

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON DC 20268-0001**

Rate and Service Changes To Implement )  
Functionally Equivalent Negotiated Service ) Docket No. MC2004-3  
Agreement with Bank One Corporation )

**JOINT MOTION OF THE UNITED STATES POSTAL SERVICE,  
BANK ONE CORPORATION, AND  
THE OFFICE OF CONSUMER ADVOCATE  
FOR CONSIDERATION OF STIPULATION AND AGREEMENT  
AS THE BASIS FOR RECOMMENDED DECISION  
(September 15, 2004)**

The United States Postal Service, Bank One Corporation and the Office of Consumer Advocate hereby jointly move that the Commission base its recommended decision in this case on the Stipulation and Agreement filed herewith, in accordance with 39 U.S.C. §§ 3622 and 3623. These participants have been actively engaged in extensive settlement negotiations, as reported to the Commission in the reports of the settlement coordinator on August 19 and September 2. These negotiations have culminated in the Stipulation and Agreement, its attachments, and related documents filed today. These documents are being circulated to all intervenors, and further signatories are expected.<sup>1</sup>

As part of the settlement, the Postal Service and Bank One have agreed to modify their proposed DMCS language by adding a trigger mechanism that protects the

---

<sup>1</sup> Parties who wish to sign the Stipulation and Agreement should file their signature page directly with the Commission, along with an appropriate notice. All parties are kindly requested to inform undersigned counsel as soon as possible as to whether they are signing the Stipulation and Agreement, not signing but not opposing, or opposing.

Postal Service and other ratepayers from the risk of significant financial loss caused by errors in the projections of the costs and revenues of the Postal Service. The mechanism requires early termination of the Negotiated Service Agreement (“NSA”) if the cumulative financial impact to the Postal Service is negative at the end of the second year after implementation.<sup>2</sup>

The amended DMCS language provides that the determination of cumulative financial impact will be based on the financial analysis submitted into the record by the Postal Service in this docket (*i.e.*, Appendix A to the Direct Testimony of USPS witness Michael Plunkett, USPS-T-1). The Appendix A analysis will be adjusted solely to reflect actual return, forwarding and ACS success rates experienced by the Postal Service on eligible solicitations (as defined in proposed DMCS § 612.1) that are entered as First-Class Mail under this provision during the two-year period. The proposed DMCS language would require the Postal Service to submit its determination of profitability, along with the required supporting analysis, within two years and three months from the implementation date of the NSA. If the cumulative financial impact is negative, Bank One would be ineligible for discounts in the third year of the agreement; and the other provisions of Section 612 would terminate two years and three months after the implementation date.

The OCA supports the proposed NSA and recommends the issuance of the attached DMCS and rate schedules, as amended by the Stipulation and Agreement. The OCA believes that the Stipulation and Agreement, the NSA, and the amended

---

<sup>2</sup> A copy of the entire proposed DMCS and accompanying rate schedules, with the changes to the rates and fees necessary to implement the Bank One NSA and designated as Section 612 are attached to the Stipulation and Agreement as Attachments A and B. The originally proposed DMCS language filed as Attachment A to the Request has been amended by adding an early expiration provision, Section 612.52, and by including a cross-reference to that provision in Section 612.51.

DMCS language serve the interests of the Postal Service, consumers, and competitors, and comply with the standards and policies of Chapter 36 of Title 39 of the United States Code.

The OCA joins Bank One and the Postal Service in requesting the Commission not to impose in this case a stop-loss cap, or any other constraints on the proposed NSA, different from that set forth in the proposed DMCS language submitted herewith. Based on the record developed in this case and the amended DMCS language, the OCA is satisfied that the Postal Service is protected against the risk of significant financial loss. Further, the potential of the NSA to provide additional contribution to the Postal Service by generating new First-Class Mail volume growth is preserved.

Section 612.52 reflects a careful balance of several competing objectives. The mailer-specific variables specified for updating the Appendix A financial analysis—actual forwarding, return, and ACS success rates—correspond to OCA’s primary concerns as potential sources of uncertainty in the profitability of the NSA. The undersigned parties decided not to specify additional variables which might complicate the analysis or inject controversy and uncertainty.<sup>3</sup>

The timing of the profitability review—two years after the implementation of the NSA—balances the importance of allowing sufficient time for the mailer to adjust its

---

<sup>3</sup> In Appendix C to the Direct Testimony of Michael Plunkett, the proposed data collection plan inadvertently omitted a provision that the Commission added in its Opinion and Recommended Decision in the Capital One NSA case. This provision would require the reports to include “Volume of Standard Mail solicitations by rate category..” See PRC Op. & Rec. Decision MC2002-2 at ¶ 9029 n. 12.

The Postal Service requests the Commission to correct this omission by adding this provision to the data collection plan proposed herein. A copy of the data collection plan, as modified, is attached to the Stipulation and Agreement as Attachment C. The reference to “eligible . . . permit accounts” is not included because there are no eligible Bank One permit accounts for Standard Mail.

business plans to incorporate the NSA's incentives against the remote possibility that the deal may yield a negative financial impact after one year. Setting the review at the end of one year would increase the risk to mailers that their litigation, transaction and other initial sunk costs would be stranded, and thus would discourage mailers from pursuing NSAs.

The parties also considered but rejected a variety of other risk-limitation mechanisms, including a stop-loss cap akin to the one adopted in Docket No. MC2002-2 (the Capital One NSA), and an adjustment to the discount volume thresholds, as a basis for settlement. The parties are attempting to move in the direction of the perfect stop-loss mechanism, namely one that would prevent Postal Service losses without reducing potential gains for the Postal Service and the NSA partner.

For these reasons and those set forth in the related documents filed today and in the post-hearing briefs to be filed in accordance with the procedural schedule, the joint movants ask the Commission to base its recommended decision on the Stipulation and Agreement filed today in this docket.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
By its attorneys:  
Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking  
Nan K. McKenzie  
475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2993; Fax -5402

OFFICE OF CONSUMER ADVOCATE  
Shelley S. Dreifuss  
Director, Office of the Consumer  
Advocate  
Emmett Rand Costich  
Attorney  
1333 H Street, N.W.  
Washington DC 20268-0001  
(202) 789-6830  
Fax: (202) 789-6819  
[dreifusss@prc.gov](mailto:dreifusss@prc.gov)

BANK ONE CORPORATION

By its attorneys:

David M. Levy

Joy M. Leong

Sidley Austin Brown & Wood LLP

1501 K Street, N.W.

Washington DC 20005

(202) 736-8000

[dlevy@sidley.com](mailto:dlevy@sidley.com)

[jleong@sidley.com](mailto:jleong@sidley.com)

*Counsel for Bank One Corporation*

September 15, 2004

## CERTIFICATE OF SERVICE

I hereby certify that I have today caused the foregoing document to be served in accordance with Section 12 of the Commission's Rules of Practice

---

Nan K. McKenzie

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
September 15, 2004