

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

---

**Rate and Service Changes To Implement  
Baseline Negotiated Service Agreement  
With Life Line Screening**

---

**Docket No. MC2007-5**

**INITIAL BRIEF OF THE  
AMERICAN POSTAL WORKERS UNION, AFL-CIO  
(February 4, 2008)**

On August 8, 2007, the Postal Service requested approval from the Postal Regulatory Commission on a baseline negotiated service agreement with Life Line Screening (LLS).<sup>1</sup> The American Postal Workers Union, AFL-CIO (APWU) hereby submits its initial brief for consideration by the Commission.

The proposed NSA was created to incentivize Life Line Screening to increase its Standard Mail letter volume by implementing declining block rates for these letters.<sup>2</sup> The APWU has serious reservations about this agreement. Specifically, we are concerned with the reliability of the estimated "before rates" volumes provided by LLS as a basis for determining the value of the NSA to the Postal Service and the volume incentive structure of the NSA.

In evaluating a proposed volume-incentive NSA, the importance of the accuracy of volume forecasts cannot be overstated. As explained by Professor John Panzar in MC2002-2 and reaffirmed by the Commission in Bank One Reconsideration

---

<sup>1</sup> Request of the United States Postal Service for a Recommended Decision on Classifications and Rates to Implement a Baseline Negotiated Service Agreement with Life Line Screening, August 8, 2007.

<sup>2</sup> Direct Testimony of Michelle K. Yorgey, USPS-T-1 at page 1, August 8, 2007.

Decision, “[w]hen, as in reality, demand schedules change over time, the focal point becomes the quantity that the large user *would have demanded* at the established rate.<sup>3</sup>

In the Bank One Reconsideration, the Commission delineated its framework for evaluating if a quantity discount met the requirements of the law.

To satisfy the requirements of the statute, a quantity discount must demonstrate a reasonable likelihood of resulting in a net increase in contribution above what the contribution would have been absent the discount. This condition is always met if (1) the threshold for discounts is above the volume that would have been sent absent the discounts, and (2) mail in every discount tier makes a positive contribution. If the threshold for discounts is below the volume that would have been sent absent the discount, the increase in contribution from new volume must be greater than the contribution lost by awarding the discounts to volume that would have been sent absent the discount.<sup>4</sup>

From the record evidence in this case, it is unclear whether this criteria has been met.

The volume estimates utilized in the proposed NSA were created by LLS and reviewed by the Postal Service. This has been the primary method for determining volume forecasts in NSAs.<sup>5</sup> Several developments in this docket counsel for reconsideration of this approach. In his testimony on behalf of LLS, Vice President of Marketing, Eric Greenberg, estimated the standard mail volume for FY 2007 at 96,000,000 pieces.<sup>6</sup> This amounted to a forecasted increase of 3% over FY 2006 volumes.<sup>7</sup> It was this forecast amount that formed the basis for the block discount rates. However, through discovery it was uncovered that the actual standard mail

---

<sup>3</sup> PRC Opinion and Further Recommended Decision in Docket MC2004-3 at ¶ 5002, April 21, 2006, *quoting* Docket No. MC2002-2, Tr. 8/1588-809 (emphasis in original).

<sup>4</sup> *Id.* at ¶ 5010.

<sup>5</sup> *Id.* at ¶ 5004.

<sup>6</sup> Direct Testimony of Eric Greenberg, LLS-T-1 at page 10, August 8, 2007.

<sup>7</sup> *Id.*

letter volume for FY 2007 was 106,267,407 pieces, an increase of almost 11% over above the original estimates.<sup>8</sup> LLS attributed this increase to the addition of “its largest ever business development client.”<sup>9</sup> The Postal Service was not aware of this increase in volume and new affinity partner until sometime late October 2007.<sup>10</sup>

It was also learned during discovery that LLS planned to discontinue the operations of six vans in early 2008.<sup>11</sup> LLS predicts that this action will cause a decrease in “roughly six to seven million pieces in 2008.”<sup>12</sup> However, it does not appear that the Postal Service was aware of this decrease or its potential impact until October 2007, after the terms of the NSA had been fully negotiated.

In the Bank One Reconsideration the Commission noted

there are two potential reasons for changes in the mailer’s volume. The first is the reaction of the mailer to the discounted price. ... The other potential reason for changes in volume is reaction to factors other than price that cause a shift in the mailer’s demand curve. Each mailer’s demand curve can and does constantly shift in response to dynamic economic and market conditions.<sup>13</sup>

The Commission further stated

[v]olume increases caused by factors other than the discount incentive have the potential to make a volume discount agreement that would otherwise be profitable for the Postal Service into one that is unprofitable for the Postal Service. Therefore, to properly analyze a volume discount proposal, *it is critical to have a means of isolating the beneficial increases in volume directly attributable to the discount from changes in the mailer’s demand that are unrelated to the discount.*<sup>14</sup>

---

<sup>8</sup> Tr. Vol. 2 at p. 40.

<sup>9</sup> *Id.*

<sup>10</sup> Tr. Vol. 2 at p. 41.

<sup>11</sup> Tr, Vol. 2 at p. 40

<sup>12</sup> *Id.*

<sup>13</sup> MC2004-3 Further Recommended Decision at ¶¶ 5005-5006.

<sup>14</sup> *Id.* at ¶ 5007 (emphasis added).

Although the actual volume for FY2007 was substantially greater than the forecasted volume for FY 2007, no change was made to the forecasted “before rates” volume numbers for FY 2008 and beyond, nor were there changes to the baseline commitment and volume cut-offs for the block rates. The Postal Service made no adjustment to the proposed NSA as a result of the new affinity partner despite some indication that the new affinity partner, which appears to have boosted FY 2007 mail volumes, might continue to have an impact on the FY 2008 volumes. Further confusing the issue is the impact of LLS’s discontinuance of six vans in 2008. In her response to APWU/USPS-T1-5, witness Yorgey seems to understand that this operational change might exactly offset the increased volumes expected from the affinity partner. But there is no record of an evaluation of this impact, let alone evidence substantiating this understanding. Therefore, the Postal Service may be discounting rates for mail that would have been sent regardless of rate incentives. If true, this NSA would be inconsistent with applicable statutory criteria.<sup>15</sup>

Thus, there continues to be a problem in “isolating the beneficial increases in volume directly attributable to the discount from changes in the mailer’s demand that are unrelated to the discount.” It seems that neither LLS nor the Postal Service has a good handle on predicting expected volumes. In this case, LLS seems to suggest that its mail volume would decline over 15 percent between 2007 and 2008 if the discounts

---

<sup>15</sup> This NSA was filed after the implementation of the Postal Accountability and Enhancement Act. The PAEA contains a “transition rule” which states that all requests for a recommended decision filed during the one year period beginning with the implementation of the PAEA “shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, *as in effect before the date of enactment of this section.*” 39 USC 3622(f) (emphasis added). The current NSA was filed during this transition year; therefore, the criteria of the Postal Reorganization Act apply.

were not in place.<sup>16</sup> The Postal Service appears unable to independently confirm that the before rates numbers presented by LLS are likely given the factors LLS put forward. In fact, LLS is even uncertain as to the impact of spam blockers and other similar factors on the non-mail solicitation techniques it proposes to use.<sup>17</sup>

In today's environment it may be impossible for the Postal Service to develop mailer-specific elasticities. Notwithstanding, the Postal Service should be encouraged to undertake critical analysis of mailer proposed "before rates" and not simply accept a mailer's volume estimates. The Commission must provide further guidance on this issue. Otherwise, the Postal Service may be discounting rates for mail that would have been sent regardless of rate incentives, contrary to statutory criteria.

Respectfully submitted,

Jennifer L. Wood  
Counsel for American Postal Workers Union, AFL-CIO

---

<sup>16</sup> Although there is some confusion over what volume LLS expects now for FY2008.

<sup>17</sup> Tr. Vol. 2 at p. 18.