

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**RESPONSES OF THE UNITED STATES POSTAL SERVICE
TO INTERROGATORIES OF PUBLIC REPRESENTATIVE
(PR/USPS-1-7)
(August 25, 2008)**

The United States Postal Service hereby provides its responses to the following interrogatories of the Public Representative, filed on August 11, 2008:

PR/USPS-1-7.

Each interrogatory is stated verbatim, and is followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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PR/USPS-1. For Fiscal Years 2006, 2007 and 2008, please provide the systemwide average read and accept rates for First-Class Mail and Standard Mail.

RESPONSE:

FY2006:

Out Prim Auto	96.66%
Out Sec Auto	97.88%
Inc MMP Auto	98.26%
Inc SCF/Prim Auto	98.17%
Inc Sec 1 Pass Auto	98.11%
Inc Sec 2 Pass Auto - Pass 1	99.13%
Inc Sec 2 Pass Auto - Pass 2	99.21%
Inc Sec 3 Pass Auto - Pass 1	99.13%
Inc Sec 3 Pass Auto - Passes 2,3	99.21%

FY2007:

Out Prim Auto	96.83%
Out Sec Auto	97.92%
Inc MMP Auto	98.40%
Inc SCF/Prim Auto	98.42%
Inc Sec 1 Pass Auto	98.40%
Inc Sec 2 Pass Auto - Pass 1	99.18%
Inc Sec 2 Pass Auto - Pass 2	99.27%
Inc Sec 3 Pass Auto - Pass 1	99.18%
Inc Sec 3 Pass Auto - Passes 2,3	99.27%

FY2008 read/accept rates are being compiled for the Annual Compliance Report (ACR) and will be submitted when finalized.

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PR/USPS-2. Please provide the average read and accept rate for Bank of America's First-Class Mail and Standard Mail since implementation of the Bank of America NSA.

RESPONSE:

Objection filed.

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PR/USPS-3. Please provide the value of discounts earned by (paid to) Bank of America pursuant to Rate Schedules 630A (First-Class Mail) and 630D (Standard Mail) since implementation of the Bank of America NSA.

RESPONSE:

No discount has been paid to date because the parties are discussing the calculation of the discount.

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PR/USPS-4. For Fiscal Years 2006, 2007 and 2008, please provide the average read and accept rate for Capital One's First-Class Mail and Standard Mail.

RESPONSE:

Objection filed.

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PR/USPS-5. Please define and discuss the phrase “pay-for-performance” as it applies to the Bank of America NSA as implemented.

RESPONSE:

The Postal Service considers the Bank of America agreement to be a “pay-for-performance” or “performance-based” NSA. “Pay-for-performance” builds upon the definition of “performance-based,” and was discussed in the USPS Initial Brief (Docket No. MC2007-1) at 16, which states:

As a pay-for-performance agreement, the BAC NSA will encourage BAC to use best business practices to determine the optimal means for reducing costs to the Postal Service of processing BAC’s First-Class Mail and Standard Mail. As witness Ayub notes, this agreement is a “marked departure” from the Postal Service’s “traditional” approach to worksharing discounts generally, in which customers receive discounts for adhering to specified requirements, an approach that “implicitly [assumes] a direct relationship between the activities performed and a reduction in Postal Service costs.” In contrast, this NSA is designed to provide BAC with discounts only for measurable cost savings, thereby incenting BAC to reduce postal costs as much as possible.

The concept of a “performance-based” NSA was outlined by witness Ayub in his testimony before the Commission. Witness Ayub defined “performance-based” incentives to mean that:

...the Postal Service [is not required] to pay any incentives to BAC unless and until it achieves a measurable improvement in actual mail processing performance—i.e., the read and accept rate of mail processing, and the percentage of UAA mail that must be returned, forwarded, or destroyed.

USPS-T-1, Docket No. MC2007-1 (revised June 6, 2007), at 13. Witness Ayub goes further to define “performance-based” as:

...offering rate incentives to Bank of America for improvements in the read/accept rates of letter-rated mailpieces entered by the Bank at First-Class Mail and Standard Mail rates. Improvement will be measured by increases in

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read/accept rates for BAC mail. The purpose of these incentives is to encourage BAC to improve the readability of the barcodes it places on mail.”

Id. Therefore, the Postal Service considers the Bank of America NSA to be a “pay-for-performance” agreement because under the contract, Bank of America will earn mailer-specific discounts for measurable improvements. Moreover, Bank of America has served as the “first adopter” of a variety of new mail processing and technological initiatives under this NSA.

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PR/USPS-6. Please refer to PRC Op. MC2007-1, at 37, where it states:

Because inappropriate baselines are used to measure performance, it is highly probable that the Postal Service will be paying BAC for levels of performance that it has already achieved. It will not be paying BAC to improve its performance. The Commission finds that as evaluated, this is not a pay-for-performance agreement.

Please confirm that the Postal Service agrees with the Commission's analysis supporting the conclusion that the Bank of America NSA is not a pay-for-performance agreement. If you do not confirm, please discuss in detail all aspects of disagreement with the Commission's analysis.

RESPONSE:

Not confirmed. The Bank of America NSA is a pay-for-performance agreement because it rewards BAC for improving mail processing, returns, and forwards above an established negotiated baseline. As stated in the Postal Service's Initial Brief in Docket No. MC2007-1, "[a]s a pay-for-performance agreement, the BAC NSA will encourage BAC to use best business practices to determine the optimal means for reducing costs to the Postal Service of processing BAC's First-Class Mail and Standard Mail." The Bank of America NSA is designed to provide Bank of America with discounts for measurable cost savings, thereby encouraging Bank of America to reduce postal costs. Please also refer to the Postal Service's response to PR/USPS-5.

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PR/USPS-7. Please refer to 39 U.S.C. §3622(c)(10), which references

(10) the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including agreements the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that—

(A) either—

(i) improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; or

(ii) enhance the performance of mail preparation, processing, transportation, or other functions;

- a. Please explain in detail how a Capital One NSA identical in language and terms to the Bank of America NSA as implemented (except for the name, address and mail volumes) would not “improve the net financial position of the Postal Service,” or “enhance the performance of mail preparation, processing, transportation, or other functions.”
- b. Please explain in detail why the “reasonable terms” provision of §3622(c)(10) does not require the Postal Service to enter into an NSA with Capital One that is identical in language and terms to the Bank of America NSA as implemented (except for the name, address and mail volumes).
- c. Please explain in detail what is unreasonable about a Capital One NSA identical in language and terms to the Bank of America NSA as implemented (except for the name, address and mail volumes).

RESPONSE:

a. The proposed Capital One NSA, identical in language and terms to the Bank of America NSA, would not “improve the net financial position of the Postal Service,” and it is not clear that it would “enhance the performance of mail preparation, processing, transportation, or other functions.” There have been changes in circumstances that counsel against offering any mailer identical baselines, discounts, and terms and conditions as contained in the Bank of America NSA. The changes in circumstances have decreased the marginal value of any functionally equivalent NSA to the Postal

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Service. Please refer to the Postal Service's response to COS/USPS-1(B) for a discussion of those changes in circumstances.

b. The inclusion of the "reasonable terms" provision in 39 U.S.C. §3622(c)(10) reinforces the Postal Service's view that identical terms, baselines, and discounts are not required for an NSA to be considered functionally equivalent to any given baseline agreement. In the same way that the term "functionally equivalent agreement" does not mean "identical agreement," "reasonable terms" does not mean "identical terms." This provision supports the Postal Service's position that a reasonable amount of flexibility in certain terms, baselines, and discounts is permissible during good faith negotiations between the Postal Service and any prospective NSA partner that seeks a functionally equivalent NSA.

c. In the Postal Service's view, it is unreasonable for Capital One to receive the identical terms, baselines, and discounts as Bank of America. Please refer to the Postal Service's response to subpart (a) of this interrogatory, as well as the Postal Service's response to COS/USPS-1(B).

The Postal Service is ready and willing to negotiate a functionally equivalent NSA with Capital One; however, it does not believe that it is reasonable for Capital One to claim entitlement to the same negotiated baselines as Bank of America received, particularly given that Bank of America has already begun to move the industry forward.