

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

*Before:*

Chairman Omas,  
Vice Chairman Tisdale,  
Commissioner Acton,  
Commissioner Goldway, and  
Commissioner Hammond

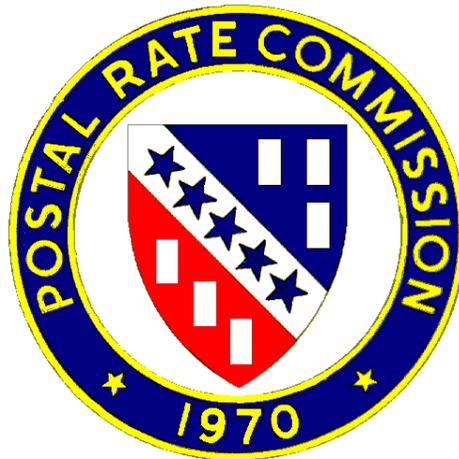
Periodicals Nominal Rate  
Minor Classification Change

Docket No. MC2006-5

OPINION AND RECOMMENDED DECISION

APPROVING

STIPULATION AND AGREEMENT



Washington, DC 20268-0001  
August 30, 2006

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## I. INTRODUCTION AND SUMMARY

### A. Commission Decision

The Commission adopts an unopposed Stipulation and Agreement (settlement agreement) as the basis for an expedited recommended decision approving a minor classification change revising the definition of a nominal subscription rate in Periodicals. Under current terms, a nominal rate is defined, in pertinent part, as a reduction to the subscriber of more than 50 percent of the basic annual subscription rate. The recommendation, which is identical to the settlement agreement, is to change this to a reduction of more than 70 percent.

The size of the authorized reduction, or discount, from a basic subscription rate is important to senders of Periodicals because it is a component of a paid circulation test. Satisfying this test is, in turn, a Periodicals eligibility requirement. The test requires that at least 50 percent of the copies of a Periodicals publication must be distributed to persons who are charged at *more* than a nominal rate.<sup>1</sup>

In operation, this means that if a Periodicals publication has 100,000 subscribers, charges a basic annual subscription rate of \$40, and meets all other requirements, a nominal subscription rate under current terms would be one that is less than \$20; therefore, to satisfy the current paid circulation test, at least 50 percent of the copies would have to be sent to persons who have paid at least \$20. Under the recommended change, the nominal rate would be one that is less than \$12; therefore, at least 50,000 copies would have to be sent to persons who have paid at least \$12 for a subscription.<sup>2</sup>

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<sup>1</sup> The nominal rate definition appears in DMCS § 412.33. It is incorporated by reference into DMCS § 412.31. The term “test” does not appear in the DMCS, but is used in this discussion to convey the nature of the referenced DMCS provisions.

<sup>2</sup> The recommended change alters *only* the percentage that factors into the definition of a nominal rate; it does not change the requirement that at least 50 percent of the copies of the publication must be distributed to persons who have paid more than a nominal rate.

The Service acknowledges that this change liberalizes the current postal rule, but maintains, among other things, that it generally follows the approach national audit bureaus have adopted in recent years; has no measurable impact on postal finances; meets all applicable statutory criteria; and benefits publishers by providing greater marketing and pricing flexibility.

The Commission's review of the record leads it to conclude that the Service's assessments are correct. It therefore adopts the unopposed settlement agreement as the basis for this Opinion and Recommended Decision approving the settlement.

The Commission acknowledges the efforts of the Postal Service and senders of Periodicals in developing this proposal. It also recognizes the efforts of all participants, including the settlement coordinator, in bringing about a speedy resolution of this case in the face of the considerable demands posed by several pending major cases.

#### B. Procedural History

On July 6, 2006, the United States Postal Service filed a Request with the Commission seeking expedited consideration of a proposed revision in the definition of a "nominal rate" Periodicals subscription.<sup>3</sup> The Request was denominated as a minor mail classification change appropriate for consideration under a set of procedural rules (39 C.F.R. 3001.69—69c) specifically developed for such cases.

The Request and three Attachments thereto (consisting of the proposed change to the DMCS, an index of testimony, and a compliance statement) were accompanied by the testimony of witness Yeh (USPS-T-1) and several contemporaneously-filed pleadings.<sup>4</sup>

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<sup>3</sup> Request of the United States Postal Service for a Recommended Decision on Change of Definition of Nominal Rate for Periodicals Subscriptions, July 6, 2006 (Request).

<sup>4</sup> Notice of Filing of Request of the United States Postal Service for a Recommended Decision on Change of Definition of Nominal Rate for Periodicals Subscriptions; Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver; and United States Postal Service Request for Establishment of Settlement Procedures, all filed July 6, 2006.

On July 11, 2006, the Commission issued a comprehensive notice and order informing the public of the filing; designating Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public; establishing August 1, 2006 as the deadline for filing notices of intervention; and identifying several other preliminary steps.<sup>5</sup> These included, among others, authorizing settlement proceedings subject to participants' right to request a hearing; appointing Postal Service counsel as settlement coordinator; and asking that information pertaining to definition changes adopted by national audit bureaus be submitted as a library reference. A subsequent order authorized consideration of the Request under the expedited rules.<sup>6</sup>

*Participation.* In addition to the Postal Service and the OCA, participants in this case include six intervenors. They are the Alliance of Nonprofit Mailers (ANM), the Magazine Publishers of America, Inc. (MPA), the National Newspaper Association (NNA), the Newspaper Association of America (NAA), David B. Popkin (Popkin) and Time Warner Inc. (Time Warner). See Appendix A. No participant requested a hearing or opportunity to brief the issues in this case. See PRC Order No. 1477 at 1 (August 24, 2006).

*Settlement.* Postal Service counsel filed two settlement reports in the capacity of settlement coordinator, indicating in both Reports that settlement appeared possible.<sup>7</sup> In its Second Report, to which the proposed settlement agreement was attached, the Postal Service noted that the proposal was unopposed, reflected the proposal as submitted with its original Request, and had the support of seven of the eight participants in this docket. Second Report at 1. In a later pleading, the Postal Service sought formal consideration of the settlement agreement. Motion of the United States

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<sup>5</sup> PRC Order No. 1470, Notice and Order on Postal Service Request for Minor Classification Change Affecting Periodicals, July 11, 2006, published at 71 FR 40172 (July 14, 2006).

<sup>6</sup> PRC Order No. 1473 (August 9, 2006).

<sup>7</sup> See First Status Report on Settlement Negotiations, August 4, 2006 (First Report), and Second Status Report on Settlement Negotiations, August 14, 2006 (Second Report); collectively referred to as Reports.

Postal Service for Consideration of the Stipulation and Agreement as the Basis for Recommended Decision, August 18, 2006. Signatories include ANM, MPA, NNA, NAA, OCA, Time Warner and the Postal Service. Popkin neither signed the settlement agreement nor opposed it.

*The evidentiary record.* In related actions, the Commission entered into the evidentiary record the instant Request and Attachments thereto, witness Yeh's testimony, her signed declaration, and certain other material stipulated to in the settlement agreement. PRC Order No. 1478 (August 29, 2006) (acting in part on United States Postal Service Motion to Place Direct Testimony into the Record, August 25, 2006). The Commission closed the record on August 29, 2006. *Id.* at 2.

## II. SUMMARY OF PROPOSAL AND SUPPORTING EVIDENCE

### A. Current DMCS Definition of Nominal Rate

The definition of a “nominal rate” subscription is part of a series of DMCS provisions that pertain to eligibility for Periodicals rates. DMCS § 412, for example, sets out the requirements for qualifying as a General Publication. DMCS § 412.31 states that a General Publication must be designed for paid circulation and that:

At least 50 percent or more of the copies of the publication must be distributed to persons who have paid above a nominal rate.

DMCS § 412.33 provides that as used in section 412.31, a nominal rate means:

- a. A token subscription price that is so low that it cannot be considered a material consideration;
- b. A reduction to the subscriber, under a premium offer or any other arrangements, of more than 50 percent of the amount charged at the basic annual rate for a subscriber to receive one copy of each issue published during the subscription period. ...

USPS-T-1 at 1.

### B. Proposed Revision

The proposed change revises DMCS § 412.33b to allow a reduction of up to 70 percent of the basic annual subscription rate for a copy to be counted as part of the publication’s paid circulation. *Id.* The proposal does not change the requirement in DMCS § 412.31 that more than 50 percent of the copies be circulated to persons who have paid more than a nominal rate. *Id.* at 2. Similarly, the language referring to a “token subscription price” in DMCS 412.33a remains unchanged.

C. Justification

Witness Yeh asserts that the revised definition addresses an existing problem and provides an effective solution that is beneficial to Periodicals mailers, readers and the Postal Service. *Id.* She states that readers will benefit because the change (1) would help provide lower subscription rates, since lower rates could be offered without jeopardizing paid circulation counts; (2) would encourage start-up publications; and (3) might avoid lost subscriptions and volume, thus relieving pressure on mailers to raise subscription prices. *Id.*

Yeh further maintains that the change would benefit mailers by enhancing marketing and pricing flexibility. In particular, she says the change would allow publishers to take advantage of the elimination of a similar “nominal rate” definition in the bylaws and rules of two national audit bureaus. *Id.* at 2-3. She states that publishers have expressed the need for such flexibility in view of the audit bureaus’ changes. *Id.* at 3. She also says that change would help offset the loss of subscriptions resulting from recent sweepstakes legislation. *Id.*

Yeh states that the benefits to the Postal Service include increased Periodicals volume and volume in other mail classes, such as renewal notices sent as either Standard Mail or First-Class Mail. *Id.* She also states that the change will reduce the disparity between the Postal Service’s definition of paid circulation and the industry (audit bureaus’) definition. *Id.*

*Consistency with classification criteria.* Yeh sets out the six statutory classification criteria in her testimony.<sup>8</sup> *Id.* at 3-4. She notes, in connection with criteria

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<sup>8</sup> The statutory classification criteria Yeh cites are: (1) the establishment and maintenance of a fair and equitable classification system for all mail [39 U.S.C. § 3623(c)(1)]; (2) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail [39 U.S.C. § 3623(c)(2)]; (3) the importance of providing classifications with extremely high degrees of reliability and speed of delivery [39 U.S.C. § 3623(c)(3)]; (4) the importance of providing classifications which do not require an extremely high degree of reliability and speed of delivery [39 U.S.C. § 3623(c)(4)]; (5) the desirability of special classifications from the point of view of both the user and of the Postal Service [39 U.S.C. § 3623(c)(5)]; and (6) such other factors as the Commission may deem appropriate [39 U.S.C. § 3623(c)(6)].

2 and 5,<sup>9</sup> that the revised definition would relax a restriction “so as to benefit all parties concerned.” *Id.* at 4. She further states that the classification change recognizes the need of Periodicals mailers for marketing and pricing flexibility when serving the public. She maintains that this change provides an effective mechanism to do so in a manner that is beneficial to all. *Id.*

In connection with criterion 1, Yeh states that it is fair and equitable for the classification schedule to recognize the unique needs of the mailers and consumers who would benefit from the flexibility provided by the proposed change. She also asserts that facilitating marketing and pricing flexibility is desirable, and has a commercial value for mailers, recipients, and the Postal Service. She states that there is no foreseeable impact on competitors. *Id.*

*Status as a minor classification change and financial impact.* Yeh reviews the proposal in terms of the criteria for expedited minor classification changes, and finds that the proposal satisfies them. *Id.*, citing 39 C.F.R. § 3001.69a. Yeh states that the Service foresees no financial impact from this proposal. *Id.*

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<sup>9</sup> Respectively, “the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail” and “the desirability of special classifications from the point of view of both the user and of the Postal Service.”

### III. SUMMARY OF STIPULATION AND AGREEMENT

*Participants' positions.* The Postal Service formally submitted a settlement agreement for the Commission's consideration on August 18, 2006. Seven of the eight participants in this case signed the agreement. They are: the Postal Service, ANM, MPA, NNA, NAA, Time Warner and the OCA.

*Description.* The settlement submitted by the Postal Service on behalf of itself and other signatories consists of two parts. Part I, captioned Background, identifies the filing date of the instant Request, summarizes the nature and substance of the requested change in DMCS § 412.33b, and notes the Commission's designation of the Request as Docket No. MC2006-5. It also states that witness Yeh's direct testimony explains the basis for the Request.

Part II, Terms and Conditions, consists of nine numbered paragraphs. Paragraph No. 1 states that the settlement represents a negotiated settlement of all issues raised in this docket. Paragraph No. 2 notes that the undersigned participants (signatories) stipulate and agree, for purposes of this proceeding only, that the Docket No. MC2006-5 direct testimony and materials filed in support of the Postal Service's Request, as well as USPS-LR-1 filed in response to Order No. 1470, provide substantial evidence supporting and justifying a recommended decision recommending the proposed change to DMCS § 412.33. This paragraph also notes that the proposed DMCS language change is attached to the settlement.

Paragraph No. 3 states that on the basis of the record identified in Paragraph No. 2, for purposes of this proceeding only, the signatories stipulate and agree that the DMCS change set forth in the attachment to the settlement is in accordance with the policies of Title 39, United States Code, and in particular, with the criteria and factors of 39 U.S.C. § 3623.

Paragraph No. 4 states that the settlement is offered in total and final settlement of this proceeding. It notes that the signatories agree that they will file no further pleadings or testimony, except under certain stated conditions. These conditions

include pleadings or testimony explicitly requested by the Commission or filed in reply thereto; pleadings or testimony opposing pleadings or testimony filed in opposition to the settlement; or pleadings or testimony in support of the settlement.

Paragraph No. 5 addresses signatories' rights and obligations. It includes a reservation of rights allowing each signatory to withdraw from the settlement under two stated conditions. The conditions are (1) if the Commission adopts a recommended decision that materially differs from the classification changes set forth therein, or (2) if the Governors of the Postal Service fail to approve a recommended decision adopting the classification change as filed by the Postal Service.

This paragraph also provides that a signatory exercising this right must provide written notice of the intention to withdraw to all participants within 5 business days of the triggering event. It provides that the exercise of such right by one or more signatories shall not affect the operation of the settlement as to other signatories.

Paragraph No. 6 states that the settlement pertains only to the instant proceeding. It further identifies various things that the signatories shall not be considered as necessarily agreeing or conceding, by virtue of having signed the instant settlement. These include, among others, the applicability of any ratemaking principle, any method or principle of classification, and any terms and conditions of service that may underlie, or be thought to underlie, the settlement agreement.

Paragraph No. 7 states that signatories shall not be bound or prejudiced by the settlement in any future negotiation or proceeding, other than proceedings related to the settlement. It further states that no participant shall rely for any purpose on the fact that another participant entered into or did not oppose the settlement. The signatories also agree, to the extent that matters presented in the instant Request, in any Commission Recommended Decision thereon, or in any decision of the Governors of the Postal Service in this proceeding, have not actually been litigated, the resolution of such matters will not be entitled to precedential effect in any other proceeding.

Paragraph No. 8 states that the signatories request that the Commission expeditiously issue a decision recommending adoption of the DMCS change appended

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to the settlement. Paragraph No. 9 states that the settlement represents the entire agreement of the signatories and supersedes any understandings or representations not contained therein.

#### IV. FINDINGS AND CONCLUSIONS

The Commission finds, based on a review of representations in the Postal Service's Reports, that all participants have had an opportunity to participate in the discussions that led to the August 18, 2006 filing of a settlement for the Commission's consideration. It also finds that all participants have had an adequate opportunity to comment on the appropriateness of the settlement as a resolution of the issues in this case.

The Commission further finds that (1) the terms of the proposed settlement are consistent with the requirements and statutory factors of the Postal Reorganization Act and (2) that the proposal is consistent with the minor classification change criteria.

With respect to the statutory criteria, the Commission adopts witness Yeh's assessment of the consistency of the proposal with 39 U.S.C. § 3623(c), which the signatories have stipulated to in the settlement agreement. It further finds that the trend toward liberalizing subscription rate definitions in the audit bureau industry, as evidenced by a review of USPS-LR-1 filed in this case, is a factor that warrants consideration under 39 U.S.C. § 3623(c)(6) — "such other factors as the Commission may deem appropriate." This lends further support to the Recommended Decision.

With respect to the minor classification change criteria, this Opinion and Recommended Decision incorporates by reference PRC Order No. 1473 wherein the Commission found that the proposal underlying the instant Request is minor in character and that its effects are likely to be limited in scope and overall impact, therefore making it an appropriate candidate for treatment of under the Commission's rules for minor classification changes. Implementation of the recommended change would appear to have no measurable impact on the Postal Service's financial position.

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

George Omas, Chairman;  
Dawn A. Tisdale, Vice Chairman;  
Mark Acton; Ruth Y. Goldway;  
and Tony Hammond

Periodicals Nominal Rate  
Minor Classification Change

Docket No. MC2006-5

RECOMMENDED DECISION

(Issued August 30, 2006)

The Commission, having considered the Postal Service Request in this case, has issued its Opinion thereon. Based on that Opinion, which is attached hereto and made a part hereof,

IT IS ORDERED:

1. The Motion of the United States Postal Service for Consideration of the Stipulation and Agreement as the Basis for Recommended Decision, filed August 18, 2006, is granted.
2. The Stipulation and Agreement filed by the Postal Service is accepted consistent with this Opinion and Recommended Decision.

3. The Commission's Opinion and Recommended Decision shall be transmitted to the Governors of the Postal Service and the Governors shall thereby be advised that the proposed amendment to the Domestic Mail Classification Schedule set forth in Appendix One is in accordance with the policies of Title 39, United States Code, and the factors set forth in § 3623(c) thereof; and is hereby recommended to the Governors for approval.

By the Commission.  
(S E A L)

Steven W. Williams  
Secretary

RECOMMENDED CHANGE  
IN DOMESTIC MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Domestic Mail Classification Schedule recommended by the Postal Rate Commission in response to the United States Postal Service's Docket No. MC2006-5 Request. The underlined text signifies that the text is new, and shall be added upon approval by the Board of Governors. Deleted text is indicated by a strikethrough. Rate and fee schedules are not affected by the change requested by the Service and recommended by the Commission.

**PERIODICALS  
CLASSIFICATION SCHEDULE**

\* \* \* \* \*

**412 General Publications**

\* \* \* \* \*

**412.3.1 Paid Circulation**

\* \* \* \* \*

**412.33 Nominal Rates.** As used in section 412.31, nominal rate means:

- a. A token subscription price that is so low that it cannot be considered a material consideration;
- b. A reduction to the subscriber, under a premium offer or any other arrangements, of more than ~~70~~50 percent of the amount charged at the basic annual rate for a subscriber to receive one copy of each issue published during the subscription period. The value of a premium is considered to be its actual cost to the publishers, the recognized retail value, or the represented value, whichever is highest.

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Signatory to the Stipulation and Agreement

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