

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

EXPERIMENTAL RATE AND SERVICE CHANGES  
TO IMPLEMENT NEGOTIATED SERVICE AGREEMENT  
WITH CAPITAL ONE SERVICES, INC.

Docket No. MC2002-2

**RESPONSE OF UNITED STATES POSTAL SERVICE  
TO PRESIDING OFFICER'S INFORMATION REQUEST NO. 4**

The United States Postal Service hereby provides its response to Presiding Officer's Information Request No. 4.

The question is stated verbatim and followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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1. During the December 4, 2002 cross-examination of Postal Service witness Bizzotto, Vice Chairman Covington raised a question regarding what recourse a potential Negotiated Service Agreement candidate has if the candidate is unable to successfully negotiate a Negotiated Service Agreement with the Postal Service, or otherwise feels that it was treated unfairly. Tr. 3/518. Witness Bizzotto stated that she had not contemplated the issue before, but that there is a "fairly well-established process for customers who feel that there is an issue with how they've been treated by the Postal Service." Id. Please provide the following information on how the Postal Service intends to resolve a customer grievance related to a Negotiated Service Agreement.

- (a) Describe the existing processes that the Postal Service utilizes to provide review to "customers who feel that there is an issue with how they've been treated by the Postal Service." Include a description of all mechanisms available to a customer to appeal a previous decision of the Postal Service in any stage of these processes.
- (b) Describe what processes, if any, will be available to accommodate a grievance related to a Negotiated Service Agreement. Please consider whether the same process would be available to (a) a mailer that is denied a Negotiated Service Agreement by the Postal Service, and (b) the competitor of a mailer that has a Negotiated Service Agreement with the Postal Service.
- (c) Compare the role played by the Postal Service's Law Department in negotiating a Negotiated Service Agreement, to the role played by the Postal Service's Law Department in resolving a grievance related to a Negotiated Service Agreement using the Postal Service's internal adjudication process.
- (d) Describe the Postal Service's position on the availability of judicial review of the Postal Service's final decision regarding a Negotiated Service Agreement grievance. Comment on any claim of immunity provided by § 410(a). Include references to any supporting case law, if applicable.
- (e) During the cross-examination of Witness Bizzotto, the possibility was raised that a Complaint may be filed with the Commission to resolve a Negotiated Service Agreement grievance. Tr. 3/528-29. Describe the Postal Service's position on the role that the Commission should have in resolving Negotiated Service Agreement grievances, and what action will be required of the Postal Service in response to a decision of the Commission.

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**RESPONSE:**

(a) Domestic Mail Manual section G020.3.0 sets forth the current process for appeals of classification decisions.

(b) The process for determining whether to develop an NSA with a particular customer can be compared to the general process of developing changes in rates, fees, and classifications. Suggestions regarding such changes may be received from mailers at any time, and the Postal Service discusses its own potential proposals with mailers on a continuing basis. Of course, not all of these ideas end up being proposed. Similarly, not all potential NSAs will come to fruition.

Whenever a request for changes is filed, parties who believe the classifications or rates should be defined differently raise those issues during the litigation. If the Postal Service chooses not to propose a particular change, a mailer who believes that situation results in its paying rates that are not consistent with the statute may file a complaint with the Commission.

Similarly, as witness Bizzotto indicated during her appearance, if the existence of an NSA with mailer A leads mailer B, who was not successful in negotiating a NSA, to believe that the rates it is paying are not lawful, that mailer has the right to file a complaint with the Commission under section 3662. See Tr. 3/528. Undoubtedly, if there were a mailer or mailers who felt they could qualify for the terms of the NSA currently before the Commission, but had been unsuccessful in negotiating an NSA with the Postal Service, the Commission would have heard from those parties in the current docket.

The DMM process for review of decisions applying existing classifications is not viewed as applicable to decisions on whether or not to file an NSA proposal, just as it is not applicable to decisions on whether or not to file any other rate, fee, or classification proposal.

The process for Capital One to appeal decisions regarding implementation of its NSA is set forth in the paragraph IV.B. of the NSA.

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(c) The Law Department is available to advise its clients in the development of all rate, fee, and classification proposals, including NSAs. The Law Department represents the Postal Service in all litigation before the Commission, including defending rate complaints. The Law Department also may provide advice to its clients regarding review of classification decisions. As noted above, that process is not viewed as applicable to potential NSAs. The Law Department would also be available to advise its clients regarding appeals under the NSA with Capital One.

(d) This question is not applicable, since that process is not viewed as applicable to NSAs.

(e) As noted above, the Postal Service believes that the section 3662 complaint process is available to parties who believe the existence of an NSA to which they are not a party results in their paying rates they believe to be unlawful.

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

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