

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

Solicitation of Comments on First Use  
of Rules Applicable to Negotiated  
Service Agreements

Docket No. RM2005-2

INITIAL COMMENTS OF THE UNITED STATES POSTAL SERVICE  
(February 28, 2005)

On January 25, 2005, the Postal Rate Commission issued Order No. 1429, in which it solicited comments on the first two dockets litigated under its rules applicable to negotiated service agreements ("NSAs"). The Commission noted that, on February 11, 2004, it had promulgated these rules, which apply to review of Postal Service requests predicated on baseline and functionally equivalent NSAs.<sup>1</sup> The Commission further noted that the Postal Service had so far invoked only the rules applicable to functionally equivalent NSAs, Rule 196 (39 C.F.R. § 196), in regard to the proposed NSAs negotiated with Bank One Corporation ("Bank One"), Docket No. MC 2004-3, and Discover Financial Services, Inc. ("Discover"), Docket No. MC 2004-4. Both of these NSAs were proffered as functionally equivalent to the baseline NSA with Capital One

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<sup>1</sup> PRC Order No. 1429, Docket No. RM2005-2, at 1, n. 1 (January 25, 2005), citing Order Establishing Rules Applicable to Requests for Baseline and Functionally Equivalent Negotiated Service Agreements, PRC Order No. 1391 (February 11, 2004).

Services, Inc. ("Capital One") that was the subject of Docket No. MC 2002-2.<sup>2</sup> As the Commission observed, the rules for new baseline agreements, Rule 195 (39 C.F.R. § 3001.195), remain untested.

The Postal Service has concluded that Rule 196, and the other rules applicable to NSAs, 39 C.F.R. § 3001.190 *et seq.*, have provided a good procedural framework to consider these early NSA cases. In particular, the Postal Service believes that the rules were adequately designed to protect the myriad and often conflicting interests that participants can present in such dockets. As noted recently by the Postal Service Governors in Docket No. MC2004-3,<sup>3</sup> the Postal Service did not agree with every element of the Commission's substantive recommendations in the cases litigated under the rules so far. Nevertheless, the existing rules themselves have enabled the relatively efficient review and establishment of worthwhile rate and classification changes implementing three beneficial NSAs. Accordingly, the Postal Service does not believe that the Commission should amend or modify any of the rules at this time.

In light of the experiences of only two cases to consider NSAs that were proposed as functionally equivalent to the same NSA (Capital One), the Postal Service believes that it would be premature to try to revise the current rules. The rules fared reasonably well and did not fail in any major respect. Future cases, particularly those requested to consider new baseline NSAs, or functionally equivalent agreements based on different baseline NSAs, will provide a more comprehensive foundation to reconsider

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<sup>2</sup> PRC Op. MC 2002-2 (May 15, 2003).

<sup>3</sup> Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Rate Commission Approving Negotiated Service (footnote continued...)

the procedural mechanisms and guidelines. In addition, the Governors have recently requested the Commission to reconsider the substance of its most recent recommendations in Docket No. MC2004-3, and to provide guidance on issues concerning type and level of proof needed, as well as the role of settlement in such cases. We should await the Governors reaction to the Commission's views and further recommended decision, before we attempt to reconsider the language or structure of the existing rules.

In its order opening this docket, the Commission devoted a large proportion of space to addressing timeliness matters.<sup>4</sup> In light of the fact that these were the first two Commission dockets involving functionally equivalent NSAs, the Postal Service views the time taken by the Commission to make its recommended decisions as understandable. Furthermore, the Postal Service strongly supports the 60-day and 120-day time limitations established by the rules as necessary in functionally equivalent cases. The Postal Service agrees with the Commission that the Bank One docket presented complex issues, and that lengthy negotiations also contributed to the time needed to produce the Commission's recommended decision.

The Postal Service does not, however, agree with the Commission's statements in its Opinion that the Bank One NSA, as proposed, was not functionally equivalent to the Capital One NSA. This is, however, a disagreement over substance, rather than procedure, and does not, in the Postal Service's view, require any rule changes at this

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(...footnote continued)

Agreement with Bank One Corporation, Docket No. MC2004-3 (February 16, 2005).

<sup>4</sup> See PRC Order No. 1429, at 2-4

time. In this respect, the Commission's early determination to proceed with the case under the procedural framework for functionally equivalent cases was the correct decision.

The Postal Service also disagrees with the Commission's conclusion that the Postal Service failed to fully comply with the terms of Rule 196(b)(2), which require a comparison of NSAs, as opposed to DMCS language. Now that the Commission has clarified its interpretation of that rule, however, the Postal Service does not anticipate a repeat of this situation. Nor does the Postal Service see a need for urging a different interpretation of this rule, much less a change to it.

The Postal Service is still in the relatively early stages of developing the parameters for what might be possible in terms of NSAs, and still views the premium on flexibility as high. At this point, the Postal Service has concluded that any changes to the existing rules would be premature, and would only present yet another set of untested procedures. It would be preferable to continue to refine the interpretation of the current procedures, in light of the experiences of more cases in the future.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice.

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