

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

Rules Applicable to Renew or Modify  
Previously Recommended Negotiated  
Service Agreements

Docket No. RM2005-3

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE  
(April 11, 2005)

On February 10, 2005, the Postal Rate Commission issued Order No. 1430, soliciting comments on proposed rules for proceedings in which it will consider requests by the Postal Service to extend the duration of previously recommended and currently in effect negotiated service agreements ("NSAs"), 29 C.F.R. § 3001.197, and requests to modify previously recommended and currently in effect NSAs, 39 C.F.R. § 3001.198. The Commission set due dates of March 14, 2005, for initial comments, and today for reply comments.<sup>1</sup>

The Postal Service and five other participants -- the Office of the Consumer Advocate ("OCA"), Bank One Corporation ("Bank One"), Discover Financial Services, Inc. ("Discover"), HSBC North America Holdings, Inc. ("HSBC"), and Valpak Direct

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<sup>1</sup> PRC Order No. 1430, Docket No. RM2005-3 (February 10, 2005).

Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (collectively "Valpak") -- have submitted initial comments.<sup>2</sup>

The Postal Service hereby provides its reply to the issues raised in the various initial comments.

### **1. Length and Nature of Proceedings**

In its initial comments, the Postal Service urged the Commission to add language to proposed Rules 197(c) and 198(c), to provide that when the Commission decides to proceed under either rule (as opposed to proceeding under Rule 195 or Rule 196), "a schedule will be established which allows a recommended decision to be issued not more than 60 days after the determination is made to proceed under § 3001.197 [or 3001.198]." USPS Initial Comments at 2-3. Bank One and HSBC also urge explicit deadlines for "accelerated review" under Rules 197 and 198, specifically 45 days if there is no hearing and 90 days if there is a hearing. Bank One Initial Comments at 12-13; HSBC Comments at 3-4. Discover recommends time periods of 30 days without a hearing or 90 days with a hearing. Discover Initial Comments at 5.

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<sup>2</sup> See Initial Comments of the United States Postal Service ("USPS Initial Comments"); Office of the Consumer Advocate Comments In Response To Commission Order No. 1430 ("OCA Initial Comments"); Initial Comments of Bank One Corporation ("Bank One Initial Comments"); Initial Comments of Discover Financial Services, Inc. ("Discover Initial Comments"); Initial Comments of HSBC North America Holdings, Inc. ("HSBC Initial Comments"); and Comments of Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. In Response To PRC Order No. 1430 ("Valpak Initial Comments").

All of these participants appear to agree that there may, in certain circumstances, be proceedings under Rule 197 and 198 that involve discovery and hearings. Valpak, however, states that it is unclear whether there will be discovery or a hearing. Valpak Comments at 3.

While the rules do not mention discovery or hearings, it is the Postal Service's understanding that there may be cases under Rules 197 or 198 that require discovery and hearings. While the Postal Service believes that 60 days should normally be a sufficient time period, it agrees with Bank One, HSBC, and Discover that 90 days should be the maximum time period if there is a hearing, and that if there is no hearing a 30 or 45 day period should be adequate.

## **2. Proceedings If the Commission Does Not Proceed Under Rule 197 or 198**

In its initial comments, the Postal Service urged the Commission to make changes to the conclusions of sections 197(c) and 198(c), both of which currently provide that "the docket will proceed under § 3001.195" if the Commission determines that the docket should not proceed under § 3001.197 or § 3001.198. USPS Initial Comments at 3. The Postal Service suggested the following language be added to both sections: "or § 3001.196, as determined in the Commission's decision." USPS Initial Comments at 3. Bank One, HSBC, and Discover similarly urge that a renewal or modification denied accelerated review be entitled to the timetable of Rule 196, if appropriate. Bank One Initial Comments at 14-15; HSBC Initial Comments at 5;

Discover Initial Comments at 4. Valpak states that there is an ambiguity as to whether Rule 196 or 195 would apply. Valpak Initial Comments at 3.

No participant has argued that it would never be appropriate to proceed under Rule 196, and the Postal Service urges the Commission to leave that option open for cases where it decides that Rule 197 or 198 should not apply to a particular request.

### **3. Two Proposals By Bank One and HSBC**

Bank One and HSBC first recommend that the Commission make clear that the three enumerated examples of immaterial changes in proposed Rules 197(a) and 198(a) -- extending the duration of an NSA, correcting a 'technical defect,' and an unforeseen intervening event -- should be illustrative, but not exhaustive. Bank One Initial Comments at 10-11; HSBC Initial Comments at 2. The Postal Service agrees. While the three enumerated examples can be considered the most likely bases for a request for modification, there is no need for them to be exhaustive. Participants will have adequate opportunities to oppose, if they wish, a request by the Postal Service to modify an NSA on a different basis, should such a case arise.

Bank One and HSBC also urge the Commission to provide that where an NSA has been approved by the PRC, if a request to renew or modify it does not materially alter its terms, there should be a "rebuttable presumption" that it the NSA would not violate the Postal Reorganization Act. Bank One Initial Comments at 12; HSBC Initial Comments at 3. The Postal Service believes that where particular issues surrounding an NSA have been litigated, or could have been litigated, before the Commission when

the NSA was first recommended, there should be such a presumption. If a renewal or modification involves a change in rates or classifications, however, the Postal Service would expect to bear the burden of justifying such changes, as it does in other proceedings where it is the proponent of new rates and classifications.

#### **4. Spreadsheet Proposal Raised By OCA**

OCA states that "the Commission has, with one exception, properly balanced the goal of expedition against the duty to ensure that ratepayers not party to an NSA are protected against loss." OCA Initial Comments at 1. In seeking to fix this alleged exception OCA urges that "the use of identical spreadsheets in a renewal or modification case as were used in the original request greatly enhances the ability of the participants to evaluate the financial effect of new proposals." OCA Initial Comments at 1. OCA appears to take the position that such a requirement would "remove as much uncertainty as possible" in valuing an NSA, uncertainties including the lack of a "Capital-One-style stop-loss cap in Docket No. MC2004-3." OCA Initial Comments at 2.

The Postal Service does not believe that this requirement would achieve the goal articulated by OCA, much less would it be helpful to the NSA process. For example, the spreadsheets which the Postal Service created for the Capital One docket did not include a cap, as there was no cap in the request.

While the Postal Service acknowledges that it often will be helpful and expeditious to use spreadsheets that parallel the spreadsheets that it used in the

original NSA case, there may be reasons not to do so. There is no need for the rules to require such conformity.

#### **5. Valpak's Concern About Mailers' Motivation**

Valpak expresses a concern that mailers generally will not "be motivated to spend the funds" to challenge an assertion that an NSA renewal is substantially identical to the original NSA, Valpak Initial Comments at 1, and recommends that "OCA be charged with responsibility for investigating these factual matters." Valpak Initial Comments at 2. Valpak similarly expresses concerns that mailers may not be willing to expend resources to raise issues concerning whether costs would need to be updated, and urges that OCA be tasked with this responsibility. Valpak Initial Comments at 2.

The Postal Service expects the Commission to appoint OCA to represent the general public in proceedings under Rules 197 and 198, as it does in other cases. There is no need, however, to amend the rules to incorporate that practice, much less to increase the burden on OCA, which can decide for itself how to allocate its resources.

#### **6. Other USPS Proposals**

In its initial comments, the Postal Service also recommended some other minor modifications. To §§ 197(a)(4) and 198(a)(4), the Postal Service recommended that the Commission change a reference to all "studies" to read "special studies," which would conform to § 3001.196(4). USPS Initial Comments at 4. The Postal Service also recommended two changes to § 3001.198(a)(3): (1) to allow the Postal Service to present a "rationale for revising the schedule of rates or fees" when it seeks a

modification; and (2) to add the phrase "since the recommendation of the existing agreement" after "intervening event," which would clarify when an intervening event must occur, and do so in a manner that is consistent with language in § 3001.197(a)(3). USPS Initial Comments at 4. The Postal Service hereby reiterates these requests.

The Postal Service appreciates the Commission's efforts in fashioning these new rules.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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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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