

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

**OBJECTION OF UNITED STATES POSTAL SERVICE  
TO INTERROGATORY OF THE OFFICE OF CONSUMER ADVOCATE TO WITNESS  
AYUB (OCA/USPS-T1-28)  
July 10, 2006**

The United States Postal Service hereby objects to the above-referenced interrogatory, directed to witness Ayub on June 28, 2006. This interrogatory seeks the following from the witness: the time period between the Washington Mutual Bank (hereinafter WMB) first contact with the Postal Service and the filing; the number of face-to-face meetings between WMB and the Postal Service, the identity of Postal Service organizational units involved in developing negotiating positions or negotiating; the total number of individuals involved from each organizational unit, and an identification of how many were supervisors, managers or higher level individuals; the time period in months to develop negotiating positions, negotiating and preparing testimony, etc.; and the total cost of these activities, including securing Commission approval.

The Postal Service objects to this interrogatory on several grounds. First, the interrogatory requests information not "reasonably calculated to lead to the discovery of

admissible evidence” as required by the Commission’s Rules of Practice. See 39 C.F.R. §§ 3001.25, 3001.26. The purpose of discovery is to elicit the facts and expert opinion underlying the Postal Service’s case. This interrogatory focuses on a portion of the mechanics by which the Postal Service assembled the case, not the factual evidence that underlies its position. As such, it is an indirect attempt to determine how the Postal Service prepared for Docket No. MC2006-3, and is, therefore, outside the scope of permissible discovery. See *Bercow v. Kidder Peabody & Co.*, 39 F.R.D. 357, 358 (S.D.N.Y. 1965). While that case involved questions to a witness regarding his preparation for examination, who he had talked to, and documents that he looked at, the principle involved is the same here; it is not the preparation, but the factual information that is the focus of discovery.

Second, the interrogatory is unduly burdensome. Given its focus on process, rather than facts and expert opinion, it is of peripheral value to the Commission in evaluating the factual issues in this proceeding. Yet preparing a response would require extensive effort on the part of the Postal Service. The requested information does not reside in records maintained by the Postal Service in the ordinary course of business. It would have to be collected by canvassing personnel who may have been involved in negotiations and preparation to determine the specifics of when and how they were involved over a period of months, including contacts, meetings attended, time, and the other items requested in the interrogatory. Additionally, the information would be based on the memories of personnel involved in a number of different activities over a significant period of time, and would be subject to the natural limitations of recall, limiting its reliability. Even extensive cross-checking and correlation of the

information would not necessarily lead to a consistent response. The Postal Service is unable to estimate the amount of effort involved in obtaining this information, but believes it to be quite substantial.

Third, the interrogatory is objectionable on grounds that the requested information is predecisional in nature and therefore protected by the deliberative process privilege. The deliberative process for developing Negotiated Service Agreements should be free of concerns by participants that their meetings, contacts, time spent, and the like, are subject to discovery by potential adversaries of the agreement. Participants should be free to focus on negotiating agreements that are appropriate, without the distraction of possible intrusion into the mechanics of their negotiations through subsequent discovery. Disclosure of the mechanics of negotiations would unnecessarily chill internal deliberations and efforts to secure agreement with NSA participants.

Fourth, the interrogatory is objectionable on grounds of commercial sensitivity. Both the Postal Service and NSA participants should be free of concern that discovery on the mechanics of their negotiations may somehow provide information adverse to their commercial interests. The opportunity for discovery on how negotiations are conducted, rather than on their results, presents a distraction to the negotiating parties and a possible disincentive to enter into negotiations.

In sum, NSA litigation in this proceeding should be kept within manageable limits so as to minimize the transaction costs associated with the successful conclusion of NSA proposals. In any proceeding, there is potential for digression into a number of issues of little or peripheral relevance. Thus, rather than focus on how the Postal

Service prepared its case, and the cost thereof, the spotlight should be on the facts and expert opinion supporting the Postal Service's position.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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