



Association for Postal Commerce

1901 N. Fort Myer Dr., Ste. 401 • Arlington, VA 22209-1609 • Ph: +1 703 524 0096 • Fax: +1 703 524 1871 • Web: <http://postcom.org>

October 22, 2007

Ms. Wendy A. Hocking
Secretary, Board of Governors
United States Postal Service
475 L'Enfant Plaza SW
Room 10300
Washington, D.C. 20260

Re: Bank of America NSA

Dear Ms. Hocking:

The Association for Postal Commerce ("PostCom") submits this letter to urge the Governors of the Postal Service to reaffirm the Negotiated Service Agreement ("NSA") between the Bank of America and the Postal Service. We do so because we are convinced that the pay-for-performance concept, which underlies this NSA will yield benefits -- both tangible and intangible -- to all users of the postal system. The concerns the Commission has raised are seriously overstated (if not unfounded) and, therefore reaffirmation of this NSA by the Board of Governors is essential, as a matter of principle, to vindicate one of the primary goals of the Postal Accountability and Enhancement Act ("PAEA") of 2006.

To its credit, the Postal Regulatory Commission has recognized that the PAEA fundamentally changes the nature of the relationship between the Commission and the Postal Service in general, and in particular as it relates to the development and implementation of NSAs. The Commission decision recognizes that the fundamental question of whether this or any other NSA is "a good bargain" does not rest with the Commission; it rests with the Postal Service and its governing body, the Governors. That is exactly what the PAEA contemplates. Simply put, the Postal Regulatory Commission, by the nature of its powers and duties, cannot fully appreciate the considerations, deliberations, and negotiations that led the Postal Service to recommend this deal to its governing body and led the Board of Governors to authorize the submission of this NSA to the Postal Regulatory Commission. Thus, the Postal Regulatory Commission has left the business decision -- and it is a business, not a legal decision -- where it properly belongs, i.e., with the Postal Service and the Governors.

Other than Bank of America and the Postal Service itself, no one is in a position to assist the Governors in its assessment of the benefits and levels of risk of this Agreement. What is clear, however, is that the Postal Regulatory Commission's assessment that this NSA represents a bad bargain to the Postal Service must be taken with a very large grain of salt. The Commission's concern about risk of loss is based largely upon disagreement as to what data should be used in evaluating the deal, and how such data should be interpreted. This mechanistic approach, dictated to a significant extent by the trial type hearings compelled by the old statute, is hardly conclusive.

Simply put, the Commission does not and cannot conclude that there will be loss to the Postal Service, much less loss in the orders of magnitude estimated in the decision. Instead, the Commission speaks in terms of "indicators," probabilities and scenarios. By its own assessment, the Commission has not and cannot make

either a qualitative or quantitative estimate of the uncompensated operational commitments that the NSA entails, the broader range benefits of the Agreement or price that Bank of America is willing to pay to yield those benefits.

Essentially, the concerns the Commission has raised are based strictly on what the Commission itself characterizes as a "financial analysis" of the NSA. Caught, as it was, in the no-man's- land between the Postal Reorganization Act (which effectively expires in three months) and the PAEA, the Commission may have felt that it had no choice except to perform the analysis of the risk-rewards of this NSA in the way that it did.

The Governors, however, are not so constrained. The Governors can, and they should, consider the totality of the Agreement, including the uncompensated costs to Bank of America and the impact of this NSA on broader fiscal and operational goals of the Postal Service. Thus viewed, PostCom is confident that the Governors will reaffirm their commitment to this Agreement.

Accordingly, reaffirmation of the Bank of America NSA is important not only in its own terms but as a matter of fundamental principle. There is considerable merit in the Postal Service's decision to find a very large volume mailer in order to facilitate the introduction of a panoply of modern mail processing systems through a pay-for-performance program. Under the PAEA, it is for the Governors, not the Commission, to make the ultimate risk-reward analysis as to whether this particular NSA furthers that goal. There is always room for improvement, and there always will be, in the manner in which the internal discussions and the internal deliberations of the Postal Service are carried out. That, however, ought not to be ground for assessing the benefits of the bargain that the Postal Service has achieved through its deal with Bank of America.

The principle at stake in this matter is very simply whether the Governors are under PAEA the proper authority for deciding how the Postal Service goes about developing and negotiating NSAs and whether the resultant deal is or is not a good bargain for all concerned. The Governors surely should not delegate such tasks to any one.

In PostCom's view, the immediate and long-term benefits of this NSA are clear. That valuation was carefully performed by the Postal Service and reviewed and evaluated by the Governors' before this proposal was submitted to the Commission. It should be reaffirmed.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene A. Del Polito". The signature is written in a cursive, flowing style.

Gene A. Del Polito, President