

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 CONSUMER ADVOCATE
MOTION TO COMPEL A RESPONSE
TO INTERROGATORY OCA/USPS-T1-28
(July 13, 2006)

Pursuant to Rules 25 through 28 of the Rules of Practice of the Postal Rate Commission, the Office of the Consumer Advocate hereby requests the presiding officer to direct Postal Service witness Ayub to respond to interrogatory OCA/USPS-T1-28. The Postal Service objected to responding on July 10, 2006.¹ The interrogatory in dispute sought, *inter alia*, the total expenses incurred by the Postal Service to negotiate and litigate the NSA with Washington Mutual Bank (WMB).² These expenses represent an investment on the part of the Postal Service. The Commission has implied (in its *Bookspan* opinion) that the return on the investment (ROI) in an NSA can provide an alternative to the Panzar test.³ Given that the information needed to perform a Panzar test on the WMB NSA has not been provided, it is crucial that the Commission have available to it the information needed to evaluate the ROI of this NSA.

¹ Objection of United States Postal Service to Interrogatory of the Office of the Consumer Advocate to Witness Ayub (OCA/USPS-T1-28), July 10, 2006.

² The text of the interrogatory is attached.

³ “[C]aptive customers would have to absorb higher rates and fees if individualized agreements fail to produce a positive return on investment.” PRC Op. MC2005-3 at 41, n.51.

A second use for this information would arise if the record of this case should ultimately permit a Panzar test. If the Panzar test suggests setting a volume cap below after-rates volume estimates, then that cap will certainly be reached—and the Postal Service will obtain no new contribution to institutional costs. In this case, the negotiation and litigation costs will never be recovered, leaving the Postal Service with an actual net loss on the NSA. A Panzar-test cap should be adjusted downward to ensure recovery of negotiation and litigation costs.

Given that negotiation and litigation expenses are needed to estimate an ROI on the WMB NSA or to adjust a Panzar-test cap, it follows that part *f* of interrogatory 28 is reasonably calculated to lead to the discovery of admissible evidence. The remaining parts of interrogatory 28 are designed to obtain information that could validate the total expenses requested in part *f*. Thus, these parts, too, are reasonably calculated to lead to the discovery of admissible evidence.

Much of the Postal Service's objection concerns the desirability of protecting predecisional discussions and commercially sensitive information from discovery. However, the interrogatory at issue does not request the *content* of discussions among Postal Service personnel or between the co-proponents of the WMB NSA. Interrogatory 28 merely requests an accounting of *time* spent developing the NSA. It is hardly likely that anyone could infer the negotiating strategy or other sensitive information from a catalog of hours spent.

The other basis for objection is undue burden. The Postal Service makes the rather implausible claim that its employees do not memorialize in writing the time spent on various projects. Apparently, supervisors at headquarters do not keep track of the

time and effort of their employees. Performance evaluations either do not occur or are entirely subjective. In reality, there must be written records that can be used to prompt the memories of those who worked on the WMB NSA if, unlikely as it sounds, there are no explicit records of employees' efforts and accomplishments.

Although the Postal Service characterizes the burden associated with responding to interrogatory 28 as "quite substantial," the value of the information sought is also great. Without the requested information, neither the Commission nor other mailers can know whether the WMB NSA (or any other NSA) makes money for the Postal Service.

Respectfully submitted,

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TEXT OF INTERROGATORY OCA/USPS-T1-28

OCA/USPS-T1-28. This interrogatory seeks information on negotiation costs of the Washington Mutual NSA. Please refer to your testimony at page 1, lines 13-15.

- a. With respect to the Washington Mutual NSA, please provide the time period in months between Washington Mutual's first contact and the filing of the Postal Service's request in this proceeding.
- b. With respect to the Washington Mutual NSA, how many face-to-face meetings did the Postal Service have with Washington Mutual or its representatives?
- c. Please identify the organizational entities (i.e., Pricing Strategy, Finance, Law, etc.) within the Postal Service involved in developing negotiating positions or negotiating on behalf of the Postal Service with respect to the Washington Mutual NSA.
- d. Please provide the total number of individuals involved in developing negotiating positions or negotiating on behalf of the Postal Service from the organizational entities identified in part c., above. How many of those individuals were supervisors, managers, or other higher level individuals?
- e. Please estimate the time period in months that you devoted to developing negotiating positions, negotiating on behalf of the Postal Service, preparing testimony, etc., with respect to the Washington Mutual NSA.
- f. Please estimate the total cost to the Postal Service of concluding the Washington Mutual NSA and securing Commission approval. This estimate should consider the personnel costs of legal, financial and other analysts developing negotiating positions, negotiating on behalf of the Postal Service, preparing filings for the Commission, etc.