Postal Regulatory Commission
Submitted 6/27/2007 8:57:45 am
Filing ID: 56927
Accepted 6/27/2007

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rate and Service Changes to Implement
Baseline Negotiated Service Agreement
With Bank of America Corporation

Docket No. MC2007-1

PRESIDING OFFICER'S RULING CONCERNING RECORD EVIDENCE

(Issued June 27, 2007)

Valpak Motion. Valpak has filed a motion requesting that the response to interrogatory VP/USPS-T1-32(b), along with its designation, be stricken from the record.[1] The interrogatory response (redirected from Postal Service witness Ali Ayub to Bank of America) was filed both as a redacted version and as an under seal version.[2] The response was designated as record evidence by P.O. Ruling No. MC2007-1/9 and included in the record at Tr. 2/494-99 (redacted) and at Tr. 3/537-42 (under seal).

Valpak objects to including the interrogatory response as record evidence contending that the response did not answer the question asked, and thus it is attempting to insert new record evidence while being non-responsive to the discovery request. Valpak asserts that if Bank of America wanted to present this information, the information should have been presented by way of testimony. Motion to Strike at 2.

[1] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Motion to Strike Bank of America Interrogatory Response to VP/USPS-T1-32(b) and Its Designation in the Record, June 13, 2007 (Motion to Strike).

[2] Answer of Bank of America Corp. to Valpak Interrogatory VP/USPS-T1-32(b) (Redirected from USPS Witness Ali Ayub), May 25, 2007.

Bank of America opposes the Motion to Strike contending that the answer provided is responsive to the interrogatory.[3] It further contends that the Commission is independently entitled to include the interrogatory answer in the record on the grounds that this would provide a more complete record. Bank of America notes that the Commission could have chosen, and may still choose, to ask this interrogatory question on its own.

Valpak posed interrogatory VP/USPS-T1-32(b) to Postal Service witness Ayub.

> **VP/USPS-T1-32.** Please refer to your response to VP/USPS-T1-27. Your response to part a states that '[t]he Four-State Barcode alone will not enable the Postal Service to develop mailer specific accept rates for other mailers.' Following a similar statement in part b, you say that 'BAC will still have to make substantial investments to implement the Four-State Barcode and the other requirements specified in the NSA.'
>
> * * *
>
> b. Aside from the investment that BAC must make in order to implement the Four-State Barcode itself, please (i) list and explain all additional investments that BAC must make in order for the Postal Service to be able to develop mailer-specific accept rates for BAC's bulk letter mail; and (ii) explain whether the investment that BAC must make in order for the Postal Service to be able to develop mailer-specific accept rates differs in any material way from the investment that other bulk mailers will have to make when they implement the Four-State Barcode for their bulk letter mail. In your response, please omit any 'other requirements specified in the NSA' that are not essential to development of mailer-specific accept rates for BAC's First-Class and Standard bulk letter mail.

Apparently recognizing that Bank of America would be in a better position to answer an interrogatory specific to the costs incurred by the bank than the Postal Service, the Postal Service redirected the interrogatory to Bank of America.

Bank of America explains in its response to the interrogatory that it views its costs to undertake the Negotiated Service Agreement as a whole, and not linked to any

[3] Response of Bank of America Corp. to Valpak Motion for Reconsideration of Presiding Officer's Ruling No. MC2007-1/9, June 15, 2007. Bank of America notes that Valpak could have filed a motion to compel a more responsive answer, filed follow-up interrogatories, or undertook cross-examination of a witness on this matter, but did not. Bank of America also notes that Valpak could file testimony of its own in response to this evidence. While the Commission recognizes that Valpak had other procedural options available, none was strictly required prior to filing the Motion to Strike.

specific incentive. Bank of America then proceeds to provide a response that perhaps may be more general than Valpak had anticipated, but which is still responsive to the interrogatory. It outlines the tasks that may incur costs on its part in implementing the agreement, including the tasks associated with the Postal Service being able to develop mailer-specific accept rates. Under seal, it further elaborates on its actual cost to participate in the agreement.

The premise that under this contract Bank of America will undertake tasks that will incur costs is not new record evidence in this case. Bank of America witness Jones testifies that Bank of America will incur costs;[4] interrogatory responses indicate that Bank of America will incur costs;[5] and answers provided during oral cross-examination indicate that Bank of America will incur costs.[6]

The redacted response to interrogatory VP/USPS-T1-32(b) provides a qualitative analysis further elaborating on the tasks that Bank of America will undertake for which it will incur costs under the agreement. The response complements what already is in the record, and allows for a more thorough understanding of the agreement from the perspective of the mailer. Accordingly, the redacted interrogatory response to VP/USPS-T1-32(b) appearing at Tr. 2/494-99 shall remain in the record.

The material appearing at Tr. 3/537-42 under seal includes the same qualitative information provided in the open transcript, and additionally provides quantitative detail of Bank of America's estimate of its total cost of investments and other expenditures needed to participate in the Negotiated Service Agreement. This information was designated to complement the redacted portions of the response. The quantitative information (the confidential mailer costs) has not been subject to scrutiny in this proceeding, and is not necessary for evaluating the impact of this agreement on the

---

[4] BAC-T-1 at 11-12. Some of the tasks identified such as Seamless Acceptance and Confirm are directly related to developing mailer-specific accept rates, while others are not.

[5] Tr. 2/253 (costs are associated with mail.dat); Id. at 294-95 (costs are associated with Four-State Barcode and other requirements); Id. at 477-78 (costs are associated with improving read and accept rates, and reducing UAA rates).

[6] Id. at 346 (costs are associated with CAPS); Id. at 348 (costs are associated with CAPS, eDropShip, and mail.dat).

Postal Service. Moreover, it arguably could be considered a new line of evidence that has not been introduced before on the record. Thus, the interrogatory response to VP/USPS-T1-32(b) appearing at Tr. 3/537-42 under seal shall be stricken from the record.

APWU Motion. APWU has filed a motion, with the agreement of the Postal Service, identifying and requesting that certain material appearing in the sealed record of this proceeding be placed in the public record.[7] The pertinent material, first appearing within USPS-LR-3 (under seal), is provided as an attachment to APWU's motion. The material was directed to be unsealed during the June 14, 2007 closed hearing without objection from the Postal Service. The motion to place the material included in the attachment to APWU's motion into the public record is granted.

[7] American Postal Workers Union, AFL-CIO, Motion to Include Unsealed Material in the Public Record, June 18, 2007.

RULING

1. Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Motion to Strike Bank of America Interrogatory Response to VP/USPS-T1-32(b) and its Designation in the Record, filed June 13, 2007, is denied with respect to the interrogatory response to VP/USPS-T1-32(b) appearing at Tr. 2/494-99 and is granted with respect to the interrogatory response to VP/USPS-T1-32(b) appearing at Tr. 3/537-42.

2. American Postal Workers Union, AFL-CIO, Motion to Include Unsealed Material in the Public Record, filed June 18, 2007, is granted.

Dan G. Blair
Presiding Officer