

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  
Baseline Negotiated Service Agreement  
With Life Line Screening

Docket No. MC2007-5

ORDER REGARDING LIMITATION OF ISSUES AND  
ESTABLISHING PROCEDURAL SCHEDULE

(Issued September 14, 2007)

*Prehearing conference.* At the September 10, 2007 prehearing conference several procedural issues were discussed. First, the Office of the Consumer Advocate (OCA) indicated that it was currently actively engaged in discovery and that after discovery was completed it might require hearings.<sup>1</sup> OCA indicated that it expected to need approximately two additional weeks for discovery. Life Line Screening (Life Line) agreed that such a request was reasonable. Second, Life Line suggested that after the discovery cut-off date, the Commission should require participants to state, with some particularity, the issues that they believe necessitate a hearing. Life Line argued that such a request is reasonable to put the participants and Commission on notice as to the issues to be heard in the case. Third, the Postal Service's Proposal for Limitation of

---

<sup>1</sup> See Office of the Consumer Advocate Statement Concerning Issues That May Require a Hearing, September 7, 2007.

Issues (Proposal) was also addressed. Proposal at 1-2. No participant filed a response to the Postal Service's Proposal or commented on the Proposal at the prehearing conference.

*Procedural schedule.* The OCA indicated that two weeks should give it sufficient time to complete initial discovery. No participant objected to the timeframe proposed by the OCA. Accordingly, the Commission will set the discovery deadline as September 24, 2007. To provide participants with sufficient time to examine and evaluate the discovery responses, the Commission sets October 9, 2007 as the deadline for participants to indicate whether they seek a hearing in this case and to identify the reasons why they believe a hearing is necessary. A further procedural schedule will be issued after a review of the pleadings filed on October 9, 2007.

*Motion to limit issues.* The Postal Service filed a proposal to limit the issues open for litigation in this proceeding due to what it believes are "extensive similarities" between the current docket and the Bookspan NSA, Docket No. MC2005-3. *Id.* The Proposal essentially requests precluding the issues of "(1) whether NSAs are consistent with the statutory scheme of the Postal Reorganization Act [the Act] and, in particular, 39 U.S.C. § 403(c), which prohibits undue preferences; (2) the finding that an open 'niche' classification should not be preferred over an NSA in general; (3) the finding that cost savings are not required for volume-based discount NSAs; and (4) the utility of declining block rates." *Id.* No participant filed a response to the Postal Service's Proposal.

Statements such as those listed above by the Postal Service are not particularly helpful when unconnected to a factual predicate. This is especially true when the Postal Service does not offer any support, context, or citation indicating that the Commission has made such findings.

It is particularly problematic with respect to the second proposed statement. The Commission has stated the opposite proposition in a similar context. In Docket No. MC2002-2 (the Capital One NSA), the Commission found that "all other things being

equal, more inclusive mail classifications are preferable to more restrictive alternatives.” PRC Op. MC2002-2, ¶ 3037.<sup>2</sup>

With respect to the first and third proposed statements, in the Capital One case, the Commission found that the Act permits the Postal Service to contract with individual mailers if (1) the contract is reviewed in a public proceeding and satisfies the substantive criteria of the Act; (2) the proposed rate and service changes will work to the mutual benefit of the mail users and the postal system as a whole; and (3) the rate-and-service package is offered to other potential users willing to meet the same conditions of service. *Id.*, ¶ 3013; PRC Op. MC2005-3, ¶ 4001. The Commission’s rules also state “it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace.” 39 C.F.R. § 3001.190(b). In Bookspan, the Commission noted that “declining block rates — without associated cost savings — can be approved under the Act if such agreements provide additional net revenue above and beyond the amounts that would have been generated in the absence of the declining block rates.” PRC Op. MC2005-3, ¶ 4006. (Footnote omitted.) It found that “there is no bar to potential NSAs that do not have a cost savings element so long as the essential features of the NSA are available to other similarly situated mailers and there is a reasonable justification for the Agreement.” *Id.*, ¶ 4018.

With respect to the fourth statement, in addition to lacking a factual predicate and being without support, context, or citation, the term “utility” is too overbroad and vague to serve a useful purpose. In certain circumstances declining block rates may have utility and in others they may not. The Commission can not make a blanket statement about declining blocks rates and their nexus to the term utility.

---

<sup>2</sup> The Commission went on to say that “the Commission has maintained a consistent policy of entertaining and acting upon claims that new mail classifications should be available on more inclusive terms than were originally proposed.... Nevertheless, the Commission will continue to allow participants to inquire into the feasibility of more inclusive classification provisions, and to propose more expansive alternatives, as it has done in this proceeding.” *Id.*, ¶ 3038-40.

*It is ordered:*

1. Initial discovery requests should be filed no later than September 24, 2007.
2. Participants seeking a hearing in this proceeding are directed to file a statement to that effect no later than October 9, 2007, along with supporting reasons.
3. The Postal Service's Proposal for Limitation of Issues, filed August 8, 2007, is granted in part and denied in part as discussed in the body of this Order.

By the Commission.

Steven W. Williams  
Secretary