

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-46-76)  
(COS/USPS-55-63 REDACTED)**

(April 20, 2009)

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. Instructions and Definitions applicable to these interrogatories are contained in the Interrogatories of Capital One Services, Inc. to the United States Postal Service (COS/USPS-1-11), filed August 8, 2008, and are hereby incorporated by reference.

Respectfully submitted,

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**INTERROGATORY COS/USPS-46**

With respect to the Memorandum from the OIG to the Governors, from early November, 2007, identified in the Lowrance deposition, please indicate if the Memorandum addressed the following issues relating to management's Presentation on December 5, 2006 to the Board of Governors on the subject of the financial impact of the proposed BAC NSA ("2006 Presentation"):

a. The financial impact in the 2006 Presentation was significantly different from that the financial impact presented to the PRC in the USPS subsequent filing in MC2007-1 of February 7, 2007.

b. The 2006 Presentation inaccurately portrayed the BAC NSA as a "pay-for-performance" agreement.

**INTERROGATORY COS/USPS-47**

- a. Who prepared the 2006 Presentation?
- b. Who orally presented the 2006 Presentation to the Board of Governors?

**INTERROGATORY COS/USPS-48**

Please indicate the date, time, location, participants, and subject matter of every meeting (whether in person or over the telephone) in which Virginia Mayes met with a representative, attorney, or consultant of Bank of America during the time period from 2006 to present.

**INTERROGATORY COS/USPS-49**

With respect to the Memorandum from the OIG to the Governors, from early November 2007, please indicate if the Memorandum addressed:

a. Whether the Postal Service had followed the NSA process set forth in the Postal Service NSA Handbook, Exhibit 1 of the Lowrance Deposition, with respect to the preparation and negotiation of the Bank of America NSA

b. Whether there was any requirement that Bank of America NSA be offered to similarly situated mailers

c. If that answer to subpart b above is yes, whether the 2006 Postal Accountability and Enhancement Act retained the requirement that functionally equivalent NSAs be offered to similarly situated mailers.

**INTERROGATORY COS/USPS-50**

With respect to the Memorandum from the OIG to the Governors, from early November, 2007, please indicate whether the term "functionally equivalent" was referred to, defined or described in that Memorandum. If so, please provide all such references, definitions, or descriptions.

## **INTERROGATORY COS/USPS-51**

With respect to the December, 2007 Memorandum from the OIG to the Governors, identified in the Lowrance deposition, please indicate:

a. Whether the Memorandum informed the Governors of the possibility that "similarly situated" mailers might request a similar NSA.

b. Whether the Memorandum contained any references to "functionally equivalent" NSAs.

c. Whether the Memorandum provided an estimate to the Governors that the net financial impact of the BAC NSA was negative.

d. If the answer to subpart c above is yes, whether the Memorandum informed the Governors that the negative financial impact could be amplified if similarly situated mailers requested similar NSAs.

e. If the answer to subpart d above is yes, whether the Memorandum informed the Governors that functionally equivalent NSAs could differ from the baseline NSA. Please explain in detail.

**INTERROGATORY COS/USPS-52**

a. Was Virginia Mayes involved in the drafting or review of the Bizzotto Presentation to the Board of Governors, dated December 10, 2007, filed under seal in this docket on December 16, 2008 ("Bizzotto Presentation"). Please describe her role in the process.

b. Was Virginia Mayes involved in the drafting or review of the December 2007 Memorandum of the Postmaster General to the Board of Governors, filed under seal in this docket on December 16, 2008 ("PMG Memo"). Please describe her role in the process.

**INTERROGATORY COS/USPS-53**

Please provide the date, location, participants and subject matter of all meetings or calls in which the Bizzotto Presentation was discussed and/or drafts of the Presentation were reviewed.

**INTERROGATORY COS/USPS-54**

Please provide the date, location, participants and subject matter of all meetings or calls in which the PMG Memo was discussed and/or drafts of the PMG Memo were reviewed.

**INTERROGATORY COS/USPS-55 (REDACTED)**

**INTERROGATORY COS/USPS-56 (REDACTED)**

**INTERROGATORY COS/USPS-57 (REDACTED)**

**INTERROGATORY COS/USPS-58 (REDACTED)**

**INTERROGATORY COS/USPS-59 (REDACTED)**

**INTERROGATORY COS/USPS-60 (REDACTED)**

**INTERROGATORY COS/USPS-61 (REDACTED)**

**INTERROGATORY COS/USPS-62 (REDACTED)**

**INTERROGATORY COS/USPS-63 (REDACTED)**

**INTERROGATORY COS/USPS-64**

The Postal Service has stated "To be clear, the Postal Service stands ready and willing to negotiate a NSA with Capital One that is functionally equivalent to the Bank of America NSA. The Postal Service has consistently expressed this position to Capital One." Motion of the USPS to Dismiss Complaint, C2008-3 (July 21, 2008).

Please indicate whether the Postal Service continues to stand ready and willing to enter in to an NSA with Capital One that is functionally equivalent (whether or not its terms are identical) to the Bank of America NSA. Please explain why or why not.

**INTERROGATORY COS/USPS-65**

Please provide updates of all your responses to previous interrogatories and document requests.

## **INTERROGATORY COS/USPS-66**

The Postal Service has stated that it regards the "key issues" in the case as: "1) whether or not Capital One is similarly situated to Bank of America, 2) whether or not functionally equivalent agreements must be identical to the baseline agreements upon which they are based, and 3) whether or not the Postal Service's [sic] has unduly discriminated against Capital One (or granted an undue preference to Bank of America)." Response of USPS to Public Representative Motion to Compel Response to Interrogatory (PR/USPS-12), C2008-3, September 16, 2008.

Please confirm that the Postal Service continues to regard these three issues as the only "key issues" in this case. If you do not so confirm, please indicate what the Postal Service regards as the "key issues" in this case at this time. If there are additional key issues, please describe them in detail.

**INTERROGATORY COS/USPS-67**

Is it the Postal Service's position that that for a mailer to obtain an NSA that is functionally equivalent to the BAC NSA, it must demonstrate that the second NSA will result in a "comparable benefit" to the Postal Service? Please explain why or why not.

In answering this interrogatory, please define your use of the term "comparable benefit."

## **INTERROGATORY COS/USPS-68**

As of the date of this interrogatory, and taking into account the Postal Service's filing in response to Commission Information Request No. 5, Question 7 in Docket No. ACR2008, and its recent responses in this docket (such as USPS Response to Interrogatory PR/USPS-12), please quantify the actual "benefit" to the Postal Service of the Bank of America NSA for the periods (a) from April 1, 2008 to December 31, 2008 and (b) from April 1, 2008 to March 31, 2009. If a portion of the "benefit" is not quantifiable, please provide a detailed description of that non-quantifiable portion of the "benefit".

**INTERROGATORY COS/USPS-69**

With reference to your response to the Interrogatory COS/USPS-68, does the Postal Service consider the overall "benefit" (both the quantifiable and non-quantifiable portions) from the BAC NSA, as the NSA has been implemented, to be positive or negative for the periods (a) from April 1, 2008 to December 31, 2008 and (b) from April 1, 2008 to March 31, 2009? Please explain.

**INTERROGATORY COS/USPS-70**

If record evidence in MC2007-1 had proven that the Read/Accept baselines written into the BAC NSA (96.8% and 96.9%) at Paragraph IV.C.2 and IV.F.2. were in fact BAC's actual read/accept rates at the time of signing of the BAC NSA, how would your calculation of "benefit" in Interrogatories COS/USPS-68 and COS/USPS-69 change? Please provide detailed descriptions and quantification to the extent possible for each referenced interrogatory.

## **INTERROGATORY COS/USPS-71**

With respect to your Response to COS/USDPS-27(a) which states "No other benefits have been quantified."

a. Please identify any and all benefits -- whether or not quantified -- that "arise directly and solely from BAC being the 'first adopter' of the key terms of the NSA." Your list will likely include those benefits already identified in COS/USPS-1, but please add any additional benefits, and please be sure that you have provided a complete list of all the claimed benefits.

b. For each of the benefits identified in your response to subpart a above, please indicate whether that benefit has been quantified or not.

c. For each quantified benefit in your response to subpart b above, please provide the quantification of the benefit for the following periods: (1) from April 1, 2008 to September 30, 2008; (2) from April 1, 2008 to December 31, 2008; (3) from April 1, 2008 to March 31, 2009.

**INTERROGATORY COS/USPS-72**

With respect to your response to COS/USPS-31, if the Postal Service has no count of the mail sent under Section III.D.1.a of the Bank of America NSA, how can it determine whether Bank of America has complied with the provisions of Section III.D, which set a minimum number of pieces that must conform to this section?

**INTERROGATORY COS/USPS-73**

With respect to your response to COS/USPS-32, if the Postal Service "is unaware of any such piece" sent under Section III.G of the Bank of America NSA, how can it determine whether Bank of America has complied with the provisions of Section III.G?

## **INTERROGATORY COS/USPS-74**

With respect to your response to COS/USPS-27 (d)-(f) which states "The Postal Service does not know, nor has it tried to identify, what Bank of America has done to ensure that the mail prepared and entered by these vendors satisfy the requirements of the NSA."

a. Please clarify that the phrase "The Postal Service does not know, nor has it tried to identify what Bank of America has done" means that that the Postal Service has not concerned itself with the specific actions that Bank of America has taken to satisfy the requirements of the NSA.

b. Please clarify that the Postal Service does know that "the mail prepared and entered by these vendors [does] satisfy the requirements of the NSA."

c. Have all mailpieces tendered by BAC under the NSA satisfied the requirements of the NSA? If your answer is no, please explain why certain mail pieces did not satisfy the requirements.

d. Please describe any and all tests, criteria, standards, or processes developed to determine whether BAC mailpieces "satisfy the requirements of the NSA."

**INTERROGATORY COS/USPS-75**

With respect to your response to COS/USPS-41,

a. Was the sole reason that the Postal Service incurred "costs ...for Accenture support activities for NSA implementation" because these costs were necessary for the implementation of the BAC NSA?

b. Would these costs have been avoided if the BAC NSA had not been implemented?

c. Has any NSA customer other than BAC benefited from the support activities undertaken by Accenture? If so, please provide a detailed description of how other NSA customers have benefited.

**INTERROGATORY COS/USPS-76**

During September, 2008, did Postal Service management consider whether to discontinue offering Market Dominant NSAs to individual mailers (as distinct from niche tariffs)? If so, was any decision, formal or informal, reached by management on whether to discontinue offering Market Dominant NSAs to individual mailers. Please provide details.