

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.