

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

STIPULATION AND AGREEMENT

This Stipulation and Agreement is submitted pursuant to Rule 29 of the Postal Rate Commission's Rules of Practice and Procedure, by and between the undersigned parties, through their respective attorneys, and represents a negotiated settlement of the Postal Service's Request for recommendations on changes of postal rates, fees, and classifications. The undersigned parties hereby stipulate and agree to the following:

I. BACKGROUND

On September 19, 2002, pursuant to 39 U.S.C. ' 3623, the United States Postal Service filed with the Postal Rate Commission a request for a decision recommending an experimental classification and rate changes needed to implement the negotiated service agreement (NSA) between the Postal Service and Capital One Services, Inc. The request was designated as Docket No. MC2002-2 by the Commission. The Commission granted the motion of the Postal Service and Capital One to jointly sponsor the request. The basis for the request is explained in the direct testimonies of witnesses Anita J. Bizzotto (USPSBTB1), Michael K. Plunkett, (USPSBTB2), Charles L. Crum (USPS-T-3), James D. Wilson (USPS-T-4), Donald Jean (COS-T-1), and

Stuart Elliott (COS–T–2), and further amplified in the rebuttal testimonies of Michael K. Plunkett (USPS–RT–1), B. Kelly Eakin (USPS–RT–2), Robert Shippee (COS–RT–1), and Stuart Elliott (COS–RT–2).

II. TERMS AND CONDITIONS

1. This Stipulation and Agreement represents a negotiated settlement of all issues raised by the Docket No. MC2002-2 Request of the United States Postal Service for an expedited recommended decision on September 19, 2002.

2. The undersigned participants have agreed to an addition to the DMCS language originally proposed by the Postal Service. A footnote would be added to indicate the process for proposal, consideration, and negotiation of NSAs comparable to the Capital One NSA. The revised DMCS language is set forth in Attachment A to this Stipulation and Agreement. The originally proposed Rate Schedules, which have not been modified, are set forth in Attachment B hereto. The undersigned participants have also agreed to a modification of the originally filed data collection plan (USPS-T-2, section VI.C.). The revised data collection plan is set forth in Attachment C hereto.

3. The Postal Service intends to issue regulations pursuant to the footnote added to the proposed DMCS language concerning comparable NSAs. A substantially final draft of these regulations is set forth in Attachment D hereto. In addition, the Postal Service agrees to report annually on the number of requests made for comparable NSAs, the industry of each requestor, the volume of First-Class Mail mailed annually by the requestor within the following ranges – less than 100 million pieces, 100 to 250 million pieces, and more than 250 million pieces – and the status of negotiations, or if

negotiations were terminated, the reason(s) therefore. No information that could identify a mailer would be provided.

4. The Office of the Consumer Advocate agrees to withdraw the proposal set forth in the testimony of James F. Callow (OCA-T-2) and to file with the Commission a notice of that withdrawal and a motion seeking to remove from the record transcript pages 1390-96 (Vol. 7), which contain the OCA's alternative proposed classification and rates. The OCA will indicate in that notice and in its brief that it no longer supports its alternative proposal and that it believes the Commission should recommend the settlement. The OCA will also explain how the settlement addresses the issues it raised in the testimonies of witnesses Callow and J. Edward Smith (OCA-T-1). The OCA understands that the Postal Service's estimated savings from Capital One's use of Address Change Service in lieu of physical returns for undeliverable-as-addressed mail are being anticipated in the preparation of the budget for FY 2004 and would be reflected in the budgets for the subsequent years of the agreement as well.

5. The undersigned parties agree that the testimonies, designated written cross-examination, and oral cross-examination of the Postal Service and Capital One witnesses listed above, the revised DMCS language, and the amplified data collection plan all provide substantial evidence which, taken together with the Postal Service's Docket No. MC2002-2 Request and the attachments thereto, justify a decision recommending the experimental change to the DMCS set forth in Attachment A to this Stipulation and Agreement and the rates set forth in Attachment B. On the basis of such record, for purposes of this proceeding only, the undersigned participants stipulate that the experimental DMCS and Rate Schedule changes set forth in the Attachments to

this Stipulation and Agreement are in accordance with the polices of title 39, United States Code, and in particular, the criteria and factors of 39 U.S.C. §§ 3622 and 3623.

6. This Stipulation and Agreement is offered in total and final settlement of this proceeding. The undersigned participants agree that they will file no further pleadings or testimony with the Commission in this proceeding, with the exception of: (a) pleadings or testimony explicitly requested by the Commission or in reply to such pleadings, including briefs and reply briefs; (b) pleadings or testimony opposing pleadings or testimony filed in opposition to this Stipulation and Agreement; or (c) pleadings, testimony or comments in support of this Stipulation and Agreement.

7. If the Commission adopts a Recommended Decision that deviates from the experimental classification and rates proposed in this Stipulation and Agreement, or if the Governors of the Postal Service fail to approve the Commission's Recommended Decision adopting the experimental classification and rates as proposed by the Postal Service and modified by this Stipulation and Agreement, then each signatory reserves the right to withdraw from this Stipulation and Agreement. Any signatory withdrawing under the terms of this paragraph must provide written notice of this fact to all participants within five business days of the occurrence of the specific event giving rise to the right to withdraw. Any exercise of such right by one or more signatories shall not affect the operation of this Stipulation and Agreement as to other signatories.

8. This Stipulation and Agreement pertains only to the instant proceeding. The undersigned participants shall not be considered as necessarily agreeing with or conceding the applicability of any principle, or any method of classification or terms and conditions of service, or any method of ratemaking or cost of service determination, or

design of rate or fee schedule or terms and conditions of service, or the application of any rule or interpretation of law, that may underlie, or be thought to underlie, this Stipulation and Agreement.

9. In any future negotiation or proceeding (other than any proceedings involving the honoring, enforcement, or construction of this Stipulation and Agreement), the undersigned participants shall not be bound or prejudiced by this Stipulation and Agreement, nor shall any participant rely for any purpose on the fact that another participant entered into or did not oppose this Stipulation and Agreement. The undersigned participants also agree that, to the extent that matters presented in the Docket No. MC2002-2 Request, in any Commission Recommended Decision on that Request, or in any decision of the Governors of the Postal Service in this proceeding have not actually been litigated, the resolution of such matters will not be entitled to precedential effect in any other proceeding.

10. As fully stated above, the agreement of the undersigned participants is intended to relate exclusively to the specific changes reflected in the proposed experimental DMCS and Rate Schedule provisions attached hereto, and is not intended to bind or prejudice those participants in any other proceeding. This understanding of the intended consequences of the agreement applies equally to all constituent parts of the agreement.

11. The undersigned participants request that the Commission expeditiously issue a decision recommending adoption of the experimental DMCS and Rate Schedule provisions appended to this Stipulation and Agreement.

12. This Stipulation and Agreement represents the entire agreement of the signatories, and supersedes any understandings or representations not contained herein.

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SIGNATURE PAGE FOR STIPULATION AND AGREEMENT

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking
United States Postal Service

March 31, 2003

Date

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Name of Participant

Date

[Signature of Representative]

NEGOTIATED SERVICE AGREEMENTS
CLASSIFICATION SCHEDULE

610 CAPITAL ONE NEGOTIATED SERVICE AGREEMENT¹

610.1 Eligible First-Class Mail

Eligible First-Class Mail under this section is defined as Capital One's First-Class Mail customer correspondence with established account holders and First-Class Mail solicitations that bear the endorsement specified by the Postal Service. Eligible First-Class Mail does not include Business Reply Mail, Qualified Business Reply Mail, Cards, or Priority Mail. To the extent specific language in 610 is seen to conflict with other classification schedules, the former shall control.

610.2 Waiver of Address Correction Fees

The fees for address correction in Fee Schedule 911 are waived for those First-Class Mail solicitations on which Capital One uses the endorsement specified by the Postal Service, if:

- (a) Capital One mails more than 750 million pieces of Eligible First-Class Mail within the first year after implementation of this section, and
- (b) updates its databases within 2 days after receipt of address correction information and uses the information in all future First-Class Mail marketing campaigns.

If, during the first year after implementation, Capital One mails fewer than 750 million pieces of Eligible First-Class Mail, Capital One agrees to pay the greater of either (1) all address correction service fees under Fee Schedule 911, as specified by the Postal Service, for pieces receiving address correction service, or (2) \$1,000,000.

¹ Comparable NSAs, involving adoption of electronic Address Correction Service in lieu of physical returns for First-Class Mail that qualifies for Standard Mail rates and declining block rates for First-Class Mail, may be entered into with other customers, as specified by the Postal Service, and implemented pursuant to proceedings under Chapter 36 of Title 39, of the United States Code.

610.3 First-Class Mail Discounts

610.31 Discount Threshold

The Discount Threshold is defined as the greater of either 1.225 billion pieces of eligible First-Class Mail, or 90 percent of Capital One's average eligible First-Class Mail volume for FY2000, FY2001 and FY2002. The Discount Threshold may be adjusted in accordance with section 610.36.

610.32 Discounts

Capital One's Eligible First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221 less the discounts shown in Rate Schedule 610A, for each year in which Capital One meets the Discount Threshold. The discounts apply only to volume above the Discount Threshold. Each incremental discount applies only to the incremental volume within each volume block.

610.33 Additional Discounts (Year 2 and Year 3)

If Eligible First-Class Mail volume for the first year is less than 1.025 billion pieces, the additional discount tiers shown in Rate Schedule 610B shall apply to the incremental volumes in the second and third years in addition to the incremental discounts in Rate Schedule 610A.

610.34 Threshold Adjustment

In the event that Capital One merges with or acquires an entity with annual First-Class Mail volume in excess of 10 million pieces in the year preceding the acquisition or merger, or in the event that, in any Postal Service fiscal year, Capital One merges with or acquires multiple entities with combined annual First-Class Mail volume in excess of 25 million pieces, the discount threshold will be adjusted upward by the volume of First-Class Mail sent by the other entity (or entities) during the 12 months preceding the merger or acquisition. In that event, beginning in the succeeding fiscal quarter following the date of acquisition or merger, Rate Schedule 610C would apply in lieu of Rate Schedule 610A, and, if the conditions in section 610.33 are also met, Rate Schedule 610D would apply in lieu of Rate Schedule 610B.

610.4 Rates

The rates applicable to this Agreement are set forth in the following rate schedules:

610A

610B

610C

610D

610.5 Expiration

This provision (Section 610) expires 3 years from the implementation date set by the Board of Governors.

610.6 Precedence

To the extent any provision of section 610 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

CAPITAL ONE NSA

RATE SCHEDULE 610A

| <u>Volume Block</u> | <u>Incremental Discounts</u> |
|--------------------------------------|------------------------------|
| <u>1,225,000,001 – 1,275,000,000</u> | <u>3.0¢</u> |
| <u>1,275,000,001 – 1,325,000,000</u> | <u>3.5¢</u> |
| <u>1,325,000,001 – 1,375,000,000</u> | <u>4.0¢</u> |
| <u>1,375,000,001 – 1,450,000,000</u> | <u>4.5¢</u> |
| <u>1,450,000,001 – 1,525,000,000</u> | <u>5.0¢</u> |
| <u>1,525,000,001 – 1,600,000,000</u> | <u>5.5¢</u> |
| <u>1,600,000,001 and above</u> | <u>6.0¢</u> |

RATE SCHEDULE 610B

| <u>Volume Block</u> | <u>Incremental Discounts</u> |
|--------------------------------------|------------------------------|
| <u>1,025,000,001 – 1,075,000,000</u> | <u>1.0¢</u> |
| <u>1,075,000,001 – 1,125,000,000</u> | <u>1.5¢</u> |
| <u>1,125,000,001 – 1,175,000,000</u> | <u>2.0¢</u> |
| <u>1,175,000,001 – 1,225,000,000</u> | <u>2.5¢</u> |

RATE SCHEDULE 610C
For Adjusted Threshold (“A.T.”)

| <u>Volume Block</u> | <u>Incremental Discounts</u> |
|--|------------------------------|
| <u>A.T. + 1 – A.T. + 50,000,000</u> | <u>3.0¢</u> |
| <u>A.T. + 50,000,001 – A.T. + 100,000,000</u> | <u>3.5¢</u> |
| <u>A.T. + 100,000,001 – A.T. + 150,000,000</u> | <u>4.0¢</u> |
| <u>A.T. + 150,000,001 – A.T. + 225,000,000</u> | <u>4.5¢</u> |
| <u>A.T. + 225,000,001 – A.T. + 300,000,000</u> | <u>5.0¢</u> |
| <u>A.T. + 300,000,001 – A.T. + 375,000,000</u> | <u>5.5¢</u> |
| <u>A.T. + 375,000,001 and above</u> | <u>6.0¢</u> |

RATE SCHEDULE 610D
For Adjusted Threshold ("A.T.")

| <u>Volume Block</u> | <u>Incremental Discounts</u> |
|---|------------------------------|
| A.T. + 1 – A.T. + 50,000,000 | 1.0¢ |
| A.T. + 50,000,001 – A.T. + 100,000,000 | 1.5¢ |
| A.T. + 100,000,001 – A.T. + 150,000,000 | 2.0¢ |
| A.T. + 150,000,001 – A.T. + 200,000,000 | 2.5¢ |

CAPITAL ONE NSA DATA COLLECTION PLAN

The Postal Service plans to collect the following data pertaining to the NSA with Capital One Services, Inc.:

1. The volume of First-Class Mail solicitations by rate category in eligible Capital One permit accounts;
2. The volume of First-Class Mail customer mail by rate category in eligible Capital One permit accounts;
3. The amount of discounts paid to Capital One for First-Class Mail by incremental volume block;
4. The volume of First-Class Mail solicitations bearing the ACS endorsement that are physically returned to Capital One;
5. The number of electronic address correction notices provided to Capital One for forwarded solicitation mailpieces, including the number of notices processed by CFS units and separately for PARS (when fully operational).
6. The number of electronic address correction notices provided to Capital One for solicitation mailpieces that would otherwise be physically returned, including the number of notices processed by CFS units and separately for PARS (when fully operational).
7. Monthly estimate of the amount of time spent on compliance activity and a description of the activities performed.
8. For each First Class solicitation mailing list run against NCOA, Capital One will provide NCOA contractor reports that separately identify the number of address records checked and the number of corrections made.
9. For each Change of Address record that is used to forward a piece of Capital One solicitation mail through ACS under the Agreement, the Postal Service will provide the date the record was created, its move effective date, whether it was for a family or individual move, and each date that the record was used to forward a mail piece. No other information from the record would be provided.

As part of each data collection plan report, the Postal Service will provide an evaluation of the impact on contribution. It will also provide an assessment of trends of Capital One's First-Class Mail volume as compared to overall First-Class Mail volume.

Data collected under the plan shall be reported annually following the end of the fiscal year, with the first report being made available at the end of FY2004. The Postal Service shall provide the data in a PC-available format.

Postal Bulletin

DMM Revision

Negotiated Service Agreements

Effective [DATE], *Domestic Mail Manual* (DMM) G100 is added to provide requirements for Negotiated Service Agreements (NSAs) that would be treated as comparable to those which form the basis for experimental mail classifications established in accordance with Chapter 36 of Title 39 of the United States Code. An NSA is an agreement between the Postal Service and a single mailer that requires changes to the established rates, fees, or classifications for that mailer only. To establish such changes, the Postal Service must adhere to the process set forth in Chapter 36 of Title 39.

On _____, after proceedings before the Postal Rate Commission, and a Recommended Decision by the Commission, the Governors of the Postal Service approved the Commission's recommended experimental changes in the classification, rates, and fees applicable to Capital One, in accordance with the Capital One NSA. Pursuant to 39 U.S.C. § 3625(f), the Board of Governors set _____ as the effective date. Section G101 of the DMM briefly describes the Capital One NSA and sets forth elements that would identify a comparable agreement with another mailer that could lead to additional experimental classification changes. Section G101 describes general requirements of comparability, factors to be considered in entering into a comparable agreement, data and documentation requirements, as well as other

matters. To be effective, each comparable NSA must be established as experimental classifications by decisions of the Board of Governors, the Commission, and the Governors under Chapter 36 of Title 39, and the Commission's rules of practice and procedure. The Postal Service issues these regulations as guidance in negotiating comparable agreements with other mailers.

We will incorporate these revisions into the printed version of DMM 58 and into the monthly update of the online DMM available via Postal Explorer at <http://pe.usps.gov>.

Domestic Mail Manual (DMM)

G General Information

* * * * *

G100 Experimental Negotiated Service Agreements

G101 Capital One Services, Inc. NSA

Summary

G101 describes general requirements for negotiated service agreements (NSAs) that would be considered comparable to the NSA that was the subject of Docket MC2002-2 and effective 2003 through 2006. G101 also explains the purpose of such agreements and factors to be considered in entering into comparable agreements with other mailers.

1.0 BASIC INFORMATION

The Negotiated Service Agreement (NSA) that was the subject of Docket MC2002-2 requires Capital One Services, Inc. (Capital One) to receive electronic notification about its undeliverable First-Class Mail solicitations instead of physical return of the pieces. The notices will be provided through the Address Change Service (ACS) program and the usual electronic address correction fee will be waived. Capital One also agrees to maintain and enhance address and mail preparation quality. In exchange for its receipt of the electronic notice for its First-Class Mail solicitations and its compliance with the Agreement's terms, Capital One would have available declining block rates of postage for volumes

above stated thresholds. A copy of the Agreement is filed with the Postal Rate Commission in Docket No. MC2002-2 as Attachment G to the Postal Service's Request for a Recommended Decision and can be found at www.prc.gov.

2.0 FEATURES

2.1 Requirements

To be considered comparable to the NSA in 1.0, the following features are required:

- a. Use of First-Class Mail for matter that qualifies for Standard Mail rates.
- b. Waiver of seal against postal inspection of mail as agreed to by the mailer.
- c. Computation of First-Class Mail postage by the use of declining block rates specified in the service agreement and based on particular volume requirements that define incremental discount thresholds. The mail subject to the agreement must relate only to the mailer's products and services.
- d. Preparation of mail under applicable standards unless otherwise specified in the service agreement.
- e. Adherence to the following address quality standards for the rates claimed:

- (1) Participation in Address Change Service (ACS) under F030 using the endorsement "Change Service Requested" as described in F010.5.1 for undeliverable-as-addressed (UAA) mail.
 - (2) Use of National Change of Address (NCOA), *FASTforward*, or other premailing USPS-approved method for meeting the move update standards in E130 for Presorted First-Class Mail and E140 for automation-rate First-Class Mail. In addition to those standards, addresses used on mailings must be updated more frequently than 180 days or as required by the service agreement.
- f. Overall positive financial impact on the USPS. A minimum payment or transactional penalty is required to ensure a positive contribution.
- g. Agreement to make necessary records and data available to the USPS to facilitate and monitor compliance.
- h. Ability of the USPS to cancel the agreement for any failure or, where appropriate, material failure of the mailer:
- (1) To provide accurate data .
 - (2) To present properly prepared and paid mailings.
 - (3) To comply with a material term of the agreement.
 - (4) To use the agreement.

2.2 Candidate Factors

The following factors are considered by the USPS in evaluating a proposal for a comparable NSA under G101:

- a. Presentation by the mailer of at least 3 years of historical data to document mail volumes (including undeliverable-as-addressed mail), mailing systems and postage payment systems in use, and quality control procedures. The effect on mail volumes of any corporate mergers, acquisitions, divestitures, and similar events must also be provided.
- b. Ability to make and present in an acceptable format accurate forecasts of future mail volumes for USPS products and services proposed for the NSA.
- c. Ability to collect necessary data in an acceptable format to support the service agreement.
- d. Willingness to establish and maintain an active Centralized Automated Payment System (CAPS) for postage payment and generate records monitoring mail volumes and discounts.
- e. Production of mail using an automated system to ensure proper mail preparation and accurate postage calculations.
- f. Implementation of a quality control program to ensure proper mail preparation and to provide accurate documentation of mailings and postage payment.

3.0 APPLICATION

3.1 Initial Request

A mailer seeking to enter into an NSA with the USPS comparable to the NSA under 1.0 must submit a written proposal to the USPS, together with appropriate supporting documentation, to the USPS manager of Pricing Strategy (see G043 for address). The proposal must contain a general statement of the reasons for requesting the NSA, and a summary of the information addressing the elements of comparability described in 2.1 and 2.2.

3.2 Negotiations

As a result of the proposal, the mailer and the USPS may negotiate a service agreement comparable to the NSA under 1.0, but with terms and conditions specific to the mailer. To take effect as an experimental mail classification, the comparable NSA must be recommended and approved pursuant to Chapter 36 of Title 39 of the United States Code, and the Commission's rules of practice and procedure. A mailer may withdraw its proposal for an NSA that is comparable to the NSA under 1.0 at any time prior to agreement. Once concluded, a comparable NSA is controlled by its terms and conditions. Nothing in these regulations prohibits a mailer from seeking an NSA not comparable to the NSA under 1.0.

3.3 Determination Not to Conclude a Comparable NSA

If negotiations between the mailer and the USPS end without the parties' reaching an agreement comparable to the NSA under 1.0, the mailer may request that the manager of Pricing Strategy explain the determination in writing. The mailer may ask for reconsideration of the decision to end negotiations within 15 days from the receipt of the written explanation. The request for reconsideration may include additional information and reasons why negotiations for a comparable NSA should be resumed, and should be submitted through the manager of Pricing Strategy to the Vice President, Pricing and Classification, (see G043 for address).

*--Mailing Standards,
Pricing and Classification, [date]*