

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON DC 20268-0001**

Rate and Service Changes To Implement )  
Functionally Equivalent Negotiated Service ) Docket No. MC2005-2  
Agreement With HSBC North America Holdings Inc. )

**INITIAL BRIEF OF HSBC NORTH AMERICA HOLDINGS INC.**

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HSBC North America Holdings Inc. (“HSBC”) respectfully submits this brief in support of its Request for approval of a proposed negotiated service agreement (“NSA”) with the United States Postal Service, filed jointly with the Postal Service on February 23, 2005.

**EXECUTIVE SUMMARY**

This case involves the fourth in a series of proposed NSAs involving financial institutions. The Commission has treated this proposal as functionally equivalent to the baseline NSA approved in Docket No. MC2002-2, the Capital One NSA case. The proposal clearly satisfies the standards established by the Commission in upholding the Capital One NSA and the two previous functionally equivalent NSAs, of Discover Financial Services (“Discover”) and Bank One Corporation (“Bank One”).

No participant has requested a hearing in this case, or indicated any intention to oppose the NSA or seek modification of its terms. Indeed, a scheduled settlement conference was canceled. There is good reason for this. No party has disputed that the NSA is likely to have a positive financial impact on the Postal Service. The NSA is thus likely to benefit other users of the mail by reducing the institutional cost contribution that the Postal Service needs to collect from mailers not party to the NSA. Finally, the

NSA will not harm or unduly discriminate against competitors, as the Commission has found in every previous NSA case.

## **STATEMENT OF FACTS**

### **A. Description Of HSBC**

HSBC and the other affiliates of the parent holding company, HSBC Holdings plc, comprise one of the largest banking and financial institutions in the world. These entities, collectively known as the HSBC Group, have over 10,000 offices and over 220,000 employees in 76 countries and territories in Europe, the Asia-Pacific region, the Americas, the Middle East and Africa. Harvey Direct (HSBC-T-1) at 2-3.

HSBC North America Holdings Inc. comprises all of the businesses of the HSBC Group in the United States and Canada, including those formerly owned by Household International, Inc. The businesses operating in the United States, referred to as “HSBC-North America,” now provide a comprehensive range of financial services in the United States to over 60 million customers. These services include personal financial services; commercial banking; corporate, investment banking and markets; private banking; and other financial activities. As a lender and credit card issuer, HSBC-North America is a direct competitor of Capital One, Discover and Bank One. *Id.* at 3.

HSBC-North America sends two types of mail in the United States: solicitation mail, which HSBC enters as either First-Class Mail or Standard Mail, and operational mail, which HSBC enters as First-Class Mail. *Id.* at 4-5. The scale of HSBC’s operations in the United States, and the volume of First-Class mail entered by HSBC, are expected to grow over the next few years. *Id.* at 5-8.

## **B. Description Of The NSA**

On February 23, 2005, pursuant to 39 U.S.C. §§ 3622 *et seq.* and 39 C.F.R. §§ 3001.190 *et seq.*, the United States Postal Service and HSBC jointly filed with the Commission a request for a decision recommending the establishment of rate and classification changes needed to implement an NSA between the Postal Service and HSBC. Accompanying the Request were the exhibits and supporting documentation required by Rule 190 *et seq.*, and the testimony of two witnesses: USPS witness Jessica A. Dauer (USPS-T-1), and HSBC witness John H. Harvey (HSBC-T-1).

As explained in the Request, supporting testimony, and errata thereto, the proposed NSA is designed to be functionally equivalent to the Capital One NSA recommended by the Commission in May 2003 in Docket No. MC2002-2, the Discover NSA recommended by the Commission in September 2004 in Docket No. MC2004-4, and the Bank One NSA recommended by the Commission in December 2004 in Docket No. MC2004-3. Like the three previous NSAs, the HSBC NSA includes: (1) a declining block rate discount structure, the purpose of which is to encourage the entry of larger volumes of First-Class Mail; and (2) an address correction element, under which the physical return of undeliverable-as-addressed (“UAA”) First-Class Mail marketing pieces is waived and replaced by the electronic transmission of address correction information. Dauer Direct (USPS-T-1) at 6-7.

The annual volume discounts specified in the NSA are as follows:

<b>Year 1 Volume Block</b>	<b>Incremental Discounts</b>
615,000,001 – 655,000,000	2.5¢
655,000,001 – 675,000,000	3.0¢
675,000,001 – 695,000,000	3.5¢
695,000,001 – 715,000,000	4.0¢
715,000,001 – 735,000,000	4.5¢
735,000,001 and above	5.0¢

<b>Year 2 Volume Block</b>	<b>Incremental Discounts</b>
725,000,001 – 765,000,000	2.5¢
765,000,001 – 785,000,000	3.0¢
785,000,001 – 805,000,000	3.5¢
805,000,001 – 825,000,000	4.0¢
825,000,001 – 845,000,000	4.5¢
845,000,001 and above	5.0¢

<b>Year 3 Volume Block</b>	<b>Incremental Discounts</b>
810,000,001 – 850,000,000	2.5¢
850,000,001 – 870,000,000	3.0¢
870,000,001 – 890,000,000	3.5¢
890,000,001 – 910,000,000	4.0¢
910,000,001 – 930,000,000	4.5¢
930,000,001 and above	5.0¢

See Dauer Direct (USPS-T-1) at 6-7.

The HSBC NSA also incorporates other terms and conditions found in the Capital One, Bank One, and Discover NSAs, such as waiver of the seal against postal inspection, preparation of the mail under certain address hygiene and operations standards, a minimum payment, similar cancellation and termination clauses, and a data collection plan. Dauer Direct (USPS-T-1) at 8; Request, Attachment F.

The HSBC NSA also contains two safeguards absent from the Capital One NSA: (1) negotiated increases in the volume thresholds for the second and third years of the

agreement; and (2) a mechanism for annual adjustment of the negotiated threshold increases. These mechanisms are designed to minimize the risk to the Postal Service of discount exposure (leakage) from the projected growth of HSBC's mail volume, while preserving the incentive for HSBC to increase its First-Class Mail volumes in response to the discounts offered by the NSA. Dauer Direct (USPS-T-1) at 9-12.

Finally, the Postal Service and HSBC have agreed to a "stop-loss" cap of \$9 million on the total discounts available to HSBC over the life of the NSA. This limitation is similar to the caps imposed by the Commission in the Capital One, Discover and Bank One NSA cases. HSBC believes that such a cap is unnecessary to protect the Postal Service against financial risk and is likely to reduce the upside potential of the NSA for both parties. As long as the Commission adheres to its current policy on stop-loss caps, however, HSBC is unwilling to incur the additional litigation costs, risks and potential delay entailed in seeking approval of an uncapped discount schedule. See Dauer Direct (USPS-T-1) at 12-13,18-20; Harvey Direct (HSBC-T-1) at 8-9.

### **C. Commission Proceedings**

On February 28, 2005, the Commission docketed the request as Docket No. MC2005-2, and appointed Shelley S. Dreifuss, the director of the Commission's Office of Consumer Advocate ("OCA"), to represent the interests of the general public. Order No. 1431 (February 28, 2005) at 8. Five parties intervened in the case: American Postal Workers Union, AFL-CIO; Discover Financial Services, Inc.; David B. Popkin; and Valpak Dealers' Association, Inc., and Valpak Direct Marketing Systems, Inc. (collectively "Valpak").

The Commission held a pre-hearing conference on March 24, 2005. No participant objected to the request of the Postal Service to treat the NSA as functionally

equivalent to the Capital One baseline NSA. No participant requested an evidentiary hearing. On March 29, 2005, the Presiding Officer ruled that the proposed NSA would be considered under Rule 196 as functionally equivalent to the Capital One NSA approved by the Commission in Docket No. MC2002-2, and that the discovery period would end on March 31, 2005, as suggested by the parties. Presiding Officer's Ruling No. MC2005-2/1 (March 29, 2005) at 4.

### **ARGUMENT**

Three issues are relevant in any functionally equivalent NSA proceeding under Rule 196(a)(6):

- (1) The financial impact of the NSA on the Postal Service over the duration of the agreement;
- (2) The fairness and equity of the NSA to other users of the mail; and
- (3) The fairness and equity of the NSA to the competitors of the parties to the NSA.

Presiding Officer's Ruling No. MC2005-2/1 at 2-3 (citing Rule 196(a)(6)).

As explained in the following pages, the record justifies Commission findings that the proposed NSA satisfies the criteria of 39 U.S.C. § 3622 and 3623; is fair and equitable to other mailers, including competitors of HSBC (*id.*, § 3622(b)(1) and 3623(c)(1)); will benefit other users of the mail by increasing the contribution received by the Postal Service (*id.*, § 3622(b)(4)); will have no adverse effect on the rates of other mailers (*id.*); will not cause any competitive harm to other users of the mail (*id.*); will improve the rate structure of the Postal Service in recognizing the degree of preparation of mail by the mailer; will reduce the Postal Service's costs (*id.*, § 3622(b)(6)); will allow the Postal Service to tailor its rates and classifications more closely to the specific needs and characteristics of HSBC (*id.*, § 3623(c)(5)); and will

cover the direct and indirect attributable costs of handling HSBC's mail and provide a reasonable contribution to the Postal Service's institutional costs (*id.*, § 3622(b)(3)).

**I. THE NSA IS LIKELY TO HAVE A POSITIVE FINANCIAL IMPACT ON THE POSTAL SERVICE.**

The record establishes that this NSA should produce a net contribution to the Postal Service of \$6.1 million over the life of the NSA: \$6.6 million in ACS cost savings plus \$4.1 million in increased contribution over the life of the NSA. Dauer Direct (USPS-T-1) at 13-17 & App. A and B (revised Apr. 14, 2005); *see also* Harvey Direct (HSBC-T-1) at 8-10.

**II. THE NSA IS FAIR TO OTHER USERS OF THE MAIL.**

For the same reasons noted in Section I, the NSA is likely to benefit other users of the mail within the meaning of 39 U.S.C. § 3622(b)(4), by increasing the contribution received by the Postal Service. The Postal Service estimates that the NSA will produce a net contribution to the Postal Service of \$6.1 million over the life of the NSA: \$6.6 million in ACS cost savings plus \$4.1 million in increased contribution, minus \$4.4 million paid in discounts. Dauer Direct (USPS-T-1) at 13-17 & App. A and B; *see also* Harvey Direct (HSBC-T-1) at 8-10.

**III. THE NSA WILL NOT HARM OR UNDULY DISCRIMINATE AGAINST COMPETITORS.**

Rule 193(f) requires the Commission to consider the impact of the NSA on competitors of the mailer party to the NSA and competitors of the Postal Service. With respect to a functionally equivalent NSA, Rule 196(a)(6)(iii) likewise requires consideration of the "fairness and equity of the [NSA] in regard to the competitors of the parties to the [NSA]." And 39 U.S.C. § 403(c) forbids the Postal Service from making any "undue or unreasonable discrimination among users of the mails," or "any undue or

unreasonable preferences to any such user.” The record offers no evidence that the proposed NSA would violate any of these norms. *Dauer Direct (USPS-T-1)* at 17-18.<sup>1</sup>

The Commission gave thorough consideration to these issues in the *Capital One* case. Concerns about competitive injury, the Commission found, “[did] not apply with much force” because *Capital One’s* competitors “did not object to the NSA during the proceeding” and “the party most likely to represent direct competitors, the American Bankers Association, signed the Stipulation and Agreement” supporting the NSA. *MC2002-2 Op. & Rec. Decis.* at 79 ¶ 5048. Volume discounts, the Commission further found, do not violate the antidiscrimination provision of 39 U.S.C. § 403(c) as long as the Postal Service offers functionally equivalent arrangements to similarly situated mailers. *Id.* at 27-28 ¶¶ 3023-3031, 92 ¶ 5076, 135-142 ¶¶ 7003-7023.

The Commission reached the same conclusion in the *Discover* and *Bank One* cases. *MC2004-4 Op. & Rec. Decis.* at 43-44; *MC2004-3 Op. & Rec. Decis.* at 79-80. None of the banking industry intervenors in either case opposed the NSA. The Commission determined in both cases that a finding of competitive injury from the proposed NSA was unwarranted in the absence of any claim of competitive injury from any competitor of the mailer co-proponent of the NSA:

With adequate notice provided, and the portion of the industry represented providing no negative comment, the Commission has no basis for finding any adverse competitive effect due to the DFS Negotiated Service Agreement, other than what is already discussed in Docket No. *MC2002-2*. A negative competitive effect could still exist, but there is no record evidence to support this conclusion.

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<sup>1</sup> As with the *Capital One* and *Discover* NSAs, the *HSBC* NSA raises no concerns about harm to competitors of the Postal Service itself. The Private Express Statutes give the Postal Service a legal monopoly over the delivery of First-Class Mail solicitation mail.

MC2004-4 Op. & Rec. Decis. at 44; *accord*, MC-2004-3 Op. & Rec. Decis. at 80 ¶ 6116.

The same conclusion is warranted here.

Moreover, to the extent that the availability or unavailability of an NSA has any competitive impact at all, this factor weighs in favor of the instant NSA proposal. Three direct competitors of HSBC—Capital One, Discover and Bank One—already have functionally equivalent NSAs approved and in place. One of the main purposes of the functionally equivalent NSA is to expedite the approval process so that the competitor which has already received an NSA does not receive a competitive advantage (in the form of postage discounts for a key input) while other similarly situated competitors seeking functionally equivalent NSAs are delayed by a cumbersome approval process.

As the Commission found in the Discover NSA case:

Preventing similarly situated mailers from obtaining functionally equivalent agreements is potentially discriminatory. By making a functionally equivalent agreement available to DFS, the Postal Service has taken an important step in reducing the potential for competitive harm caused by this style of agreement.

MC2004-4 Op. & Rec. Decis. at 44.

**CONCLUSION**

For the foregoing reasons, HSBC Corporation respectfully requests that the Commission recommend the proposed NSA as proposed.

Respectfully submitted,

*/s/*

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April 20, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that I have today caused the foregoing document to be served in accordance with Section 12 of the Commission's Rules of Practice

*/s/*

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David M. Levy

April 20, 2005