

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON DC 20268-0001**

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

**MOTION OF BANK ONE CORPORATION
FOR LEAVE TO FILE RESPONSE TO
AUGUST 5 REPLY COMMENTS OF OCA AND VALPAK
(August 10, 2004)**

Bank One Corporation (“Bank One”) respectfully requests leave to file the accompanying response to the August 5 comments of the Office of Consumer Advocate (“OCA”) and Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. (collectively “Valpak”). Although the Commission’s rules do not authorize a response to a reply as a matter of right, Rule 21(b) allows the Commission or presiding officer to accept such a pleading as a matter of discretion in appropriate cases.¹ Good cause exists for allowing Bank One to file such a response here.

First, OCA’s August 5 reply comments were the first OCA pleading to attempt a justification for OCA’s request for a hearing on the stop-loss cap issue. OCA could have—and should have—provided such an explanation in its July 23 written request for a hearing or its July 29 comments on the limitation of issues. If OCA had done so, Bank One would have responded in the next available pleading. Because OCA did not set forth its theory of the issue until in its August 5 reply comments, Bank One should be

¹ See , e.g., Presiding Officer’s Ruling No. R2001-1/20 at 6 n. 9 (granting OCA request for leave to file reply to reply); Presiding Officer’s Ruling No. R97-1/20 at 10 ¶ 6 (granting motion of Nashua Photo Inc. *et al.* for leave to file reply to reply); Presiding Officer’s Ruling No. MC96-3/13 at 6 n. 3 (same).

allowed to respond now. Doing so would not only protect Bank One's due process interests, but would also assist the Commission in having the fullest possible record for deciding whether to hold a hearing.

Second, the August 5 comments of Valpak portray Bank One as uncooperative in informal discovery, and unresponsive to Valpak's formal discovery requests. These claims are untrue, and create a false and misleading impression about the conduct and integrity of Bank One and its counsel and experts. Unless the Commission grants leave to file these comments, these misstatements will remain uncorrected.

For the foregoing reasons, Bank One respectfully requests that the Commission grant this motion for leave to file a Response to the August 5 Reply Comments of OCA and Valpak.

Respectfully submitted,

/s/

David M. Levy
Joy M. Leong
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K St., N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Bank One Corporation

August 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have today caused the foregoing document to be served in accordance with Section 12 of the Commission's Rules of Practice

/s/

David M. Levy

August 10, 2004