

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

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

Docket No. MC2004-3

UNITED STATES POSTAL SERVICE MOTION FOR LEAVE TO
FILE MEMORANDUM ON RECONSIDERATION AND FOR
PROPOSED PROCEDURES
(March 7, 2005)

On February 16, 2005, the Governors of the United States Postal Service issued their Decision acting on the Postal Rate Commission's Recommended Decision in the instant docket.¹ Pursuant to 39 U.S.C. § 3625(c)(2), the Governors allowed under protest the rate and classification changes recommended by the Commission to implement the Negotiated Service Agreement (NSA) with Bank One, and returned the matter to the Commission for reconsideration and a further recommended decision. The Governors have directed the Postal Service to initiate proceedings on reconsideration consistent with their Decision.

While the Governors expressed substantial agreement and appreciation regarding the Commission's recommendations enabling the NSA, they asked the Commission to reconsider its determination to impose a cap on the discounts

¹ Decision Of The Governors Of The United States Postal Service On The Opinion And Recommended Decision Of The Postal Rate Commission Approving Negotiated Service Agreement With Bank One Corporation, Docket No. MC2004-3 (February 16, 2005)

available to Bank One under the agreement. They also asked the Commission to provide clarification on several issues related to the Bank One proposals and related to Commission recommendations to implement two previous NSA proposals, in Docket Nos. MC2004-4 (Discover Financial Services) and MC2002-2 (Capital One Services). In particular, they sought further explanation from the Commission on statements it made indicating that there might be circumstances under which these or similar NSAs could be recommended without caps. In this regard, the Governors asked the Commission to elaborate and provide specific guidance on the type of evidence that the Commission might find persuasive to recommend uncapped volume discounts in future NSAs. They also asked the Commission to clarify the role of settlement in functionally equivalent NSA cases.

The Postal Service's experiences in developing NSAs, as well as its financial and ratemaking objectives, substantially shaped the context for the Governors' views. The Postal Service therefore believes that the best place to begin reconsideration and explanation of an evidentiary standard to support uncapped NSAs would be for the Postal Service to present its views on the questions raised by the Governors in their Decision. In this regard, the Postal Service can submit a memorandum addressing the pertinent legal, economic, and practical issues. The Postal Service is also prepared to propose an evidentiary approach that could serve as a standard for future NSA proposals. Intervenors and the Office of the Consumer Advocate, including past and prospective NSA partners, could then comment on the Postal Service's views in a second stage of the proceedings, which would allow NSA stakeholders to

address suitable evidentiary standards, in light of their own capabilities and concerns. The objective would be to identify a practical approach to establishing a record foundation that meets the requirements of the Postal Reorganization Act without unduly restricting the development of NSAs in practice.

To take full advantage of the opportunity to explore these issues in the context of the record in this proceeding, the Postal Service further suggests that the Commission respond by elaborating on the possibilities suggested in both its Opinion and Recommended Decision and its Concurring Opinion in this docket. At this next stage, the Commission would address the Postal Service's and other parties' proposals for evidence to support future NSAs, in light of the Commission's own expectations, and would propose an approach to overcome its concerns. The Commission's guidance would establish a comprehensive foundation for its reconsideration in this docket, and could be presented through a Notice of Inquiry or other suitable procedural vehicle. The purpose would not necessarily be to elicit further testimony, but to give the parties an opportunity to comment on the practical and legal implications of the Commission's preliminary guidance.

Finally, the Commission would deliberate, based on the existing record, supplemented by the comments submitted on reconsideration, and would issue a further recommended decision, including further explanations and guidance for future cases.

In accordance with the above, the Postal Service respectfully moves for leave to file a memorandum on reconsideration, and asks the Commission to

establish a schedule following the procedures as outlined. The Postal Service proposes that it be permitted to file its memorandum on April 15, 2005.² The Commission should then establish a schedule allowing for 1) intervenor and OCA responses to the Postal Service's memorandum; 2) a Commission discussion of the Postal Service's and other parties' views; and 3) an opportunity for the parties to comment of the Commission's suggested approach to NSAs in the future.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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² In normal circumstances, the Postal Service might not require a lengthy period to prepare the proposed memorandum. At its most recent meeting, however, the Postal Service's Board of Governors directed the Postal Service to prepare, as soon as possible, a Request for a Recommended Decision on omnibus changes in postal rates and fees. Given the substantial burden created by that undertaking, and in light of other pending matters, the Postal Service anticipates that it will need until April 15 to draft its submission.

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.

Nan K. McKenzie

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