

Before the
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Rate and Service Changes to Implement)
Functionally Equivalent Negotiated Service) Docket No. MC2004-3
Agreement with Bank One Corporation)

OFFICE OF THE CONSUMER ADVOCATE
RESPONSE TO NOTICE OF INQUIRY NO. 1
(October 14, 2004)

The Office of the Consumer Advocate (OCA) hereby responds to Notice of Inquiry No. 1 (NOI), issued September 27, 2005. The NOI poses nine questions, of which the last five are directed to all participants. Before responding to individual questions, the OCA would like to summarize its views on further procedures related solely to the Bank One NSA.

As the NOI states, the OCA is bound by a settlement agreement. That agreement limits the signatories' filing of documents in this docket to those supporting the settlement or those requested by the Commission. The OCA considers itself bound by that agreement, *so long as the record remains materially the same* as it was at the time OCA signed the agreement.

The OCA views the declaration of witness Plunkett as providing clarifying information that does not inject new issues or otherwise materially alter the record. The OCA would not withdraw from the settlement if the record were reopened for the sole purpose of receiving the Plunkett declaration into evidence.

Question 5 of the NOI asks whether signatories to the settlement will be disadvantaged if a petition of J.P. Morgan Chase & Co. (Chase) to reopen the record is granted in full. The OCA did not anticipate that the Commission would find the Bank One NSA to be not functionally equivalent to the Capital One NSA. As a signatory to the settlement agreement, OCA can understand Bank One's interest in taking further steps to have the settlement agreement become fully effective. OCA does not press for the record to be reopened, nor does OCA object to a reopening. So long as the supplementary evidentiary material provided by Bank One is similar in nature and effect to that which underlies the settlement agreement, OCA would not view itself as disadvantaged. If the supplementary evidence constitutes a major departure from evidence previously filed, at the very least, OCA may wish to ask questions about such material. If OCA is able to participate in this type of procedure, we would not view ourselves as being disadvantaged.

We further observe that the precedential value of a decision recommending the implementation of the Bank One NSA would seem to be limited to situations where protections have been crafted such as those incorporated into the settlement agreement and where the Postal Service can and does perform the kind of analysis described in the Declaration of witness Plunkett.

A full-blown reopening of the record would create problems for the OCA, particularly with respect to the Postal Service's Memorandum of May 16, which included the declarations of Drs. Samuel Hadaway and John Matthews. The May 16 Memorandum contains material directed at issues more general than those raised by

the specific terms of the Bank One NSA. Other than the Plunkett Declaration, the materials in the Memorandum appear to be directed at other issues raised in the Governors' Decision, such as general evidentiary standards to be met in any case requesting an uncapped NSA. These issues can and should be addressed in a different docket.

Questions 6 and 7 ask how the Commission should deal with pure volume discounts (*i.e.*, no cost savings or other risk-mitigating cushion) in a reopened Bank One proceeding. Since the Bank One NSA *does* have cost savings, the issue of pure volume discounts does not need to be resolved in a reopened proceeding. This issue can and should be addressed in a different docket.

Question 8 asks for participants' plans for discovery and/or rebuttal testimony if the record is reopened. The OCA would expect to conduct discovery on any material from the May 16 Memorandum other than the Plunkett Declaration. If the other declarations were admitted into evidence, the OCA would probably file rebuttal testimony. The OCA would object to admission of any unsponsored material in the Memorandum. As for testimony accompanying new volume data, the OCA would have to determine whether such testimony would materially alter the record on which the OCA based its decision to settle.

Question 9 asks for suggestions to improve the procedures adopted in Order No. 1443. In that Order (at 13), the Commission stated,

Separating the uncapped volume-based discount issue from the reconsideration allows all participants to fully address all issues without regard to their status or obligations as signatories.

OCA understands this statement to mean that a pure, uncapped volume-based discount (not reflecting NSA-generated cost savings) would be best addressed in a separate proceeding – one in which OCA (and other litigants) were not previously restricted by the provisions of a settlement agreement. This “separation” of a pure volume discount from other issues to be addressed in a reopened Bank One proceeding is a sound step and OCA supports it.

In conclusion, the OCA believes that with the addition of the Plunkett Declaration to the record, the Commission can approve the settlement agreement.

Respectfully submitted,

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