

Before the
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Solicitation of Comments on) Docket No. RM2005-2
First Use of Rules Applicable to)
Negotiated Service Agreements)

COMMENTS OF NATIONAL POSTAL POLICY COUNCIL

The National Postal Policy Council (NPPC) appreciates this opportunity to comment on the Commission's rules applicable to Negotiated Service Agreements (NSAs). NPPC believes that in a marketplace of unprecedented challenge to the volume, and the balance sheet, of the Postal Service, NSAs offer a major opportunity to impact the decline in First Class Mail (1-C) and its heavy contribution to the financial well-being of the system. The Commission, through its approach and the application of its rules, may very well hold the key to the success of NSAs.,

NPPC is a trade association representing many of the largest business users of First Class Mail. Members are in the financial services, banking, insurance, utility, telecommunications and other industries. NPPC strongly supports a robust and healthy postal system as a basic element in its members' business success and in the public's economic and communications interest. .

Introduction

NPPC strongly supports the concept of NSAs, and commends the Commission for its work in reviewing and approving the three NSAs brought before it to date. We hope that the fourth, which was recently filed, will have a positive outcome. NSAs clearly are a new and important means of encouraging mailers not only to keep existing mail in the system, but increase their volume. In fact, each of the companies involved in those NSAs is a member of NPPC.

NPPC is generally pleased with the Commission's efforts to expedite the process for approving NSAs. The rules for functionally equivalent NSAs have reasonably effectively served their intended purpose, with these cases reaching resolution comparatively rapidly. However, we would like to offer some thoughts about several aspects of those rules, and the Commission's approach to NSAs overall.

The Commission Should Reconsider the Use of Caps

First, we recommend that the Commission adjust its focus on caps. NPPC understands that an important function of the Commission is to ensure that rates proposed in any situation not only accord with the evidence of record, but do not disadvantage the system, other mailers or the ratepaying public. In the case of NSAs, since they involve a negotiated rate with one customer at a time, we can understand the Commission's being particularly vigilant for any potentially financially untoward outcome.

Having said that, we believe the Commission is erring too much on the side of caution. An NSA is an arrangement that is similar in many ways to business agreements. By operating in a business-like way, USPS creates the potential for substantial benefits all around. But virtually no business arrangement is without risk, and NSAs are no exception. To be too risk averse, though, itself risks much of the likelihood for benefits that would not only inure to the customer, but to USPS.

That is the case with a concern expressed by the Commission: that a mailer might eventually decide based on non-cost factors to mail pieces at conventional rates that are included in an NSA. To some degree, that issue is controlled for by data submitted for the record measuring before and after rates effects, along with general review by the Commission. As fundamentally, the parties can control for this issue. USPS obviously thoroughly understands its business, and would not enter into an NSA where the likelihood of its obtaining conventional rates for additional mail is high. Mailers seeking to enhance their marketing while constraining costs as all businesses are under pressure to do, are unlikely to resort to a higher cost alternative if an NSA is not made available. They will turn to alternatives to the mail.

In the three completed NSAs, those companies were not placing additional volume in the mail or converting from Standard A back to 1-C. Extrapolating from them, the likelihood that further revenue will not be realized in this context is low, and the risk quite manageable.

Thus, NPPC would prefer to see no cap at all. The business climate for First Class Mail (1-C), with an unprecedented set of alternatives that have begun to take hold, is noticeably less hospitable than it ever has been. This is borne out by the continuing decline in its volume. Given the major contribution to institutional costs that 1-C provides, the Postal Service, and its users, can ill afford to miss opportunities to have an impact on that decline. By not imposing a cap, the PRC would permit some risk of harm, but the potential for gain in this circumstance, especially since there has been effective negotiation between the parties (and intervenors), far outweighs it.

If the PRC is not persuaded to forego a cap, NPPC believes any that might be imposed should be conditional, and focused on the limit of acceptability for loss to USPS. That is, a cap should be imposed only if USPS loses money beyond a certain threshold limit based on real-time experience as was the case in the negotiated settlement among the parties in the Bank One NSA. In a three-year arrangement, as has been typical to

date, if USPS' net from whatever factors are applied in the NSA is negative beyond the limit set during some specified part of the three years, then the arrangement could be capped or curtailed.

However, whatever that amount is should not be reflected in a limit on how much the customer can gain from the agreement. The customer should be able to continue to realize gains from its NSA with no artificially developed cap. If USPS does not realize its gains, or even loses money, then a conditional cap could be imposed or the NSA could be terminated early.

By simply imposing a cap and not waiting for real-time experience, the Commission substantially dampens the prospects not only for the instant NSA, but for future NSAs from other parties. With that dampening goes partial suppression of one of the few options USPS has at its disposal to protect or, optimally, even enhance, its revenue base.

So, we respectfully suggest to the Commission that if it does create a cap, that that cap only apply beyond some negative threshold for USPS. If that condition does not occur, then the only limit should be the bounds of whatever has been negotiated between the mailer and USPS. The direct and indirect (more NSAs) benefits from approaching it that way can be very substantial, while not abandoning the fiduciary responsibility and prudence the Commission must and should exercise.

The Commission Should Find Ways to Help Constrain the Need for Litigation and, Thus, Litigation Costs in the Interest of Encouraging NSAs and Opening Them to Smaller Parties

Another concern of NPPC's is the cost of litigation for NSAs. Certainly, we understand that litigation is virtually never inexpensive. And we further understand that litigating before the Commission is in line with that. However, an NSA is not similar to an omnibus rate case, or a major classification case. It's an attempt to establish a business-like arrangement with benefits for all parties. Given the relatively small benefits from an NSA, litigation costs can have a significant effect on the net outcome, and therefore whether to file in the first instance.

Prospective litigation costs should not be a determining or even a substantial factor in whether to proceed. The stakes are significant here for all sides, so decisions to proceed with NSAs should be based on business judgment, not on how much it's going to cost. Obviously, one element inherent in the cost of litigation is the length of time litigators have to be involved; in other words, how long does the case take to complete, and how intense is the investment of time? While the Commission is to be commended for how quickly it was able to issue an opinion in the Discover NSA, the Commission can have a positive effect on those costs by finding ways to move even more quickly than it has.

Another means by which the Commission might constrain litigation costs would be to limit the scope of inquiry in the proceeding to areas material to the financial and volume aspects of the NSA.. In at least one of the approved NSAs, proprietary information such as list purchasing and list processing were probed, compelling expenditures for litigation on items of questionable relevance at best to the issues before the Commission. Circumscribing inquiry into proprietary matters which are not central to review of the NSA before the Commission would help with the cost burden.

Not so incidentally, limiting inquiry into unnecessary proprietary areas would encourage more parties to begin the process.

Litigation costs, of course, tie back in to the concept of a cap. The larger the upside potential for a company, the smaller the relative percentage of litigation costs, the less likely it will shy away because of those costs. Without a cap, some companies that are not currently contemplating proceeding might well move ahead with NSAs.

Finally, while the members of NPPC are large to very large companies, the relative cost of litigation to potential benefits of an NSA is offputting. For smaller companies, it must be daunting indeed. Therefore, constraining the length and complexity of an NSA case would be democratizing to the process in that many more parties might find pursuing one affordable.

The Commission Should Consider Finding a Means to Encourage More Innovation in Cost Savings through NSAs

Finally, NPPC would like to see the Commission accord greater weight to cost savings in evaluating the merits of an NSA. USPS justifiably deserves enormous praise for the costs it has been able to cut over the past three years. Under the leadership of Postmaster General Jack Potter, it has achieved savings beyond anyone's expectations, and done so humanely (no lay-offs, e.g.), while actually improving service and serving millions of new addresses. Those reductions, while admirable, have also been necessary as USPS struggles to compete in a rapidly evolving marketplace.

More needs to be done. One way of achieving more cost savings is through innovation in NSAs. The foregoing of physical return of undeliverable as addressed 1-C pieces in the existing NSAs is one area of innovation, and we commend the Commission for supporting it.

NPPC recognizes that the Commission already requires in its general NSA rules that sufficient information concerning cost (as well as revenue and volume) projections with and without a proposed NSA be submitted so that it can determine the cost impact including, of course, whatever USPS might save. Hence, the Commission is already in the ballpark.

However, in the functional equivalence rules that are the subject of this docket, cost savings might be specifically broken out as an element for determining whether

overall functional equivalence exists. Plus, the Commission might allow cost savings for areas other than address correction to still qualify as functionally equivalent. That would provide not only greater emphasis upon, but a real incentive to find, new cost savings.

Thank you for considering our views.

Respectfully submitted,

Arthur B. Sackler
Executive Director
National Postal Policy Council

7113 Deer Crossing Court
Bethesda, MD 20817

301-469-2078
asackler@postalcouncil.org

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