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ORDER NO. 1346

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

George A. Omas, Chairman;  
Ruth Y. Goldway, Vice Chairman;  
Dana B. Covington;  
and Tony Hammond

Experimental Rate and Service Changes  
To Implement Negotiated Service Agreement  
With Capital One Services, Inc.

Docket No. MC2002-2

NOTICE AND ORDER  
ON FILING OF REQUEST FOR ESTABLISHMENT OF  
EXPERIMENTAL RATE AND SERVICE CHANGES  
FOR QUALIFYING FIRST-CLASS MAILINGS

(Issued September 24, 2002)

On September 19, 2002, the United States Postal Service filed a request with the Postal Rate Commission for a recommended decision on a proposed three-year experimental classification change, and related discounts and fee waivers, for qualifying First-Class mailings entered by Capital One Services, Inc. ("Capital One"). Request of the United States Postal Service for a Recommended Decision on Classification, Rates and Fees for Capital One Services, Inc. Negotiated Service Agreement ("Request"). The Service's Request was filed pursuant to Chapter 36 of the Postal Reorganization Act, 39 U.S.C. §§ 3601 *et seq.* It was accompanied by a contemporaneous motion seeking waiver of certain requirements of rules 54 and 64; by a motion for joint

sponsorship of the proposed changes by the Postal Service and Capital One; and by a notice of the filing of a Postal Service library reference, USPS-LR-1. All these documents are available for physical inspection in the Commission's docket section during regular business hours, and for Internet access on the Commission's website at: [www.prc.gov](http://www.prc.gov) within the search field "Docket No. MC2002-2."

*Simultaneous filings by Capital One.* On the same date, Capital One filed a petition for leave to intervene in the proceeding initiated by the Postal Service's Request, and to join the Service in its motion for joint sponsorship of the proposed rate and service changes. In addition to requesting that it be granted the status of a full participant under rule 20 at the outset of this proceeding, Capital One seeks leave to present testimony in support of the Postal Service's request, and submits the prepared direct testimony of two witnesses.

*Brief description of joint proposal.* The Postal Service proposes rate and service changes that would be available for certain forms of high-volume First-Class mail use in order to implement the terms of a contract negotiated between the Service and Capital One. Under that contract, which is appended as Attachment G to the Request, the Postal Service and Capital One would observe reciprocal requirements, conditions, and conduct that would support alterations in the rates and fees of specified services available to Capital One—specifically, mailings of certain categories of First-Class Mail and optional use of address correction service.

Under the proposed changes, Capital One would be eligible for new incremental per-piece discounts for certain of its First-Class Mail solicitation and customer correspondence volume. Beyond an overall annual volume threshold, these discounts would vary under a "declining block" rate structure, with discounts increasing as specified levels of volume are exceeded. If Capitol One enters 750 million eligible pieces of First-Class Mail during the first year after implementation, electronic address correction service would also be provided by the Postal Service without fee to Capitol One's solicitations entered as First-Class Mail when such pieces prove to be undeliverable as addressed and cannot be forwarded under existing regulations. In

return, Capital One would agree to forgo its current practice of receiving free return of such undeliverable mail, which is an existing service feature of First-Class Mail. Additionally, Capital One would be required to perform specific actions to maintain and improve the address quality of mail it enters as First-Class Mail.

*Rationale for filing the joint proposal.* The Postal Service states that adoption of the rate and classification changes proposed in its Request will allow it and the Commission to test the effectiveness of the Negotiated Service Agreement (“NSA”) approach, as a means of providing pricing flexibility under the Postal Reorganization Act’s existing ratemaking and mail classification provisions. The Service states that agreements similar to NSAs have been successfully employed to set prices in other regulated industries, by foreign postal administrations, and by the Postal Service with its international customers. Request at 2-3.

With respect to the particular changes negotiated between the Postal Service and Capital One, the Service anticipates that they will lead to a net reduction in its costs related to handling of forwarded and returned mail. In addition, the changes are expected to enable Capital One to reduce its postage costs. More broadly, if volume conditions are met, the Service states that it expects the revenue effects to result ultimately in a reduction in other mailers’ proportional contribution to the Service’s institutional costs. *Id.* at 2.

*Significance of experimental designation.* The Postal Service states that it believes it would be appropriate for the Commission to review and recommend the operative rate and classification elements of its NSA-based proposal as an experimental classification, under the expedited rules of practice and procedure for experimental changes in §§ 3001.67-3001.67d of title 39, Code of Federal Regulations. These rules provide for issuance of the Commission’s recommended decision within 150 days of the filing of the Postal Service’s Request, or of the Commission’s determination that experimental treatment of the proposal is appropriate, whichever occurs later. 39 C.F.R. § 3001.67d.

In support of this treatment, the Service asserts that the substance of its Request is innovative, and thus is consistent with the purpose of the experimental rules. Request at 3-4. According to the Service, the minor impact, limited scope of application, and proposed three-year duration of the requested changes conform to the logic of the experimental approach. *Id.* at 4. The Service further argues that the Commission's specialized procedures for considering experimental classifications are sufficiently comprehensive to provide for the exploration and resolution of whatever factual and legal issues might be raised regarding the proposals. *Id.* at 5. Finally, the Postal Service claims that the prospects for generating data and information documenting the effects of the proposed changes warrant adopting an experimental approach.<sup>1</sup> *Id.* at 4.

*Motion for waiver of certain Commission rules.* In its waiver motion, the Postal Service states that it has supplemented information it developed specifically for this filing by incorporating documentation it submitted in connection with the most recently concluded omnibus rate proceeding, Docket No. R2001-1. Motion of United States Postal Service for Waiver, September 19, 2002. The Service argues that this is a reasonable and sufficient approach to satisfying the filing requirements of sections 54, 64, and 67 of the rules, in that the Capital One NSA experiment would not materially alter the rates, fees, and classifications proposed and adopted in the R2001-1 proceeding. In assessing compliance with the applicable filing requirements, the Service claims that substantial weight should be given to the nature of the proposed changes, and their negligible impact on physical attributes of mail and limited impact on costs, volumes, and revenues. However, should the Commission conclude that the materials imported from Docket No. R2001-1 are insufficient, and that strict construction of the rules regarding information pertaining to other mail categories and special services would require newly-developed testimony reflecting the changes proposed in the Request, the Service moves that those requirements be waived.

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<sup>1</sup> The Postal Service's plan for collecting and reporting data associated with the implementation of the proposed changes is described in the testimony of witness Michael K. Plunkett, USPS-T-2.

*Appropriate procedures at the outset of this case.* The character of the Request before the Commission is novel, in that the rate and mail classification changes proposed therein were arrived at bilaterally, through a process of negotiation. Thus, unlike typical rate and mail classification proposals submitted by the Postal Service, the Capital One Negotiated Service Agreement evidently has two independent but contractually-linked proponents.

In view of this unique origin, the Commission is inclined to initiate its review of the Request on the terms jointly advanced by the Postal Service and Capital One. As the Service notes in its motion for joint sponsorship, the proposed changes are mutually advantageous to the Service and Capital One, and are based on information provided by both parties. The Service's motion, and Capital One's petition, indicate that both parties are prepared to submit and defend their affirmative cases-in-chief at the outset of the case. Under these circumstances, although the rules of practice do not explicitly provide for this order of presentation, the Commission concludes that the proposed procedures would serve the interests of efficiency and economy in conducting the proceeding. Additionally, to the extent that other participants will be able to examine the evidence proffered by Capital One at an earlier stage of the proceeding, the proposed procedures would enhance its fairness. Accordingly, the Commission shall grant Capital One's petition to intervene at the outset and join the Postal Service's motion for joint sponsorship; grant the Service's and Capital One's joint motion for joint sponsorship of the Request's proposed changes; and grant the Service's motion for leave to rely on Capital One's case-in-chief. However, other participants may submit responses to these motions if they so desire, and their grant is subject to reconsideration, should another participant lodge any objection in its answer.

*Appropriateness of proceeding under the experimental rules.* As noted earlier, the Postal Service asks that the Commission consider its Request under Commission Rules 67-67d. As provided in Rule 67, in determining whether these procedures are appropriate, the Commission will consider the proposed change's novelty, magnitude, the ease or difficulty of collecting data, and proposed duration.

Participants are invited to comment on whether the Postal Service's Request should be evaluated under Rules 67-67d. Comments are due on or before October 17, 2002, and participants should be prepared to discuss relevant issues at the prehearing conference.

Pending a determination on this issue, participants should recognize that the motion seeking application of the experimental rules may, or may not, be granted. The experimental rules provide that cases falling within this designation shall be treated as subject to the maximum expedition consistent with procedural fairness, and that participants will be expected to identify genuine issues of material fact at an early stage in this case. See Rule 67a(b). The schedule ultimately adopted in appropriate cases is established to allow for issuance of a decision not more than 150 days following a determination regarding the appropriateness of applying the experimental rules or the filing of the Request, whichever occurs later. 39 CFR § 3001.67d. However, Rule 67 states that the Commission reserves the right, in appropriate cases, to require that the procedures normally prescribed for non-experimental cases under 39 U.S.C. § 3623 be used for a Request that the Postal Service has submitted as a proposed experiment.

*Limitation of issues.* Rule 67a provides a procedure for limiting issues in experimental cases. To enable participants to evaluate whether genuine issues of fact exist, the proponents—*i.e.*, both the Postal Service and Capital One—shall respond to discovery requests within 10 days. Written discovery pursuant to rules 25-28 may be undertaken upon intervention.

*Need for hearing.* A decision on whether there is a need for evidentiary hearings, and the scope of any such hearings, has not been made. Comments on this matter, and other procedural issues raised by the Service's Request, should be filed no later than October 17, 2002, and participants should be prepared to discuss these matters at the prehearing conference.

*Representation of the general public.* In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this

proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as, service on the Commission of the 24 copies required by Commission rule 10(d) [39 CFR § 3001.10(d)].

*Intervention.* Those wishing to be heard in this matter are directed to file a written notice of intervention with Steven W. Williams, Secretary of the Commission, 1333 H Street NW, Suite 300, Washington, DC 20268-0001, on or before October 17, 2002. Notices should indicate whether participation will be on a full or limited basis. See 39 CFR §§ 3001.20 and 3001.20a.

*Prehearing conference.* A prehearing conference will be held Wednesday, October 23, 2002, at 10 a.m. in the Commission's hearing room.

It is ordered:

1. The Commission establishes Docket No. MC2002-2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One Services, Inc., to consider the request referred to in the body of this order.
2. The Motion of United States Postal Service for Joint Sponsorship of Proposals and for Leave to Rely on Capital One's Case-in-Chief, filed September 19, 2002, is granted, subject to reconsideration in response to any objection lodged by other participants in this proceeding.

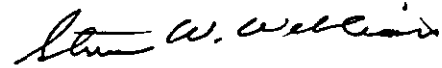
3. The Petition of Capital One Services, Inc. for Leave to Intervene in the Above-Captioned Proceeding, and to Join United States Postal Service Motion for Joint Sponsorship of Proposals, filed September 19, 2002, is granted, subject to reconsideration in response to any objection lodged by other participants in this proceeding.
4. The Commission will sit en banc in this proceeding.
5. The deadline for filing notices of intervention and comments regarding the appropriateness of proceeding under rules 67 through 67d is October 17, 2002.
6. Answers to the Service's motion for waiver of certain filing requirements, to its motion for joint sponsorship of proposals, and to Capital One's motion for leave to intervene and jointly sponsor the proposals are due no later than October 17, 2002.
7. Written discovery pursuant to rules 26-28 may be undertaken upon intervention.
8. The Postal Service and Capital One Services, Inc. shall respond to discovery requests within 10 days.
9. A prehearing conference will be held Wednesday, October 23, 2002, at 10 a.m. in the Commission's hearing room.
10. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.



11. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

By the Commission.

(SEAL)

A handwritten signature in cursive script, appearing to read "Steven W. Williams".

Steven W. Williams  
Secretary