

ORDER NO. 1444

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

George Omas, Chairman;
Tony Hammond, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway;
and Dawn A. Tisdale

Rate and Service Changes To Implement
Functionally Equivalent Negotiated Service
Agreement With Bank One Corporation

Docket No. MC2004-3

NOTICE TO PARTICIPANTS AND OTHER INTERESTED PERSONS
OF PETITION TO REOPEN RECORD

(Issued September 27, 2005)

On September 14, 2005, J.P. Morgan Chase & Co. (Chase) filed a petition to reopen the record in this docket so that it can provide supplemental information for the Commission's reconsideration of the Bank One Opinion and Recommended Decision Approving Negotiated Service Agreement issued December 17, 2004.¹ Chase argues that it has been denied due process, and unless it has a timely opportunity to supplement the record, a profound injustice will result.

If the Commission grants the Chase Petition, issues potentially may be considered related to Negotiated Service Agreements based solely on pure volume-based discounts. These novel issues may not have been fully considered or litigated

¹ Petition of J.P. Morgan Chase & Co. to Reopen Record, September 14, 2005 (Chase Petition). Bank One Corporation, the original party in this case, merged with J.P. Morgan Chase & Co. on July 1, 2004. The merged entity now refers to itself as J.P. Morgan Chase & Co.

under the original Bank One Request.² The Bank One Request was filed as a request to consider a Negotiated Service Agreement functionally equivalent to the Capital One Negotiated Service Agreement based on a declining block rate volume discount element and an address correction cost savings element.

On September 27, 2005, the Commission issued Notice of Inquiry No. 1 Regarding Status of Settlement Agreement (NOI) seeking comments as to the status of the settlement agreement signed by a majority of the participants in the Bank One case, and seeking further background information necessary to evaluate the Chase Petition. Two of the questions posed in the NOI, pertaining to adequacy of notice, and to the use of the Bank One record for setting standards for Negotiated Service Agreements predicated on pure volume based discounts, may be of interest to interested persons who have not intervened in the Bank One case. The Commission invites both participants and interested persons who have not intervened in the Bank One case to comment on these or any other questions posed in the NOI. Comments may be submitted on or before October 14, 2005. Reply comments may be submitted on or before October 24, 2005.

NOI questions 6 and 7 may be of interest to interested persons who have not intervened in the Bank One case, and are repeated below:

NOI Question 6. The Commission has noted, in PRC Order No. 1443, that adequacy of notice is an extremely important issue especially where a request has been filed under expedited rules for functionally equivalent agreements. The functionally equivalent rules are meant to send a clear signal that no new major issues are present in the request. Reopening the record opens the possibility for consideration of novel issues related to pure volume-based discount Negotiated Service Agreements. Interested persons who have not intervened in this docket potentially may allege that inadequate notice has been provided to alert them to the existence of novel and precedent setting issues. How should the Commission view this potential problem, and what possible steps can the Commission take to alleviate this situation?

² Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement Functionally Equivalent Negotiated Service Agreement with Bank One Corporation, June 21, 2004 (Bank One Request).

NOI Question 7. The Bank One Negotiated Service Agreement is based on a declining block rate volume discount element and an address correction cost savings element. The Bank One Negotiated Service Agreement request was filed as an agreement functionally equivalent to the Capital One Negotiated Service Agreement, which also included volume discount and cost savings elements. The Bank One record was developed considering both elements. Reopening the Bank One record potentially will lead to the consideration of issues directly related to Negotiated Service Agreements based solely on pure volume-based discounts. Given this potential, both participants and interested persons who have not intervened in this docket are invited to comment on the use of the Bank One docket to potentially decide issues related to Negotiated Service Agreements based solely on pure volume-based discounts.

Presiding Officer's Ruling Granting the Postal Service Motion for a Stay and Establishing a Date for Replies to the J.P. Morgan Chase Petition was issued on September 15, 2005 (P.O. Ruling No. MC2004-3/9). This ruling established a September 29, 2005 date for participants to provide responses to the Chase Petition. It also stayed previously scheduled dates for comments and reply comments in regard to the Commission's reconsideration of the Bank One decision. In light of the Commission's need to obtain more information before issuing a ruling on the Chase Petition, the date for responses to the Chase Petition shall be extended until October 31, 2005.

The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

It is ordered:

1. Comments in response to Notice of Inquiry No. 1 Regarding Status of Settlement Agreement, issued September 27, 2005, may be submitted on or before October 14, 2005. Reply comments may be submitted on or before October 24, 2005. Interested persons who have chosen not to intervene in the Bank One case also are invited to provide comments.
2. The date for participants to reply to the Petition of J.P. Morgan Chase & Co. to Reopen Record previously established by P.O. Ruling No. MC2004-3/9 shall be extended until October 31, 2005.
3. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

By the Commission.

(S E A L)

Steven W. Williams
Secretary