007. The Postal Service has reviewed The Bradford Group testimony and, in accordance with rule 192(b) [39 CFR § 3001.192(b)], states that such testimony may be relied upon in presentation of the Postal Service's direct case. USPS-T-1 at 3.

The Request relies on record testimony entered in the baseline docket. This material is identified in the Postal Service's Compliance Statement, Request Attachment E.

Requests that are proffered as functionally equivalent to baseline Negotiated Service Agreements are handled expeditiously, until a final determination has been made as to their proper status. The Postal Service's Compliance Statement, Request

² Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the Negotiated Service Agreement.

Attachment E, is noteworthy in that it provides valuable information to facilitate rapid review of the Request to aid participants in evaluating whether or not the procedural path suggested by the Postal Service is appropriate.

The Postal Service submitted several contemporaneous related filings with its Request. The Postal Service has filed a proposal for limitation of issues in this docket.³ Rule 196(a)(6) [39 CFR § 3001.196(a)(6).] The proposal identifies issues that were previously decided in the baseline docket, and key issues that are unique to the instant Request.

Rule 196(b) [39 CFR § 3001.196(b)] requires the Postal Service to provide written notice of its Request, either by hand delivery or by First-Class Mail, to all participants of the baseline docket. This requirement provides additional time, due to an abbreviated intervention period, for the most likely participants to decide whether or not to intervene. A copy of the Postal Service's notice was filed with the Commission on August 3, 2007.⁴

The Request, accompanying testimonies of witnesses Parr (USPS-T-1), Gustafson (BG-T-1), and Ring (BG-T-2), the baseline agreement, and other related material can be accessed electronically, via the Internet, on the Commission's web site (<http://www.prc.gov>).

I. Background: Baseline Bookspan Negotiated Service Agreement, Docket No. MC2005-3

If a request predicated on a Negotiated Service Agreement is found to be functionally equivalent to a previously recommended, and currently in effect, Negotiated Service Agreement, it may be afforded accelerated review. Rule 196 [39 CFR § 3001.196.] The Postal Service asserts that the Negotiated Service Agreement in the instant Request is functionally equivalent to the now in effect Bookspan Negotiated

³ United States Postal Service Proposal for Limitation of Issues, August 3, 2007.

⁴ Notice of the United States Postal Service Concerning the Filing of a Request for a Recommended Decision on a Functionally Equivalent Negotiated Service Agreement, August 3, 2007.

Service Agreement recommended by the Commission in Docket No. MC2005-3.⁵ The Bookspan Negotiated Service Agreement will remain in force from June 1, 2006 to June 1, 2009. See Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Rate and Service Changes to Implement Baseline Negotiated Service Agreement with Bookspan, Docket No. MC2005-3, May 31, 2006.

The Bookspan Negotiated Service Agreement is designed to provide incentives to Bookspan to increase its use of Standard Mail letters for the purpose of soliciting members for its various book clubs. Direct Testimony of Michelle K. Yorgey on Behalf of the United States Postal Service, Docket No. MC2005-3, July 14, 2005, at 2. The Bookspan agreement provides Bookspan with a per-piece discount for Standard Mail letter volumes that exceed specified volume thresholds. Discounts are only payable after certain specified minimum volume commitments have been reached. The volume commitment levels are subject to adjustment each year, based on the previous year's actual volume. *Id.*

The Bookspan Negotiated Service Agreement also provides for several other risk mitigation features to protect the Postal Service's interests. If Bookspan sends more than a maximum number of qualifying pieces in one year, the agreement automatically terminates. Either party may also unconditionally cancel the agreement with 30 days notice. Additionally, the agreement contains a mechanism to adjust the volume blocks applicable to discounts if Bookspan merges or acquires other entities.

II. The Bradford Group Negotiated Service Agreement

The Postal Service proposes to enter into a three-year Negotiated Service Agreement with The Bradford Group. The agreement provides The Bradford Group with declining block rates for Standard Mail letters and flats soliciting new and existing customers for The Bradford Group's collectibles and other gift items. The total

⁵ See Opinion and Recommended Decision, Docket No. MC2005-3, May 10, 2006.

estimated net benefit to postal finances over the three-year period of this Negotiated Service Agreement is \$5.3 million. Request at 4.

The Bradford Group Negotiated Service Agreement is based on the same key substantive functional elements that are central to the Bookspan agreement. *Id.* at 3. Like the Bookspan Negotiated Service Agreement this agreement provides declining block rates for Standard Mail letter solicitations. Additionally, The Bradford Group agreement provides declining block rates for Standard Mail flats. By providing discounts for both letters and flats, the potential for letter-flat conversion will be mitigated. USPS-T-1 at 2. Based on an analysis of The Bradford Group's volume histories and forecasts, the Postal Service does not anticipate a significant conversion between letters and flats.

The agreement contains several provisions to mitigate risk. These provisions include an annual adjustment mechanism for those volume commitments, based on actual experience, an automatic termination clause if volumes exceed a specified cap, and an unconditional right of cancellation for both parties. Request at 2.

In the first year of the agreement, the projected before-rates volumes are 146.5 million letter pieces and 53.5 million flat pieces. Discounts would be earned for volumes above the thresholds of 147 million and 53.5 million pieces for letters and flats respectively. The discounts will not be paid unless The Bradford Group actually mails 154 million letters and/or 54.5 million flats. *Id.* at 2-3.

Without an incentive such as that provided by the proposed Negotiated Service Agreement, The Bradford Group marketing volumes are expected to be flat or falling due to the highly volume variable nature of The Bradford Group's operations.

III. Commission Analysis

Applicability of the rules for functionally equivalent Negotiated Service Agreements. For administrative purposes, the Commission has docketed the instant filing as a request predicated on a Negotiated Service Agreement functionally equivalent to a previously recommended and ongoing Negotiated Service Agreement.

A final determination regarding the appropriateness of characterizing the Negotiated Service Agreement as functionally equivalent to the Bookspan Negotiated Service Agreement, Docket No. MC2005-3, and application of the expedited rules for functionality equivalent Negotiated Service Agreements, will not be made until after the prehearing conference.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Kenneth E. Richardson, Acting 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, Mr. Richardson will direct the activities of Commission personnel assigned to assist him and, upon request, will supply their names for the record. Neither Mr. Richardson nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Intervention. Those wishing to be heard in this matter are directed to file a notice of intervention on or before August 24, 2007. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's web site (<http://www.prc.gov>), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR §§ 3001.9(a) and 10(a).] Notices should indicate whether participation will be on a full or limited basis. See rules 20 and 20a [39 CFR §§ 3001.2 and 20a.] No decision has been made at this point on whether a hearing will be held in this case.

Prehearing conference. A prehearing conference will be held August 28, 2007, at 11:00 a.m. in the Commission's hearing room. Participants intending to object to proceeding under rule 196 [39 CFR § 3001.196], intending to object to the Postal Service's proposal for limiting issues, or intending to identify issue(s) that would indicate the need to schedule a hearing shall file a written explanation of their position by August 24, 2007. Participants shall be prepared to discuss these issues during the prehearing conference. The Commission intends to issue a ruling on these issues shortly after the prehearing conference.

It is ordered:

1. The Commission establishes Docket No. MC2007-4 to consider the Postal Service Request referred to in the body of this order.
2. The Commission will sit *en banc* in this proceeding.
3. Kenneth E. Richardson, Acting Director of the Commission's Office of the Consumer Advocate, is designated to represent the interest of the general public.
4. The deadline for filing notices of intervention is August 24, 2007.
5. A prehearing conference will be held August 28, 2007 at 11:00 a.m. in the Commission's hearing room.
6. Participants intending to object to proceeding under rule 196 [39 CFR § 3001.196], intending to object to the Postal Service's proposal for limiting issues, or intending to identify issue(s) that would indicate the need to schedule a hearing shall file a written explanation of their position by August 24, 2007.
7. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

Steven W. Williams
Secretary