

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

RATE AND SERVICE CHANGES TO IMPLEMENT  
BASELINE NEGOTIATED SERVICE AGREEMENT WITH  
WASHINGTON MUTUAL BANK

Docket No. MC2006-3

**RESPONSE OF UNITED STATES POSTAL SERVICE  
WITNESS AYUB TO INTERROGATORY OF THE OFFICE OF CONSUMER  
ADVOCATE (OCA/USPS-T1—6)**

The United States Postal Service hereby provides the response of witness Ayub to the following interrogatory of the Office of Consumer Advocate:

OCA/USPS-T1—1-6, filed on April 7, 2006. The interrogatory is stated verbatim and is followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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April 21, 2006

**RESPONSE OF USPS WITNESS AYUB TO INTERROGATORIES  
OF THE OFFICE OF CONSUMER ADVOCATE**

OCA/USPS-T1-6. This interrogatory seeks information that could assist in the evaluation of financial risk to the Postal Service from the proposed NSA.

a. Article II, Paragraph F, of the NSA refers to a “published figure” for “domestic active credit card accounts.”

i. Where is this figure published?

ii. Please provide this figure for 2003, 2004, and 2005.

b. Article II, Paragraph C, subparagraph 3, of the NSA states that correspondence with non-cardholders will count toward thresholds.

i. Did you or the Postal Service inquire of WMB as to previous annual volumes of such correspondence? If so, what was the response? If not, why not?

ii. Please provide the annual volumes of such correspondence for 2003, 2004, and 2005.

iii. Is such correspondence considered “customer mail” or “solicitation mail” for purposes of Article II, Paragraph K, subparagraph 1, of the NSA?

iv. Does such correspondence count toward the volume commitment of Article II, Paragraph J, of the NSA?

v. Is such correspondence included in the graph on page 18 of your testimony? If so, where?

c. Article II, Paragraph J, of the NSA is entitled “Solicitation Mail Volume Guarantee.” It includes the sentence, “If, in any year, Washington Mutual fails to meet this commitment, *the Postal Service may terminate this agreement*, and Washington Mutual will pay the Postal Service \$250,000.” (Emphasis added.)  
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i. Is the payment of \$250,000 contingent on the Postal Service’s terminating the agreement?

ii. Why is there a termination clause here, given the unconditional right of the Postal Service to terminate at any time under Article IV, Paragraph F, of the NSA?

d. Article III, Paragraph D, of the NSA requires WMB to pay \$250,000 if it fails to mail at least 375 million First-Class Mail pieces in Year 1.

i. Is this \$250,000 in addition to the \$250,000 penalty in Article II, Paragraph J, of the NSA? If not, why not?

ii. Why is there no termination clause in Article III, Paragraph D, given that there is such a clause in Article II, Paragraph J, of the NSA?

iii. If WMB fails to mail at least 375 million First-Class Mail pieces in Year 1 *and* the Postal Service terminates the agreement, would WMB owe \$500,000 to the Postal Service? If not, why not?

iv. If WMB mails 490 million First-Class Mail pieces in Year 1 *and* the Postal Service terminates the agreement, how much would the Postal Service make from the agreement? Please provide all calculations and sources used.

v. What is your current estimate of the likelihood that WMB will fail to mail at least 375 million First-Class Mail pieces in Year 1?

vi. What is your current estimate of the likelihood that WMB will fail to meet its commitment under Article II, Paragraph J, of the NSA?

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vii. What is the expected value to the Postal Service of the two \$250,000 penalty clauses in the NSA?

e. Article II, Paragraphs F, G, and I, of the NSA contain threshold adjustment clauses.

i. Are there any other threshold adjustment clauses in the NSA? If so, please identify them.

ii. If WMB were to mail 900 million First-Class Mail pieces in Year 1, would this volume, by itself, trigger a threshold adjustment for Year 2? If so, how?

f. Are there risk mitigation provisions in the NSA other than those previously discussed in this interrogatory? If so, please identify them.

**RESPONSE:**

a) i). This figure will be provided each year to the Postal Service by WMB.

ii). Based on previous Providian Annual Reports, the figures are as follows:

2003 – 10.4 million

2004 – 10.2 million

2005 - 10.0 million (estimated)

The Postal Service also uses data from industry reports produced by Synovate, Card Data, Forrester, CompereMedia. In addition, we evaluate data from regulatory filings with the SEC, FTC, and other government agencies.

b) i.) We discussed the volume of such correspondence and determined that this correspondence represented less than one percent of WMB total First-Class Mail volume. This factor is consistent with observations from other NSA discussions.

ii.) The volume represented by this portion is less than one percent of total volume for 2003, 2004 and 2005. Because this volume is associated with permits that comprise mail to existing card holders, the Postal Service does not have information that would allow it to provide the requested information.

iii.) Such correspondence is considered customer mail.

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iv.) No.

v.) No.

c) i.) The penalty is contingent on the Postal Service terminating the agreement.

ii) Article II, Paragraph J, describes a special situation where the Postal Service terminates for cause and provides a unique remedy in conjunction with the exercise of that authority. In this sense, it is distinct in purpose from the provisions and remedies for termination in Article IV, paragraph F.

d) i.) The penalties in Article III, Paragraph D, are independent from those in Article II, Paragraph J. If WMB mail volume is less than 375 million First-Class Mail pieces in Year 1, but the percentage of First-Class Mail marketing pieces is greater than 90 percent, then the only penalty that will be applied is the \$250,000 penalty identified in Article III, Paragraph D.

ii) The unconditional right to terminate under Article IV, Paragraph F, provides for termination, and a special termination clause for this provision was not negotiated.

iii.) No. Please see response to (d)(i) above.

iv.) An estimate of value based only on total First-Class Mail pieces could not be made without knowing the proportions of volume classified as marketing and customer mail.

v.) We do not possess any estimates of the likelihood that WMB will fail to mail at least 375 million First-Class Mail pieces in Year 1. Based on the testimony of Witness Rapaport, I believe that there is a solid basis to conclude that WMB will mail more than 375 million pieces.

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vi). The Postal Service has filed this NSA with the expectations that WMB will be able to meet the commitment in Article II, Paragraph J.

vii). The value of penalty clauses to the Postal Service is to ensure that NSA customers are committed to the NSA process. The penalty clauses respond to objections raised in other NSA proceedings.

e) i.) No.

ii.) No.

f) Risk mitigation in the NSA process consists of addressing risks in contract performance. Risks can also be mitigated by performing the type of in-depth analysis we used to in our evaluation of the data used to develop the NSA.

## 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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