

Before the  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

)  
Rules Applicable to Renew or Modify  
Previously Recommended Negotiated ) Docket No. RM2005-3  
Service Agreements  
)

**REPLY COMMENTS OF BANK ONE CORPORATION**  
(April 11, 2005)

Pursuant to Order No. 1430, issued on February 10, 2005, and published at 70 Fed. Reg. 7704 (Feb. 15, 2005), Bank One Corporation (“Bank One”) respectfully submits these reply comments on the rules proposed by the Commission for renewing or modifying existing Negotiated Service Agreements (“NSAs”).

The initial comments of the other participants, to the extent that they discuss the specific issues raised in Bank One’s initial comments, generally support an expeditious and light-handed regulatory standard for review of proposals to renew or modify existing NSAs.<sup>1</sup> The only parties to advocate stricter scrutiny of such proposals are the Valpak entities.<sup>2</sup> Valpak proposes that (1) the Office of Consumer Advocate (“OCA”) be

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<sup>1</sup> Initial Comments of Discover Financial Services, Inc., HSBC North America Holdings Inc., Office of Consumer Advocate, and United States Postal Service.

<sup>2</sup> Comments of Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc..

“charged with responsibility” for investigating the “factual matters” relating to the reasonableness of proposals under Rule 197 or Rule 198; (2) the Commission should require the submission of updated cost and volume data for each renewal and modification proposal, “even if no mailer had the motivation to” challenge the proposal; and (3) the OCA should be “tasked with investigating” any intervening changes such as mergers and acquisitions involving the bank party to the NSA or operational changes such as the “deployment of PARS.”

The Commission should decline to adopt a blanket rule requiring the OCA to raise these issues, or the Commission to consider them, if no intervenor raises them. As Bank One and HSBC explained in their initial comments, the degree of regulatory oversight of NSAs should reflect a reasonable balance between the benefits and costs of regulation. NSA litigation is not a free good; it is a costly and time-consuming process. Needless regulatory proceedings can deter mailers from entering into agreements that would have benefited the parties to the agreement as well as the general public.

A request to renew or modify an existing NSA involves, by definition, an agreement whose basic terms have already been found by the Commission to be profitable for the Postal Service, free of undue discrimination against competitors of the NSA partner, and unobjectionable on any other identifiable ground. The failure of any private party to challenge such a proposal provides further evidence that the NSA, as renewed or modified, is unlikely to pose a significant threat to the interests of any other party. Under the circumstances, a general requirement that the OCA launch a full blown investigation in every proceeding under Rule 197 or Rule 198 is likely to make

society worse off by wasting the Commission's resources and deterring the establishment or renewal of arrangements that otherwise would have made both the Postal Service and third-party mailers better off.

Rather, the extent (if any) of any activity by the OCA in an NSA proceeding should be left to the professional judgment of the OCA itself. Moreover, any participant that challenges the reasonableness of the proposed NSA terms should bear the burden of making a showing of probable cause that the modified terms would violate one or more provisions of the Postal Reorganization Act.

Allocating the burden of going forward in this fashion would signal to the mailing community that the Commission is serious about fostering the economic viability of NSAs. And, as noted in Bank One's initial comments, third parties would still enjoy greater procedural opportunities to challenge NSA renewal or modification proposals than third parties enjoy with respect to similar contracts before other American regulatory agencies and many foreign postal authorities.

## CONCLUSION

Bank One respectfully requests that the Commission modify its proposed rules as explained here and in Bank One's initial comments.

Respectfully submitted,

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