



determine a single company's elasticity. Until that time—years in the future—the absence of company-specific elasticities will mean that either no volume-incentive NSAs can be approved or an acceptable proxy for company-specific elasticity must be adopted to set Before Rates. The Commission has recognized both the inherent uncertainties in predicting Before Rates of individual mailers and the practical problems of demanding company-specific elasticities. See, e.g., Opinion and Further Recommended Decision at 21, MC2004-3 (April 21, 2006) (Bank One Reconsideration Decision). Until company-specific elasticities are available, the Commission has found that at least one methodology may be acceptable for setting a baseline for discounts. *Id.* at 29, *et seq.* The question remains: What alternative methodologies are acceptable?

Mailers, including ACMA's members, are eager to enter into NSA agreements to mitigate volume decreases caused by 2007 rate increases.<sup>1</sup> But they are becoming increasingly frustrated by confusing signals on the Before Rates issue emitted by the two key institutions involved in the NSA process: the Commission and the Postal Service. The Commission's guidance in its decisions seem to point in one direction (reliance upon mailer estimates of after-rates volume coupled with sector-based elasticities), while the Postal Service's agreements in more recent NSA cases appear to point in an entirely different direction (reliance on mailer-set before-rates and after-rates volume projections). Still more recently, the Postal Service seems to be leaning toward a formulaic approach that points in a third direction (e.g., mechanically setting Before Rates by calculating and applying the growth rate of the mailer's historical volumes to the most recent annual volume).<sup>2</sup> And in this proceeding, the OCA is demanding proof of company-specific elasticities to justify each NSA; an approach that points nowhere at all since such elasticities have been deemed virtually impossible to prove at this time.

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<sup>1</sup> Volume decreases of Standard Mail flats for the first quarter of USPS FY 2008, usually the strongest quarter due to the holidays, may be approximately 13 per cent. USPS remarks at MTAC meeting (USPS Financial Update), January 30, 2008.

<sup>2</sup> *But see* Opinion and Recommended Decision, MC2004-3 (December 17, 2004) at 56-57 (Paras. 6054-6056).

This murky situation is about to become murkier still. The new procedures for rate regulation mandated by the Postal Accountability and Enhancement Act (PAEA) will apparently leave the mailer and the Postal Service to negotiate in the dark, without guidance as to what the Commission could find unlawful in the later compliance review—and with unknown consequences. Indeed, if the PAEA expands the Postal Service’s flexibility in structuring NSAs, as some have argued in this case (Initial Brief of the Bradford Group, January 16, 2008, at 7, 10), then even the guidance offered by previous Commission decisions may be out of date. Alternatively, without some sense of the Commission’s direction, the Postal Service could well become still more cautious about negotiating NSAs despite their potential for mutual benefit, as Congress recognized in the PAEA.<sup>3</sup>

Previous PRC decisions, Postal Service positions, and the PAEA have all increased uncertainties for mailers seeking NSAs. Such uncertainties necessarily have a chilling effect on mailers seeking NSAs. In this proceeding, one of the last for which a recommended decision will be prepared, the OCA has raised the issue of the appropriate methodology for setting Before Rates. ACMA urges the Commission, in deciding this issue, to clarify the parameters of an acceptable Before Rates methodology and to provide whatever guidance it can about each of the various NSA methodologies that have been broached. We also believe it would be useful for the Commission to re-assess or re-affirm the concepts set out in the Bank One Reconsideration in light of (1) the almost two years of less than stellar experience with NSAs since that decision, (2) the new approaches put forward by the Postal Service, and (3) the new objectives and procedures introduced by the PAEA.<sup>4</sup>

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<sup>3</sup> In fact, the Postal Service has recently made public statements that indicate that the Commission’s recent actions may have a negative impact on the NSA program. See, e.g., USPS remarks at MTAC meeting (USPS Perspective on PRC Rate Setting Proposal), November 7, 2007.

<sup>4</sup> If the Commission determines that a certain methodology is appropriate and effective, then the resulting certainty will open the door to more NSAs. If the Postal Service finds for whatever reason that it cannot follow the methodology endorsed by the Commission, then it can make the explicit decision to discontinue volume-incentive NSAs for business reasons. As things stand now, mailers do not know whether to address the Commission’s “over-regulation” of NSAs or the Postal Service’s business

As things stand now, mailers find it difficult to discern a practical way forward. In principle, it should be possible to develop a commercially sensible approach to volume-incentive NSAs that serves the public interest and grows Postal Service volumes. Above all, what is needed is a workable concept of NSAs that will have the overall effect of advancing the interests of the Postal Service and a wide range of mailers—both large and small—even if there is the theoretical possibility of an occasional bad deal. We would welcome, therefore, whatever light the Commission can shed on this promising, but so far under-developed, mechanism for the development of postal markets and the enhancement of postal volume.

Respectfully submitted,



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decisions. Worse, mailers risk signing an agreement with the Postal Service and learning after implementation that the Commission finds the agreement unacceptable.