Postal Rate Commission
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Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Rate and Service Changes to Implement Functionally Equivalent Negotiated Service Agreement with Bank One Corporation	)))	Docket No. MC2004-3

OFFICE OF THE CONSUMER ADVOCATE
REQUEST FOR A HEARING IN DOCKET NO. MC2004-3

At the prehearing conference in the instant proceeding, held on July 15, 2004, Postal Service counsel informed the Presiding Officer that the participants wished to take an additional week to determine whether it would be necessary to request a hearing. Tr. 1/13. During that period of time, the Office of the Consumer Advocate (OCA) continued to assess the evidentiary presentations of the Postal Service and Bank One Corporation (Bank One) and determined that the Commission's and the public's interests would be best served by the filing of OCA testimony. OCA informed the Postal Service and Bank One of that intention.

The issues that concern the OCA at this point relate to the financial effect of the proposed NSA on the Postal Service. Thus, OCA has no problem with the Postal Service's motion to limit issues. However, in Order No. 1409 at 8,[1] the Presiding Officer stated that it would be of assistance to the Commission if specific issues warranting a hearing were identified. Although discovery is not yet complete, the OCA has identified some issues that clearly warrant a hearing.

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[1] "Notice and Order on Filing of Request Seeking Recommendation of Functionally Equivalent Negotiated Service Agreement," June 24, 2004.

First, as in the baseline case, the Postal Service proposes to grant discounts to volume that would be mailed even in the absence of discounts. In the baseline case, this problem was eliminated by Capital One's revision of its before-rates volume estimates. Such a solution seems unlikely in this docket, since a recommended decision is likely to issue in fewer than 120 days, before any new volume information can materialize.

The chief issue that OCA will address in its testimony is whether a stop-loss cap can be calculated for Bank One in the same way the Commission calculated a stop-loss cap for Capital One. The co-proponents have not incorporated into their proposed DMCS language a cap comparable to that imposed by the Commission in the Capital One baseline NSA. In Docket No. MC2002-2, the Commission recommended DMCS §610.35 – a discount limit defined as the "maximum cumulative discount available . . . over the duration of th[e] NSA." Such a discount limit is not part of the Postal Service's Bank One NSA Request. OCA's preliminary estimate is that a stop-loss cap calculated by the method recommended by the Commission in PRC Op. Docket No. MC2002-2 would fall into the range of $7 – 8 million.

An important additional complication in the instant proceeding is the merger on July 1, 2004, between Bank One and J.P. Morgan Chase. Since the merger took place a little over a week after the filing of the Bank One NSA Request, the initial request contained no information on the Standard Mail and First-Class Mail credit card solicitations of J.P. Morgan Chase. No information was provided on J.P. Morgan Chase's return rate for credit card solicitations, nor was information provided on the mailing practices of J.P. Morgan Chase with respect to whether it maintains an internal address database for solicitation purposes or primarily uses rented address lists (or operates in still a different way). J.P. Morgan Chase's mailing practices (and further into the test period, the mailing practices of the new Bank One/J.P. Morgan Chase merged entity) trigger a re-evaluation of the financial impact analysis presented by witness Plunkett that applies solely to Bank One.

Bank One's witness Rappaport, a Vice President at the Bank One Card Services division, presents information on Bank One. For example, at page 3 of BOC-T-1, he states that:

> In contrast to Capital One, which mails a significant amount of its solicitations by First-Class Mail, Bank One typically uses Standard Mail for about 90 percent of its approximately one billion solicitations each year.

At page 5 of his testimony, he presents Bank One's three–year volume history for solicitation letters and flats; and at pages 6 –7, he presents an explanation of Bank One's before-rates volume expectations and its after-rates reaction to volume discounts. Page 8 contains a description of Bank One's address hygiene practices. At page 9, he presents Bank One's return rates for solicitation letters and flats.

None of this information has yet been furnished for J.P. Morgan Chase. In OCA's view, it is important to obtain as much information as is reasonably available to see whether J.P. Morgan Chase's use of Standard Mail and First-Class Mail for the purpose of credit card solicitations alters the analysis performed by witness Plunkett.

OCA will also use discovery, and possibly oral cross-examination, to see whether the new costs incurred in moving Bank One's (and possibly J.P. Morgan Chase's) mail from Standard Mail to First Class (First Class return costs and forwarding costs are of the greatest concern) are sufficiently outweighed by the additional contribution that the NSA is estimated to provide.

Under DMCS §610.2, Capital One is required to “update[ ] its databases within 2 days after receipt of address correction information in all future First-Class Mail marketing campaigns.” Article II.B. of the Bank One NSA imposes a requirement for Bank One to update its databases within 7 business days; no information has been provided on whether this is feasible for J.P. Morgan Chase.

Capital One has an obligation to run all First-Class Mail solicitation addresses against NCOA databases within 60 days of mailing. Article II.H.2., Capital One NSA. Bank One has an obligation to do so within 90 days of mailing. Article II.G.2., Bank One NSA. No information has been provided on whether this is feasible for J.P. Morgan Chase.

Unlike Capital One’s NSA, which involved only First-Class Mail letters, the Bank One NSA provides discounts on First-Class solicitation flats in addition to letters. Thus, a different set of costs and contributions (flats versus letters) must be assessed.

In the case of new forwards, no attempt has been made to quantify the new costs. It is important to consider that in the baseline case Capital One was incurring substantial physical return costs for its First-Class Mail *prior* to entering into the NSA agreement. One of the chief benefits of the NSA was to reduce high levels of return costs already being incurred. The Commission emphasized that:

> The Postal Service estimates the ACS portion of the NSA will reduce its costs significantly. The savings are possible primarily because Capital One's business plan utilizes First-Class Mail to send solicitations that are returned-to-sender at the rate of nearly one in ten. Tr. 2/38-39, 42. This exceptionally high return rate, applied to a large volume of First-Class

> solicitations, causes the Postal Service to incur significant costs in the course of physically returning UAA mail to Capital One.

PRC Op. Docket No. MC2002-2, para. 6006 (footnote omitted). By contrast, Bank One's Standard Mail solicitations currently do not include free return of its pieces; thus they are not generating any return costs as Standard Mail. This contrast between the Bank One NSA and the baseline NSA is significant.

Moreover, there is the prospect of new forwarding costs that arise from inducing Bank One's Standard Mail solicitations to move into First Class. Capital One was found to mail an average of 5.6 First Class Mail solicitation pieces to each household in the United States, based on a total First-Class Mail solicitation volume of 768 million. *See* witness Crum's response to POIR 2, Q7, page 3 (Tr. 2/320), Docket No. MC2002-2. By contrast, Bank One projects its after-rates First-Class Mail solicitation volumes at 83.5 million pieces in the first year of the NSA. This is roughly 11 percent of Capital One's First-Class Mail solicitation volumes. This equates to an average of 0.62 pieces per household. Its repeat forwarding rate is a small fraction of Capital One's in the first year of the agreement. Thus, witness Crum's methodology from the baseline case (POIR 2, Q7) will not work for the first year of the Bank One NSA.

In the second and third years of the Bank One NSA, volumes are projected to be 163.5 million. This approximately doubles the figures for the first year. While it is possible that additions of J.P. Morgan Chase volumes will increase the average pieces per household, the first, second, and third year totals are currently not estimated.

OCA raises as an issue whether the 6.6 cents of additional cost for providing electronic Address Correction Notices to Discover (witness Crum's response to interrogatory NAA/USPS-T3-11 (Tr. 2/284), Docket No. MC2002-2) will be offset by the avoided forwards of Bank One's much smaller amount of repeated First-Class solicitation mailings to the same address.

In view of the issues identified above, OCA respectfully urges the Commission to proceed on the 120-day procedural schedule triggered by the need for a hearing.

Respectfully submitted,

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