

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

RATE AND SERVICES CHANGES TO
IMPLEMENT FUNCTIONALLY EQUIVALENT
NEGOTIATED SERVICE AGREEMENT WITH
DISCOVER FINANCIAL SERVICES, INC.

Docket No. MC2004-4

UNITED STATES POSTAL SERVICE
PROPOSAL FOR LIMITATION OF ISSUES
(June 21, 2004)

Pursuant to the procedures and approach embodied in Rule 196(a)(6), 39 C.F.R. § 3001.196(a)(6), the United States Postal Service submits that the issues in this case should be limited to those issues that are unique to the Discover Financial Services, Inc., Negotiated Service Agreement (NSA). The Postal Service submits that this agreement is functionally equivalent to the Capital One NSA, the rates and classifications for which were recommended by the Commission and approved by the Governors of the Postal Service in Docket No. MC2002-2.

As the Commission stated in Docket No. RM2003-5, Order 1391 at 48, "[t]he purpose of § 3001.196 is to provide an opportunity to expedite the review of a request for a functionally equivalent Negotiated Service Agreement by allowing the proponents of the agreement to rely on relevant record testimony from a previous docket. This potentially could expedite the proceeding by avoiding the need to relitigate issues that were recently litigated and resolved in a previous docket." The Commission's rules reflect the relationship between baseline and

functionally equivalent NSAs, in which functionally equivalent NSAs extend to qualifying mailers the core elements of baseline agreements that have been previously reviewed, recommended and approved by the Commission and the Governors.

Accordingly, pursuant to Rule 196(a)(3), 39 C.F.R. § 196(a)(3), the Postal Service has listed in its Compliance Statement the testimony from Docket No. MC2002-2, on which it relies, and respectfully submits that there should not be any relitigation of the issues that were decided in that docket. Those issues include, *inter alia*, (1) the predominantly legal issue of whether NSAs are consistent with the statutory scheme of the Postal Reorganization Act and, in particular, 39 U.S.C. § 403(c), which prohibits undue preferences; (2) the finding that an open “niche” classification should not be preferred over an NSA in general; (3) the finding that the provision of incentives to high-cost mailers to discontinue high cost behavior should not, in the abstract, disqualify a proposed NSA; (4) the general appropriateness of combining so-called “independently usable, unrelated elements”; (5) the utility of declining block rates; and (6) the appropriateness of the relationship between the core elements of the Capital One NSA (which are shared by the Discover NSA), including the finding, in accordance with record evidence supporting the Capital One NSA, that the net cost and revenue effect of the elements could benefit the Postal Service, the NSA partner, and all other mailers.

Accordingly, the Postal Service submits that the key issues to be addressed in the instant proceeding properly include: (1) the financial impact of

the Discover NSA on the Postal Service over the duration of the agreement; (2) the fairness and equity of the NSA in regard to other users of the mail; and (3) the fairness and equity of the NSA in regard to the competitors of the parties to the NSA.

The Postal Service further submits that, pursuant to Rule 196(a), the status of the Discover Financial Services NSA as a functionally equivalent NSA should result in an expeditious and uncomplicated review. To give effect to Rule 196(a), the issues in this proceeding should be limited to those unique questions presented by the Discover NSA.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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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.

Brian Reimer

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