

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

**Rate and Service Changes To Implement
Baseline Negotiated Service Agreement
With Bank of America Corporation**

Docket No. MC2007-1

**MOTION OF THE AMERICAN POSTAL WORKERS UNION, AFL-CIO
TO RE-SCHEDULE HEARING ON CO-PROponents' CASE IN CHIEF FOR
JUNE 7, 2007
(May 1, 2007)**

The American Postal Workers Union, AFL-CIO (APWU) hereby respectfully requests that the Postal Regulatory Commission postpone the hearing on the co-proponents case in chief, currently scheduled for May 8, 2007, for 30 days, to and including June 7, 2007

Following a March 14, 2007, settlement conference, the Postal Regulatory Commission issued Presiding Officer's Ruling MC2007 -1/1 establishing the procedural schedule for this docket , on March 20, 2007. This schedule provided that discovery on co-proponents direct case would close on April 6, 2007 and hearings on the direct case would be held on May 8, 2007.¹

It is necessary to postpone the hearing in this matter for several reasons:

1. On April 30, 2007, the Postal Service filed its opposition to the APWU's Motion for Issuance of a Subpoena. In its opposition, the Postal Service offered to provide Brent Raney for "cross-examination" before the Commission at its May 8, 2007, hearing in this matter. Thus, the Postal Service has acknowledged that Mr.

Parties intending to conduct cross-examination of either BAC witness Richard Jones (BAC-T-1) or USPS witness Ali Ayub (USPS-T-1) must provide written notice of this intent by today, May 1, 2007. ¹

Raney possesses relevant and discoverable information in this matter, but Raney has not previously been identified as a Postal Service witness or made available to the interveners in this proceeding for direct examination. It would be wasteful of the Commission's time, disorderly, and unfair to the interveners who wish to question him, to require that the first round of discovery from Mr. Raney take place before the full Commission.

The APWU will be filing a response to the Postal Service Opposition to APWU's request for a subpoena in which APWU will:

- Agree to substitute Mr. Raney for Mr. O'Tormey, without waiving the right to seek additional testimony from Mr. O'Tormey if necessary; and
- Seek the right to take Mr. Raney's deposition before a single member of the Commission or before a designee of the Commission rather than before the full Commission.

Mr. Raney was identified to the Commission and the Interveners in this proceeding only after the APWU demanded access to a witness who could provide information about Postal Service automation programs and their effect on read rates since 1999. The Postal Service has acknowledged that it has implemented automation enhancement programs since 1999. The APWU sought the deposition of Mr. Walter O'Tormey, who certainly would know the effect of those programs on automation read/accept rates. It was only after the APWU demanded such information that the Postal Service identified Mr. Raney and offered to make him available for "cross examination." Due process and fundamental fairness require that an appropriate period be permitted for discovery from Mr. Raney now that he

has been identified. Furthermore, inasmuch as there is no certainty that Mr. Raney an actually provide the necessary information about current read/accept rates, it may still be necessary to conduct further discovery, perhaps from Mr. O'Tormey, after discovery from Mr. Raney.

2. A second, and independently sufficient, reason to postpone the hearing in this matter until June 7, 2007, is that the Postal Service has only provided its answers to interrogatories filed by the APWU, by the OCA, and by ValPak, on the past two days.² The interveners are entitled to, and the APWU intends to, file followup interrogatories within seven days after the Postal Service filed its interrogatory responses. That process alone will require an extension of the hearing date, even assuming that the Postal Service uncharacteristically files its answers to the followup interrogatories in a timely manner. Furthermore, the Postal Service's interrogatory responses have raised serious issues about the propriety of using the outdated 1999 data the Postal Service and BAC propose to use in their NSA.

² To date the Postal Service has filed 22 Motion for Acceptance of Interrogatory Responses out of Time covering approximately 70 interrogatories. Half of those Motions were filed on or after April 6, 2007, the close of discovery on the co-proponents' case in chief. Even though discovery closed 25 days ago, there are still outstanding interrogatory responses due from both co-proponents in this case. For example, BAC has not yet responded to OCA/BAC-T1-6 propounded on April 5, 2007. BAC has also not followed up its response to OCA/BAC-T1-5 filed on March 23, 2007 that promised to provide the actual volumes of First-Class Mail and Standard Mail for 2006 as soon as they became available. The actual volumes of BAC First Class and Standard mail for the year 2006 are clearly relevant and necessary to an evaluation of the proposed NSA. BAC mail volume is a foreseeable topic of inquiry of BAC witness Jones. However, no party can prepare for the examination without this information, which was requested almost two months ago on March 9, 2007. Over a month ago the APWU submitted interrogatory APWU/USPS-T1-1 to Postal Service witness Ayub. After keeping the APWU and other interested parties waiting, without any explanation, for thirty-five days the Postal Service finally responded to the interrogatory today. However, the response is but a "partial response." Given the import of the information requested in APWU/USPS-T1-1 parties must be given an opportunity to cross-examine the Postal Service on the information is ultimately provides. The hearing is currently scheduled for one week from today, it is not possible for the parties to prepare meaningful cross-examination on this topic in such a short period of time and with a complete answer still outstanding.

3. An example of the need to file followup interrogatories is provided by an attachment to the Response of USPS witness Ayub to an Interrogatory of the OCA (OCA/USPS-T1-35). Mr. Ayub attached to his response what appears to be a powerpoint slide presentation that Mr. Ayub states was presented by someone other than Mr. Ayub. Thus, Mr. Ayub neither prepared nor presented the slides. It is unfortunate that the Postal Service chose to present these slides through Mr. Ayub, therefore, because the slides raise serious questions that must be answered by someone who knows how the information in the slides was prepared and what it means. For example:

The slides are dated February 20, 2007, but Mr. Ayub states that the presentation was given by Pritha Mehra at a meeting of MMA on April 7, 2007.

Pages 17 through 27 of the 29-page slide show are labeled “draft,” raising a question about the authenticity of the document.

At page 6, the slides indicate that “high barcode quality results in 98% average scan rate.”

At page 8, the slides state that high quality pieces receive a 99% pass rate on Merlin and the same 99% operational scan rate.

These statements raise profound doubts about the accuracy of the Postal Service claims that it cannot provide any more accurate and up-to-date read/accept data to use at the baseline in this case than the outdated 1999 aggregate data it proposes to use.

For these and other reasons, the hearing in this matter must be postponed, the APWU respectfully requests that the hearing be re-scheduled for June 7, 2007.

Respectfully submitted,

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