

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

**REPLY BRIEF OF AMERICAN POSTAL WORKERS UNION, AFL-CIO
(August 13, 2007)**

The Postal Service errs when it argues that because 1999 baseline data was used in R2006-1 the Commission should approve of the use of that data for this baseline NSA. The Postal Service also contends that it would be “manifestly unfair to hold BAC to a different benchmark than that used in Docket No. R2006-1 to determine discounts for all mailers.” USPS Initial Brief at 25. Determination of the main workshare discount in R2006-1 (between the benchmark and the average piece of workshare mail) did not depend on the 1999 baseline data used in this docket, MC2007-1, because the CRA data used in calculating the R2006-1 discounts did not depend upon the special survey that produced the 1999 baseline data used in the present case. Furthermore, use of the old baseline data to determine relative differentials between workshare rates would not be the same as using old baseline rates as current rates to determine an alleged absolute difference between current read rates and future changes in read rates. There is no evidence that it was inappropriate to use the old data to determine relative discounts between workshare rates, but the evidence in this case shows that the old data does not

reflect current read reads and cannot be used to determine the actual difference between read rates before and after the proposed NSA.¹

The Postal Service contentions that BAC will not accept any reduction of the discount proposed in the NSA, and that the critics of this excessive discount should have proposed an alternative discount (Initial Brief at 34 and 36), seem inconsistent. We do not presume to renegotiate the USPS/BAC deal for them. The deal they have proposed, however, is fatally flawed because of its use of outdated baseline data.

We observe that BAC errs in its assertion (BAC Initial Brief at 24) that the expiration of USPS ratemaking authority under pre-PAEA law “ensures, as a matter of law, that the Postal Service could not recover from other mailers a shortfall in contribution caused by this NSA... .” Any revenue shortfall will have to be redressed in the future alignment of rates. A shortfall in revenue could impact service for a wide variety of mail. The fact that the shortfall would reflect a unique and excessive discount provided to BAC (and perhaps to other large mailers following the baseline pattern) would ensure that the burden of recovering the shortfall would be born unfairly by other mailers not in a position to take advantage of the discount. But even if BAC’s argument were correct, it would simply mean that the burden of the gift to BAC would fall on the Postal Service instead of other mailers. This would be contrary to one of the fundamental purposes of the PAEA –

¹ The Postal Service failed to provide mailer specific costs as required by the Commission’s rules of practice (see Rule 193(e)(1)) and proposes to use this outdated baseline data as a proxy for mailer specific data. The old baseline data fails as an adequate proxy for the required mailer specific costs. see Valpak Initial Brief at 8-13; OCA Initial Brief at 4-7.

to bolster the Postal Service's financial position – and one of the principles underlying past NSAs that the NSA be at least revenue neutral for the Postal Service (Opinion and Recommended Decision MC2002-2 at ¶ 8013).

For the reasons stated herein and more fully explained in APWU's Initial Brief, the Commission should recommend that the proposed NSA be rejected.

Respectfully submitted,

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