

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

AMENDED ANSWER OF THE UNITED STATES POSTAL SERVICE
(September 16, 2008)

Pursuant to Commission Rule 84 (39 C.F.R. § 3001.84) and Presiding Officer's Ruling No. 15 (September 9, 2008) the United States Postal Service hereby submits its Amended Answer to the Complaint of Capital One Services, Inc. (Docket No. C2008-3). The Postal Service responds to the enumerated paragraphs as follows:

1. Respondent denies the allegation in Sentence 1 that implementation began on April 1, 2008, as steps toward implementation occurred prior to that date, but admits that the commencement date for the NSA fell on April 1, 2008. Respondent denies the implication in Sentence 2 that the Bank of America NSA was "characterized" differently at the time of filing. Respondent admits the allegation in Sentence 3, but respondent further pleads that discovery revealed that the baselines used in the Bank of America NSA were negotiated between the parties.
2. Respondent denies the allegations in Sentences 1 and 2 with regard to the characterization of the baselines and financial incentives used in the Bank of America NSA. The baselines were negotiated between the parties. Respondent admits the third sentence contains an accurate quote from the Commission's Opinion and Recommended Decision.

Respondent admits the fourth sentence, except that the Governors, not the Board of Governors, approved the rates and classification for the NSA.

3. Respondent denies the allegation in the first sentence insofar as it mischaracterizes the Postal Service's intention of offering functionally equivalent NSAs as being driven by "allay[ing] concerns of discrimination." Respondent admits the allegation in the second sentence is an accurate quotation of a section header in the Postal Service's Reply Brief. Respondent admits the third sentence accurately quotes witness Ayub.
4. Respondent admits the allegation in the first sentence. Respondent denies the allegation in the second sentence insofar as it mischaracterizes the supposed lack of "direct incentives" in the Bank of America NSA.
5. Respondent lacks information to admit or deny the allegation contained in the first sentence. Respondent admits the second sentence only to the extent it generally describes the Postal Service's position that the lack of opposition in any given NSA docket typically indicates a low probability of competitive harm.
6. Respondent denies the allegation in the first sentence. Respondent lacks information to admit or deny the allegation contained in the second sentence pertaining to the supposed "competitive advantage." Respondent further denies the allegation in the second sentence that Capital One repeatedly sought a "similar" NSA – Capital One sought a substantively identical NSA. Respondent admits the allegation in the third sentence that Capital One has proffered a substantively identical

agreement as the Bank of America NSA. Respondent denies the allegation in the fourth sentence. Respondent affirmatively pleads that it has merely consistently stated that functional equivalence requires consideration of broader issues than Capital One asserts.

7. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
 - A. Respondent denies the allegation in the paragraph or header labeled "A" on page 4 of the Complaint.
8. Respondent denies the allegations in this paragraph. The rebates in the Bank of America NSA were calculated based on the difference between measured read/accept rates and the negotiated thresholds. Respondent denies the allegation in the third sentence that read/accept rates were "the focus of the Commission's review."
9. Respondent denies the allegation in the first sentence that the Postal Service and Bank of America "pitched" the agreement as a "pay-for-performance" NSA "when first proposed." Respondent further denies the definition of "pay-for-performance" alleged by Complainant in the first sentence. Respondent denies the allegation in the second, third, and fourth sentences insofar as it mischaracterizes the general concept of "address quality" and its relationship to the read/accept rates in the Bank

of America NSA, although Respondent admits the allegations are accurate quotations.

10. Respondent denies the allegation in the first sentence. Respondent admits the allegation in the second sentence that the read/accept baselines in the Bank of America NSA are 96.8 and 96.9 percent for First Class Mail and Standard Mail, respectively. Respondent affirmatively pleads that the thresholds and discounts in the Bank of America NSA were negotiated between the parties. Respondent admits that the third sentence contains an accurate quotation. Respondent denies the allegation in the fourth sentence in that it ignores the fact that negotiations between the parties “tie” the discounts to mail-processing improvements.
11. Respondent admits the allegation in the first sentence. Respondent denies the allegation in the second sentence insofar as it mischaracterizes the Bank of America NSA proceeding by stating the new read/accept rates “cast doubt on the wisdom of using 1998 industry averages.”
12. Respondent denies the allegation insofar as it is a mischaracterization that the co-proponents “changed tack” during the course of the Bank of America NSA proceeding.
13. Respondent denies the allegation. The discounts and thresholds in the Bank of America NSA were negotiated between the Postal Service and Bank of America. Complainant mischaracterizes the nature of the Bank of America NSA. Respondent denies the allegation in Sentence 3 regarding the “touchstone” of the Bank of America NSA.

14. Respondent admits that it and Bank of America opposed suggestions to change the baselines in the agreement. Respondent admits that the allegation in the second sentence contains an accurate quotation from the Postal Service's Initial Brief. Respondent denies Complainant's allegation in the third sentence that using up-to-date, mailer-specific baselines would not have "fundamentally change[d] the nature of the NSA" as alleged by Complainant; it would simply have lessened the financial benefit to Bank of America.
15. Respondent admits the allegation.
16. Respondent admits the allegation.
17. The allegations set forth in this paragraph argue for conclusions of law to which no response is required, in that this paragraph implies that Capital One was considered a "functionally equivalent customer." To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph, though Respondent admits that this paragraph contains accurate quotations from pleadings in Docket No. MC2007-1.
18. Respondent denies the allegation insofar as it mischaracterizes the Bank of America NSA proceeding (Docket No. MC2007-1). The Postal Service pleads further that the Commission concluded the Bank of America NSA was "not indicative of a pay-for-performance agreement." The Commission did not "soundly reject" the Postal Service's position. Respondent admits that this paragraph contains accurate quotations from the Commission's Recommended Decision.

19. The allegations set forth in this paragraph argue for conclusions of law to which no response is required, in that this paragraph implies that the baselines were “an essential part of the agreement” and thus may form part of the basis for a legal determination by the Postal Regulatory Commission of functional equivalency. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
20. The allegations set forth in this paragraph argue for conclusions of law to which no response is required, in that this paragraph implies that the baselines were “an essential part of the agreement” and thus may form part of the basis for a legal determination by the Postal Regulatory Commission of functional equivalency. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
21. Respondent denies that the Board of Governors approved the Bank of America NSA. Respondent admits that the Governors approved the recommended decision of the Postal Regulatory Commission on the Bank of America NSA. Respondent admits that the agreement’s commencement date was April 1, 2008.
22. Respondent admits that the Governors’ decision on the Bank of America NSA does not use the words “pay-for-performance.” However, Respondent pleads further that the Governors described the Bank of America NSA as providing “performance-based” discounts. Respondent

denies the implication from this paragraph that the Governors rejected the concept of “pay-for-performance.”

- B. Respondent denies the allegation in the paragraph or header labeled “B” on page 10 of the Complaint.
23. Respondent denies the allegation in the first sentence regarding the characterization of “the touchstone” of the Bank of America NSA. Respondent denies the allegation in the second sentence, as the quoted language cannot be found at the citation Tr. 2/379.
24. The allegations set forth in this paragraph state conclusions of law to which no response is required, in that this paragraph implies that cited provisions are “essential requirements” and thus may form part of the basis for a legal determination by the Postal Regulatory Commission of functional equivalency. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
- III. Respondent denies the allegation in the paragraph or header labeled “III” on page 11 of the Complaint.
- A. Respondent denies the allegation in the paragraph or header labeled “A” on page 11 of the Complaint.
25. Respondent lacks sufficient information to admit or deny the allegation contained in this paragraph.
26. Respondent lacks sufficient information to admit or deny the allegation contained in this paragraph.
27. Respondent admits the allegation.

28. Respondent admits the allegation.
29. Respondent admits the allegation.
30. In the first sentence, Respondent denies the existence of a decision by the “Board” of Governors, but Respondent admits that such a meeting took place; however, Ms. Lowrance was no longer Acting Manager of Pricing Strategy or any other Postal Service section at the time. In the second sentence, Respondent denies the characterization of the conversation.
31. Respondent admits that such a discussion took place but denies the characterization of the conversation. Moreover, Ms. Lowrance was no longer Acting Manager of Pricing Strategy or any other Postal Service section at the time.
32. Respondent admits that such a discussion took place but denies the characterization of the conversation. Moreover, Ms. Lowrance was no longer Acting Manager of Pricing Strategy or any other Postal Service section at the time.
33. Respondent admits the allegation.
34. Respondent admits the allegation.
35. Respondent admits the allegation.
36. Respondent admits the allegation.
37. Respondent admits the allegation.
38. Respondent admits the allegation.
39. Respondent admits the allegation, except that Respondent notes that Mr. Kearney’s last name is misspelled.

40. Respondent admits the allegation.

41. Respondent admits the allegation.

42. Respondent admits the allegation.

Claim 1. Respondent denies the allegation in the paragraph or header labeled "Claim 1" on page 15 of the Complaint.

43. Respondent incorporates by reference its responses to paragraphs 1-42, *supra*.

44. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

45. Respondent denies the allegation, in that this paragraph mischaracterizes the Commission's legal standards for NSAs, particularly functionally equivalent NSAs.

46. Respondent does not have information sufficient to admit or deny this paragraph.

47. Respondent denies the allegation.

48. Respondent denies the allegation.

49. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required, insofar as the term "key, operative provision" relates to the definition of functional equivalency. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

50. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
51. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
- Claim 2. Respondent denies the allegation in the paragraph or header labeled "Claim 2" on page 17 of the Complaint.
52. Respondent incorporates by reference its responses to paragraphs 1-51, *supra*.
53. Respondent considers the cited section of 39 U.S.C. § 403(c) strictly procedural and not requiring a response. To the extent a response may be deemed necessary, Respondent admits it is an accurate, albeit slightly edited, quotation.
54. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
55. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be

deemed necessary, Respondent denies the allegations set forth in this paragraph.

Claim 3. Respondent denies the allegation in the paragraph or header labeled "Claim 3" on page 17 of the Complaint.

56. Respondent incorporates by reference its responses to paragraphs 1-55, *supra*.

57. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

58. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

59. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

60. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

Claim 4. Respondent denies the allegation in the paragraph or header labeled "Claim 4" on page 18 of the Complaint.

61. Respondent incorporates by reference its responses to paragraphs 1-60, *supra*.
62. Respondent does not have information to admit or deny this allegation.
63. Respondent denies the allegation.
64. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
65. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

Claim 5. Respondent denies the allegation in the paragraph or header labeled "Claim 5" on page 19 of the Complaint.

66. Respondent incorporates by reference its responses to paragraphs 1-65, *supra*.
67. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

- Claim 6. Respondent denies the allegation in the paragraph or header labeled "Claim 6" on page 19 of the Complaint.
68. Respondent incorporates by reference its responses to paragraphs 1-67, *supra*.
69. Respondent admits the allegation.
70. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph. Responded further denies the allegation that "NSA terms" were offered to Capital One.
71. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
72. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
73. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

74. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
75. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
76. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph, although Respondent admits that the Governors' Decision was not appealed.
77. Respondent admits the allegation.
78. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
79. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.

80. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
81. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
82. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
83. The allegations set forth in this paragraph argue for, or state, conclusions of law to which no response is required. To the extent a response may be deemed necessary, Respondent denies the allegations set forth in this paragraph.
84. This paragraph contains the prayer for relief, and no response is required. To the extent a response is required, the statements in the prayer for relief are denied.

Unless otherwise indicated in this Answer, the Postal Service accepts each of Complainant's properly cited quotations as accurate quotations of Commission precedent, statutes, or regulations.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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