

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

VALASSIS NSA

Docket No. MC2012-14

VALASSIS NSA

Docket No. R2012-8

**NEWSPAPER ASSOCIATION OF AMERICA**  
**MOTION FOR STAY**  
(August 24, 2012)

The Newspaper Association of America (“NAA”)<sup>1</sup> hereby moves, pursuant to rule 66 of the Commission’s rules of practice, for a stay of Commission Order No. 1448<sup>2</sup> approving the Postal Service’s negotiated services agreement (“NSA”) with Valassis.<sup>3</sup>

In support of this motion, NAA states that earlier today it filed a petition for review of Order No. 1448 in the United States Court of Appeals for the District of Columbia Circuit. *Newspaper Association of America v. Postal Regulatory Commission*, No. 12-1367 (D.C. Cir.). NAA requests that the Commission issue this stay to prevent irrevocable harm to the marketplace while judicial review is pending.

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<sup>1</sup> NAA represents the interests of nearly 2,000 newspapers in the United States and Canada. Its members account for nearly 90 percent of the daily newspaper circulation in the United States and a wide range of non-daily U.S. newspapers.

<sup>2</sup> Issued August 23, 2012.

<sup>3</sup> 77 *Fed Reg.* 27,491 (May 10, 2012) (Order No. 1330), *noticing* Notice of the United States Postal Service of Filing of Contract and Supporting Data and Request To Add Valassis Direct Mail, Inc. Negotiated Service Agreement To The Market-Dominant Product List, Docket No. MC2012-14 & Docket No. R2012-8 (filed April 30, 2012) (“USPS Notice”).

The Commission recently reviewed the criteria for a stay in Order No. 1387 (*Complaint of American Postal Workers Union*, Docket No. C2012-2 (June 29, 2012)). There, the Commission stated that to obtain a preliminary injunction or stay, a party must demonstrate that “(1) it has a substantial likelihood of success on the merits; (2) it would suffer irreparable harm if the preliminary injunction is not granted; (3) the balance of the equities favor issuing an injunction; and (4) the issuance of an injunction is in the public interest.” *Id.* at 3. As the Commission noted, these four factors have been evaluated on a “sliding scale” in the D.C. Circuit. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F. 2d 841, 842-43 (D.C. Cir. 1977).

This standard is met here. The NSA between the Postal Service and Valassis approved by this Commission in Order No. 1448 will cause irreparable harm to NAA member newspapers in the form of local market disruptions, and massive and irreversible revenue losses, with a corresponding reduction in their ability to report and publish news and information in their communities. In addition, the Postal Service also will suffer irreparable harm through permanently lost revenues at a time when its finances are deteriorating.

NAA has a substantial likelihood of success on the merits in the Court of Appeals, because the NSA:

- Is tailored so narrowly that it is not realistically available to any other mailer, in violation of 39 U.S.C. §3622(c)(10);
- Would cause undue harm to the marketplace in violation of 39 U.S.C. §3622(c)(10)(B);
- Would result in a net financial loss to the Postal Service in violation of 39 U.S.C. §3622(c)(10)(A); and

- Would be unreasonably discriminatory in violation of 39 U.S.C. §403(c).

If a stay is granted, the NSA would not take effect and Valassis would be unable to avail itself of the steeply discounted rebate rates made available only to it by the Postal Service. The inability of one mailer to take advantage of an unwarranted and unjustified benefit is greatly outweighed by the likely injury to the many newspapers across the country that rely on advertising by retailers of durable and semi-durable goods, harms demonstrated in the record of this proceeding by the unprecedented number of declarations and affidavits submitted by newspapers from across the nation, both large and small businesses. Although Order No. 1448 assumes that the NSA will be used in a small number of markets, nothing in the NSA so limits its availability and, in any event, neither Valassis nor the Postal Service have ever indicated in what markets the NSA might be used.

There is a strong likelihood that, unless stayed, Order No. 1448 will cause irreparable harm within 90 days, which could not be rectified in a meaningful or timely way by an after-the-fact review by this Commission under Section 3652 or Section 3662. Accordingly, a stay of Order No. 1448 is in the public interest.

For these reasons, NAA respectfully but urgently requests that the Commission stay the effect of Order No. 1448, pending resolution of the pending petition for review.

Respectfully submitted,

Newspaper Association of America

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