

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

REPLY OF UNITED STATES POSTAL SERVICE IN OPPOSITION TO THE MOTION  
TO COMPEL OF THE OFFICE OF CONSUMER ADVOCATE (OCA/USPS-T1-28)  
(July 20, 2006)

On July 10, 2006, the United States Postal Service objected to the following interrogatory of the Office of Consumer Advocate (OCA), filed on June 28, 2006: OCA/USPS-T1-28. The OCA filed a motion to compel a response on July 13, 2006. The Postal Service hereby opposes the motion.

The interrogatory at issue is as follows:

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.

In arguing that OCA/USPS-T1-28 is relevant and material, the OCA indicates that the requested information is needed to evaluate the ROI of the Washington Mutual Bank (hereinafter WMB) NSA, or to adjust a Panzer-test cap. The requested information is irrelevant and immaterial for these purposes. To the extent the interrogatory seeks information on the time period between WMB's first contact with the Postal Service and the filing, the number of face-to-face meetings between WMB and the Postal Service, the identities of organizational units involved, the number of individuals involved from each organizational unit, an identification of how many were supervisors, managers or higher level individuals, the time period in months to develop negotiating positions, etceteras, the irrelevancy to determining negotiation and litigation expense is manifest. The OCA suggests that such information could be used to validate the cost information requested in part (f) of the interrogatory, which directly requests the personnel costs associated with concluding the NSA and securing Commission approval. Personnel costs involve time spent on activities. The requested information is too unrelated to time actually spent by personnel on negotiation and litigation activities associated with the WMB NSA to serve as validating information.

The specific cost information requested in part (f) of the interrogatory also is irrelevant to calculating an ROI or conducting a Panzer test. Postal personnel involved

in this NSA work in various functional units involved in costing, pricing, and related activities. The Postal Service commits resources to these functions to conduct pricing and costing activities at a certain level of effort determined by Postal management. The level of effort expended on these activities is the same, regardless of the specific activities involved. If the NSA were not developed, personnel otherwise engaged in developing the NSA would have been working on other pricing and costing activities, and costs for these personnel would have been the same as if they had been working on the NSA. Under these circumstances, there are no personnel costs specifically caused by the NSA, since costs to the Postal Service would have been virtually identical with or without it. For this reason, the costs of personnel time spent on activities to develop and litigate the NSA are unrelated specifically to it. They would have been incurred anyway.

The requested information not only is irrelevant for the purposes indicated by the OCA, it also is unduly burdensome to produce. The Postal Service is unable to provide the information requested by the interrogatory without undue effort. The information is not contained in records kept in the normal course of business. It must be assembled largely from information in the memories of participants, some of whom also must be identified from the memories of those who participated or might have participated. The OCA speculates that there must be relevant records, since the requested information would be required for performance evaluations and to keep track of employee time, effort, and accomplishments. Employee performance is not evaluated and employees are not monitored by the time between first contacts and filings, the number of face-to-face meetings, the identity of organizational units involved and the number of

employees from each, the levels of employee positions involved, and time spent in activities. Rather, employees are monitored and evaluated in terms of the relevance, quality, and quantity of their output.

The OCA fails to address Postal Service objections that the requested information is predecisional in nature, and therefore protected by the deliberative process privilege, and also is commercially sensitive. The OCA Motion simply notes that the interrogatory does not request the content of discussions and incorrectly indicates that it merely requests an accounting of time spent developing the NSA. Parts (a) through (e) of the interrogatory go well beyond measures of time. They involve questions on first contacts, number of face-to-face meetings, organizations involved, rank of individuals involved, etceteras. The Postal Service's objection rests on these questions, rather than on the one referenced by the OCA. The kind of questions asked permit intrusion into deliberative processes for developing NSAs, and raise concerns of commercial sensitivity, as indicated in the Postal Service's objection. The OCA notes that the interrogatory does not request the content of discussions. The Postal Service's objection is not predicated on such a request, but on the potential of the questions asked, if responses were required, to intrude into deliberative processes and raise commercial sensitivity issues, as indicated in the Postal Service's objection.

The OCA fails to meet its burden of showing that the requested information is "reasonably calculated to lead to the discovery of admissible evidence" as required by the Commission's Rules of Practice. The requested information is not relevant and material to the use for which the OCA seeks it, would be unduly burdensome for the Postal Service to develop, and is protected by its relationship to the deliberative process

privilege and to commercial sensitivity. For these reasons, the OCA motion to compel a response should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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