

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

Complaint of Capital One Services, Inc.)

Docket No. C2008-3

PUBLIC REPRESENTATIVE INTERROGATORIES TO
UNITED STATES POSTAL SERVICE
(PR/USPS-1-7)
August 11, 2008

Pursuant to Rules 25 through 28 of the Rules of Practice of the Postal Regulatory Commission, the Public Representative hereby submits interrogatories and requests for production of documents.

If data requested are not available in the exact format or level of detail requested, any data available in (1) a substantially similar format or level of detail or (2) susceptible to being converted to the requested format and detail should be provided.

The production of documents requested herein should be made by photocopies attached to responses of these interrogatories. If production of copies is infeasible due to the volume of material or otherwise, provision should be made for inspection of responsive documents at the Postal Regulatory Commission, 901 New York Avenue, N.W., Washington, D.C. 20268-0001, during the hours of 8:00 a.m. to 4:30 p.m.

If a privilege is claimed with respect to any data or documents requested herein, the party to whom this discovery request is directed should provide a Privilege Log (see,

e.g., Presiding Officer Ruling C99-1/9, p. 4, in *Complaint on PostECS*, Docket No. C99-1). Specifically, “the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.” Fed. R. Civ. P. 26(b)(5).

The term “documents” includes, but is not limited to: letters, telegrams, memoranda, reports, studies, newspaper clippings, speeches, testimonies, pamphlets, charts, tabulations, and workpapers. The term “documents” also includes other means by which information is recorded or transmitted, including printouts, microfilms, cards, discs, tapes and recordings used in data processing together with any written material necessary to understand or use such punch cards, discs, tapes or other recordings.

“All documents” means each document, as defined above, that can be located, discovered or obtained by reasonable diligent efforts, including without limitation all documents possessed by: (a) you or your counsel; or (b) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

“Communications” includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by telephone, as well as all documents, including but not limited to letters, memoranda, telegrams, cables, or electronic mail.

“Relating to” means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

Responses to requests for explanations or the derivation of numbers should be accompanied by workpapers. The term “workpapers” shall include all backup material whether prepared manually, mechanically or electronically, and without consideration to the type of paper used. Such workpapers should, if necessary, be prepared as part of the witness's responses and should “show what the numbers were, what numbers were added to other numbers to achieve a final result.” The witness should “prepare sufficient workpapers so that it is possible for a third party to understand how he took data from a primary source and developed that data to achieve his final results.” Docket No. R83-1, Tr. 10/2795-96. Where the arithmetic manipulations were performed by an electronic digital computer with internally stored instructions and no English language intermediate printouts were prepared, the arithmetic steps should be replicated by manual or other means.

Please especially note that if you are unable to provide any of the requested documents or information, as to any of the interrogatories, provide an explanation for each instance in which documents or information cannot be or have not been provided.

Respectfully submitted,

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Public Representative

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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.

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.

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.

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

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

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.

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).