

UNITED STATES OF AMERICA
Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Experimental Changes to Implement)
Capital One NSA)

Docket No. MC2002-2

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO REMOVE PAGES TR. 7/1390-96 FROM THE RECORD
(March 31, 2003)

The Office of the Consumer Advocate (OCA) requests the Presiding Officer to remove seven pages from the record that consist of the classification proposal filed by OCA as part of its direct case. The pages at issue are Tr. 7/1390-96 (Attachments A and B of OCA-T-2, the testimony of James F. Callow). In a notice filed today,¹ OCA has notified the Commission that it has withdrawn its proposal submitted on December 20, 2002. The proposal has been withdrawn as a result of the successful completion of settlement discussions with the Postal Service concerning a new approach that OCA believes is superior to the classification proposed by OCA.

The approach presented by the Postal Service during settlement discussions consists of new regulations to be incorporated into the Domestic Mail Manual, namely new sections G101.1.0 – 3.3 (see Attachment D of the Stipulation and Agreement),² that establish a formal, orderly process for mailers who are interested in entering into NSAs comparable to the Capital One Services, Inc. NSA (COS/NSA).

¹ "Office of the Consumer Advocate Notice of Withdrawal of Classification Proposal." For the convenience of the reader, OCA will include the explanations presented in the Notice in the instant pleading.

² The Stipulation and Agreement was also filed today.

Features for Evaluation of a Mailer's Qualification to Enter into a Comparable NSA

In Section 2.1, the Postal Service sets forth Requirements that will be incorporated into an NSA comparable to the COS/NSA. These Requirements are a generalized form of the essential elements of the COS/NSA with respect to monitoring by, and financial benefits to, the Postal Service. The key requirements are:

- First-Class Mail eligible to be mailed as Standard Mail
- Waiver of seal against inspection
- Limitation of declining block rates to a specified volume threshold and only for the NSA partner's products and services
- Substitution of electronic return of undeliverable-as-addressed (UAA) mail for physical return
- More frequent move-updating of mailing lists
- Agreement to allow the Postal Service to monitor records to ensure compliance with the NSA
- Finally, and most importantly, that there be an "overall positive financial impact" on the Postal Service.

In Section 2.2, Candidate Factors are set forth. The most significant of these are:

- Three years of mail volume data permitting the estimation of a volume threshold
- Ability and willingness to collect data necessary to ensure compliance
- Quality control program

Process for Negotiating a Comparable NSA

The Postal Service provides a clear description of the steps to be followed in negotiating a comparable NSA (Sections 3.0 – 3.3). First, a written statement by a mailer of its reasons for seeking an NSA and its ability to establish comparability is

required. Second, prospective partners are informed that the NSA will be established as an experimental mail classification that must be approved by the Commission under Title 39. Third, a procedure is established for mailers to (1) seek a written explanation from the Postal Service following a Postal Service determination not to enter into an NSA and (2) request reconsideration of such a determination from the Vice President, Pricing. In the Stipulation, the Postal Service has agreed to report annually “on the number of requests made for comparable NSAs, the industry of each requestor, and the status of negotiations, or if negotiations were terminated, the reason(s) therefore.” In OCA’s judgment, the combination of a clearly articulated set of procedures and regular reporting on the negotiations activities provides a significant measure of confidence that the process is being conducted in a fair and nondiscriminatory manner.

The settlement approach, based upon rules added to the DMM, has two distinct advantages over OCA’s original classification proposal. First, if OCA’s proposal had been recommended by the Commission and adopted by the Governors, rules to implement the classification would have been drafted and promulgated *after* the proceeding had been concluded. Under the settlement agreement, the rules and procedures are known in advance. Having reviewed these rules, OCA judges them to be a sound method for giving mailers the opportunity to negotiate comparable NSAs.

Second, OCA’s proposed classification gave the Postal Service broad authority to enter into (or reject) such arrangements without further Commission review. Under the settlement approach, if the Postal Service and its negotiating partners reach an agreement on a comparable NSA, the agreement can become operational only after it has been reviewed by the Commission under the Commission’s experimental

classification rules. In the draft Postal Bulletin (Attachment D, at 2, of the Stipulation and Agreement), the Postal Service makes this clear: “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 settlement approach also achieves the chief aims of the OCA classification proposal: to ensure access to a COS/NSA-type arrangement on an equal footing with Capital One; to reap the savings estimated from a larger group of mailers; to allow additional First-Class mailers to choose electronic returns over physical returns if they perceive an advantage in this alternative; to obtain free electronic forwarding notices if it seems likely that provision of this information will avoid a large number of forwarded pieces in future mailings; and to give other First-Class solicitation mailers the opportunity to obtain declining block rates for new volume that they have been incited to provide.

An important consideration in OCA’s decision to enter into the Stipulation is that the possibility of a potentially undesirable outcome described by Commission witness Panzar – that Capital One’s competitors (presuming that it has competitors) may reduce their use of mail, especially First-Class Mail, if they are not given access to declining block rates – is substantially reduced because of the proposed procedures that give them opportunities to enter into comparable NSAs.

The OCA’s concern about a “free rider” potential in the COS/NSA, addressed in the testimony of OCA witness Smith, is now greatly diminished by virtue of the rebuttal testimony filed by Capital One witness Elliott. Witness Elliott estimates that the volume

of Capital One's First-Class solicitation mail in the test year may even be less than the threshold for rebating monies under the declining block rate schedule. Of equal significance is that witness Elliott used a volume estimation methodology of the type recommended by witness Smith in OCA-T-1. This included the use of First-Class volume data that could be verified by the Postal Service.

Data Collection Plan

OCA and the Postal Service reached agreement on data that will be collected and reported during the course of the COS/NSA experiment. While much of this was volunteered by the Postal Service in its initial filing, there are significant additions to the Postal Service's initial offer.

- The Postal Service will provide the number of electronic address correction notices provided to Capital One, not only by CFS units, but also by PARS when it becomes fully operational.
- The Postal Service will provide a monthly estimate of its compliance activities and a description of the activities performed.
- The Postal Service has agreed to provide data on the number of times that a particular move address record is accessed for a Capital One solicitation mailing, including the dates the record is accessed and the move effective date of the change of address order. In addition, the Postal Service will indicate whether the change of address order was for a family or individual move. In OCA's view, these data may be of value in future attempts to assess the number of forwards that may have been avoided by Capital One's prompt corrections to its address databases.

- Capital One has also agreed to accept an additional data provision responsibility – it will provide NCOA contractor reports for its First-Class solicitation mailing list runs that give the number of address records checked and the number of corrections made for the runs. This will give important new clues to the percentage of move address changes that NCOA is able to generate and will facilitate an understanding of how many additional corrections the CFS operations are able to produce.
- In each report, the Postal Service will provide an evaluation of the impact of the COS/NSA on contribution.

OCA's Position on the Settlement

While most of the evidence furnished by OCA in its direct case was aimed at developing support for its original classification proposal, the evidence should now be construed as supporting the type of approach embodied in the Stipulation and Agreement. OCA views the earlier evidence in that light and asks that the Commission do so as well. OCA wishes to make its position clear: the Commission is asked to approve the Capital One NSA as originally filed by the Postal Service and Capital One; to recommend the settlement version of the DMCS (Attachments A, as revised, and B of the Stipulation and Agreement); and to recommend the settlement Data Collection Plan. Having withdrawn its proposal, OCA intends that its December 20th proposal *not* be recommended.

If the Commission rejects the Stipulation and Agreement filed today, then OCA asks that its former classification proposal be reinstated.

Wherefore, OCA moves to have pages Tr. 7/1390-96 removed from the record.

Respectfully submitted

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