

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

RATE AND SERVICES CHANGES TO
IMPLEMENT FUNCTIONALLY EQUIVALENT
NEGOTIATED SERVICE AGREEMENT WITH
BANK ONE CORPORATION

Docket No. MC2004-3

COMMENTS OF THE UNITED STATES POSTAL SERVICE
IN REGARD TO ITS PROPOSAL FOR LIMITATION OF ISSUES
(July 29, 2004)

On June 21, 2004, contemporaneously with the filing of its Request for a Recommended Decision, the Postal Service filed a proposal to limit the issues in this case to those that are unique to the Bank One Corporation Negotiated Service Agreement (NSA). The Postal Service based its proposal on Rule 196(a)(6), 39 C.F.R. § 3001.196(a)(6).

In Presiding Officer's Ruling No. MC2004-3/1 (issued July 23, 2004) at 5, the presiding officer stated that written comments in regard to the limitation of issues shall be submitted by today, and that written responses are due by August 5, 2004. At this juncture, the Postal Service sees no need to repeat its proposal or respond to preliminary statements of issues that have been filed in this proceeding, and it awaits the opportunity to respond next week to any comments that are filed today. A few general comments at this point are, however, in order.

This case, along with Docket No. MC2004-4, are the first two cases in which the Commission is applying Rule 196. In evaluating the comments and

responses that will be filed today and next week, the Postal Service encourages the Commission to keep in mind its pronouncement in Docket No. RM2003-5, Order 1391 at 48, that "[t]he purpose of § 3001.196 is to provide an opportunity to expedite the review of a request for a functionally equivalent Negotiated Service Agreement"

From a long-term perspective, if the effects of a baseline NSA on competitors of the mailer who signs that NSA are to be taken into full account, then the opportunity for competitors to sign a functionally equivalent NSA and receive expedited review before the Commission is essential. To bog down a proceeding under Rule 196 with issues that are not unique to the functionally equivalent NSA would defeat this important consideration.

Moreover, while the mailer in the instant proceeding is a major corporation that participates in the highly competitive credit card industry, the precedents that the Commission sets in this case will be watched by smaller mailers. If the Postal Service, in the long run, is to extend the benefit of baseline NSAs to smaller mailers who agree to functionally equivalent contracts, the potential litigation costs to be incurred by those smaller mailers need to receive serious consideration. A failure to limit the issues in a Rule 196 proceeding to those that are unique to the functionally equivalent NSA could discourage the extension of baseline NSAs to many mailers who can meet the requirements of functional equivalency.

The Postal Service awaits the opportunity to respond next week to any written comments that are filed today.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

Brian Reimer

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