

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint of Capital One Services, Inc.)

Docket No. C2008-3

PUBLIC REPRESENTATIVE MOTION TO COMPEL RESPONSE
TO INTERROGATORY TO UNITED STATES POSTAL SERVICE
(PR/USPS-15)
September 24, 2008

On September 3, 2008, the Public Representative submitted a discovery request to the Postal Service.¹ On September 15, 2008, the Postal Service objected to the interrogatory PR/USPS-15.²

Pursuant to Rules 26(c) and 27(c) of the Rules of Practice of the Postal Regulatory Commission, the Public Representative hereby moves to compel responses to the interrogatory and request for production of documents.³ The text of the interrogatory and request for production of documents is set out here.

PR/USPS-15. Please refer to PRC-LR-1, "Workpapers for MC2007-1 Opinion and Recommended Decision (Released from Protective Conditions)," and PRC Op. MC2007-1 (Released from Protective Conditions), which relies on the analysis in PRC-LR-1, where it states, at page 2:

[1006] Applying the most recent read/accept rates, assuming that Bank of America continues to perform at systemwide average levels, and generally accepting the Postal Service's estimate relating to the other four incentive discounts, the financial analysis reveals that the Postal Service will lose up to \$45.8 million from the Agreement. Even in the unlikely event that Bank of America

¹ Public Representative Interrogatory to United States Postal Service (PR/USPS-15) September 3, 2008.

² Objection of the United States Postal Service to Interrogatory of Public Representative (PR/USPS-15), September 15, 2008.

³ This motion to compel is being filed out-of-time pursuant to Presiding Officer's Ruling Granting Miscellaneous Procedural Motions, Ruling No. C2008-3/21, September 17, 2008.

achieves perfect read/accept rates, the Postal Service will lose more than \$25 million from the Agreement.

Please confirm that the Postal Service concludes, as the Commission did, that the "Postal Service will lose more than \$25 million . . . up to \$45.8 million from the Agreement." If you do not confirm, please provide a detailed explanation of any disagreement with the Commission's financial analysis in PRC-LR-1, and provide any Postal Service financial analysis (in electronic form), and any other analysis, that supports your explanation and/or shows the areas of disagreement with the Commission's financial analysis.

The Postal Service objects to the above-referenced interrogatory on grounds of relevance, and that the requested analyses are protected from disclosure under 39 U.S.C. § 410(c)(4). According to the Postal Service, the "key issues" in this proceeding are

1) whether or not Capital One is similarly situated to Bank of America, 2) whether or not functionally equivalent agreements must be identical to the baseline agreements upon which they are based, and 3) whether or not the Postal Service's has unduly discriminated against Capital One (or granted an undue preference to Bank of America).⁴

Contrary to the Postal Service claims, the requested analyses are directly relevant to the key issues in the Capital One complaint. In this proceeding, Capital One asserts that it is "similarly situated" to Bank of America in that it is "ready, willing and able to enter into a Negotiated Service Agreement that is *substantively identical* to the Bank of America NSA."⁵ (Emphasis added.) The Postal Service may argue that a functionally equivalent agreement need not be identical to the baseline agreement as a means of voiding Capital One's complaint of undue discrimination. Nowhere does the Postal Service argue, however, that a functionally equivalent agreement that is identical (or "substantively identical") to the baseline agreement would not remove any claim of

⁴ Objection of the United States Postal Service to Interrogatory of Public Representative (PR/USPS-15), September 15, 2008, at 2.

⁵ Response of Capital One Services to Interrogatory PR/COS-3, August 25, 2008.

undue discrimination. Clearly, an interrogatory that seeks the Postal Service's analysis to estimate the value of a substantively identical functionally equivalent NSA is directly related to the "key issues" in this proceeding.

More directly, the relevance of Interrogatory 15 is best determined by reference to the Postal Service's response to Interrogatory PR/USPS-10.⁶ In its response the Postal Service claims,

Capital One's read and accept rates for automation letter mail would be significantly above the thresholds used in the Bank of America NSA, and that using those thresholds would result in a net reduction in contribution to the Postal Service.

The requested financial analyses would provide credible support for the Postal Service's claim of a net reduction in contribution as a basis for its opposition to Capital One's preferred option. Moreover, the requested financial analyses would show postal-identified clarifications or corrections in the Commission's financial analysis⁷ that would facilitate analysis of a Capital One NSA on terms substantively identical to the Bank of America NSA.

The specific documents that the Postal Service objects to as predecisional—*i.e.*, "financial analyses that the Postal Service performed between issuance of the Commission's Recommended Decision and the Decision of the Governors of the Postal Service"—would not be responsive to Interrogatory 10,⁸ and the Public Representative does not seek them. Rather, the Public Representative seeks a concrete, corrected,

⁶ Response of the USPS to Interrogatory of Public Representative (PR/USPS-10), September 8, 2008.

⁷ The Governors' Decision in MC2007-1 explicitly states that the Postal Service has reservations concerning the Commission's estimate of potential loss of contribution from the Bank of America NSA. Govs. Dec. MC2007-1, December 18, 2007, at 6.

⁸ The Public Representative viewed these documents during the deposition of Jessica Lowrance.

numerical analysis providing a current estimate of the loss of contribution from the Bank of America NSA. If such an analysis needs to be built from scratch or filed under seal, so be it. At this point, the record provides no basis to support the assertion that an NSA as sought by Capital One would lose money.

Respectfully submitted,

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