

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  
DENYING APWU MOTION FOR FURTHER DISCOVERY

(Issued July 9, 2007)

American Postal Workers Union, AFL-CIO (APWU) has filed a motion requesting an order to compel the Postal Service to produce certain documents and to answer an interrogatory.<sup>1</sup>

**Documents Requested:**

1. Copies of all periodic or special studies, documents or reports issued, produced or used by the Postal Service since 1999, including all reports to the Board of Governors, that concern the efficacy of the Wide Field of View Camera installed on postal mail processing equipment during 2003 and 2004; and
2. Copies of all periodic or special studies, documents or reports issued, produced or used by the Postal Service since 1999 that concern read/accept rates of the type used or referred to by the USPS and BAC in their proposed Negotiated Service Agreement submitted to the Postal Regulatory Commission in Case No. MC2007-1.

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<sup>1</sup> Motion of American Postal Workers Union, AFL-CIO for an Order Compelling the Production of Documents and Information by the United States Postal Service, June 15, 2007 (Motion).

**Interrogatory Answer Requested:**

Identify a USPS official, or if necessary more than one official, who is familiar with (1) the existence and contents of USPS studies, documents or reports that concern read/accept rates at the national, regional, and local levels in operations that process the type of mail that is mailed by BAC and that is at issue in this case; and (2) read/accept rates on postal automation used to process the type of mail that is mailed by BAC and that is at issue in this case.

APWU argues that given “the NSA in question is pay-for-performance, accurate measures of baseline performance must be used.”<sup>2</sup> Motion at 1. It suggests that the proposed benchmark read/accept rates from 1999 are out-of-date and not valid for determining improvements in Bank of America’s read/accept rates. APWU further suggests that automation changes have improved read/accept rates since 1999, and that the Postal Service has the capability to determine current read/accept rates.

APWU contends that the witness provided by the Postal Service could not testify about current read/accept rates, or identify any Postal Service studies or reports providing information on improvements in read/accept rates since deployment of the Wide Field of View (WFOV) cameras. Furthermore, the witness was not involved in the original Decisional Analysis Report on the WFOV camera, nor was he familiar with any follow-up reports to the Board of Governors. Thus, APWU requests this further discovery.

The Postal Service opposes the Motion for further discovery, except for where it has already agreed to provide certain material under seal.<sup>3</sup> It argues that the discovery request is untimely, noting that direct evidence was received into evidence on June 14, 2007; that no participant has indicated an intent to submit a direct case; and that there is no basis for filing rebuttal testimony. The Postal Service contends that it has been

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<sup>2</sup> Pay-for-performance is interpreted as paying for an improvement in a specific mailer’s performance relative to that mailer’s previous performance.

<sup>3</sup> Answer of United States Postal Service in Opposition to Motion of the American Postal Workers Union, AFL-CIO, for an Order Compelling Production of Documents and Information, June 22, 2007 (Answer).

accommodating in these proceedings; providing a qualified expert, witness Raney, specifically to address read/accept rates, and agreeing to postpone the hearing by more than one month while discovery was directed to witness Raney. It further contends that APWU had a full opportunity to ask for additional information during discovery directed to witness Raney, but did not, and that APWU has not presented any mitigating factors that would warrant further discovery. In addition, the Postal Service asserts it has provided information under seal related to the efficacy of the WFOV camera to stem further motions practice.<sup>4</sup>

APWU filed a reply under seal to the Postal Service's Answer describing what it believes will be missing from the documents that the Postal Service agreed to file under seal, and rebutting a Postal Service assertion that APWU has failed to take advantage of the opportunity to cross-examine witness Raney concerning current read rates.<sup>5</sup> APWU reiterates that it seeks confirmation of the impact of the WFOV camera on read rates, more direct evidence of current read rates, and the identity of a witness with personal non-hearsay knowledge of current read rates.

The Postal Service surreply to APWU's reply argues that APWU has not correctly interpreted witness Raney's testimony.<sup>6</sup> It contends that APWU did not ask witness Raney to identify the source of the information that formed the basis for his responses to discovery. Therefore, APWU has no foundation to conclude that witness Raney has

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<sup>4</sup> See, Motion of United States Postal Service for Leave to File Certain Documents as Provided in the Postal Service's Response to Ruling of the Presiding Officer at Hearing on June 14, 2007 Under Protective Conditions, June 20, 2007; P.O. Ruling No. MC2007-1/11, June 22, 2007; and Notice of the United States Postal Service of Filing of Library Reference USPS-LR-4/MC2007-1, June 28, 2007.

<sup>5</sup> Reply of American Postal Workers Union to Opposition of USPS to APWU Motion to Compel Production of Documents and Information, June 26, 2007 (filed under seal). The reply was accompanied by Motion of the American Postal Workers Union, AFL-CIO for Leave to Reply to USPS Answer in Opposition to APWU Motion to Compel Production of Documents and Information, June 26, 2007 (Motion to Reply). This generated an Opposition of Bank of America Corp. to Motion of APWU for Leave to File Reply to USPS Opposition to APWU Motion to Compel, July 2, 2007 (Opposition). The arguments in all of these pleadings center on the due process justification for additional discovery, and all have been considered.

<sup>6</sup> Surreply of United States Postal Service to the June 26 Reply of American Postal Workers Union, AFL-CIO, June 29, 2007 (Surreply). The surreply was accompanied by Conditional Motion of United States Postal Service for Leave to File Surreply to the June 26 Reply of American Postal Workers Union, AFL-CIO, June 29, 2007.

only hearsay knowledge. The Postal Service asserts that APWU's request to identify a witness with personal non-hearsay knowledge of current read rates has already been satisfied through witness Raney. Surreply at 2. The Postal Service further submits that its production of library reference USPS-LR-4/MC2007-1 essentially moots APWU's document production requests.

*Discussion.* The thrust of APWU's Motion appears to be directed at gaining a further understanding of up-to-date read/accept rates on automation equipment in general, and up-to-date read/accept rates on automation equipment for the type of mail sent by Bank of America. APWU asserts that it currently believes the evidence now on record "establishes that the baseline read/accept rates from 1999 are not valid for determining improvements in BAC read/accept rates under the NSA." Motion at 2. The co-proponents, however, appear ready to rely on the record as it is to support their request for the proposed Negotiated Service Agreement.

If there exists more up-to-date system-wide read/accept rate information and/or Bank of America specific read/accept rate information, it could have probative value. It could support or rebut the validity of benchmarks contained in the agreement. It might or might not support rebuttal testimony that opposed approval of the agreement. However, opponents of the agreement have already explored this area in some depth, and offer no valid reason for not having delved into it further. Furthermore, no participant has proposed filing rebuttal testimony.

Evidence appears in the record allowing analysis of the pros and cons of adopting the read/accept rate benchmarks proposed by the co-proponents. The co-proponents have stated their reasons for agreeing to the selected benchmarks and can further discuss any additional record evidence on brief. Participants can argue in favor of the co-proponents' rationale for selecting the benchmarks, or rely on record evidence to dispute the appropriateness of the co-proponent's benchmark selection.

An adequate opportunity for discovery appears to have run its course. The co-proponents have been cooperative in agreeing to a delay of more than one month in the proceeding to allow for additional discovery. The Postal Service has been cooperative

in making available an additional witness for the hearing on its direct case to answer further questions. This has provided all participants, including APWU, the opportunity to gain further understanding of this agreement beyond what was provided in the original discovery period. The Postal Service also has filed library reference USPS-LR-4/MC2007-1, which touches on the documentation currently requested by APWU.

APWU has failed to present a persuasive argument as to why the questions it now seeks to ask could not have been posed during the extended written discovery period agreed to by all participants, or during oral cross-examination. The Motion to allow for further discovery is denied.

With the co-proponents' direct case concluded, and all outstanding discovery issues resolved, participants may designate for the record any material which has been filed since the June 14, 2007 hearing. Designations are to be filed by July 11, 2007.

## RULING

1. Motion of American Postal Workers Union, AFL-CIO for an Order Compelling the Production of Documents and Information by the United States Postal Service, filed June 15, 2007, is denied.
2. Motion of the American Postal Workers Union, AFL-CIO for Leave to Reply to USPS Answer in Opposition to APWU Motion to Compel Production of Documents and Information, filed June 26, 2007, is granted.
3. Conditional Motion of United States Postal Service for Leave to File Surreply to the June 26 Reply of American Postal Workers Union, AFL-CIO, filed June 29, 2007, is granted.
4. Participants may designate for the record any material which has been filed since the June 14, 2007, hearing. Designations are to be filed by July 11, 2007.

Dan G. Blair  
Presiding Officer