

ORDER NO. 1431

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

Before Commissioners:

George A. Omas, Chairman;
Tony Hammond, Vice Chairman;
Dana B. Covington, Sr.;
Ruth Y. Goldway; and
Dawn A. Tisdale

Rate and Service Changes To Implement
Functionally Equivalent Negotiated Service
Agreement With HSBC North America Holdings Inc.

Docket No. MC2005-2

NOTICE AND ORDER ON FILING OF REQUEST
SEEKING RECOMMENDATION OF
FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT

(Issued February 28, 2005)

On February 23, 2005, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a Negotiated Service Agreement with HSBC North America Holdings Inc.¹ The Negotiated Service Agreement is proffered as functionally equivalent to the Capital One Services, Inc. Negotiated Service Agreement (baseline agreement) as recommended by the Commission in Docket No. MC2002-2. The Request, which includes six attachments,

¹ Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement a Functionally Equivalent Negotiated Service Agreement with HSBC North America Holding Inc., February 23, 2005 (Request).

was filed pursuant to Chapter 36 of the Postal Reorganization Act, 39 U.S.C. § 3601 *et seq.*²

The Postal Service has identified HSBC North America Holdings Inc. (HSBC), along with itself, as parties to the Negotiated Service Agreement. This identification serves as notice of intervention by HSBC. It also indicates that HSBC shall be considered a co-proponent, procedurally and substantively, of the Postal Service's Request during the Commission's review of the Negotiated Service Agreement. Rule 191(b) [39 CFR § 3001.191(b)]. An appropriate Notice of Appearance and Filing of Testimony as Co-Proponent by HSBC North America Holdings Inc., February 23, 2005, also was filed.

In support of the direct case, the Postal Service has filed Direct Testimony of Jessica A. Dauer on Behalf of the United States Postal Service, February 23, 2005 (USPS-T-1). HSBC has separately filed Direct Testimony of John H. Harvey on Behalf of HSBC North America Holdings Inc., February 23, 2005 (HSBC-T-1). The Postal Service has reviewed the HSBC testimony and, in accordance with rule 192(b) [39 CFR § 3001.192(b)], states that such testimony may be relied upon in presentation of the Postal Service's direct case.³

The Request relies substantially on record evidence entered in the baseline docket, Docket No. MC2002-2. The Postal Service's Compliance Statement, Request Attachment E, identifies the baseline docket material on which it proposes to rely.

Requests that are proffered as functionally equivalent to baseline Negotiated Service Agreements are handled expeditiously, until a final determination has been made as to their proper status. The Postal Service's Compliance Statement, Request Attachment E, is noteworthy in that it provides valuable information to facilitate rapid

² Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the Negotiated Service Agreement.

³ Request at 2-3, fn. 2.

review of the Request to aid participants in evaluating whether or not the procedural path suggested by the Postal Service is appropriate.

The Postal Service submitted several contemporaneous related filings with its Request. The Postal Service has filed a proposal for limitation of issues in this docket.⁴ Rule 196(a)(6) [39 CFR § 3001.196(a)(6)]. The proposal identifies issues that were previously decided in the baseline docket, and key issues that are unique to the instant Request.

Rule 196(b) [39 CFR § 3001.196(b)] requires the Postal Service to provide written notice of its Request, either by hand delivery or by First-Class Mail, to all participants of the baseline docket, MC2002-2. This requirement provides additional time, due to an abbreviated intervention period, for the most likely participants to decide whether or not to intervene. A copy of the Postal Service's notice was filed with the Commission on February 23, 2005.⁵

The Postal Service has filed a conditional request to establish settlement procedures.⁶ The Postal Service believes that there is a distinct possibility that no party will identify any need for a hearing, thus there would be no need to engage in settlement discussions. However, if the parties do have issues that they want to explore, settlement discussions might provide a convenient forum to resolve those issues.

The Postal Service's Request, the accompanying testimonies of witnesses Dauer (USPS-T-1) and Harvey (HSBC-T-1), the baseline Docket No. MC2002-2 material, and other related material are available for inspection at the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's website (www.prc.gov).

⁴ United States Postal Service Proposal for Limitation of Issues, February 23, 2005.

⁵ Notice of the United States Postal Service Concerning the Filing of a Request for a Recommended Decision on a Functionally Equivalent Negotiated Service Agreement, February 23, 2005.

⁶ Conditional Request of the United States Postal Service for Establishment of Settlement Procedures, February 23, 2005.

I. Background: The Baseline Capital One Negotiated Service Agreement, Docket No. MC2002-2

If a request predicated on a Negotiated Service Agreement is found to be functionally equivalent to a previously recommended, and currently in effect, Negotiated Service Agreement, it may be afforded accelerated review. Rule 196 [39 CFR § 3001.196]. The Postal Service asserts that the Negotiated Service Agreement in its instant Request is functionally equivalent to the now in effect Capital One Negotiated Service Agreement recommended by the Commission in Docket No. MC2002-2.⁷ The Capital One Negotiated Service Agreement will remain in force from September 1, 2003 to September 1, 2006.⁸

The Capital One Negotiated Service Agreement is based upon two significant mail service features—an address correction service feature, and a declining block rate volume discount feature.

The address correction service feature provides Capital One, at certain levels of volume, electronic address corrections without fee for First-Class Mail solicitations that are undeliverable as addressed (UAA). In return for receipt of electronic address correction, Capital One will no longer receive physical return of its UAA First-Class solicitation mail that cannot be forwarded. Capital One will also be required to maintain and improve the address quality for its First-Class Mail.

Use of the address correction service feature is a prerequisite to use the second feature of the Negotiated Service Agreement, a declining block rate volume discount. This feature provides Capital One with a per-piece discount for bulk First-Class Mail volume above an annual threshold volume. The per-piece discount varies from 3 to 6 cents under a “declining-block” rate structure. Should first-year mail volume decline under a predetermined quantity, a reduced threshold and lower initial discounts take effect.

⁷ See, Opinion and Recommended Decision, Docket No. MC2002-2, May 15, 2003.

⁸ Notice of the United States Postal Service of Decision of the Governors, June 3, 2003.

To account for several unknowns, the Commission's recommendation incorporates a stop-loss provision in the amount of \$40.637 million.

II. The HSBC Negotiated Service Agreement

The Postal Service proposes to enter into a three-year Negotiated Service Agreement with HSBC. It asserts that the HSBC Negotiated Service Agreement is based on the same two substantive functional elements that are central to the Capital One Negotiated Service Agreement—an address correction element and a declining block rate volume discount element.

The address correction element provides, at certain levels of volume, electronic address corrections without fee for solicitations sent by First-Class Mail that are undeliverable as addressed and cannot be forwarded under existing regulations. In return, HSBC agrees to forgo physical return of such undeliverable mail provided under the existing service features of First-Class Mail.

The declining block rate volume discount element provides HSBC with per-piece discounts of those portions of its First-Class Mail solicitations that exceed specified volume thresholds. The initial volume threshold, which must be exceeded to receive any discount, is 615 million pieces. The negotiated volume threshold is increased annually. The discounts range from 2.5 cents to 5.0 cents depending on the block volume.

The Postal Service estimates it will benefit by \$6.1 million over the life of the Negotiated Service Agreement. This is based on estimates of \$6.6 million in savings due to the address correction feature, \$3.9 million in increased contribution due to increased mail volume, and a net leakage of minus \$4.4 million due to the discount feature of the agreement. The agreement establishes a \$9 million discount cap over the life of the agreement. The agreement further provides for an annual adjustment mechanism to the volume thresholds.

III. Commission Response

Applicability of the rules for functionally equivalent Negotiated Service Agreements. For administrative purposes, the Commission has docketed the instant filing as a request predicated on a Negotiated Service Agreement functionally equivalent to a previously recommended and ongoing Negotiated Service Agreement. A final determination regarding the appropriateness of characterizing the Negotiated Service Agreement as functionally equivalent to the Capital One Negotiated Service Agreement, Docket No. MC2002-2, and application of the expedited rules for functionally equivalent Negotiated Service Agreements, rule 193 [39 CFR § 3001.193], will not be made until after the prehearing conference.

Settlement. The Commission has established rules for expeditiously issuing recommendations in regard to requests predicated on functionally equivalent Negotiated Service Agreements. If, after a prehearing conference, it is determined that the Postal Service's request is properly submitted as a functionally equivalent request, and there are no outstanding issues, the Commission will promptly issue its recommendations. In such instances, conducting a settlement conference for the purpose of concluding with a Stipulation and Agreement is both unnecessary and could interfere with the intent of the rules to expedite the schedule.

However, the Commission encourages communications among the Postal Service and other participants to facilitate resolving issues early in a proceeding. These communications can be either informal, or formally sanctioned settlement conferences. Settlement conferences early in a proceeding still can have value in exploring the various positions of the different participants.

The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold a settlement conference on March 24, 2005, immediately following the prehearing conference in the Commission's

hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's procedural status or on the need for a hearing.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Intervention. Those wishing to be heard in this matter are directed to file a notice of intervention on or before March 16, 2005. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's website (www.prc.gov), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR §§ 3001.9(a) and 10(a)]. Notices should indicate whether participation will be on a full or limited basis. See rules 20 and 20a [39 CFR §§ 3001.20 and 20a]. No decision has been made at this point on whether a hearing will be held in this case.

Prehearing conference. A prehearing conference will be held March 24, 2005, at 10:00 a.m. in the Commission's hearing room. Participants shall be prepared to address whether or not it is appropriate to proceed under rule 196 [39 CFR § 3001.196], and to identify any issue(s) that would indicate the need to schedule a hearing, along with other matters referred to in this ruling. Rule 196(c) [39 CFR § 3001.196(c)]. In addition, discussion on the Postal Service's proposal for limiting issues should be presented at the prehearing conference.

Participants intending to object to proceeding under rule 196 [39 CFR § 3001.196] shall file supporting written argument, if any, by March 18, 2005. Participants also shall file supporting written argument, if any, in regard to the identification of issue(s) that would indicate the need to schedule a hearing, and objections to the Postal Service's proposal for limiting issues by March 18, 2005. The

Commission intends on deciding upon these issues shortly after the prehearing conference.

It is ordered:

1. The Commission establishes Docket No. MC2005-2 to consider the Postal Service Request referred to in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for a settlement conference immediately following the prehearing conference scheduled on March 24, 2005, and at such times deemed necessary by the settlement coordinator.
4. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
5. The deadline for filing notices of intervention is March 16, 2005.
6. A prehearing conference will be held March 24, 2005 at 10:00 a.m. in the Commission's hearing room.
7. Participants shall file supporting written argument, if any, in regard to the identification of issue(s) that would indicate the need to schedule a hearing, objections to the Postal Service's proposal for limiting issues, or objections to proceeding under rule 196 [39 CFR § 3001.196] by March 18, 2005.

8. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

By the Commission.

(S E A L)

Steven W. Williams
Secretary