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

EXPERIMENTAL CHANGES TO IMPLEMENT CAPITAL ONE NSA	Docket No. MC2002-2

NOTICE OF THE UNITED STATES POSTAL SERVICE
OF DECISION OF THE GOVERNORS
(June 3, 2003)

The United States Postal Service hereby provides notice of the attached Decision of the Governors in Docket No. MC2002-2:

Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Rate Commission Recommending Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One, Docket No. MC2002–2 (June 2, 2003)

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE OPINION AND RECOMMENDED DECISION OF THE POSTAL RATE COMMISSION RECOMMENDING EXPERIMENTAL RATE AND SERVICE CHANGES TO IMPLEMENT NEGOTIATED SERVICE AGREEMENT WITH CAPITAL ONE, DOCKET NO. MC2002–2

June 2, 2003

STATEMENT OF EXPLANATION AND JUSTIFICATION

On May 15, 2003, the Postal Rate Commission issued its Opinion and Recommended Decision in Docket No. MC2002-2. The Commission has recommended, with one additional provision, the experimental classification language and rates embodied in the settlement agreement signed by 13 of the participants in this case. The Commission indicated that the settlement "greatly assisted" it in its work.[1]

We find, based upon our independent review of the administrative record, that the Commission's recommended decision is reasonable and supported by substantial record evidence, and we approve the recommendations. With our approval, the Postal Service is able to implement the three-year Negotiated Service Agreement ("NSA") it had concluded with Capital One Services, Inc., before filing the Request in this docket.

BACKGROUND AND SUMMARY

The Commission's recommendation of changes based on the Capital One NSA represents a significant advance in the effort to explore new approaches to pricing postal services under the Postal Reorganization Act (Act). We commend the Commission's skillful and successful navigation through the thicket of issues presented on its way to a

[1] PRC Op. MC2002-2, at 2.

favorable recommended decision. Our decision approving it will permit the Postal Service to test the feasibility and effectiveness of particularized pricing and service arrangements in the postal system.

The Commission's decision is groundbreaking in several respects. For the first time, the Commission has recommended rates and classifications to implement a customized agreement with a single domestic mailer. For the first time, the Commission has employed a price structure incorporating "declining block rates," a form of volume discounts. Economic theory holds that such discounts, properly applied, should lead to increased volume, revenue, and contribution. Another first was that Capital One filed its case-in-chief contemporaneously with that of the Postal Service, as an integral part of the Postal Service's request. We commend the Commission for accommodating this novel approach within its existing rules, while affording all participants due process. We look forward to the development of procedural rules specifically tailored to NSAs, which the Commission indicates it will formulate in the near future. Such rules will expedite the litigation process. The existence of known procedures should also help shorten the time it takes the Postal Service and interested mailers to negotiate agreements.[2]

Under the terms of the NSA, Capital One agrees to acceptance of "electronic returns" of certain undeliverable-as-addressed ("UAA") First-Class Mail, in lieu of actual physical return of the pieces. This provision suits Capital One because it makes significant use of First-Class Mail to send solicitations that advertise its credit card services. (Most such advertising is sent as Standard Mail, which, unlike First-Class Mail, does not include return service as part of the basic service.) Electronic address correction service will provide Capital One with information about each undeliverable piece, rather than returning the advertising piece itself, for which Capital One has no further need. This change will result in cost savings for the Postal Service ($11 million per year), since the costs of providing the information electronically are lower than the costs of physical return of each UAA First-Class Mail solicitation piece.

In addition to the provisions regarding returns, the NSA also provides Capital One with the opportunity to pay "declining block rates," if it provides very high volumes of First-Class Mail (over 1.225 billion pieces per year). Under this arrangement, Capital One

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[2] PRC Op. MC2002-2, at 135.

receives discounts starting at 3 cents off each piece above 1.225 billion, up to 6 cents for each piece above 1.6 billion. The NSA will benefit all mailers because, pursuant to its terms, Capital One has committed itself to various measures that the Governors and Commission both conclude will reduce costs in a way that exceeds the cumulative value of the discounts.[3]

The stipulation and agreement identifies specific procedures by which the NSA can be extended to other similarly situated mailers.[4] PRC Op. MC2002-2, at 2. The Governors agree with the Commission's expectation that structurally similar NSAs, if warranted, can be negotiated and approved.

The Commission's consideration of the Capital One NSA necessarily required close examination of its fundamental fairness and equity, if only because this was the Postal Service's first attempt to benefit all mailers through an agreement with just one. We appreciate that the Commission engaged noted economist John Panzar to provide testimony on its behalf in this case. Professor Panzar's testimony, together with the economic testimony provided by Dr. B. Kelly Eakin on behalf of the Postal Service, added substantially to the record by providing expert examination of the economic implications of NSAs. This record provides full support for the Commission's conclusion that the Capital One NSA is not unduly or unreasonably discriminatory because cost and demand differences in Capital One's mailing practices fully justify separate classification treatment for its First-Class solicitation mail. PRC Op. MC2002-2, at 29.

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[3] The Commission imposed a cap on the cumulative value of the discounts measured as 95 percent of the sum of certain avoided costs over the 3-year life of the NSA. Although, as we discuss below, we believe the cap to be unnecessary, the impact of the cap as applied to this agreement is likely to be minimal.

[4] We find that the stipulation and agreement also provides a meaningful response to the conundrum the Commission found in various Postal Service characterizations of the Capital One NSA as "'the same' as and 'different from'" similar NSAs that may be reached with other mailers pursuant to the settlement agreement. PRC Op. MC2002-2, at 138. Since no other mailers currently approach the volume of First-Class Mail that Capital One enters, there would necessarily be differences in other NSAs due to other mailers' unique volumes and thresholds. Thus any similar, but different, NSA with such mailers would have to be examined separately by the Commission in a subsequent proceeding. If one or more mailers had been able to qualify for the terms of the Capital One NSA, the request in this docket would necessarily have been structured differently, whether as a niche classification or as a pair or series of NSAs.

LEGAL BASIS FOR THE CAPITAL ONE NSA

The value and effectiveness of the NSA approach to pricing postal services could not be justified, if we were to conclude that it is fundamentally inconsistent with the statutory framework for postal ratemaking. As the entity entrusted by Congress in the statutory scheme with the final responsibility in ratemaking, we must satisfy ourselves that the changes recommended by the Commission do not conflict with the procedures, policies, or ratemaking standards of the Postal Reorganization Act. We must also agree that the Commission has given us a recommendation that is reasonable and adequately supported on the record. We conclude that the Commission's Recommended Decision meets all of these objectives.

STATUTORY SCHEME

In the administrative proceedings before the Commission, opponents of the Capital One proposals expressed the view that rate and classification proposals based on NSAs are fundamentally inconsistent with the statutory framework for postal ratemaking. The Commission's Opinion notes that, in a recent report to Congress, it expressed the conclusion that NSAs might be legal if three conditions are met: (1) the NSA must be subject to review in Commission proceedings, as specified in the Act; (2) the changes proposed must mutually benefit the mail users and the postal system as a whole, as well as conform to the policies and ratemaking standards in the Act; and (3) the NSA approved must be available to other similar mail users willing to meet the conditions specified in the NSA agreement.[5] While we might not agree with every specific application of those principles that might arise in the future, we agree that any Commission-approved change based on an NSA that met all of the conditions would be consistent with the statutory scheme.

In particular, we agree with the Commission that, in the instant case, the procedural requirements of the Act were fully observed. As discussed in the Commission's Opinion, the Postal Service proposed the Capital One NSA changes in accordance with a formal Request made under 39 U.S.C. §§ 3622 and 3623 and the Commission's rules of

[5] PRC Op. MC2002-2. at 22-23; Postal Rate Commission, *Report to Congress Authority of the United States Postal Service to Introduce New Products and Services and to Enter into Rate and Service Agreements with Individual Customers or Groups of Customers*, at 1 (Feb. 11, 2002).

practice and procedure. The Commission conducted open hearings under 39 U.S.C. § 3624 and the Administrative Procedure Act that afforded interested parties an opportunity to intervene and be heard. Several mailer associations did participate, including some who expressed opposition to the proposals. The Commission carefully considered their views in light of the evidentiary record compiled and issued a reasoned Recommended Decision based on substantial evidence in the record.

Before the Commission, intervenors attacked the Capital One NSA proposal as inconsistent with the statutory ratemaking process. They argued principally that consideration of changes based on NSAs would deprive the Commission of its intended role in the statutory scheme. Under the logic of this argument, Congress intended for the Commission to take an active role in formulating rate and classification changes. It did not intend for the Commission merely to review passively proposals based on a negotiated agreement. According to this view, NSA-based proposals are therefore fundamentally inconsistent with the statutory framework for ratemaking.

The Commission justifiably rejected this argument. It noted that the Act directs it to conduct formal proceedings, in accordance with 39 U.S.C. § 3624, and that "no intrinsic feature of a negotiated service agreement necessarily subverts this process." PRC Op. MC2002-2, at 27. In fact, the Commission did conduct a full review of the Capital One NSA proposals. Furthermore, the Commission did not assume a passive role.[6] Rather, the Presiding Officer took affirmative steps to supplement the record with testimony of an economic expert addressing issues raised by the proposals. *Id.* at 6-7. The Commission's Recommended Decision, moreover, did not simply approve the NSA changes as proposed, but added a new element and condition, which we discuss below.

Regarding the policies and substantive ratemaking standards in the Act, the Commission also reasonably concluded that the changes proposed by the Postal Service did not conflict with the statutory scheme. We discuss below the Commission's evaluation of the record supporting its determinations. Here, we note that two main arguments were advanced contending that rate and classification changes based on NSAs are

[6] The Postal Service's briefs to the Commission support our conclusion in this regard. *See* Reply Brief of the United States Postal Service, Docket No. MC2002-2, at 2-7 (Apr. 14, 2003)

fundamentally inconsistent with the ratemaking provisions of the Act.[7] We agree with the Commission and conclude ourselves that neither contention establishes that NSAs are incompatible with the statute, either in the abstract or with regard to the Capital One NSA proposals.

First, opponents of the proposals argued that the language and structure of the Act preclude postal rates applied to or based on agreements with individual mailers. Under this view, rates may be applied only to classes or subclasses of mail encompassing more than a single mailer. The Commission relied on the history and structure of the Act, however, to support its view that the statutory scheme does not rigidly preclude such classification changes. They may be employed, if they are determined by the Postal Service and the Commission to be compatible with the existing classifications, as long as they remain consistent with the ratemaking policies and standards in the Act. *Id.* at 25-27. In particular, the Commission found that the Act delegates Congress's constitutional powers to establish postal services to the Postal Service and the Commission, in performing their respective functions under the ratemaking scheme. In this regard, the Commission observed that, before the Act, Congress commonly exercised its authority to restrict postal rates and services to particular kinds of mail users. The Commission saw no logical or legal inconsistency between that practice and the Capital One proposal.

We find the Commission's reasoning persuasive. We also agree that the structure of the Act establishes a mechanism by which the two postal agencies ensure that postal rates and mail classifications evolve appropriately, and continue to serve a vital postal system. Furthermore, except as explicitly provided in the Act, the manner in which the system evolves is not constrained by any Congressional predetermination. Rather, Congress left the two agencies, in furtherance of their statutory roles, to shape the face and content of the mail classification schedule.

[7] Several intervenors also argued that the Postal Service's proposals violate what the Commission termed "regulatory axioms" that apply, or should apply, to the review of changes based on NSAs. See PRC Op. MC2002-2, at 31-40. While we need not agree with all of the Commission's views in discussing these arguments, we agree generally with the Commission's conclusions that none of these purported principles should stand in the way, or invalidate, recommendation of the Postal Service's proposals based on the Capital One NSA.

Nothing in the specific wording of the applicable statutory provisions, the legislative history of the Act, or the statutory scheme dictates that rates may not be made applicable to a single mailer.[8] In this regard, we note that the changes recommended by the Commission do not establish a mail class for a single mailer, but only amend the existing First-Class Mail and special services classifications to modify the rates applicable to part of Capital One's mail, under certain limited conditions. We find that this limited modification of the DMCS is fully within the Commission's authority to recommend, and our authority to approve.

Second, opponents of the Capital One NSA proposal argued that rates based on negotiated agreements with individual mailers would be fundamentally inconsistent with the Act's prohibition in 39 U.S.C. § 403(c) against undue or unreasonable discrimination or preferences. Again, the Commission rejected that restrictive view of the Act. It concluded that, as a matter of statutory interpretation, and on the record of the instant proceeding, the Capital One NSA changes would not discriminate unreasonably, as long as they were grounded in a rational basis for treating Capital One differently. It further found that, for a variety of reasons, Capital One's distinct mailing practices justified separate classification treatment for its solicitation mail. PRC Op. MC2002-2, at 27-30.

We agree with the Commission's conclusion.[9] We also find that the beneficial objectives embodied in the terms of the Capital One NSA and the changes the Commission

[8] *See* Reply Brief of the United States Postal Service, at 7-10.

[9] We note that, in an earlier rulemaking proceeding, the Commission had occasion to discuss the status of mailer-specific rate and service agreements in relation to the Act's prohibition against undue or unreasonable discrimination. Further Invitation for Comments, Docket No. RM89-5, 54 Fed. Reg. 47223 (1989). In that rulemaking proceeding, the Commission observed in the abstract that differences in an individual mailer's attributable costs would justify discrimination. The Commission, however, had reservations regarding rate distinctions based on differences in contribution to institutional costs. *Id.* at 11-13. In the instant proceeding, the Commission noted its earlier discussion, and suggested that its views regarding the ability to evaluate relative contributions based on distinct cost levels would not necessarily apply where discounted rates were accompanied by a change in service conditions that provide other cost or revenue justification. PRC Op. MC2002-2, at 19. As discussed below, here we agree with the Commission that the cost and revenue effects of the Capital One NSA do justify the separate treatment embodied in the Commission's recommendation. We also find that application of the standards in 39 U.S.C. §§ 3622(b) and 3623(c), as discussed by the Commission, provide additional justification for the changes in relation to section 403(c).

recommended warrant the separate rate and classification treatment, as discussed below. Nothing in the language or scheme of the Act contradicts that finding.

EVALUATION AND RECORD SUPPORT

We also find that the Commission appropriately evaluated the Capital One NSA proposals in light of the ratemaking policies and standards in the Act, and that its Recommended Decision is supported by substantial evidence on the record.

As described at length in the Commission's Opinion, the Postal Service's proposals based on the Capital One NSA consisted of two main elements.[10] First, the Postal Service proposed rate and classification changes that would implement a substitution of the free return feature available under First-Class Mail for electronic notification of non-delivery under the Postal Service's Address Change Service (ACS).[11] First-Class Mail provides free return for mailpieces that are undeliverable as addressed (UAA). Under the terms of the NSA, Capital One agreed to forgo free return of UAA letters soliciting new business and, instead, receive information about the UAA mail electronically. In return, the fee for electronic address correction under ACS would be waived for Capital One's First-Class Mail solicitations that bear the appropriate ACS endorsement. Capital One would receive electronic notification of UAA mail, but it would have to mail a minimum quantity and update its address databases within 2 days of receipt of corrected address information. Second, Capital One's First-Class Mail would be eligible for discounts off the applicable First-Class Mail rates, in accordance with a volume-related pricing structure, termed "declining block rates." Eligibility for these discounts would be contingent upon Capital One's participation in the ACS program for its solicitations.

[10] The initial proposed DMCS language is Attachment A and the Agreement is Attachment G to the Postal Service's Request. Request of the United States Postal Service for a Recommended Decision on Experimental Changes to Implement Capital One NSA, Docket No. MC2002-2 (Sept. 19, 2002).

[11] Capital One has agreed to participate in the Address Change Service program. It will be assigned an ACS participant code which it will imprint on First-Class Mail solicitation pieces along with a keyline that Capital One will use to identify a specific record in its address file. Capital One will also endorse this mail with the term "Change Service Requested." Delivery units send UAA mail bearing this endorsement to a Computerized Forwarding Service (CFS) unit. The CFS unit will lift information from the mail piece necessary to inform Capital One electronically of the keyline, the reason the piece was UAA and, for move-related mail, the new address.

Under the declining block rate structure, above a volume threshold of 1.225 billion pieces, Capital One's First-Class Mail would be eligible for discounts that increase from 3 to 6 cents, as volumes increase. If volume in the first year of the agreement were below 1.025 billion pieces, then lower discounts would be available at lower volumes. Capital One would be prohibited from meeting the discount threshold as a result of new volume produced by mergers or acquisitions of other companies. Any acquired company's First-Class Mail solicitation volume would be added to the threshold. If approved, the terms of the NSA would apply for three years.[12]

The Commission recommended the requested rates and changes to DMCS language, as amended,[13] with only one material change. It added an element, termed a "stop-loss" provision that placed a ceiling on the cumulative amount of discounts available to Capital One over the three-year term of the agreement. Under this provision, the total value of the discounts could not exceed $40.637 million.

We agree with the Commission that the record supports the recommended changes in rates and classification. The Commission correctly found that separate classification treatment of Capital One was justified because of the significant opportunities arising from Capital One's acceptance of electronic address correction, in lieu of the physical

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[12] In addition to the changes in classification and rates, the NSA sets forth additional and integral terms. It defines the type of mail that is considered Capital One's own mail and prohibits "reselling" postal services as a means to qualify for the discounts. It details many of the mechanics associated with the electronic address correction service and declining block rates. Capital One commits to exemplary address management practices as well as high quality mail preparation practices. Finally, the agreement contains a number of compliance provisions and a process by which Capital One can appeal a decision made by the Postal Service in the implementation of the agreement.

[13] As part of the Stipulation and Agreement, dated March 31, 2003, the Postal Service, Capital One and the Commission's Office of Consumer Advocate, requested that a footnote be added to the DMCS regarding entering into comparable NSAs with other mailers, as specified by the Postal Service and implemented pursuant to proceedings under chapter 36 of the Postal Reorganization Act. The Commission incorporated the proposed text as a section of the DMCS rather than a footnote. The Stipulation and Agreement also provided that the Postal Service would issue regulations that define the elements of an agreement that was comparable to the Capital One, how NSA candidates should apply for consideration, a revised data collection plan, and a mechanism for appealing a determination that a proposed agreement was not comparable to the Capital One NSA.

return of the mail pieces.[14] *Id*. at 29. The Commission appropriately quantified the cost savings opportunities for the Postal Service associated with this operational change at approximately 20 cents per returned piece. Based upon the anticipated volumes in the test year, the Commission reasonably estimated the test year savings as $11.067 million. PRC Op. MC2002-2, at 134.

We also concur with the Commission's view that the substitution of electronic address correction for returns of UAA mail is appropriate. This element of the NSA is essentially a variation of worksharing, an approach that has long been accepted in Commission practice as the basis for classification changes supporting differentials in rates. Under this logic, Capital One is agreeing to modify the preparation of its mail (*e.g.* using the specified ACS endorsement), which will result in lower Postal Service handling costs. *Id.* at 133. Similarly, we concur that sharing the savings through a declining block rate discount constitutes a reasonable approach to encourage efficient mailing practices. It creates the incentive for Capital One to use ACS. *See Id.* at 38. Moreover, it provides the potential for increasing the net revenue of the Postal Service. *Id.* at 61. This approach makes more sense in this case than granting a discount over a mailer's entire qualified volume of mail because the declining block structure targets incremental usage as a means to increase contribution, rather than merely rewarding existing levels of use.

In making its findings, the Commission appropriately relied upon average costs and other proxies, as well as test year volume estimates, in calculating the savings. While better data might be available in the future, or as a result of a special study, on the record of this case, we believe it is reasonable to use these data as the best available.[15] *Id*. at 133. Professor Panzar concurs on this point. Tr. 8/1633-35. Moreover, Capital One's status as a national mailer, with a mail mix that closely approximates the average, enhances the reliability of using average figures as proxies for Capital One's costs. *See* Tr. 2/325, 328, 331. While in some instances, a special study may be appropriate to

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[14] Contrary to the Commission's suggestion (PRC Op. MC2002-2, at 83), Capital One currently does derive some benefit from the physical return of its UAA mail (see Tr. 2/42, 74), but, under the NSA, it also expects greater utility from the electronic address correction information. Tr. 2/42.

[15] There is no doubt that a Capital One specific cost study would also likely have been imperfect, or very expensive, since Capital One is a national mailer and its mail would be returned from all corners of the country.

isolate the attributes of a unique mailer, we believe that the use of national averages is appropriate in many instances, including this one.

The Commission properly accepted use of information from the test year to estimate the relevant address correction cost savings. PRC Op. MC2002-2*,* 128-29. The Commission correctly found that the impact of PARS' introduction on the projected savings will be small and that the test year figures need no adjustment for PARS. *Id*. Similarly, the Commission rejected arguments that the cost of providing electronic notice for Capital One's forwarded mail should be included in the cost calculations. The Commission appropriately found that the lack of information about the current and expected forwarding rates of Capital One's First-Class Mail solicitations does not present a serious problem. PRC Op. MC2002-2*,* 131. In fact, the Commission also indicated a belief that the Postal Service's treatment of forwarding costs likely results in a slight underestimation of potential savings from the NSA. *Id*. at 132. We note that, while types of forwarding data are not readily ascertainable today, the Postal Service's data collection plan will track them through the ACS program.

The Commission's finding that the cost data adequately support the Postal Service's requested changes to rates and classifications is not diminished by the Commission's expressed preference for better cost data. See for example, PRC Op. MC2002-2, at 51 and 122. We appreciate the guidance that the Commission has given for future NSAs, and the Postal Service will strive to improve the presentation of evidence when other such proposals are brought to the Commission for review.

Volume estimations provide key elements of the evidentiary support in this case, affecting both the analysis of declining block rates, and the calculation of the anticipated ACS savings. As part of their initial request, the parties estimated that, without the NSA, Capital One would mail approximately 1.4 billion pieces of presorted First-Class Mail in the test year. Later, in its rebuttal case, Capital One revised the forecast to 1.21 billion pieces, reflecting updated actual volume information. It was appropriate for the Commission to rely upon the revised volume forecast in calculating the address correction savings.

We concur with the Commission's assessment that the Postal Service has adequately addressed the concern that comparable NSAs be made available to other mailers. The

Commission endorses the approach described in the Stipulation and Agreement and its attachments. We agree with the Commission's view that, in evaluating comparable NSAs, the Postal Service should consider whether the agreement is the functional equivalent from the perspective of an applicant. *Id.* at 140. We do not, however, interpret this part of the Opinion to suggest that the Postal Service's evaluation be subject to the variations of each actual applicant's particular view on functional equivalency. Such a standard would lead to an uneven application of the functional equivalency standard and would impinge on the second laudable goal noted by the Commission: the consistent application of the criteria. We also note that the Postal Service has agreed to provide an internal right to appeal such rejections. See Attachment G to Stipulation and Agreement.

The record also supports the Commission's finding that the agreement sufficiently addresses the issue of reselling. We agree that it is important that customers who have non-linear tariffs available to them must be prevented from reselling the postal services to others. *Id.* at 93. The Capital One NSA has enforceable provisions to prevent this.

In addition, we find that the data collection plan (*see id.* at 170 to 171) provides an adequate basis to evaluate the Postal Service's and Capital One's implementation of the NSA, as well as the Postal Service's ability to extend comparable benefits of the Capital One NSA to other mailers.

Finally, we concur with the Commission that its recommended decision is consistent with the policies of sections 3622 and 3623 of the Postal Reorganization Act. *See* discussion at PRC Op. MC2002-2, at 157-162.

In discussing the implications of reviewing NSA-based changes, the Commission correctly observes that the Capital One proposals in this case encompass closely related policy, as well as financial and operational objectives. PRC Op. MC2002-1, at 145. In this context, the Commission characterizes its approach to evaluating the Postal Service's proposals as having a different orientation from review of proposals more typically encountered in the postal ratemaking practice. The Commission states that it "is not so concerned with determining the most appropriate division of costs, revenues, or contributions," noting that "[t]he two participants in the NSA have already done that to their satisfaction." *Id.* at 146.

We do not understand this statement to reflect, in effect, a diminished standard of review or a lack of rigor in the Commission's analysis. Indeed, as is evident from the Commission's detailed discussion over the course of some 200 pages in its Opinion, the Commission has meticulously reviewed the record and carefully considered each major factual and policy issue presented in the Postal Service's Request. When faced with a choice among imperfect volume estimates, the Commission has judiciously weighed their reliability against its statutory obligations in recommending changes, and in light of the policy objectives embodied in the Postal Service's proposal. Furthermore, the Commission reaffirmed its conclusions that the cost estimates on the record that support its recommendations are both reliable and representative of the period during which the NSA will be in effect. *Id.* at 150.

In any event, our conclusions regarding the sufficiency of the Commission's analysis, or record support for its recommendations in this case, do not depend exclusively on the Commission's discussion of the differences involved in reviewing NSA-based proposals. Based on our understanding of the Commission's evaluation of the record, and our own review, we conclude that our decision approving the Capital One changes is fully and substantially supported by the record. In particular, we are satisfied that the recommended rate, fee, and classification changes reflect the appropriate findings under the standards for revenue sufficiency and equitably related rate schedules embodied in the Act. In this regard, the goal underlying the Commission's expressed orientation in reviewing NSAs, on balance, does not depart significantly from the measure it always applies in reviewing Postal Service proposals and recommending changes in rates and classifications. The Commission states that its focus in this case has been to ensure that the Capital One NSA will not make mailers other than Capital One worse off. *Id.* at 146. That standard essentially encompasses legal requirements against which cost allocations, rate relationships, and revenue effects of rate and classification proposals are judged in every case presented to the Commission and to us under our obligation to act on Commission recommendations. 39 U.S.C. §§ 403(c), 3621-3623. As the entity entrusted by the Act with final authority to ensure the financial adequacy and reasonableness of the Postal Service's rates under the policies in the Act, we conclude that the appropriate standard has been met here.

In the final analysis, the Commission does not equivocate in expressing its conclusion on the Postal Service's proposals. The Commission states:

> The Commission still has an absolute obligation to assure that any rates and classifications it recommends are consistent with the policies of the Act. It fulfills that obligation in this Opinion and Recommended Decision.

Id. at 147. We concur with that conclusion and we independently affirm it.

ECONOMIC BENEFITS

The Commission has recommended implementation of an NSA that it believes will offer economic benefits to the Postal Service, to Capital One, and to other mailers. Consistent with our decision to approve, we likewise believe that the NSA recommended by the Commission offers economic benefits to those interests. Additionally, though, we have a perhaps more expansive view of what the economic benefits could have been under the Postal Service's proposed NSA, and we therefore believe that some discussion of our views on this is warranted.

To place our discussion in context, we begin with the outlines of the NSA contemplated by the Postal Service and Capital One as it was being negotiated, and by the Board when it approved the NSA filing. In both instances, economic benefits were expected to derive from each of the two main facets of the proposal-–the agreement of Capital One to accept electronic rather than physical return of undeliverable-as-addressed (UAA) First-Class solicitations, and the availability of multi-level block discounts, once Capital One's presorted First-Class Mail volume exceeds an identified threshold. Electronic return would allow the Postal Service to incur substantially lower unit costs compared with the costs of physical return, and the declining block rate structure would create the potential for increased First-Class Mail volumes, lower marginal rates for Capital One, increased total net contribution from Capital One's First-Class mailings, and increased economic efficiency. When the case was filed last September, it was the mutual expectation of the Postal Service and Capital One that the combined effects of these factors would result in an estimated test year value of the NSA to the Postal Service of approximately $8.2 million, as developed in the testimony of Postal Service witness Crum (USPS-T-3).

Two distinct developments have reshaped the expected contours of the NSA, relative to what was envisioned when the proposal was filed last fall, and it is important to keep their effects separate. The first development was the submission, during the rebuttal phase of the case, of a revised TYBR Capital One First-Class Mail volume forecast (*i.e.*, the volume Capital One would expect to mail in the absence of any NSA). The revised forecast of witness Elliott reflected lower-than-anticipated Capital One mail volumes in the period since the case was filed, and suggested test year volumes just slightly below the threshold level proposed to trigger eligibility for block discounts. COS-RT-2. As a consequence of this development, there is no longer any firm expectation of test year marginal rate reductions for Capital One, and, in the absence of such discounts in the test year, there is no basis to anticipate any particular level of increased First-Class Mail volumes, or of additional net revenue contribution from new pieces of First-Class Mail.

On the other hand, the mere establishment of the discount structure, in conjunction with a projection of test year volumes only slightly below the triggering point, would certainly appear to create a stronger incentive for Capital One to innovate and seek value-enhancing applications of mail that could push First-Class Mail usage to levels at which discount savings would materialize. This incentive, moreover, would be in place over all three years of the NSA's duration, and representatives of Capital One indicated that, as business conditions change, the company would be likely to keep the discount thresholds in mind as decisions on mailing amounts are made over that period. *See*, *e.g.*, Tr. 9/1815-16, 1834-35 (Shippee). Thus, while the new information incorporated into the revised forecast reduced the *probability* of substantial recognition of the economic benefits emanating from the declining block rate structure within the proposed NSA during the test year, the *potential* for recognition of such benefits remained fully in place.

The second development reshaping the NSA was the Commission's recommendation of what it termed a stop-loss cap. The stop-loss cap provision essentially limits the aggregate amount of discounts from the declining block rate structure available to Capital One over the term of the NSA to a measure of the aggregate cost savings to the Postal Service over that period anticipated from the substitution of electronic address correction for physical return of UAA pieces. According to the Commission, the purpose of the cap is to "assure that nonparticipating mailers are not made worse off by the

NSA." PRC Op. MC2002-2*,* 158. More specifically, the cap is intended to guard against the "significant risk ... that discounts to Capital One could exceed costs avoided by the Postal Service," because, under those circumstances, "other mailers' rates would have to increase to make up the difference." *Id.* at 2. The stop-loss cap over the course of the NSA recommended by the Commission is $40.637 million.

As the Commission correctly indicates in the discussion on pages 86-91 of its Opinion, any effects of the cap are contingent upon Capital One's mail volumes over the NSA period. In the context of this analysis, relevant volumes include the volume that Capital One would have mailed without the NSA (labeled by the Commission as Q_0), and the volume that Capital One would mail under the NSA with no cap (Q_1).[16] If both of these mail volumes are below the volume level at which the cap becomes binding (Q_C), the cap has no effect on the potential economic benefits available under the NSA. *Id.* at 86, 90-91. As noted above, the most recent revised volume forecast suggests that this is the most likely scenario as we move forward in the test year and into the NSA period. If that remains the case, the effects of the stop-loss provision would, in most respects, be academic.

If, however, volumes were to rise to levels at which the cap does become binding (*i.e.*, at which discounted marginal rates are no longer available), then the relationships between Q_0, Q_1, and Q_C become critical to the analysis of the effects of the cap. At one extreme, if the volume that Capital One would have mailed even without the NSA easily exceeds the cap (*i.e.*, Q_0 exceeds Q_C), then the cap prevents Capital One from receiving what basically would amount to a windfall — discounts, which in the aggregate exceed the Postal Service's UAA cost savings, on mail that would have been mailed anyway. At the other extreme, if the discounts (without the cap) would have been earned predominantly on new volume that would not have been generated without the NSA (*i.e.*, Q_0 is substantially less than Q_C, while Q_1 is greater than Q_C), then the cap could largely negate the potential economic benefits by abruptly ending the discounts, and thereby

[16] It may be useful to note that the term Q_0 is used in the following discussion to represent the same concept denoted as TYBR volume earlier. In both instances, the idea is the volume level that would occur in the absence of any NSA agreement, or, in more conventional rate case usage, in the test year, before any rate changes.

preventing the recovery of additional contribution from some of Capital One's new First-Class Mail.[17]

Therefore, whether or not the cap provision has any material effect in practice, in theory it represents a potentially significant restructuring of the economics of the agreement between the parties. As the changes were proposed, both the Postal Service and Capital One had the potential to achieve open-ended benefits from new volume stimulated by the block discount structure. Capital One could have obtained a discount on every piece of new volume, and the Postal Service could have obtained additional contribution from every such piece (and used that contribution to lower the aggregate institutional cost burden on all other mailers). Of course, commensurate with the higher level of potential benefits available to the Postal Service from the NSA as negotiated (i.e., without the cap) was a higher level of risk. That risk arose from the possibility of charging discounted rates to significant volumes of mail that were not stimulated by the agreement, and would have been mailed anyway — a phenomenon which could actually lower the aggregate contribution from Capital One's mail volumes, and thereby increase the burden on all other mailers. On balance, therefore, it is fair to characterize the recommended cap as a provision that lowers potential loss, at the cost of also lowering potential benefits.

The Commission identifies uncertainty on the record regarding the level at which Capital One would mail in the absence of the agreement (Q_0) as compelling its determination to predicate its recommendation of the NSA on the inclusion of a cap. PRC Op. MC2002-2, 147-151. While we acknowledge the myriad of potential pitfalls associated with the types of volume forecasts which the Commission finds troubling, we do not share the Commission's conclusion that such factors render the forecasts presented on the record so unreliable as to preclude their adoption. We note, for example, that the

[17] To give an example of this latter type of situation, imagine volume without the NSA (Q_0) of 1.360 billion pieces, a cap volume (Q_C) of 1.560 billion pieces, and uncapped NSA volume (Q_1) of 1.710 billion pieces. Under this hypothetical, the effect of the cap would be to reduce new volume from what it would have been without the cap, 350 million (1.710 - 1.360 billion) pieces, to 200 million (1.560 - 1.360 billion) pieces. Thus, the cap in this scenario prevents generation of 150 million pieces of new mail, each of which would have represented net value for Capital One, and net revenue for the Postal Service.

Commission appears to attach no weight to widely-circulated announcements previously made by Capital One, available both to potential investors and government regulators, regarding relevant corporate strategies moving forward. See Tr. 5/958-59. We believe that carefully considered statements of this type, made in contexts completely unrelated to the evaluation of the proposed NSA, lend helpful support to the credibility of volume forecasts that are consistent with them, as are the forecasts presented by Capital One in this case. Overall, we believe that the record in this case would have been adequate to support recommendation of the NSA without the cap.[18]

We, however, also appreciate the fact that, in any given situation, the Commission's assessment of an acceptable level of risk may be different from that of postal management and, indeed, from our own. The Commission has chosen to mitigate the risks from this particular NSA by inserting the stop-loss cap, and, as this step was undoubtedly the product of a good-faith difference of opinion on the merits of this record, we respect its determination on that issue.[19] There is, however, one aspect of the

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[18] In its discussion of its concerns regarding the volume forecasts, the Commission appears to place great emphasis on the facts that Capital One historically does not have a stable pattern of consistent volume levels, and that actual trends in the most recent year run counter to the direction of the volume changes forecast for the test year. PRC Op. MC2002-2*,* 148-49. We understand these concerns. By the same token, however, we expect that if similar NSA proposals were negotiated in the future with mailers presenting less volatile historical mailing patterns, the Commission might view the corresponding need for a cap to be very much less compelling.

[19] We note as a technical matter, however, that there exists some possibility that the Commission may have misapprehended the full range of circumstances in which its recommended stop-loss cap could be detrimental. In discussing Figures 5-5a, b, and c on pages 86-91, the Opinion acknowledges that the cap may cause losses in efficiency gains when the discount leakage is less than the cap (Figure 5-5b). There is no apparent recognition, however, that there can also be losses in efficiency gains even when the discount leakage exceeds the cap (Figure 5-5a), if the avoided leakage is less than the new contribution that would have been obtained from the new volume that the cap suppresses. Page 88 states that "the avoided leakage FE_0IC is greater than the lost contribution IE_1HG," but that relationship is not immutable. Specifically, if Figure 5-5a were altered such that Q_C were only marginally smaller than Q_0, while Q_1 remained materially higher than Q_0, discount leakage would only be avoided on a relatively small amount of volume between Q_C and Q_0, while contribution would be lost from a substantially larger amount of volume between Q_0 and Q_1. For example, the Commission has set Q_C at 1.559 billion pieces. PRC Op. MC2002-2*,* 154. If Q_0 were 1.565 billion pieces, and Q_1 were 1.590 billion, leakage from the uncapped discounts would exceed the cap, but imposition of the cap would still not be beneficial overall,

(continued…)

Commission's discussion that we find quite troubling. In discussing the Postal Service's ability to negotiate NSAs, the Commission states:

> However, as Panzar points out, the Postal Service operates under a net revenue constraint that prevents it from maximizing net revenue over the long run. Under the net revenue constraint any increase in net revenue produced by an NSA must ultimately be given up by rate decreases to other postal customers. This leaves the Service without much of an institutional incentive to generate additional net revenues from the NSAs it negotiates.

PRC Op. MC2002-2*,* 93. Several pages later, a similar assertion is made:

> First, the Postal Service cannot be relied upon to negotiate NSAs that maximize the public benefits (represented by the added contribution to postal net revenue) to be derived from them.

Id. at 96. Essentially the same claim also appears on page 72.

To the extent that the Commission's conclusions regarding the necessity of the cap are in any way dependent upon the views manifest in the above passages of its Opinion, we would find that result quite disturbing. What these statements may be read to suggest is that postal management (and, ultimately, the Board) is indifferent as to whether the Postal Service eventually has to file an omnibus rate case seeking an X percent average increase from its customers, or a case seeking an average increase of X-minus-something percent, with minus-something representing the maximum amount of net revenue that could be obtained via NSAs. Stated more broadly, the possible implication is that we cannot be "relied upon" to manage to the bottom line, because any ability on our part to achieve productivity improvements and capture cost savings, or to identify and successfully pursue revenue generation opportunities, would simply be obviated in the next omnibus rate case by smaller rate increases for some postal customers.

(…continued)
because the lost contribution from 25 million (1.590 - 1.565 billion) new pieces would exceed the leakage avoided by 6 million (1.565 - 1.559 billion) existing pieces. While this example may seem contrived, recall that unless there is some basis for concern that Q_0 may be in the vicinity of (or exceed) Q_C, there really is no compelling need for the cap in the first place. Thus, while perhaps this exact scenario is unlikely, something similar is not totally implausible, and yet the Commission's extensive analysis on pages 86-91 seems to have overlooked such a possibility.

We reject these (apparent) claims. They are inaccurate portrayals of the motivation and expectations (or lack thereof) of postal management and postal personnel. We have taken great pains to ensure that, from top to bottom, this organization is extremely cognizant of the implications of all of its actions for the rates paid by our customers. As members of the Board, we certainly are *not* indifferent to the rate impacts of the way the Postal Service is managed, and we take every reasonable effort to ensure the smallest possible average rate increase whenever evolving developments in postal finances compel us to initiate an omnibus rate proceeding. It is obvious to us that such efforts include attempting to negotiate NSAs that generate the maximum possible new contribution to net revenue. Within the bounds created by the existing statutory structure of our nation's postal enterprise, it is, ultimately, *our* responsibility to create the "institutional incentives" to motivate postal officials to seek the maximum additional net revenues from the NSAs they negotiate, and our ability to do so is not enhanced by either explicit or implicit expressions of doubt regarding our commitment to that objective.

As noted earlier, however, we do not question that the inclusion of the stop-loss provision may be the result of perfectly reasonable differences of opinion regarding the acceptable level of risk, as we take our first steps down the NSA path. We agree with the Commission that the cap has the intended effect of risk reduction, and we likewise agree that it is a relatively uncomplicated measure that should be fairly simple to administer. Given the distinct possibility that it will have no practical effect on the intended economic benefits of the agreement, we find our continued preference for an NSA without the cap to be no reason not to accept the recommended NSA with the cap. We still anticipate that implementation of the agreement will lead to reduced UAA costs, and, to the extent that Capital One finds itself in a position to enter mail volume in amounts above the threshold, it will create opportunities for volume and net revenue expansion that would benefit the Postal Service, Capital One, and other mailers.

In terms of other economic issues, we agree with the Commission that the testimonies of Professor Panzar and Dr. Eakin usefully highlighted relevant issues with respect to the potentially beneficial opportunities provided by NSAs generally, and a need for enhanced attention to possible effects on competitors. As also indicated by Commissioner Goldway in her concurring opinion, future NSA proposals could be improved with the explicit inclusion of more analysis of competitive issues. In terms of this case, however, we believe that, regardless of the merits of some of the theoretical issues raised, the Commission is correct to conclude that any potential effects on competitors of Capital One are unlikely to operate with much force, given the lack of opposition from such entities. *See* PRC Op. MC2002-2, 79.[20]

POLICY

Throughout the decision, the Commission recognized the experimental nature of this proceeding and of NSAs in general. The NSA experiment will be ongoing, as the Postal Service seeks to extend the attributes of the Capital One NSA to other mailers in comparable NSAs, and as it explores new types of NSAs. While NSAs will not supplant the need for reform, they are important tools that provide flexibility at the margin, as we transform the Postal Service into an organization with new means to be more responsive to the needs of its customers and the new demands of today's economy. We welcome the Commission's rulemaking, which will facilitate the review process and ease the administrative burden on customers who wish to consider NSAs. PRC Op. MC2002-2, at 50. We concur with the Commission that the experience of litigating the case, together with the discussion in the Opinion and our decision, will inform subsequent Postal Service proposals, as well as rulemakings regarding NSAs. *See* PRC Op. MC2002-2, at 151. NSAs are still emerging, and we urge the Commission, in its

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[20] In terms of other theoretical economic matters, however, we are also concerned with the following passage from the Opinion:

> Economic price discrimination occurs when postal customers are supplied the same service but are charged different marginal rates. Rate discrimination is undesirable because it encourages an inefficient use of the mail by postal customers.

PRC Op. MC2002-2, 92. While "price discrimination" has some pejorative connotations, in fact, charging different rates for similar service more frequently gives rise to issues of fairness, rather than issues regarding efficient use of service. We are certain that the Commission is aware that the ability to charge different marginal rates to different customers, who are likely to be using the mail for different purposes and therefore may attribute significantly different value to the mail service they receive, can actually encourage economic efficiency. See, for example, the discussion on pages 61-65 of the Opinion.

consideration of future NSAs and the rulemakings, to promote innovation and not stifle creativity.

The Opinion indicates in various places the Commission's intention to undertake one or more rulemakings in a number of areas. *See, e.g.*, PRC Op. MC2002-2, at 4-5, 55-56. The first of these notes the need for the Postal Service to standardize its pre-filing approach to NSAs. It also refers generally to the Commission's need to develop procedural requirements suitable for a request based upon an NSA, an extension of a given NSA to another mailer, and to possible renewals of approved NSAs. Some general comments may assist the Commission in understanding the Governors' and the Board of Governors' views.

Overall, as this docket has amply demonstrated, experience is the best teacher, and it may be prudent to hold in abeyance any rulemaking regarding an issue that has not been the subject of or implicated in the litigation. This is consistent with Commission's correct rejection of arguments that it should codify rules for all NSAs in their consideration of this one. Moreover, the focus of the rules should be on streamlining the process and limiting transaction costs,[21] while ensuring that statutory requirements are met so that the as many mailers as possible can use NSAs. We note with caution, however, that, as a practical matter, rules prescribing substantive NSA content or imposing data requirements that outweigh a possible agreement's benefits could preclude future NSAs, and should accordingly be avoided. Additionally, the cost of compliance with the rules will typically be borne, not only by the Postal Service, but also by the mailer-NSA candidate, since most NSAs will require co-sponsorship of data that support a request for PRC review.

In sum, the rules should promote efficiency, expedition and fairness, and reflect the partnership between the Postal Service and the Postal Rate Commission embodied in the Postal Reorganization Act. We ask that the PRC take particular care to reduce transaction costs incurred by mailers who wish to participate in NSAs and by the Postal Service. The initial rules will be an important step in the evolution of NSAs. We join the

[21] As this case demonstrates, mailer-specific cost data are not a pre-requisite for the approval of NSA, although it may be necessary for certain NSAs. Requiring cost studies in all cases, for example, would therefore needlessly raise the barrier to mailer participation.

PRC's observation here that rulemakings should not extend at this time to proscriptive or prescriptive rules for NSAs generically. PRC Op. MC2002-2, at 143.

The Postal Service will continue to request innovative rate and classification designs that meet the statutory requirements in new and creative ways. We applaud the Commission's openness and willingness to embark on this path with the Postal Service.

ESTIMATE OF ANTICIPATED REVENUE

The statute (39 U.S.C. § 3625(e)) requires that our Decision include an estimate of anticipated revenue. The conversion to electronic address correction is estimated to increase the Postal Service's net revenue by $11.067 million in the test year. Since Capital One's volume is forecasted to be below the threshold for volume discounts, no additional revenue resulting from the declining block rates has been forecast. Nevertheless, as noted above, given that the estimated volume is just below the threshold for volume discounts, the potential exists for the NSA to encourage additional First-Class Mail volume and the additional revenue and contribution it would generate.

ORDER

In accordance with the foregoing Decision of the Governors, the change in rates and classifications set forth in the Attachment is hereby approved and ordered into effect. In accordance with Resolution 03-8 of the Board of Governors dated June 2, 2003; the changes will take effect at 12:01 a.m. on September 1, 2003.

By The Governors:

Chairman

RESOLUTION OF THE BOARD OF GOVERNORS

OF THE

UNITED STATES POSTAL SERVICE

Resolution No. 03-8

Effective Date of Experimental Rate and Service Changes

To Implement Negotiated Service Agreement with Capital One Services, Inc.

RESOLVED:

Pursuant to section 3625(f) of Title 39, United States Code, the Board of Governors determines that the experimental rate and service changes to implement the Negotiated Service Agreement with Capital One Services, Inc., that were ordered to be placed into effect by the Decision of the Governors adopted on June 2, 2003, shall become effective at 12:01 a.m. on September 1, 2003.

The foregoing Resolution was adopted by the Board of Governors on June 2, 2003.

Secretary

ATTACHMENTS TO THE DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE OPINION AND RECOMMENDED DECISION OF THE POSTAL RATE COMMISSION RECOMMENDING EXPERIMENTAL RATE AND SERVICE CHANGES TO IMPLEMENT NEGOTIATED SERVICE AGREEMENT WITH CAPITAL ONE, DOCKET NO. MC2002-2

(JUNE 2, 2003)

<u>CAPITAL ONE NSA</u>
<u>RATE SCHEDULE 610A</u>

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

CAPITAL ONE NSA
RATE SCHEDULE 610B

Volume Block	Incremental Discounts
1,025,000,001 - 1,075,000,000	1.0¢
1,075,000,001 - 1,125,000,000	1.5¢
1,125,000,001 - 1,175,000,000	2.0¢
1,175,000,001 - 1,225,000,000	2.5¢

CAPITAL ONE NSA
RATE SCHEDULE 610C
FOR ADJUSTED THRESHOLD (A.T.)

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

Docket No. MC2002-2

CAPITAL ONE NSA
RATE SCHEDULE 610D
FOR ADJUSTED THRESHOLD (A.T.)

Volume Block	Incremental Discounts
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¢

NEGOTIATED SERVICE AGREEMENTS CLASSIFICATION SCHEDULE

610 CAPITAL ONE NEGOTIATED SERVICE AGREEMENT

610.1 Eligible First-Class Mail

610.11 **Capital One.** 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.

610.12 **Other Mailers.** 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.

610.2 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.

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 610.34.

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.

610.35 **Discount Limit.** The maximum cumulative discount available to Capital One over the duration of this NSA shall not exceed $40.637 million.

610.4 Rates

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

610A
610B
610C
610D

610.5 Expiration

The provisions of section 610 expire on September 1, 2006 at 12:01 a.m.

610.6 Precedence

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

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.

Nan McKenzie

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Washington, D.C. 20260-1137
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June 3, 2003