

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

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

OFFICE OF THE CONSUMER ADVOCATE
COMMENTS ON THE HSBC NSA
(April 20, 2005)

Presiding Officer's Ruling No. MC2005-2/1¹ established a procedural schedule for the instant proceeding that calls for the filing of initial briefs by April 20, 2005. The Office of the Consumer Advocate (OCA) hereby submits its comments on the HSBC NSA.

The agreement forged between the Postal Service and HSBC appears to be closely modeled on the NSA approved by the Commission in Docket No. MC2004-4, i.e., the Postal Service-Discover (DFS) NSA. As with the Capital One NSA² and the two subsequent NSAs filed as functionally equivalent to the Capital One NSA – with Discover and Bank One³ -- the fundamental characteristics of address correction and a rate volume discount element declining block are the essential elements of the HSBC agreement. The Commission articulated its views on functional equivalence in PRC Op. Docket No. MC2004-4.⁴

¹ Issued March 29, 2005.

² Docket No. MC2002-2.

³ Docket No. MC2004-4 and MC2004-3, respectively.

⁴ At 2.

While the DFS Negotiated Service Agreement is functionally equivalent to the Capital One Negotiated Service Agreement, it is not, nor is it required to be, identical. The DFS Negotiated Service Agreement is tailored to DFS's unique situation. For example, the DFS Negotiated Service Agreement includes discounts and volume levels applicable exclusively to DFS's mailing characteristics. It also includes contract terms and conditions, such as a yearly threshold adjustment, which were negotiated specifically to address DFS's interactions with the Postal Service. The necessity to tailor specific rates and classifications to a particular mailer is a characteristic of a Negotiated Service Agreement classification, which might not be present with a more inclusive type of classification.

The HSBC NSA thus reflects HSBC's particular mailing characteristics and business activity, but is not fundamentally different from either the Capital One or the DFS NSAs.

Of particular significance is that the NSA under consideration honors the Commission's preference for a stop-loss mechanism by incorporating a negotiated savings cap over the life of the agreement. In the DFS opinion, the Commission remarked that the \$13 million "competitive cap" negotiated by DFS was intended to be proportional to the savings cap obtained by Capital One.⁵ The Commission calculated a stop-loss cap of \$11.8 million using the same methodology that it employed in the Capital One proceeding.⁶ While the Commission did not wholeheartedly endorse DFS' approach of negotiating a proportional, competitive cap, it did find that DFS and Capital One were similarly situated with respect to mailing practices and characteristics.⁷

The Commission eventually held that:

⁵ PRC Op. MC2004-4 at 37.

⁶ Id.

⁷ Id. at 40.

The \$13 million competitive cap value is reasonable in comparison to the \$11.8 stop-loss cap calculated by the Commission. The competitive cap has the advantage of being acceptable to the parties to the contract as it was determined by agreement through arms-length negotiations. The higher value lessens the concern that potential new volume will be cut off because of an overly restrictive cap. The Commission accepts the proposition that there is more than one reasonable value for a cap, as long as the cap serves its intended purpose. The Commission finds that the competitive cap serves the intended purpose of protecting the Postal Service (and other mailers not party to the contract) from undue financial risk or harm due to uncertainties in mail volume forecasts, and other exogenous factors.

In light of the Commission's approval of DFS' negotiated cap, OCA finds no reason to oppose the HSBC negotiated cap. As Postal Service witness Dauer testifies, the negotiated cap adds a "competitive adjustment" to ACS cost savings calculated by the Commission's approved method.⁸ The HSBC negotiated cap appears similar enough to the DFS cap that it can win Commission approval also.

In response to interrogatory OCA/USPS-T1-5, witness Dauer states that the data collection reports for the HSBC NSA will be closely modeled after the Capital One Data Collection Report filed on January 31, 2005. OCA staff closely reviewed that report and found that there were some mistakes and some formatting approaches that made review of electronic documentation by those outside the Postal Service difficult. OCA is working informally with the Postal Service to improve future NSA data collection reports and we are hopeful that future reports will be more accurate and easier to audit.

OCA must introduce a note of caution with respect to future NSAs that are based on the cost analysis presented by witness Crum in Docket No. MC2002-2. Witness Dauer's response to interrogatory OCA/USPS-T1-3 confirms that the Crum analysis of manual and electronic return costs was developed in a pre-PARS era, but that even

⁸ USPS-T-1 at 13.

currently PARS is deployed at facilities that are expected to process slightly less than one-quarter of UAA machinable letter volume. The target date for full deployment of PARS is October 2007, pending approval by the Governors. While the HSBC NSA will be affected by PARS deployment, OCA did not find the impact of PARS significant enough to insist on revising Crum's analysis for purposes of the instant proceeding.

In addition, Postmaster General Potter announced in his Keynote Address at the National Postal Forum on March 21, 2005, that he wants the Postal Service to cut UAA mail by 50 percent in the next several years. Stiffer mailer requirements and changed operations for processing UAA mail will also have an impact on the return costs estimated by witness Crum.

In summary, while OCA does not oppose the current HSBC NSA, it may oppose more vigorously future NSAs that depend on evidence presented in the Capital One proceeding that is quickly growing out of date.

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