

ORDER NO. 3

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Dan G. Blair, Chairman;
Dawn A. Tisdale, Vice Chairman;
Mark Acton; Ruth Y. Goldway; and
Tony L. Hammond

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

Docket No. MC2007-1

NOTICE AND ORDER ON FILING OF REQUEST
SEEKING RECOMMENDATION OF A
BASELINE NEGOTIATED SERVICE AGREEMENT

(Issued February 9, 2007)

The Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement a Baseline Negotiated Service Agreement with Bank of America Corporation (Request) was filed with the Postal Regulatory Commission on February 7, 2007.¹ The Negotiated Service Agreement is

¹ The procedures of the former Postal Rate Commission apply to this Request under 39 U.S.C. § 3622(f) as established by the Postal Accountability and Enhancement Act, Pub. L. No. 109-435, 120 Stat. 3198 (2006). Section 3622(f) specifies, for the mail categories which are the subject of this Request, that: “[p]roceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year [transition] period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.”

proffered as a new baseline Negotiated Service Agreement. The Request includes six attachments.²

The Postal Service has identified Bank of America Corporation (Bank of America), along with itself, as parties to the Negotiated Service Agreement. This identification serves as notice of intervention by Bank of America. It also indicates that Bank of America shall be considered a co-proponent, procedurally and substantively, of the Postal Service's Request during the Commission's review of the Negotiated Service Agreement. Rule 191(b) [39 CFR §§ 3001.191b]. An appropriate Bank of America Corporation Notice of Appearance and Filing of Testimony as Co-proponent, February 7, 2007, also has been filed.

In support of the Request, the Postal Service has filed Direct Testimony of Ali Ayub on Behalf of United States Postal Service, February 7, 2007 (USPS-T-1). Bank of America has separately filed Direct Testimony of Richard D. Jones on Behalf of Bank of America Corporation, February 7, 2007 (BAC-T-1). The Postal Service states that it intends to rely upon the testimony submitted by Bank of America in presentation of its direct case in accordance with rule 192(b) [39 CFR § 3001.192b]. Request at 5. The Request has been assigned Docket No. MC2007-1.

The Postal Service's Request, the accompanying testimonies of witnesses Ayub (USPS-T-1) and Jones (BAC-T-1), and other related material are available for inspection at the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's website (<http://www.prc.gov>).

² Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of Postal Service testimony; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the Negotiated Service Agreement.

I. BANK OF AMERICA NEGOTIATED SERVICE AGREEMENT

The Postal Service proposes to enter into a three-year Negotiated Service Agreement with Bank of America. The Negotiated Service Agreement provides performance-based incentives to encourage Bank of America to undertake certain mailing activities to reduce Postal Service costs associated with processing Bank of America's letter-rated First-Class Mail and Standard Mail. The agreement also encompasses mail entered into the system by or on behalf of Bank of America subsidiaries or affiliates. The agreement is described as a pure cost-savings agreement based on pay for performance rather than compliance with specific process changes.

The agreement requires multiple operational commitments from Bank of America: implementing Four-State Barcode, OneCode ACS, CONFIRM, Seamless Acceptance, FAST and eDropship; barcoding of Courtesy and Business Reply Mail and Qualified Business Reply Mail; and waiver of physical return of certain First-Class Mail and Standard Mail in return for acceptance of electronic information.

The Postal Service agrees to pay rate discounts from otherwise established rates for improvements in address quality and mail processing based on actual mail volumes and performance. First-Class Mail discounts will be available for improvements in mail processing, reductions in return rates, and reductions in forwarding rates. Standard Mail discounts will be available for improvements in mail processing, and reductions in undeliverable-as-addressed rates. The discounts, in the form of refunds, will be calculated quarterly and are based on a percentage of the resulting cost savings to the Postal Service. Specific per-piece discounts based on overall percentage incremental improvements are described in the Request, Attachment B.

The Postal Service estimates it may benefit by \$5.5 million, net of incentives, over the three-year life of the Negotiated Service Agreement. USPS-T-1 at 24. However, because the agreement is performance based, the actual value of the agreement can not be known with certainty until after the agreement has ended.

II. COMMISSION RESPONSE

Applicability of the rules for baseline Negotiated Service Agreements. For administrative purposes, the Commission has docketed the instant filing as a request predicated on a baseline Negotiated Service Agreement as described by rule 195 [39 CFR § 3001.195].

Representation of the general public. In conformance with former section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Intervention. Those wishing to be heard in this matter are directed to file a notice of intervention on or before March 5, 2007. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's website (<http://www.prc.gov>), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR §§ 3001.9a and 10a]. Notices should indicate whether participation will be on a full or limited basis, see rules 20 and 20a [39 CFR §§ 3001.20 and 20a], and shall indicate if a hearing on this Request is desired.

Prehearing conference. A prehearing conference will be held March 14, 2007, at 10:00 a.m. in the Commission's hearing room. Participants are encouraged to immediately begin discovery once a notice of intervention is filed to begin developing issues for consideration. Participants shall be prepared to address the scheduling of additional discovery and any issue(s) that justify scheduling a hearing at the prehearing conference. The Commission strongly urges participants to file supporting written argument in advance of the prehearing conference in regard to the identification of any issue(s) that would indicate the need to schedule a hearing, or any other scheduling

request. The Commission intends to resolve such issues shortly after the prehearing conference.

It is ordered:

1. The Commission establishes Docket No. MC2007-1 to consider the Postal Service Request referred to in the body of this Order.
2. The Commission will sit en banc in this proceeding.
3. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
4. The deadline for filing notices of intervention is March 5, 2007.
5. A prehearing conference will be held March 14, 2007, at 10:00 a.m. in the Commission's hearing room.
6. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary