

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

**ANSWER OF UNITED STATES POSTAL SERVICE  
IN OPPOSITION TO MOTION OF THE AMERICAN POSTAL WORKERS  
UNION, AFL-CIO, FOR AN ORDER COMPELLING PRODUCTION OF  
DOCUMENTS AND INFORMATION**

(June 22, 2007)

The American Postal Workers Union, AFL-CIO (APWU) filed the subject motion on June 15, 2007, requesting an order compelling the Postal Service to produce certain documents and to answer an interrogatory, as follows:

**Documents to be Produced:**

1. Copies of all periodic or special studies, documents or reports issued, produced or used by the Postal Service since 1999, including all reports to the Board of Governors, that concern the efficacy of the Wide Field of View Camera installed on postal mail processing equipment during 2003 and 2004; and
2. Copies of all periodic or special studies, documents or reports issued, produced or used by the Postal Service since 1999 that concern read/accept rates of the type used or referred to by the USPS and BAC in their proposed Negotiated Service Agreement submitted to the Postal Regulatory Commission in Case No. MC2007-1.

**Interrogatory to be Answered:**

Identify a USPS official, or if necessary more than one official, who is familiar with (1) the existence and contents of USPS studies, documents or reports that concern read/accept rates at the national, regional, and

local levels in operations that process the type of mail that is mailed by BAC and that is at issue in this case; and (2) read/accept rates on postal automation used to process the type of mail that is mailed by BAC and that is at issue in this case.

The Postal Service hereby opposes the APWU motion, except to the extent noted below. APWU states that it has filed the motion “pursuant to Section 21 of the Rules of Practice” which provides that “[a]n application for an order or ruling not otherwise specifically provided for in this part shall be by motion.” The catch-all provision of Section 21 does not apply, however. The APWU motion requests the Commission to require the Postal Service to produce certain documents and to answer an interrogatory. The motion, therefore, is a request for an order allowing further discovery from the Postal Service. Discovery is governed by Sections 25 through 28. Those rules make clear that discovery is not open-ended. Rule 25, in particular, specifies:

Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant’s direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

APWU’s latest discovery requests are clearly untimely under these rules. The Postal Service’s direct case was received into evidence on June 14, 2007, along with the supporting testimony sponsored by Bank of America Corp. (“BAC”), and all of the discovery responses of the two NSA proponents that were designated by any participant or the Presiding Officer. Moreover, none of the

participants in this case has filed a notice of intent to submit a direct case. See, e.g. APWU Notice of Intent Not to File Rebuttal Testimony (filed on June 20, 2007); see also Office of the Consumer Advocate Notice of Intent Not to File a Direct Case (filed on June 15, 2007). Discovery on the Postal Service in this proceeding, therefore, has ended. Without the filing of direct testimony by other participants in response to the co-proponents' case-in-chief, there is no basis for filing rebuttal (i.e., third round) testimony, and therefore no ground for conducting discovery to support such rebuttal testimony. APWU provides no justification for the untimeliness of its latest discovery requests, beyond asserting their relevance.<sup>1</sup> This simply begs the question. Relevance is certainly a necessary condition for allowing a discovery request, but is clearly not a sufficient condition when the request is untimely. While mitigating factors sometimes may excuse a failure to meet a discovery deadline, APWU does not – and cannot – assert any legitimate mitigating factor here. The Postal Service filed its proposed testimony on February 7, 2007, three and a half months ago. The first interrogatories concerning this testimony were filed on February 15, 2007. The two other participants raising questions about the NSA – OCA and Valpak – filed over 70 interrogatories by March 9, 2007. APWU filed no discovery requests at all until March 27, 2007, seven weeks into the discovery period, when it filed three interrogatories.

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<sup>1</sup> The motion states only that a central issue in the case is whether read/accept rates from 1999 that form the baseline in the BAC NSA are valid, and posits that the evidence of record establishes they are not a valid basis for determining improvements in BAC read/accept rates under the NSA hence the need for additional information on the effect of automation changes since 1999 on read/accept rates.

Seizing upon delays by the Postal Service in answering the large flurry of discovery requests near the end of the discovery period, APWU belatedly began its own discovery in earnest in late April. On April 24, 2007, APWU filed several documents, including Requests for Admissions by the Postal Service, a Motion to Compel a Response to APWU/USPS-T-1,<sup>2</sup> and a Motion to Stay Proceedings. On April 25, 2007, APWU filed a Motion for Issuance of a Subpoena to Compel Testimony and Production of Documents by Walter O'Tormey. All of these pleadings had, as their central focus, obtaining information related to improvements in letter mail processing read and accept rates since 1999.

The Postal Service and BAC bent over backwards to accommodate these requests. The Postal Service voluntarily offered to provide a witness specifically qualified to address APWU's requests for information on read and accept rates. Mr. Brent Raney, Manager of Technical Development/Applications, Engineering, was made available to respond to interrogatories and for cross-examination at the hearing on the Postal Service's direct case. With the consent of the participants, the Postal Service and BAC, the Commission postponed the hearing by more than one month, from May 8, 2007, to June 14, 2007. POR No. MC2007-1/5, May 3, 2007. Discovery directed to witness Raney, and any institutional discovery related to witness Raney, was allowed through May 25, 2007.

On May 9, 2007, APWU filed eight interrogatories, APWU/USPS-ST3-1-8, for response by Mr. Raney. The interrogatories sought information on Mr.

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<sup>2</sup> The Postal Service responded to this interrogatory out of time, along with a number of interrogatories from other participants, as it struggled to deal with the effects of staffing changes and the difficulties of coordination among many organizational units.

Raney's qualifications as an expert in the area of inquiry, and requested information related to read and accept rates of letter mail. Except for interrogatories 3(d) and 5, timely responses were filed by the Postal Service on May 23, 2007. The response to interrogatory 5 was filed on May 25, two days out of time. That interrogatory response provided the range of current accept rates. APWU conducted no further discovery probing the sources of information underlying this response despite ample time to conduct follow up discovery before the hearing. For example, APWU had ample opportunity to file additional interrogatories until May 25, and to follow-up on responses it had received even after that date. It did neither.

Now, in its interrogatory request, APWU asks the Postal Service to identify an official familiar with various sources of information on read and accept rates at various levels of aggregation. APWU had a full opportunity to ask for this information during the discovery period on witness Raney, and did not avail itself of that opportunity. APWU did not follow up his response at the hearing by asking further questions. Instead, APWU filed the instant motion after the June 14 hearing was over and the witnesses and parties dispersed.

The relief requested by APWU would undoubtedly lead to another hearing to cross examine the official identified by the Postal Service in its response to the interrogatory. This would require yet even more discovery beforehand, reprising the opportunity APWU already has had, but which it failed to utilize effectively, efficiently, and with due regard for conservation of precious Commission resources.

In an effort to stem further needless motions practice, the Postal Service stands ready to provide voluntarily the information as identified in its motion filed on June 20<sup>3</sup> under the protective conditions granted in Presiding Officer's Ruling No. MC2007-1/11. Based on the results of diligent searches, the Postal Service submits that its offer to provide this information under protective conditions essentially moots APWU's document production requests as set forth in its motion insofar as it relates to the efficacy of the WFOV Camera.<sup>4</sup> Beyond this, no further delay is warranted.

Rule 195, Requests to recommend a baseline Negotiated Service Agreement, section (b) indicates:

The Commission will treat requests predicated on a baseline Negotiated Service Agreement as subject to the maximum expedition consistent with procedural fairness. A schedule will be established, in each case, to allow for prompt issuance of a decision.

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<sup>3</sup> See Motion of United States Postal Service for Leave to File Certain Documents As Provided in the Postal Service's Response to Ruling of the Presiding Officer at Hearing on June 14, 2007 Under Protective Conditions (filed June 20, 2007). The Postal Service stated that it would provide documents containing information on improvements resulting from a Performance Improvement Plan (PIP) implemented in connection with the WFOV Cameras as well as information that discusses improvements in accept rates of barcode readers equipped with WFOV Cameras.

<sup>4</sup> See Motion of American Postal Workers Union, AFL-CIO for An Order Compelling the Production of Documents and Information by the United States Postal Service (filed June 15, 2007). The scope of APWU's request is very broad in that it requests a trail of documents from 1999 to present. Given the lack of a centralized computer, the Postal Service is conducting reasonable and diligent searches so as to identify and produce information as identified in its motion for protective conditions. See Motion of United States Postal Service for Leave to File Certain Documents As Provided in the Postal Service's Response to Ruling of the Presiding Officer at Hearing on June 14, 2007 Under Protective Conditions (filed on June 20, 2007). These searches are close to being completed and the undersigned counsel intend to file the information at the beginning of the week of June 25 under the protective conditions set forth in Presiding Officer's Ruling No. MC2007-1/11.

Since procedural fairness requirements have been met, the Commission should act to meet the requirements of Rule by allowing for a prompt issuance of a decision.

For the above reasons, the Postal Service requests that APWU's Motion be denied.

UNITED STATES POSTAL SERVICE

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

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