

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

**RATE AND SERVICE CHANGES TO
IMPLEMENT FUNCTIONALLY EQUIVALENT
NEGOTIATED SERVICE AGREEMENT WITH
BANK ONE CORPORATION**

DOCKET NO. MC2004-3

**RESPONSE OF ASSOCIATION FOR POSTAL COMMERCE TO NOTICE OF
INQUIRY NO. 1 REGARDING STATUS OF SETTLEMENT AGREEMENT**

(October 14, 2005)

The Association for Postal Commerce (“PostCom”) hereby responds to the Commission’s Notice of Inquiry No. 1 regarding the status of the settlement agreement. Specifically, PostCom responds to Question 6 of NOI-1, which asks for comment regarding “the possibility for consideration of novel issues related to pure volume-based discount Negotiated Service Agreements.” NOI-1 at 9. PostCom supports J.P. Morgan Chase & Co.’s (“Chase”) petition to reopen the record and believes that this concern is irrelevant to the Commission’s decision.

Quite simply, whether “novel and precedent setting issues” might be presented on the reopened record is of no import to determining whether the record should be reopened. Chase has requested that the record be reopened to provide additional data regarding actual mail volumes, and to add any relevant testimony offered by the proponents of the agreement. As Chase has plainly shown, such a presentation is necessary for a fair hearing in this docket.

The Commission is charged with deciding the case before it. Thus, concerns about how the Commission's rulings in this case will be applied in other cases are irrelevant. The Commission is charged with determining whether the Chase NSA is a functionally equivalent agreement. Specifically, it must decide whether a stop-loss cap is a necessary feature of a functionally equivalent agreement. The Commission should confine itself to making this determination without concern for issues that may or may not arise in future cases, including cases now pending.

As a corollary, the Commission should not decide any issues that are not germane to the proceeding before it. Thus, in reopening the record, the Commission should take great care to consider only those issues directly related to the Chase NSA. The Commission should not allow this proceeding to become a forum for the airing of general policy concerns only tangentially related to the specific issues before it. The Commission has the power to exclude testimony or discovery that raises issues extraneous to this proceeding, and it should use this power accordingly. To do otherwise not only prejudices Chase but also prejudices the outcome of other cases.

Respectfully submitted,

Ian D. Volner
Rita L. Brickman
Matthew D. Field
Venable LLP
575 7th Street, NW
Washington, DC 20004-1601
(202) 344-4814
idvolner@venable.com
Counsel to PostCom

DC2:\689615