

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

COMPLAINT OF CAPITAL ONE SERVICES, INC.

Docket No. C2008-3

**RESPONSES OF THE UNITED STATES POSTAL SERVICE  
TO INTERROGATORIES OF CAPITAL ONE SERVICES, INC.  
(COS/USPS-1-11)  
(August 22, 2008)**

The United States Postal Service hereby provides its responses to the following interrogatories of Capital One Services, Inc., filed on August 8, 2008: COS/USPS-1-11. The Postal Service has responded to these interrogatories in accordance with the Commission's Rules of Practice and Procedure. The Postal Service has not provided the additional information covered by Capital One's "Instructions," which were included as a preamble to COS/USPS-1-11, as that information is currently the subject of a pending Motion.<sup>1</sup>

Each interrogatory is stated verbatim, and is followed by the response.

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<sup>1</sup> See Motion of Capital One Services, Inc. to Strike A Portion of the Postal Service's Answer and for Clarification of Proceedings, Docket No. C2008-3, August 19, 2008, at 11-12 (requesting that the Commission require the certification of discovery responses by individual postal employees). The Postal Service intends to file a timely response to this Motion, to address those requested additional procedures and requirements.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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**COS/USPS-1.** The Answer of the Postal Service, filed July 21, 2008, admits Paragraph 42 of the Complaint, which states that “Mr. Kearney explained that the Capital One NSA would have to use mailer-specific baselines and that the discounts would have to be reduced to reflect that Capital One was not the ‘first’ adopter . . . . [C]hanges in the baselines and discount schedules were justified by changes in circumstances.”

A. Please identify each of the benefits to the Postal Service that arise directly and solely from Bank of America being the “first” adopter, and for each benefit, quantify the amount of benefit that the Bank of America NSA provides or may provide and the amount of benefit that the Postal Service believes the Proposed Capital One NSA would provide.

B. Please describe with specificity all “changes in circumstances” that you believe justify reducing the baselines and discount schedules in the Proposed Capital One NSA, the date each change occurred, the person or entity responsible for each change, the reason why each change justifies reducing the baselines and discount schedules, and a quantification of the reduction in benefit to the Postal Service from each change.

**RESPONSE:**

A. There are numerous, yet unquantifiable, benefits to the Postal Service that have arisen directly and solely from BAC being the “first” adopter of the key terms of the NSA.

Such benefits include, but are not limited to:

- Vendor adoption of full service IMB
- By/For information (information provided on a postage statement about mail sender and service provider)
- Maximizing seamless acceptance pilot size
- Electronic acceptance of commingled mail
  - Compliance of software vendors
  - Vendor acceptance of software changes
- Testing of mail.dat files for seamless acceptance

B. The “changes in circumstances” that have occurred do not necessarily translate to “reducing the baselines and discount schedules,” as this interrogatory assumes. As

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the Postal Service has consistently stated, the “changes in circumstances” simply counsel against offering *identical baselines, discounts, and terms and conditions* in a subsequent contract. But if the negotiation process with Capital One had progressed, it is possible that the parties would have come to an agreement on certain negotiated baselines that, in fact, would have provided Capital One with greater discounts in some respects.

There are two primary factors that compel the use of different baselines and discount schedules for a functionally equivalent NSA.<sup>1</sup> The first is the fact that Bank of America assumed considerable risk in becoming the first adopter of the NSA's requirements. Bank of America was confronted with numerous unknowns, particularly in dealing with unproven technological and mail processing initiatives. Any subsequent functionally equivalent NSA would present less risk and fewer unknowns to the customer and the Postal Service. Hence, the marginal value of any functionally equivalent NSA would be lower to the Postal Service, a factor which would have to be considered during the course of negotiating any functionally equivalent agreement.

The second factor is that Bank of America, given its tremendous size, motivated the postal industry to adopt new technologies. BAC faced the arduous task of moving vendors from all facets of the mail forward at least one year prior to the industry implementation date. The entire industry will accordingly benefit from Bank of America's efforts. Since Bank of America has already undertaken many of the major tasks to move the industry forward, the same effort would not be needed from other

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<sup>1</sup> For both of these factors, there is no specified date associated with any one event which precipitated a change in circumstances, as requested in COS/USPS-1(B). Moreover, these factors cannot be quantified.

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industry players. This is another factor which the Postal Service would have to take into account when negotiating any functionally equivalent agreement.

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**COS/USPS-2.** In its June 26, 2008, Answer in Opposition to Capital One's Motion for Bifurcation, the Postal Service refers to knowledge it has learned "on the road to implementation of the BAC NSA," and more specifically "asserts that knowledge it gained by undertaking regulatory and internal reviews of the BAC NSA can and should inform its judgment regarding any functionally equivalent NSA."

A. Please confirm that the only regulatory review relating to the Bank of America NSA is PRC Docket No. MC2007-1. Please specify how each finding of that regulatory review:

- (1) has informed the Postal Service's judgment regarding the Proposed Capital One NSA and its valuation of the benefits from such an NSA; and
- (2) has changed the Postal Service's valuation of the benefit of the Bank of America NSA from its expected value on February 7, 2007.

B. Please identify all "internal reviews" of the Bank of America NSA, including reviews of individual Postal Service departments and the OIG, formal and informal, and specify how each finding in each internal review:

- (1) has informed the Postal Service's judgment regarding the Proposed Capital One NSA and its valuation of the benefits from such an NSA; and
- (2) has changed the Postal Service's valuation of the benefit of the Bank of America NSA from its expected value on February 7, 2007.

**RESPONSE:**

A. Confirmed that the only regulatory review is found in Docket No. MC2007-1.

(1). The findings in the Commission's Opinion and Recommended Decision, Docket No. MC2007-1 informed the Postal Service's judgment regarding the proposed Capital One NSA, because the Commission, simply by recommending approval of the Bank of America NSA, made it possible that agreements functionally equivalent to the Bank of America NSA could be made available to similarly situated mailers. Therefore, the Postal Service understood that some mailers would be interested in negotiating a functionally equivalent NSA.

However, no finding in the Commission's regulatory review specifically addressed the definition of "functionally equivalent," or what would or would not qualify as functionally equivalent to the Bank of America NSA. The Postal Service understood,

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as is consistent with past NSA practice, that functionally equivalent NSAs contain structurally similar elements, but are negotiated separately, and may contain different thresholds and discounts than what were offered in the underlying baseline agreements.

Additionally, the Commission advised that, when possible, mailer-specific and/or the most up-to-date data should be used. Thus, the Postal Service contends that mailer-specific and/or the most up-to-date data should be considered during the course of negotiations with potential NSA candidates in determining thresholds and discounts for proposed functionally equivalent NSAs to the Bank of America NSA.

(2). The effect of the Commission's findings on the Postal Service's "valuation of the benefit" of the Bank of America NSA are stated in the section entitled, "Estimate of Anticipated Revenue," in the Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Regulatory Commission Approving Negotiated Service Agreement with Bank of America Corporation, Docket No. MC2007-1.

B. Objection filed.

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**COS/USPS-3.** Has the Postal Service accrued, accounted for, or provided any discounts to Bank of America under the Bank of America NSA, implemented on April 1, 2008? If so, please provide dates of any accrual, accounting, or provision of such discounts, explain how the amount of discounts was determined, provide the underlying measurements, and describe how those measurements were obtained. If not, please explain why. Please supplement your response as necessary pursuant to Paragraph 15 of the Instructions and Paragraph IV.B.4(a) of the Bank of America NSA.

**RESPONSE:**

No discount has been paid to date because the parties are discussing the calculation of the discount. The Postal Service has not accrued or accounted for any discounts.

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**COS/USPS-4.**

A. Have any oral or written modifications of the Bank of America NSA been proposed or discussed since January 9, 2007, by the parties to the NSA? Please identify each such proposal or discussion and indicate whether it has been agreed to, whether formally or informally.

B. Please certify that to date Bank of America has fully complied with every provision of the Bank of America NSA. Please supplement your response as necessary pursuant to Paragraph 15 of the Instructions.

**RESPONSE:**

A. The parties have not agreed to any oral or written modifications of the Bank of America NSA since January 9, 2007. Oral modifications are not permitted, as the contract specifies in Paragraph V.G that the agreement shall not be amended except expressly, in writing, by authorized representatives of the parties. The Postal Service and Bank of America have had a variety of confidential discussions related to implementation of the Bank of America NSA, but none to date have led to the exchange of proposed written modifications to the contract.

B. The Postal Service is unaware of any process of "certification" of compliance; therefore, the Postal Service is unable to "certify" that Bank of America has fully complied with every provision. However, the Postal Service represents that Bank of America is in compliance with the contract.

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**COS/USPS-5.** Paragraph 15 of the Postal Service's Answer states that "Respondent also denies Complainant's allegation that using up-to-date, mailer-specific baselines would not have 'fundamentally change[d] the nature of the NSA' as alleged by Complainant; it would simply have lessened the financial benefit to Bank of America."

A. Please describe and quantify how much "using up-to-date, mailer-specific baselines" would have "lessened the financial benefit to Bank of America," and explain your methodology for quantifying this reduction in financial benefit to Bank of America.

B. Does the Postal Service contend that Bank of America would not have implemented any of the Operational Commitments listed in Section III of the Bank of America NSA, or any portion thereof, unless it received the exact baselines set forth in Section IV of the Bank of America NSA and the financial incentives that flowed from those baselines? Please explain your answer.

C. Does the Postal Service contend that Bank of America would not have implemented the entire suite of Operational Commitments listed in Section III of the Bank of America NSA at one time, unless it received the exact baselines set forth in Section IV of the Bank of America NSA and the financial incentives that flowed from those baselines? Please explain your answer.

**RESPONSE:**

A. The Postal Service does not have mailer-specific baseline data for Bank of America, and therefore cannot describe or quantify how much using those baselines would have lessened the financial benefit to Bank of America.

B. The Postal Service lacks sufficient information to form an opinion as to what Bank of America would or would not have done with different anticipated discounts.

C. The Postal Service lacks sufficient information to form an opinion as to what Bank of America would or would not have done with different anticipated discounts.

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**COS/USPS-6.** In Docket No. MC2007-1, Postal Service witness Ali Ayub stated, “[T]he Postal Service recognizes an *affirmative obligation* to make comparable terms available to companies that are deemed functionally equivalent, thus obviating the possibility that any *competitor of BAC* need be affected by the Agreement.” USPS-T-1:26.

A. How does the Postal Service define “competitor of BAC,” as that term was used above?

B. Please indicate whether you agree with the following statement: “Capital One is a competitor of Bank of America.” If you do not agree, please explain your answer. If your answer is based on lack of sufficient factual information, please indicate what information you need to reach a definitive answer.

C. Did the Postal Service conduct any analyses or special studies, or evaluate formally or informally the potential effects of the Bank of America NSA on the marketplace or on competitors to Bank of America prior to filing Attachment E-7 of its Compliance Statement in Docket No. MC2007-1? If so, please describe the nature and extent of such reports and evaluations and any conclusions reached.

D. Did any discussions or communications take place at the Postal Service at any time to develop a procedure, process, or proposed response, formal or informal, to requests by mailers for an NSA similar to the Bank of America NSA? Please identify and describe any such communications, describe the procedures, process, or proposed responses considered and how they related to the Postal Service’s “affirmative obligation” above.

**RESPONSE:**

A. As the term was used above, competitors in this context can include large financial institutions with a full range of banking, investing, asset management and other financial and risk-management products and services covering both retail and online banking.

B. The Postal Service has no basis to disagree with this statement at this time.

C. Any such analyses are provided in the testimony of witness Ayub in USPS-T-1, Docket No. MC2007-1.

D. No specific procedures, processes, or proposed responses were developed to respond to mailers requesting an NSA similar to the Bank of America NSA, and thus, no discussions or communications took place to that end.

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**COS/USPS-7.** Please identify and describe all communications, internal or external to the Postal Service, that relate to Capital One's request for a mail processing NSA similar in any way to the Bank of America NSA.

**RESPONSE:**

Objection filed.

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**COS/USPS-8.** Please identify and describe all communications, internal or external, that relate to the request of any other mailer for a mail processing NSA similar in any respect to the Bank of America NSA. Please specifically identify and describe those communications that relate to the qualifications (or lack of qualifications) of that mailer for a Bank of America-type NSA. You do not have to identify the mailer by name, but please indicate the approximate amount of mail sent by the mailer and the industry that the mailer operates in.

**RESPONSE:**

Objection filed.

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**COS/USPS-9.**

A. In choosing to negotiate with Bank of America to pursue a baseline NSA for implementation of mail processing technologies, please indicate which of the following criteria the Postal Service used to evaluate the qualifications of Bank of America and list any other criteria that were used. Please indicate how the Postal Service evaluated or graded Bank of America on each of these criteria.

- Leader in the industry (please describe the “industry”)
- Amount of mail sent
- Type of mail sent
- Current level of efficiency of mail processing operations relative to the industry
- Effect of recent acquisitions/mergers on consolidation of mail processing operations
- Importance of mail to the company’s business
- Ease of implementation
- Precedential value of NSA
- Effect on developing key internal skills and capabilities of Postal Service
- Pre-existing relationship with USPS

B. Did the Postal Service evaluate Bank of America relative to other mailers? If so, how did the Postal Service quantify or otherwise conduct that evaluation, and how did Bank of America rank relative to other mailers? If Capital One was ranked, how did Capital One rank?

C. Before entering into an agreement with Bank of America, did the Postal Service notify any other mailers of its interest in finding an NSA partner for a mail processing NSA? Please identify and describe all such communications.

**RESPONSE:**

A. The Postal Service did not use specified criteria to evaluate or grade Bank of America in electing to engage in negotiations on the Bank of America NSA. The Postal Service, as is the case with most large mailers such as Bank of America, had a general understanding of Bank of America’s position in the financial services industry, its mail volume and mail mix, and its relationship with the Postal Service.

B. No.

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- C. No. The Postal Service did not have any specific interest in pursuing a mail processing NSA before entering into discussions with Bank of America. Other mailers were not solicited through a notification process, as suggested in this interrogatory.

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**COS/USPS-10.**

Does the Postal Service have any sort of contractual or legal relationship with any vendor or subcontractor of Bank of America that performs work related to the Bank of America NSA? If so, please describe.

**RESPONSE:**

Objection filed.

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**COS/USPS-11.**

The Postal Service's Opposition to the Motion to Bifurcate states at pages 4-5:

"The NSA requires BAC to adopt a number of operational commitments, many of which are under development, which would reduce the costs to the Postal Service of handling BAC mail."

A. For each "operational commitment" referred to above and for the suite of operational commitments as a whole, quantify the current "reduc[tion in] costs to the Postal Service" which are a direct result of these "operational commitments" and identify any updates to cost estimates made in 2007.

B. Please explain whether and to what extent the "reduc[tion in] costs" in (A) rely on mailer-specific information.

C. Is there any reason why the "reduc[tion in] costs" in (A) cannot be expressed on a per-piece basis? If so, please explain why.

D. Please identify individually which operational commitments are "under development" and the expected date that each such operational commitment will no longer be "under development."

E. Is Bank of America required to use any operational commitment for its mail while it is "under development"? Please explain.

F. Are the per-piece "reduc[tions in] cost" conditioned on key characteristics of Bank of America? If so, please describe those characteristics and answer parts (1) and (2) below:

(1) Would the adoption of the same "operational commitments" by another mailer result in the same per piece "reduc[tions in] costs" if that mailer had the same key characteristics? Please explain your answer.

(2) If Capital One had been the entity to enter into the MC2007-1 NSA, rather than Bank of America, would the "reduc[tions in] cost" on a per-piece basis have been different? Please explain your answer.

**RESPONSE:**

A. The benefits of the mandatory "operational commitment" or suite of commitments as a whole that Bank of America has agreed to adopt under the NSA remain unquantified by the Postal Service.

B. Not applicable. Though if the cost reductions were quantified, they would not rely on mailer-specific information.

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C. As stated in the Postal Service's Initial Brief in Docket No. MC2007-1 (p. 23-24), Bank of America's implementation of many of these operational commitments "will enable the Postal Service to test and measure the effectiveness of a variety of programs and processes . . . [and] provide the Postal Service with the opportunity to determine how well these programs work together to ensure efficient mail processing and delivery." In this context, the value of Bank of America's implementation does not depend on its impact on specific attributable acceptance, mail-processing, or delivery operations as they exist today, but rather on the information and experience the Postal Service has gained as a result of a controlled and measured early implementation of these systems and processes. This value is independent of the exact volume of mail sent by Bank of America, and any attempt to assign or attribute it on a per-piece basis is necessarily arbitrary, and would not provide a good indication of the value of additional "test" pieces.

D. The following operational commitments are still under development, and in different stages of development:

- Seamless Acceptance is currently undergoing pilot testing.
- Electronic mail documentation for commingled volume is currently in the process of Customer Acceptance testing.
- FAST for First-Class Mail is currently in the process to start pilot testing.

These operational commitments do not have expected dates of completion of all development processes at this time.

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- E. Bank of America is required to execute the NSA and its requirements, including operational commitments. Bank of America is required to participate in all pilot programs and adopt any NSA requirements and operational commitments once they become available.
- F. Not applicable – see the Postal Service's responses to (A-C)