

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RATE AND SERVICE CHANGES TO IMPLEMENT)
BASELINE NEGOTIATED SERVICE AGREEMENT) Docket No. MC2007-1
WITH BANK OF AMERICA CORPORATION)

VALPAK DIRECT MARKETING SYSTEMS, INC. AND
VALPAK DEALERS' ASSOCIATION, INC.
MOTION TO STRIKE BANK OF AMERICA INTERROGATORY RESPONSE TO
VP/USPS-T1-32(b) AND ITS DESIGNATION IN THE RECORD
(June 14, 2007)

Pursuant to sections 21(c) and 30(e)(2) of the Postal Regulatory Commission rules of practice, Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak") hereby move to strike the Answer of Bank of America Corporation to VP/USPS-T1-32(b), as well as the designation of that answer for the record. For reasons therefor, Valpak says that the Answer is unresponsive to Valpak's interrogatory, and should not be considered in the adjudication of this matter, as more specifically set forth below.

1. Valpak's Interrogatory VP/USPS-T1-32(a)-(b) to the Postal Service was filed on April 27, 2007. The Postal Service responded to part (a) of the interrogatory on May 11, 2007, but redirected part (b) of the interrogatory to a different party, Bank of America Corporation ("BAC"). BAC responded with an institutional response to part (b) of the interrogatory out of time on May 25, 2007, stating that it would "provide a witness at the hearing to defend the answer if Valpak or any other participant wishes to undertake cross-examination concerning it." *See* Answer of Bank of America Corporation to VP/USPS-T1-32(b). None of the intervenors herein nor the OCA designated this response on June 11, 2007, or at any time prior thereto, but the Presiding Officer designated it on June 12, 2007.

2. BAC's answer to VP/USPS-T1-32(b) — which asks for a listing and explanation of the additional investments that BAC must make in order for the Postal Service to develop mailer-specific accept rates for BAC's bulk letter mail, which asks whether that investment differs from the investment that other bulk mailers would need to make “when they implement the Four-State Barcode for their bulk letter mail,” and which explicitly asks the responder to “omit any ‘other requirements in the NSA’ that are not essential to development of mailer-specific accept rates for BAC's First-Class and Standard bulk letter mail” — is not answered by BAC. Instead, BAC expounds generally about various costs that it expects to incur with respect to every aspect of its participation in the NSA, but studiously avoids responding to the question regarding mailer-specific accept rates. In fact, after stating its “outline of the expenses that BAC must make to support the overarching agreement,” BAC completely changes the question when it says “[w]e have viewed this agreement as a whole and not by its independent elements.” *See Answer of Bank of America Corporation to VP/USPS-T1-32(b)*, page 2. The information it submits is nonresponsive, attempting to shoehorn into the record new information while avoiding the discovery actually sought.

3. While avoiding responding to Valpak's specific question, BAC introduced for the first time statements that should not be considered evidence in this case. Valpak had no desire to interrogate any witness regarding such matters, which, if they were to be introduced in this case, should have been introduced by way of testimony. They should not be allowed to become part of the record through some backdoor means by answering a question that was never asked.

4. Valpak asks the Commission to strike the BAC answer as non-responsive. Striking BAC's answer would be correct under the rules, and would be the fair way to proceed.

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