

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

COMPLAINT OF CAPITAL ONE
SERVICES, INC.

Docket No. C2008-3

**INTERROGATORIES OF CAPITAL ONE SERVICES, INC.
TO THE UNITED STATES POSTAL SERVICE (COS/USPS-1-11)**
(August 7, 2008)

Pursuant to Rules 25 through 27 of the Rules of Practice of the Postal Regulatory Commission, Capital One Services, Inc. ("Capital One") submits the following interrogatories to the United States Postal Service (the "Postal Service"). Related requests for production of documents (COS/USPS-1-17) are being filed concurrently.

INSTRUCTIONS

1. For each interrogatory response, identify all individuals responsible for providing the response who will be able to confirm the response under oath.
2. For each document or narrative response provided, please designate the discovery request(s) to which it is responsive.
3. Where a discovery request calls for the production of a document or documents, such production should be in the form of legible, complete and true copies of the original documents as "original" is defined below.

4. To each document or group of documents produced from the same file, attach a sheet of paper or label identifying the location of the file from which the document came and the custodian(s) of that file.

5. With respect to any document related to any matter addressed in any question in the attached discovery requests, if the document is not in the Postal Service's possession but the Postal Service knows or has reason to believe that it exists, identify and indicate to the extent possible the present or last known location of the document and its custodian.

6. Where a document or narration responds to more than one request, a duplicate need not be provided. The Postal Service need only cross-reference the responsive information.

7. If any information is not available in the exact form requested and cannot be made available in that form without undue burden, provide whatever information or documents are available that best respond to the discovery request and explain why the Postal Service is unable to produce the additional information.

8. If any document responsive to any of these discovery requests has been destroyed, please state the following: (1) identify any person involved in deciding to destroy the document; (2) state when the document was destroyed; (3) state why the document was destroyed; and (4) provide all documents relating to the order or act of destruction. If the Postal Service asserts that the destruction occurred pursuant to a document destruction program, please identify and produce a copy of the guideline, policy, or manual describing the document destruction program and provide and identify copies of any document, or identify any communication, relating to the destruction of the document.

9. If a privilege is claimed with respect to any data, information, or documents requested herein, the party to whom the discovery request is directed should provide a privilege log (see, e.g., Presiding Officer Ruling C99 1/9, p. 4, in Complaint on PostECS, Docket No. C99-1). Specifically, “the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.” Fed. R. Civ. P. 26(b)(5).

10. For any claim of privilege or other discovery immunity, list all documents withheld under the claim of privilege or other discovery immunity and, for each:

- state the title and general subject matter of the document (to the extent possible without waiving the privilege or immunity);
- state the privileges or discovery immunities being interposed;
- state the number of pages of the document and the number and title and number of pages of any attachments;
- state the date of the document;
- identify all persons who wrote or prepared the document; and
- identify the addressees and all other recipient(s) of the document; and indicate the discovery request(s) to which the document is responsive.

11. If in response to any discovery request the Postal Service is unable to provide any of the requested documents or information, please state with particularity the reasons why the requested information cannot be provided.

12. In responding to any questions contained in the attached discovery requests that require any calculations, analyses, assumptions, or studies that have been prepared, please provide and identify copies of such calculations, analyses,

assumptions, studies, and all work papers relating thereto. Please provide these materials on computer diskette as well as in hard copy.

13. Documents should be produced in the way they are maintained (*i.e.*, hard copy files should be produced as photocopies, emails or other electronic documents should be produced in electronic format, as maintained by the Postal Service, *including metadata*). If production of hard copy documents is infeasible due to the volume of material or otherwise, provision should be made for inspection of responsive documents.

14. When oral communications are responsive to a discovery request, the response should indicate the date and time of the communication, the manner of communication (*e.g.*, telephone or in-person), all persons involved, and the full substance and subject matter of the communication.

15. You are also required to supplement and/or amend your responses to this discovery if, after you have responded, you learn:

- the identity of other persons with information about the questions asked (including any witnesses you may call to testify);
- of additional responsive documents or other information; and/or
- that any of the information you gave in the responses was incomplete, incorrect when made, or is no longer correct.

DEFINITIONS

The term "Postal Service" includes all agents, employees, attorneys, representatives, and anyone acting on its behalf, as well as the Board of Governors, contractors and subcontractors to the Postal Service, and the Postal Service Office of Inspector General (OIG).

The term "Bank of America" refers to the Bank of America Corporation and its subsidiaries and affiliates, and includes all agents, employees, attorneys, representatives, and anyone acting on its behalf or on behalf of any of its subsidiaries or affiliates.

Unless otherwise stated, the term "benefit" refers to any type of benefit, including but not limited to financial, operational, tangible and intangible benefits, that the Postal Service receives as a direct result of the specified activity, action, agreement, or circumstance.

The "Bank of America NSA" refers to the Negotiated Service Agreement signed by Bank of America and the Postal Service, dated January 9, 2007, that was the subject of PRC Docket No. MC2007-1.

Operational terms such as "Seamless Acceptance," "OneCode ACS," etc., shall have the same definitions as those set forth in "Section II. Definitions" of the Bank of America NSA. The "Intelligent Mail Barcode" (IMB) is the equivalent of the "Four-State Barcode" in the Bank of America NSA.

"Communications" includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by telephone, as well as all documents, including but not limited to letters,

memoranda, telegrams, cables, electronic mail, or otherwise transmitted by any means or manner whatsoever.

“Documents” includes, but is not limited to the original or any manner of copy of any letter, email, note, spreadsheet, memorandum, report, study, meeting minutes, contract, diary entry or schedule, presentation, print out, newspaper clipping, speech, testimony, pamphlet, chart, tabulation, work paper, draft, diagram, audio or visual recording, and other writing, recording, or retrievable data of whatever kind or nature to which the Postal Service has or has had access, regardless of origin or location, hard copy or electronic, handwritten or typed. Any document that is not exactly identical to another document for any reason, including but not limited to marginal notations, deletions, redrafts, or rewrites, is a separate document within the meaning of this term.

“All documents” means each document, as defined above, that can be located, discovered or obtained by reasonably diligent efforts, including without limitation all documents possessed by: (a) you (the Postal Service, as defined above); or (b) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

“Relates to” means anything that discusses, describes, reflects, contains, analyzes, studies, reports, comments on, evidences, constitutes, sets forth, considers, recommends, concerns, or pertains to, in whole or in part.

“Original” means the document as created or maintained, *i.e.*, the document itself, not a copy, summary, description, or translation.

“Copy” means any reproduction, in whole or in part, of an original document and includes, but is not limited to, non-identical copies made from copies.

“Identify” means to provide, as follows:

(a) With respect to a document:

(1) the document's title, date, author (and, if different, the signer), addressees, and recipients; (2) the names of all persons who assisted in the preparation thereof; (3) the subject matter or general nature thereof; (4) whether it is in the responder's possession, custody, or control; (5) the present location and custodian thereof; and (6) the information requested in clauses (1) through (5) with respect to any amendments thereto or redrafts thereof.

(b) With respect to an oral statement or non-verbal communication:

(1) the maker thereof; (2) the intended or actual recipient(s) thereof; (3) the time it was made; (4) the location at which it was made; (5) the identity of all persons present when it was made; (6) the mode of communication; (7) the subject matter of the communication; (8) any position taken by each participant or witness thereto; (9) any decision resulting therefrom; and (10) any document generated as a result of or in connection with the oral statement or non-verbal communication.

(c) With respect to a person:

(1) the person's full name; (2) the person's employer, job title and a brief description of the person's duties now and at the relevant time indicated by the discovery request; and (3) the person's business address.

The terms "state," "describe," and "explain" call for answers independent from any documents that are required in response to requests. Such answers should be in a form (narrative, table, etc.) appropriate to a complete response to the request.

Responses to requests for explanations or the derivation of numbers or quantification of benefits should be accompanied by workpapers. The term "workpapers" shall include all backup material whether prepared manually, mechanically or electronically, and without consideration to the type of paper used. Such workpapers should if necessary, be prepared as part of your responses and should "show what the numbers were, what numbers were added to other numbers to achieve a final result." You should "prepare sufficient workpapers so that it is possible for a third party to understand how he took data from a primary source and developed that data to achieve his final results." Docket No. R83-1, Tr. 10/2795-96. Where the arithmetic

manipulations were performed by an electronic digital computer with internally stored instructions and no English language intermediate printouts were prepared, the arithmetic steps should be replicated by manual or other means. If an Excel spreadsheet was used, please provide a version of the worksheet that includes the underlying formulas for each cell.

Respectfully submitted,

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INTERROGATORY COS/USPS-1

The Answer of the Postal Service, filed July 21, 2008, admits Paragraph 42 of the Complaint, which states that “Mr. Kearney explained that the Capital One NSA would have to use mailer-specific baselines and that the discounts would have to be reduced to reflect that Capital One was not the ‘first’ adopter [C]hanges in the baselines and discount schedules were justified by changes in circumstances.”

A. Please identify each of the benefits to the Postal Service that arise directly and solely from Bank of America being the “first” adopter, and for each benefit, quantify the amount of benefit that the Bank of America NSA provides or may provide and the amount of benefit that the Postal Service believes the Proposed Capital One NSA would provide.

B. Please describe with specificity all “changes in circumstances” that you believe justify reducing the baselines and discount schedules in the Proposed Capital One NSA, the date each change occurred, the person or entity responsible for each change, the reason why each change justifies reducing the baselines and discount schedules, and a quantification of the reduction in benefit to the Postal Service from each change.

INTERROGATORY COS/USPS-2

In its June 26, 2008, Answer in Opposition to Capital One's Motion for Bifurcation, the Postal Service refers to knowledge it has learned "on the road to implementation of the BAC NSA," and more specifically "asserts that knowledge it gained by undertaking regulatory and internal reviews of the BAC NSA can and should inform its judgment regarding any functionally equivalent NSA."

- A. Please confirm that the only regulatory review relating to the Bank of America NSA is PRC Docket No. MC2007-1. Please specify how each finding of that regulatory review:
- (1) has informed the Postal Service's judgment regarding the Proposed Capital One NSA and its valuation of the benefits from such an NSA; and
 - (2) has changed the Postal Service's valuation of the benefit of the Bank of America NSA from its expected value on February 7, 2007.
- B. Please identify all "internal reviews" of the Bank of America NSA, including reviews of individual Postal Service departments and the OIG, formal and informal, and specify how each finding in each internal review:
- (1) has informed the Postal Service's judgment regarding the Proposed Capital One NSA and its valuation of the benefits from such an NSA; and
 - (2) has changed the Postal Service's valuation of the benefit of the Bank of America NSA from its expected value on February 7, 2007.

INTERROGATORY COS/USPS-3

Has the Postal Service accrued, accounted for, or provided any discounts to Bank of America under the Bank of America NSA, implemented on April 1, 2008? If so, please provide dates of any accrual, accounting, or provision of such discounts, explain how the amount of discounts was determined, provide the underlying measurements, and describe how those measurements were obtained. If not, please explain why. Please supplement your response as necessary pursuant to Paragraph 15 of the Instructions and Paragraph IV.B.4(a) of the Bank of America NSA.

INTERROGATORY COS/USPS-4

- A. Have any oral or written modifications of the Bank of America NSA been proposed or discussed since January 9, 2007, by the parties to the NSA? Please identify each such proposal or discussion and indicate whether it has been agreed to, whether formally or informally.
- B. Please certify that to date Bank of America has fully complied with every provision of the Bank of America NSA. Please supplement your response as necessary pursuant to Paragraph 15 of the Instructions.

INTERROGATORY COS/USPS-5

Paragraph 15 of the Postal Service's Answer states that "Respondent also denies Complainant's allegation that using up-to-date, mailer-specific baselines would not have 'fundamentally change[d] the nature of the NSA' as alleged by Complainant; it would simply have lessened the financial benefit to Bank of America."

A. Please describe and quantify how much "using up-to-date, mailer-specific baselines" would have "lessened the financial benefit to Bank of America," and explain your methodology for quantifying this reduction in financial benefit to Bank of America.

B. Does the Postal Service contend that Bank of America would not have implemented any of the Operational Commitments listed in Section III of the Bank of America NSA, or any portion thereof, unless it received the exact baselines set forth in Section IV of the Bank of America NSA and the financial incentives that flowed from those baselines? Please explain your answer.

C. Does the Postal Service contend that Bank of America would not have implemented the entire suite of Operational Commitments listed in Section III of the Bank of America NSA at one time, unless it received the exact baselines set forth in Section IV of the Bank of America NSA and the financial incentives that flowed from those baselines? Please explain your answer.

INTERROGATORY COS/USPS-6

In Docket No. MC2007-1, Postal Service witness Ali Ayub stated, “[T]he Postal Service recognizes an *affirmative obligation* to make comparable terms available to companies that are deemed functionally equivalent, thus obviating the possibility that any *competitor of BAC* need be affected by the Agreement.” USPS-T-1:26.

- A. How does the Postal Service define “competitor of BAC,” as that term was used above?
- B. Please indicate whether you agree with the following statement: “Capital One is a competitor of Bank of America.” If you do not agree, please explain your answer. If your answer is based on lack of sufficient factual information, please indicate what information you need to reach a definitive answer.
- C. Did the Postal Service conduct any analyses or special studies, or evaluate formally or informally the potential effects of the Bank of America NSA on the marketplace or on competitors to Bank of America prior to filing Attachment E-7 of its Compliance Statement in Docket No. MC2007-1? If so, please describe the nature and extent of such reports and evaluations and any conclusions reached.
- D. Did any discussions or communications take place at the Postal Service at any time to develop a procedure, process, or proposed response, formal or informal, to requests by mailers for an NSA similar to the Bank of America NSA? Please identify and describe any such communications, describe the procedures, process, or proposed responses considered and how they related to the Postal Service’s “affirmative obligation” above.

INTERROGATORY COS/USPS-7

Please identify and describe all communications, internal or external to the Postal Service, that relate to Capital One's request for a mail processing NSA similar in any way to the Bank of America NSA.

INTERROGATORY COS/USPS-8

Please identify and describe all communications, internal or external, that relate to the request of any other mailer for a mail processing NSA similar in any respect to the Bank of America NSA. Please specifically identify and describe those communications that relate to the qualifications (or lack of qualifications) of that mailer for a Bank of America-type NSA. You do not have to identify the mailer by name, but please indicate the approximate amount of mail sent by the mailer and the industry that the mailer operates in.

INTERROGATORY COS/USPS-9

- A. In choosing to negotiate with Bank of America to pursue a baseline NSA for implementation of mail processing technologies, please indicate which of the following criteria the Postal Service used to evaluate the qualifications of Bank of America and list any other criteria that were used. Please indicate how the Postal Service evaluated or graded Bank of America on each of these criteria.
- Leader in the industry (please describe the “industry”)
 - Amount of mail sent
 - Type of mail sent
 - Current level of efficiency of mail processing operations relative to the industry
 - Effect of recent acquisitions/mergers on consolidation of mail processing operations
 - Importance of mail to the company’s business
 - Ease of implementation
 - Precedential value of NSA
 - Effect on developing key internal skills and capabilities of Postal Service
 - Pre-existing relationship with USPS
- B. Did the Postal Service evaluate Bank of America relative to other mailers? If so, how did the Postal Service quantify or otherwise conduct that evaluation, and how did Bank of America rank relative to other mailers? If Capital One was ranked, how did Capital One rank?
- C. Before entering into an agreement with Bank of America, did the Postal Service notify any other mailers of its interest in finding an NSA partner for a mail processing NSA? Please identify and describe all such communications.

INTERROGATORY COS/USPS-10

Does the Postal Service have any sort of contractual or legal relationship with any vendor or subcontractor of Bank of America that performs work related to the Bank of America NSA? If so, please describe.

INTERROGATORY COS/USPS-11

The Postal Service's Opposition to the Motion to Bifurcate states at pages 4-5: "The NSA requires BAC to adopt a number of operational commitments, many of which are under development, which would reduce the costs to the Postal Service of handling BAC mail."

- A. For each "operational commitment" referred to above and for the suite of operational commitments as a whole, quantify the current "reduc[tion in] costs to the Postal Service" which are a direct result of these "operational commitments" and identify any updates to cost estimates made in 2007.
- B. Please explain whether and to what extent the "reduc[tion in] costs" in (A) rely on mailer-specific information.
- C. Is there any reason why the "reduc[tion in] costs" in (A) cannot be expressed on a per-piece basis? If so, please explain why.
- D. Please identify individually which operational commitments are "under development" and the expected date that each such operational commitment will no longer be "under development."
- E. Is Bank of America required to use any operational commitment for its mail while it is "under development"? Please explain.
- F. Are the per-piece "reduc[tions in] cost" conditioned on key characteristics of Bank of America? If so, please describe those characteristics and answer parts (1) and (2) below:
 - (1) Would the adoption of the same "operational commitments" by another mailer result in the same per piece "reduc[tions in] costs" if that mailer had the same key characteristics? Please explain your answer.
 - (2) If Capital One had been the entity to enter into the MC2007-1 NSA, rather than Bank of America, would the "reduc[tions in] cost" on a per-piece basis have been different? Please explain your answer.