

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

OFFICE OF THE CONSUMER ADVOCATE  
RESPONSE TO PRESIDING OFFICER'S RULING NO. MC2006-3/1  
(June 15, 2006)

Presiding Officer's Ruling No. MC2006-3/1<sup>1</sup> provides that participants estimate the time needed for discovery following the filing of errata to 2005 First-Class volume estimates by Washington Mutual Bank. The errata were filed on June 8, 2006. According to Ruling No. 1, participants must furnish today estimates of time needed for discovery.

The Office of the Consumer Advocate (OCA) is unable to provide an answer as to how much time will be needed for discovery in this proceeding. Answers to OCA's outstanding discovery requests are not due for another week. The primary issue that now commands OCA's attention is the subject of the outstanding discovery: how can the Panzar test, which was presented and applied by the Commission in recent proceedings, be used to evaluate the WMB NSA?

A brief recap of recent activity at the Commission is germane. A prehearing conference was held on April 25, 2006, following a settlement meeting immediately preceding the hearing. At that time, OCA indicated that it was not planning to file a

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<sup>1</sup> Issued May 2, 2006.

direct case. It was our view that the evidence adduced during discovery would be satisfactory to support the OCA position on brief.

Important developments occurred just prior to, and soon after, April 25<sup>th</sup>. First, the Commission issued an Opinion and Further Recommended Decision in Docket No. MC2004-3 (the Bank One NSA case) on April 21, 2006. Next, members of the Commission's Rates and Planning staff made a public presentation on May 5, 2006, (Briefing on Declining Block Rate Model). This was followed three weeks later, on May 10, 2006, by the Commission's Opinion and Recommended Decision in Docket No. MC2005-3 (the Bookspan NSA case). The Bank One opinion introduced a framework for estimating the "realistic bounds of what the mailer would send under the terms of the agreement (after-rates volumes)."<sup>2</sup> The Panzar test was applied subsequently in the Commission's recommended decision in the Bookspan case.<sup>3</sup>

The WMB NSA proceeding provides the first opportunity to apply the Panzar test to a First-Class Mail NSA, in a situation in which cross-price elasticity effects far outweigh own-price effects. OCA has determined this analytical effort to be our chief goal in the instant proceeding. Consequently, OCA has reconsidered its decision not to file a direct case and now plans to do so. A new challenge is presented in the WMB case that has not been resolved in the earlier cases. This challenge is to use a cross-price elasticity in the application of the Panzar test, rather than an own-price elasticity. OCA's best recollection is that Rates and Planning Commission staff member, Matthew

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<sup>2</sup> PRC. Further Rec. Dec. MC2004-3 at para. 5012; see especially para. 5014. This pleading refers to the framework as the "Panzar test."

<sup>3</sup> PRC Op. MC2005-3 at paras. 4089-93.

Robinson, at the May 5, 2006 briefing, acknowledged that the Commission had not yet devised an approach that involves a cross-price elasticity.

OCA posed three interrogatories to the Postal Service on May 25, 2006, in an effort to apply the Panzar test in a context in which the volumes spurred by the NSA discounts arise due to a cross-price response (Standard Mail solicitations converting to First-Class solicitations)<sup>4</sup> as opposed to an own-price response. The responses are due on June 22, 2006.<sup>5</sup> Until OCA sees the responses to the interrogatories, we are unable to determine whether there is a serious disagreement between OCA and the Postal Service on the Panzar test application in a cross-price context. It may be that discovery by OCA can end soon after the response is filed. Alternatively, if there is a wide gulf between the views of the OCA and the Postal Service, other rounds of discovery will be necessary. OCA proposes that it be given three business days following the filing of the Postal Service response to supplement the instant pleading.

A three day delay in advising the Commission subsequent to the receipt of responses to OCA/USPS-T1-25-27 is reasonable, given the Postal Service's three and one-half week suspension of the proceedings. The delay will permit the OCA to review and analyze the responses to the outstanding interrogatories, and to determine whether additional discovery is necessary for its direct case. This in turn will aid the Commission in establishing the subsequent procedural schedule.

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<sup>4</sup> OCA/USPS-T-1-25-27 to witness Ayub.

<sup>5</sup> Per Ruling No. 1.

Wherefore, OCA respectfully requests that it be given three business days following the filing of responses to interrogatories OCA/USPS-T-1-25-27 to inform the Presiding Officer of our estimate of the time needed for discovery.

Respectfully submitted,

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