

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

**REQUEST OF THE UNITED STATES POSTAL SERVICE
FOR A RECOMMENDED DECISION ON CLASSIFICATIONS, RATES
AND FEES TO IMPLEMENT FUNCTIONALLY EQUIVALENT NEGOTIATED
SERVICE AGREEMENT WITH DISCOVER FINANCIAL SERVICES, INC.**

UNITED STATES POSTAL SERVICE

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June 21, 2004

Documents relating to this request may be served upon Mr. Foucheaux at the above address

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Pursuant to chapter 36 of title 39, United States Code, the United States Postal Service has determined that it would be in the public interest, and in accordance with the policies and applicable criteria of that title, to implement the classifications, rates and fees contained in the attached Negotiated Service Agreement (NSA) with Discover Financial Services, Inc. (Discover or DFS). Accordingly, the Postal Service requests that the Postal Rate Commission submit to the Governors of the Postal Service a decision recommending the changes proposed in this filing.

When it issued its decision in Docket No. MC2002-2 recommending rate and fee changes necessary to implement the Capital One NSA, the Commission found

that it is consistent with the policies of the Act for the Postal Service and the Commission to explore new methods of improving postal service efficiency through new economically beneficial rate programs. See § 403(a). During the course of this proceeding both the Commission and the Postal Service have gained knowledge about how NSAs may impact the postal system and its users. Continuing this process should lead to a healthier, more flexible system of economically efficient rates.

PRC Op., MC2002-2, at 158 (¶ 8040).

The Discover NSA, appended here as Attachment F, is a negotiated contract founded on the operational and service relationship between the Postal Service and Discover. It shares material terms and conditions with the baseline NSA with Capital One Services, Inc. (Capital One), considered by the Commission in Docket No. MC2002-2.¹ Attachment A to this Request contains proposed Domestic Mail Classification Schedule (DMCS) language implementing the Discover NSA, and Attachment B contains proposed Rate Schedule language.

The Commission's recently promulgated rules for consideration of NSAs properly separate so-called "baseline" NSAs from those that are "functionally equivalent" to baselines. PRC Order No. 1391 (February 11, 2004). Under these rules, review of functionally equivalent NSA proposals is expected to require substantially less time for Commission consideration than a baseline request. Id. at 48. In accordance with 39 C.F.R. § 3001.196, and for the reasons explained in the testimony and materials submitted with this filing, the Discover NSA follows this lead and is submitted as functionally equivalent to the baseline Capital One NSA.

It is worth noting that Discover is a direct competitor of Capital One, and, in pertinent respects, is similarly situated. See Direct Testimony Of Karin Giffney On Behalf Of Discover Financial Services, Inc. (DFS-T-1) at 2, 12-13.² Accordingly, Discover should have an opportunity to participate in a functionally equivalent NSA. As

¹ Pursuant to Postal Service Board of Governors Resolution No. 03-8, the rates, fees, and classifications recommended by the Commission in Docket No. MC2002-2 were formally implemented on September 5, 2003.

² The Postal Service has reviewed the testimony of Discover witness Karin Giffney and, in accordance with Rule 192 (b), 38 C.F.R. § 3001.192(b), states that such testimony may be relied upon in presentation of the Postal Service's direct case. See Direct Testimony Of Ali Ayub On Behalf Of United States Postal Service (USPS-T-1) at 1-2.

explained in the testimony supporting the instant request, it is especially important in cases such as this one, where a party to a proposed NSA is a direct competitor of a party to the baseline NSA, that the proceedings be expeditious. Ayub Testimony (USPS-T-1 at 19); Giffney Testimony (DFS-T-1 at 4).

Under the terms of the proposed NSA, the Postal Service, Discover, and other mail users are expected to benefit. In particular, the proposed rate and fee changes are expected to lead to a net reduction in the Postal Service's costs related to the handling of undeliverable-as-addressed mail. In addition, the Postal Service expects the changes to enable Discover to reduce its postage costs. If the volume conditions are met, the contribution to institutional costs required from all mail users will be reduced.

1. Functional Equivalence.

As noted above, the Postal Service submits that the Discover NSA is functionally equivalent to the current Capital One NSA. The Commission pointed out in Docket No. RM2003-5, Order 1391 at 50, that the analysis that determines whether an NSA is functionally equivalent to a baseline NSA involves a comparison of the literal terms and conditions of the NSAs, and a comparison of the effect that each NSA has on the Postal Service.

The comparison of literal terms and conditions focuses on whether each agreement rests on the same substantive functional elements. PRC Order 1391 at 50. As explained in the testimony of Postal Service witness Ayub (USPS-T-1) at 6-7, the Discover NSA is based on the same two key substantive functional elements that are central to the Capital One NSA and recommended changes -- an address correction element and a declining block element. As to the first element, if the DMCS is amended

as proposed, the Postal Service would provide to Discover, at certain levels of volume, electronic address corrections without fee for solicitations sent by First-Class Mail that are undeliverable-as-addressed and cannot be forwarded under existing regulations. See Attachment F (Discover NSA) at ¶¶ I.B and II.B-E. In return, Discover would agree to forgo requiring the Postal Service to return such undeliverable mail, under the existing service features of First-Class Mail. Id. at ¶ II.A. As to the second element, if the foregoing conditions are met, to encourage increased First-Class Mail volume, Discover would be eligible for per-piece discounts on those portions of its First-Class Mail solicitation volume that exceed specified volume thresholds. Attachment F at ¶¶ III.A and C. The Discover NSA also has a comparable effect on the Postal Service, including the provision of real ACS savings. Ayub Testimony (USPS-T-1) at 7.

The Compliance Statement (Attachment E to this request) contains a part-by-part analysis of differences between the functionally equivalent Discover NSA and the baseline Capital One NSA. These differences do not, in any way, detract from the functional equivalency of the two NSAs. To the contrary, the Commission and the Postal Service anticipated that there would be differences between baseline and functionally equivalent agreements even if they shared the same terms and conditions. Functionally equivalent agreements would likely include provisions that recognize the unique mailing characteristics of each company because of the differences in how individual companies conduct business, solicit customers, and make business decisions. See PRC Op., MC2002-2, at 31-40, 136-42. See also DMCS § 610.12; DMM G911.

To be comparable to the Capital One NSA, an agreement need not contain identical terms, such as the level of First-Class Mail volume. PRC Op., MC2002-2, at 141. A review of the Attachment E to this request reveals that while there are differences in wording between the Discover NSA and the Capital One NSA, the differences fall well within the parameters of DMM G911.

Accordingly, the Postal Service considers that it is appropriate for the Commission to review and recommend the operative rate and classification elements of the Discover NSA as functionally equivalent to the Capital One NSA, under the procedures specified in the Commissions' Rules of Practice and Procedure (39 C.F.R. § 3001.196).

2. Economic effects of the Discover NSA on the Postal Service.

The overall cost, volume, and revenue effects of the proposed Discover NSA are relatively modest, both in the first year of the proposed agreement and in later years. As proposed, the changes would apply to only one, discretely-positioned mailer. The duration of the rates, fees and classifications would be limited to three years by the terms of the NSA. The proposed changes would apply to the rates, fees and classifications for Address Correction Service and First-Class Mail. No other mail classes or special services would be affected.

The impacts of this proposal are described fully in the testimony of Postal Service witness Ali Ayub (USPS-T-1) at 10-14, Appendices A and B. The Postal Service estimates it will benefit by \$6.8 million over the life of the NSA -- \$8.0 million in ACS

Cost Savings plus \$2.0 million in increased contribution, minus \$3.2 million in revenues referred to in the Capital One proceedings as leakage.³

Witness Ayub also estimates that the Discover NSA will have minimal impact on Discover's competitors, the Postal Service's competitors, and on mail users. Ayub Testimony (USPS-T-1) at 14-15. In providing his analysis of the competitive impact, witness Ayub relies upon the extensive evidence in the Capital One case.⁴

It is worth noting that in its Opinion and Recommended Decision in the Capital One case, Docket No. MC2002-2, the Commission determined that the Capital One NSA's effect on competition was a minor concern, particularly since no participant alleged that the Capital One NSA would cause competitive harm. PRC Op., MC2002-2, at 79, 159. The Postal Service considers that the competitive impact of extending the same terms and conditions to Discover, a competitor of Capital One, should garner similar concern. The converse is not true, however. Failure to permit Discover, a similarly situated competitor, access to the functionally equivalent NSA could be seen as unduly or unreasonably discriminatory, in violation of the Postal Reorganization Act. See PRC Order 1391 at 52.

3. Other Matters

Attachment A to this Request includes the proposed addition of Domestic Mail Classification Schedule 611. Attachment B sets forth the proposed addition of Rate Schedule 611. To implement the Discover NSA, the Postal Service requests that the Commission recommend these additions. Among other provisions, DMCS 611

³ Witness Ayub refers to this amount as "discount exposure" in his testimony. Ayub Testimony (USPS-T-1) at 9, 10.

⁴ Particularly, Docket No. MC2002-2, Tr. 8/1571-1789 and Tr. 10/2060 to 2141.

prescribes the criteria for determining eligibility of Discover mail for the proposed rate changes, describes the conditions under which Address Correction Service fees would not be charged, describes the manner and conditions under which discounts would be applicable to Discover First-Class Mail volume, and specifies a duration of three years for the NSA. As explained in witness Ayub's testimony, USPS-T-1 at 17-19, the requested changes would conform to the criteria of 39 U.S.C. §§ 3622(b) and 3623(c).

The NSA provides a foundation for the changes to the DMCS and Rate Schedule, and those changes should be read in concert with the terms of the NSA. Among other provisions, the Discover NSA specifies: (1) the key conditions making the NSA possible; (2) obligations undertaken by Discover to ensure reduction of postal costs associated with handling of returned and forwarded mail; (3) volume thresholds pertaining to mail qualifying under the NSA for additional discounts; (4) information concerning other issues, such as monitoring, compliance, regulatory review, implementation, withdrawal, and cancellation; and (5) conditions affecting public communications, amendments, and notices.

Pursuant to the Commission's Rules of Practice and Procedure (particularly 39 C.F.R. §§ 3001.193 and 3001.196), the Postal Service is filing with this Request prepared direct evidence on which it proposes to rely. In recognition that the Discover NSA is submitted as functionally equivalent to the baseline Capital One NSA, this evidence consists of one piece of testimony, including appendices: the testimony of Postal Service witness Ali Ayub (USPS-T-1).

The rules for consideration of functionally equivalent NSAs provide opportunities for limitation of issues, and comparatively rapid resolution, compatible with participants'

sufficient exercise of their due process rights. The Postal Service has filed a Proposal For Limitation Of Issues that outlines its expectations regarding the issues present in this case. In Attachment E to this Request, the Postal Service has filed a listing of the Docket No. MC2002-2 testimony on which it intends to rely in this case. These filings are in accordance with the procedural framework for expeditious consideration of functionally equivalent NSAs embodied in the Commission's rules.

The page following this Request is an index of Attachments. The testimony has been marked for identification as shown in Attachment D. Further data submitted for informational purposes or in response to specific sections of the Rules of Practice are included in the other Attachments.

In accordance with the discussion, above, and the accompanying pleadings filed by the Postal Service and Discover today,⁵ other evidence on which the Postal Service intends to rely is being filed today by Discover. Evidence filed by the Postal Service is referenced in Attachment D to this Request.

The Postal Service considers that its submissions comply with the Commission's filing requirements in Rules 193 and 196 of the Rules of Practice and Procedure (39 C.F.R. §§ 3001.193 and 196). Should the Commission conclude otherwise, the Postal Service respectfully requests consideration of the conditional motion it has filed seeking a waiver of the pertinent filing requirements in those rules.

⁵ United States Postal Service Proposal For Limitation Of Issues; Request Of The United States Postal Service For Establishment Of Settlement Procedures; Statement Of The United States Postal Service Concerning Compliance With Filing Requirements And Conditional Motion For Waiver.

Finally, it should be noted that the proposed data collection plan (USPS-T-1, Appendix C) will provide the same types of data as the data collection plan approved in the Capital One case, Docket No. MC2002-2.

WHEREFORE, the Postal Service requests that the Commission submit a recommended decision in accordance with this Request.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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June 21, 2004

INDEX OF ATTACHMENTS TO REQUEST, MC2004-4
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NEGOTIATED SERVICE AGREEMENT WITH DISCOVER FINANCIAL SERVICES, INC. (DFS)

- Attachment A: Domestic Mail Classification Schedule 611 Language
- Attachment B: Rate Schedule 611
- Attachment C: Certification
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NEGOTIATED SERVICE AGREEMENTS
CLASSIFICATION SCHEDULE

611 DISCOVER FINANCIAL SERVICES NEGOTIATED SERVICE AGREEMENT

611.1 Eligible First-Class Mail

Eligible First-Class Mail under this section is defined as: (1) Discover Financial Services' First-Class Mail customer correspondence related to credit and banking products and services account holders; and (2) First-Class Mail solicitations for credit and banking products 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.

611.2 Waiver of Address Correction Fees

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

- (a) Discover Financial Services mails more than 350 million pieces of eligible First-Class Mail within the first year after implementation of this section, and
- (b) Discover Financial Services updates any databases it uses for solicitation mail, other than First-Class Mail customer correspondence related to account holders, as specified by the Postal Service.

If, during the first year after implementation, Discover Financial Services mails fewer than 350 million pieces of eligible First-Class Mail, Discover Financial Services 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) \$250,000.

611.3 First-Class Mail Discounts

611.31 Discount Threshold

The Discount Threshold is set at 405 million pieces of eligible First-Class Mail for the first year of the agreement.

611.32 Discounts

Discover Financial Service'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 611A, for the first year of the agreement if Discover Financial Services 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.

611.33 Annual Threshold Adjustment

The Postal Service shall annually adjust the Discount Threshold based on the percentage change, from year to year, of Discover Financial Services' domestic gross active accounts, as that figure is reported quarterly in SEC filings. The beginning and ending points for each volume block in Rate Schedule 611A will increase or decrease by the same number as the increase or decrease in the Discount Threshold. Rate Schedule 611B will be applicable in lieu of Rate Schedule 611A if there is such an adjustment.

611.34 Threshold Adjustment for Acquisition or Merger

In the event that Discover Financial Services 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, Discover Financial Services 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. Rate Schedule 611B will be applicable in lieu of Rate Schedule 611A if there is such an adjustment.

611.35 Discount Limit

The maximum cumulative discount available to Discover Financial Services over the duration of this NSA shall not exceed \$13 million.

611.4 Rates

The rates applicable to this Agreement are set forth in Rate Schedules 611A and 611B.

611.5 Expiration

This provision (Section 611) expires 3 years from the implementation date set by the Board of Governors.

611.6 Precedence

To the extent any provision of section 611 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

DISCOVER FINANCIAL SERVICES NSA

RATE SCHEDULE 611A

<u>Volume Block</u>	<u>Incremental Discounts</u>
<u>405,000,000 to 435,000,000</u>	<u>2.5¢</u>
<u>435,000,001 to 465,000,000</u>	<u>3.0¢</u>
<u>465,000,001 to 490,000,000</u>	<u>3.5¢</u>
<u>490,000,001 to 515,000,000</u>	<u>4.0¢</u>
<u>515,000,001 and above</u>	<u>4.5¢</u>

DISCOVER FINANCIAL SERVICES NSA

RATE SCHEDULE 611B
FOR ADJUSTED THRESHOLDS (A.T.)

<u>Volume Block</u>	<u>Incremental Discounts</u>
<u>(A.T.) to (A.T+30,000,000)</u>	<u>2.5¢</u>
<u>(A.T.+30,000,001) to (A.T.+60,000,000)</u>	<u>3.0¢</u>
<u>(A.T.+60,000,001) to (A.T.+85,000,000)</u>	<u>3.5¢</u>
<u>(A.T.+85,000,001) to (A.T.+110,000,000)</u>	<u>4.0¢</u>
<u>(A.T.+110,000,001) and above</u>	<u>4.5¢</u>

CERTIFICATION

I, William P. Tayman, Jr., Manager, Corporate Financial Planning, Finance Department, United States Postal Service, am familiar with the attached Request of the United States Postal Service for a Recommended Decision on Experimental Changes to Implement the Bank One NSA, together with the accompanying direct testimony and exhibits.

Pursuant to Rule 193(i) of the Postal Rate Commission's Rules of Practice and Procedure, 39 C.F.R. §3001.193(i), I hereby certify that I have read the Request, that the cost statements and supporting data submitted by the Postal Service as part of the Request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

Virginia J. Mayes 6-18-04
William P. Tayman, Jr.

INDEX OF TESTIMONIES: DOCKET NO. MC2004-4

WITNESS	TESTIMONY	EXHIBITS		WORKPAPERS	ATTORNEY
		TITLE	NO.		
Mr. Ayub	USPS-T-1	None		None	Brian M. Reimer 202-268-3037

Docket No. MC2004-4 Request

ATTACHMENT E

COMPLIANCE STATEMENT

This Attachment contains a statement of the manner in which the Postal Service has supplied the information requested in sections 193 and 196 of the Commission's Rules of Practice and Procedure (39 CFR §§3001.193 and 3001.196). Where information required by these rules is not included in direct testimony or exhibits of the Postal Service's witness, it is contained in the Request or its attachments, or has been incorporated by reference in the Request, testimony, exhibits, or attachments made available to the Commission in Docket Nos. R2001-1 and MC2002-2. Alternatively, the pertinent filing requirements should be waived in accordance with the accompanying Statement of the United States Postal Service Concerning Compliance With Filing Requirements and Conditional Motion For Waiver.

RULE: 193(b)

REQUIREMENT: This rule requires that a copy of the Negotiated Service Agreement be filed with the Request.

A copy of the Negotiated Service Agreement is filed as Attachment F to the Request.

RULE: 193(c)

REQUIREMENT: This rule requires a description of the proposed rates, fees, and/or classification changes, including proposed changes, in legislative format, to the text of the Domestic Mail Classification Schedule and any associated rate or fee schedule.

Attachment A to this Request includes the proposed additions to the Domestic Mail Classification Schedule. Attachment B sets forth the proposed additions to the Rate Schedule.

RULE: 193(d)

REQUIREMENT: This rule requires a statement describing and explaining the operative components of the Negotiated Service Agreement, and requires that this statement include the reasons and bases for the components in the Negotiated Service Agreement.

The statements required by this rule are contained within the testimony of witnesses Ali Ayub (USPS-T-1) and Karin Giffney (DFS-T-1).

RULE: 193(e)(1)

REQUIREMENT: This rule requires an analysis of the effects of the Negotiated Service Agreement on Postal Service volumes, costs and revenues in a one year period intended to be representative of the first year of the proposed agreement. This financial analysis shall:

- (i) set forth the estimated mailer-specific costs, volumes and revenues of the Postal Service for that year, assuming the then effective postal rates and fees absent the implementation of the Negotiated Service Agreement;
- (ii) set forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for that year which result from the implementation of the Negotiated Service Agreement;
- (iii) include an analysis of the effects of the Negotiated Service Agreement on contribution to the Postal Service for that year (including consideration of the effect on contribution from mailers who are not parties to the agreement);
- (iv) utilize mailer-specific costs for that year, and provide the basis used to determine such costs, including a discussion of variances between mailer-specific costs and system-wide average costs; and
- (v) utilize mailer-specific volumes and elasticity factors for that year, and provide the bases used to determine such volumes and elasticity factors.

If mailer-specific costs or elasticity factors are not available, the bases of the costs or elasticity factors that are proposed shall be provided, including a discussion of the suitability of the proposed costs or elasticity factors as a proxy for mailer-specific costs or elasticity factors.

The analysis required by this rule is contained within the testimonies of witnesses Ali Ayub (USPS-T-1) and Karin Giffney (DFS-T-1).

RULE: 193(e)(2)

REQUIREMENT: This rule requires that if a Negotiated Service Agreement is proposed to extend beyond one year, the request shall include an analysis of the effects of the agreement on Postal Service volumes, costs, and revenues in each subsequent year of the proposed agreement. This financial analysis shall:

- (i) identify each factor known or expected to operate in that subsequent year which may have a material effect on the estimated costs, volumes, or revenues of the Postal Service, relative to those set forth in the financial analysis provided for the first year of the agreement in response to Rule 193(e)(1). Such relevant factors might include (but are not limited to) cost level changes, anticipated changes in operations, changes arising from specific terms of the proposed agreement, or potential changes in the level or composition of mail volumes;
- (ii) discuss the likely impact in that subsequent year of each factor identified in Rule 193(e)(2)(i), and quantify that impact to the maximum extent practical; and
- (iii) estimate the cumulative effect in that subsequent year of all factors identified in Rule 193(e)(2)(i) on the estimated costs, volumes, and revenues of the Postal Service, relative to those presented for the first year of the agreement in response to Rule 193(e)(1).

The analysis required by this rule is contained within the testimonies of witnesses

Ali Ayub (USPS-T-1) and Karin Giffney (DFS-T-1).

RULE: 193(f)

REQUIREMENT: This rule requires an analysis of the impact, over the duration of the Negotiated Service Agreement, of the agreement on:

- (1) competitors of the parties to the Negotiated Service Agreement other than the Postal Service;
- (2) competitors of the Postal Service; and
- (3) mail users.

The Postal Service shall include a copy of all completed special studies that were used to make such estimates. If special studies have not been performed, the Postal Service shall state this fact and explain the alternate basis of its estimates.

The analysis required by this rule is contained within the testimonies of witnesses Ali Ayub (USPS-T-1) and Karin Giffney (DFS-T-1).

RULE: 193(g)

REQUIREMENT: This rule requires a proposal for a data collection plan, which shall include a comparison of the analysis presented in Rule 193(e)(1)(ii) and 193(e)(2)(iii) with the actual results ascertained from implementation of the Negotiated Service Agreement. The results shall be reported to the Commission on an annual or more frequent basis.

The proposed data collection plan is contained in the testimony of witness Ali Ayub (USPS-T-1). It parallels the Data Collection Plan recommended by the Commission and approved by the Governors of the Postal Service in MC2002-2. If the Commission concludes that this data collection plan does not fully comply with the requirements of this rule, the Postal Service requests that those requirements be waived.

RULE: 193(h)

REQUIREMENT: This Rule requires seven sets of workpapers to be filed with the Request.

There are no workpapers in this case.

RULE: 193(i)

REQUIREMENT: This Rule requests one or more certifications stating that the cost statements and supporting data submitted as part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books. The requested certification is to be signed by one or more representatives of the Postal Service authorized to make such certification.

The certification is submitted as Attachment C to this Request.

RULE: 196(a)(1)

REQUIREMENT: This Rule requires a detailed description of how the proposed Negotiated Service Agreement is functionally equivalent to the baseline agreement.

The required description is included in the testimony of witness Ali Ayub (USPS-T-1).

RULE: 196(a)(2)

REQUIREMENT: This Rule requires a detailed description of how the proposed Negotiated Service Agreement is different from the baseline agreement.

The required description follows:

Part I - Key Conditions for NSA Treatment

- ¶ 1.A - the Discover NSA states that Discover has mailed 450,000,000 pieces of First-Class Mail, as compared to a figure of 1 billion pieces for Capital One.

- ¶ I.C - Discover agrees to install the Mail Piece Total Quality Management ("MPTQM") program at its Salt Lake City, Utah production site (in compliance with DMM § G911.2.2.f), as compared to Capital One already being MPTQM certified at its Richmond production site.

- ¶ I.D - states that for First-Class Mail, Discover uses only addresses that have been processed against National Change of Address / Coding Accuracy Support System ("NCOA/CASS") databases within the 60 days prior to mailing (in compliance with DMM G911.2.1.e). In comparison, Capital One: (1) for First-Class Mail correspondence with established account holders (customer mail), used only addresses that have been processed against NCOA/CASS databases within the 30 days prior to mailing; and (2) for First-Class Mail solicitations the time period was 60 days.

- ¶ I.F - states that Discover's mail relates to its "own credit and banking products and services business" (in compliance with DMM G911.2.1.g), whereas the Capital One NSA did not include the quoted language.

- ¶ I.H - notes that the Agreement complies with DMM G911, which resulted from the settlement of the Capital One NSA case and could not, of course, have been

included in the Capital One NSA.

Part II - Address and Other Quality Issues

- ¶¶ II.B and C (whose counterparts are ¶¶ II.C and D of the Capital One NSA) - reflect the fact that Discover does not currently maintain the type of address database for solicitation mail that Capital One maintained, see Testimony of Karin Giffney (DFS-T-1), but assures that Discover will use the ACS notices in the best practical manner (in compliance with DMM G911.2.1.e).

- ¶ II.D - contains a different mailing requirement (350 million First Class Mail pieces, as compared to the Capital One NSA's requirement of 750 million First-Class Mail pieces), as well as a separate penalty (\$250,000 for Discover, as compared to \$1,000,000 for Capital One). These two figures are reflective of the differences in the amount of First-Class Mail usage by the two entities, and the Discover NSA complies with G911.2.1.f.

- ¶ II.G requires Discover to maintain its current usage of NCOA/CASS databases, as does ¶ II.H of the Capital One NSA, but, as noted above, there is a slight difference in the current usages of these entities.

- ¶ II.H - The Discover and Capital One NSAs contain similar requirements regarding the MPTQM program, but those paragraphs incorporate the differences in the Capital One's and Discover's current usage of that program. The Discover NSA contains a lower liquidated damages figure for failure to qualify under the MPTQM program (\$25,000 versus \$50,000), which is reflective of the differences in First-Class Mail volume between Discover and Capital One. The Discover NSA

complies with DMM G911.2.2.f.

Part III - Volume Threshold Issues

- III.B- The Discover NSA contains a negotiated "competitive cap" of \$13 million for the "maximum cumulative discount available to Discover over the life of the agreement," whereas the Capital One Agreement did not include a negotiated cap. This cap is explained in the testimonies of Ali Ayub (USPS-T-1) and Karin Giffney (DFS-T-1).

- ¶ III.C - reflects the fact that First-Class Mail counting towards thresholds relates to "credit and banking products and services" (in compliance with DMM G911 § 2.1.a), whereas such a term was not included in the Capital One NSA.

- ¶ III.E - the numbers for the volume blocks and the incremental discounts differ between the two NSAs. These differences are reflective of negotiations between the Postal Service and two different entities that have differing usages of First-Class Mail. This Discover NSA is fully in accord with G911.2.1.c and 3.3.

- ¶ III.F - allows for annual adjustments in the volume threshold to reflect changes in the number of Discover's "domestic gross active accounts." These adjustments are intended to ensure that the incentives will remain in place for Discover to increase its volumes of First-Class Mail solicitations, and comply with DMM G911.2.1.a. See Testimony of Ali Ayub (USPS-T-1).

- ¶ III.H - The volume accounting section of the Discover NSA is similar to ¶ III.J of the Capital One NSA, although it allows ten (10) business days notice before deduction of money from Discover's CAPS account if it has received more

discounts than due (as opposed to 5 days for Capital One). The Discover NSA also provides that additional amounts due to Discover will be credited within 10 business days, whereas the Capital One NSA did not give a set number of days. The Discover NSA complies with DMM G911.2.2.d.

Part IV - Compliance and Other Issues

- ¶ IV.A.2 - spells out with specificity the procedure under which the Postal Service will open certain returned Discover First-Class Mail pieces, and complies with DMM G911.2.1.b and g. The Capital One NSA did not include this level of specificity.

- ¶ IV.D.1 - specifies that the Discover NSA will be requested to be reviewed as functionally equivalent to the Capital One NSA.

- ¶ IV.D.2 - reflects the fact that under the new rules, Discover will file a direct case, as opposed to intervening.

- ¶ IV.F.6 - includes a provision that allows Discover to terminate the Agreement if, during the litigation before the Commission, it is required to divulge information it deems confidential, and which, in its business judgment, it does not wish to reveal. While the Capital One NSA did not contain this language, Capital One could have achieved the same outcome had it been placed in such a position, by refusing to divulge such information and asking to have the case dismissed.

- ¶ IV.H contains a provision specifying that the Contract Disputes Act, 41 U.S.C. § 601 et seq., does not apply to disputes arising from the NSA. While this paragraph did not appear in the Capital One NSA, it merely puts an NSA partner

on notice that the Act law is inapplicable, and it is the position of the Postal Service that the Act would have been inapplicable in the Capital One case.

RULE: 196(a)(3)

REQUIREMENT: This Rule requires identification of the record testimony from the baseline agreement docket, or any previously concluded docket, on which the Postal Service proposes to rely, including specific citations to the locations of such testimony.

The Postal Service proposes to rely on the following record testimony from the baseline agreement docket (Docket No. MC2002-2):

Anita J. Bizzotto - USPS-T-1, accepted into the record at Vol. 3:411; Vol. 3:410-530

Michael K. Plunkett - USPS-T-2, accepted into the record at Vol. 4:674; Vol. 4:673-851;

Vol. 5:865-66; Vol. 9:1857-1961 (USPS-RT-1)

Charles R. Crum - USPS-T-3, accepted into the record at Vol. 2:254; Vol. 2:252-400;

Vol. 5:858-864

James D. Wilson - USPS-T-4, accepted into the record at Vol. 3:532; Vol. 3:531-666

B. Kelly Eakin - Vol. 10:2060-2140 (USPS-RT-2)

Institutional Responses of United States Postal Service - Vol. 5: 867-966

John C. Panzar - Vol. 8:1572-1790 (JCP-T-1)

Donald Jean - Vol. 2:34-198 (COF-T-1)

Stuart Elliott - Vol. 2:198-251 (COF-T-2)

- Vol. 9:1836-1872 (COF-RT-2)

Robert Shippee - Vol. 9:1797-1835 (COF-RT-1)

The Postal Service is also relying on the following from Docket No. R2001-1:

USPS Library References J-58, J-60 (as revised 11/15/01),

J-69 (as revised 11/5/2001)

PRC Library References 2, 4 and 7

RULE: 196(a)(4)

REQUIREMENT: This Rule requires the Postal Service to include all available special studies developing information pertinent to the proposed Negotiated Service Agreement.

The Postal Service did not conduct any special studies in relation to this proposed Negotiated Service Agreement.

RULE: 196(a)(5)

REQUIREMENT: This Rule requires the identification of circumstances unique to this request.

The Postal Service does not believe that there are any circumstances unique to this request, beyond those discussed in response to Rule 196(a)(2).

RULE: 196(a)(6)

REQUIREMENT: This Rule requires that the Postal Service include with its request, if applicable, a proposal for limitation of issues in the proceeding.

The proposal for limitation of issues is being filed contemporaneously with this request.

**NEGOTIATED SERVICE AGREEMENT BETWEEN
UNITED STATES POSTAL SERVICE AND
DISCOVER FINANCIAL SERVICES, INC.**

This Agreement ("Agreement") is made as of May 6, 2004 (the "Agreement Effective Date") by and between Discover Financial Services, Inc., a Delaware Corporation, with its principal place of business located at 2500 Lake Cook Road, Riverwoods, IL, 60015, and its subsidiaries and affiliates ("DFS"), and the United States Postal Service ("Postal Service"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and DFS are referred to herein collectively as the "Parties" and each singly as a "Party."

WHEREAS, it is the intention of the Parties to enter into a functionally equivalent Negotiated Service Agreement ("NSA") to that of Capital One in Docket No. MC 2002-2, that will benefit the Postal Service, the postal system as a whole, and DFS, and that will comply with the requirements of the Postal Reorganization Act, and

WHEREAS, it is the intention of the Postal Service to make available a functionally equivalent agreement to other mailers,

NOW, THEREFORE, the Parties agree as follows:

I. Key Conditions for NSA Treatment:

The Postal Service finds that the following key conditions, taken together, support this Negotiated Service Agreement:

- A. DFS has mailed, for at least each of the last three calendar years, a minimum of 450,000,000 pieces of First-Class Mail.
- B. DFS agrees to receive electronic information about its undeliverable-as-addressed solicitations sent as First-Class Mail, instead of physical return of the pieces.
- C. DFS intends to install the Mail Piece Total Quality Management ("MPTQM") program at its Salt Lake City, Utah production site.
- D. For First-Class Mail, DFS uses only addresses that have been processed against National Change of Address / Coding Accuracy Support System ("NCOA/CASS") databases within the 60 days prior to mailing.
- E. DFS can document the number of returns of undeliverable-as-addressed ("UAA") First-Class Mail.

- F. DFS's mail relates to its own credit and banking products and services business, including, but not limited to, sales and other promotions run in conjunction with DFS's strategic partners or as part of strategic alliances with other entities.
- G. DFS does not use Address Correction Service ("ACS") as a means to qualify with the published Postal Service Move Update requirements for automation compatible First-Class Mail.
- H. This Agreement complies with Domestic Mail Manual ("DMM") § G911, in effect on the date this contract is executed.

II. Address and Other Quality Issues

- A. DFS will apply the endorsement "Change Service Requested" ("CSR") to all First-Class Mail solicitations and comply with Postal Service rules and regulations associated with this endorsement, unless mutually agreed to in writing by both Parties. DFS will receive the service associated with CSR, Option 2, which will include forwarding. After providing the service associated with this endorsement, the Postal Service will dispose of the mail in accordance with applicable Federal laws and Postal Service operating instructions.
- B. Consistent with Article II, Paragraph D, the Postal Service will waive the fees for ACS notices for solicitations that comply with the rules and regulations associated with the CSR, Option 2 endorsement. In exchange for a waiver of ACS fees, DFS agrees:
 - 1. For any address database it maintains for solicitation mail other than First-Class Mail customer correspondence related to account holders ("customer mail"), DFS will update that database within 30 business days and use the information in future mailing campaigns.
 - 2. For every mailing whose address source is an outside list, DFS agrees to forward the ACS notices to its third party list processor, or arrange to have the Postal Service forward the ACS notices directly to its list processor. DFS will work with its third party list processor to use this data for all future marketing campaigns. DFS will ensure that the data is not used for any mailings other than DFS mailings.
 - 3. In addition, DFS agrees that it will demonstrate how its systems' procedures assure that it complies with this paragraph, and it will retain records auditable by the Postal Service that so demonstrate.

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- C. In accordance with Article II Paragraph B above DFS will become an active ACS participant for its First-Class Mail solicitation mailings for the duration of the Agreement. It will comply with all rules and regulations associated with the use of ACS endorsements.
- D. If, by the end of the first year of this Agreement, DFS mails less than 350,000,000 First-Class Mail pieces, as defined in Article III, Paragraph C, DFS agrees to pay the greater of either (1) all applicable ACS fees for the first year of this Agreement; or (2) \$250,000. DFS authorizes the Postal Service to deduct the amount from its Centralized Account Processing System (CAPS) account, upon five days notice of the amount due. Should the account have insufficient funds, DFS will pay the remaining amount owed within five days of receipt of notice.
- E. The waiver/suspension of fees does not apply to the use of any ancillary address correction endorsements other than the CSR endorsement authorized for First-Class Mail solicitations.
- F. DFS agrees that it cannot use the CSR endorsement as a means to comply with the published Postal Service Move Update requirements for automation compatible First-Class Mail. DFS will continue to comply with Move Update requirements for First-Class Mail through either NCOA match, FastForward, or other Postal Service approved methods.
- G. DFS agrees that for its First-Class Mail, it will only use addresses that have been processed against NCOA/CASS databases within the 60 calendar days prior to mailing.
- H. By July 1, 2005, DFS will install the MPTQM program and achieve a self-assessment score of 95% at its Salt Lake City, Utah site. If DFS fails to comply with this paragraph it agrees to pay the Postal Service \$25,000 in liquidated damages. This is the only remedy available to the Postal Service. Failure to comply with this paragraph will not be a basis for the Postal Service to invoke the cancellation clause set forth in Part IV, Section G.

III. Volume Threshold Issues

- A. In exchange for DFS's compliance with the Address Management terms, and for its agreement to accept electronic address corrections for its First-Class Mail solicitations rather than physical return of such pieces, declining block rates of postage will be available for volumes above certain thresholds of such First-Class Mail as defined in Article III, Paragraph C. The declining block rates will be calculated by applying the discounts specified below to the otherwise applicable rates of postage. The discounts specified below apply only to the incremental volumes within each volume block.

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- B. DFS agrees to pay the otherwise applicable rates of postage at the time the mail is entered. The Postal Service will provide DFS with credits of the appropriate amounts of the discounts as specified in Article III. The maximum cumulative discount available to DFS over the duration of this NSA shall not exceed \$13 million.
- C. Thresholds: First-Class Mail that will be counted toward the 350,000,000 piece threshold under Article II, Paragraph D, and toward the First-Class Mail thresholds set forth in Article III, Paragraph D, and will be eligible for discounts is limited to:
1. All First-Class Mail customer correspondence related to credit and banking products and services account holders ("customer mail");
 2. First-Class Mail solicitations for credit and banking products and services that bear the CSR endorsement and comply with Postal Service rules and regulations associated with this endorsement.

Postcards, Qualified Business Reply Mail, Priority Mail, and Business Reply Mail ("BRM") will not be counted toward the threshold, nor will they be eligible for block discounts.

- D. Given the threshold for the first year at 405,000,000, then the declining block rates are calculated based on the following discounts:

<u>Volume Block</u>	<u>Incremental Discounts</u>
405,000,000 - 435,000,000	2.5¢
435,000,001 - 465,000,000	3.0¢
465,000,001 - 490,000,000	3.5¢
490,000,001 - 515,000,000	4.0¢
515,000,001 and above	4.5¢

- E. Quarterly Threshold Amounts: For the purpose of computing the applicable volume thresholds on a quarterly basis, the annual threshold determined within this section (or as modified within the terms of this Agreement) will be divided into Postal Service fiscal quarters. To ensure a consistent base of mailings throughout the fiscal year, at least 18% of the mail will be allocated to each quarter. Due to the seasonality and variations in mailing patterns throughout the fiscal year, DFS has the right to allocate the Volume threshold for any given year, during the term of this Agreement, into four Postal Service fiscal quarters, subject to a quarterly minimum of 18% of the determined Volume Threshold. At least ten business days prior to the start of each year of the Agreement, DFS shall deliver to the Postal Service an estimated volume allocation by quarter, subject to the minimum of 18% per quarter. These volume thresholds will be used, as outlined in Article III, Paragraph H,

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Volume Accounting, to determine appropriate quarterly volume discounts, for credit to DFS.

- F. Annual Threshold Adjustment: The Parties intend this NSA to provide DFS with an incentive to increase entry of First-Class Mail solicitations. Accordingly, the Postal Service shall annually adjust the volume threshold at which postage discounts begin based on the percentage change, from year to year, of DFS's domestic gross active accounts, as that figure is reported quarterly in SEC filings. DFS will report the most recently published figure as of the beginning of the first fiscal quarter following the implementation date ("initial gross active account figure"). The adjustment will be made after the fourth subsequent fiscal quarter, and will be based on the percentage change between the published "initial gross active account figure" and the published gross active account figure as of the beginning of the fifth subsequent fiscal quarter. DFS's reports must be supported by auditable records.

The beginning and ending points for each volume block will either increase or decrease by the same number as the threshold at which postage discounts begin. The increments between the beginning and end points will remain the same. For example, if the threshold at which postage discounts begin increases by 10,000,000 (from 405,000,000 to 415,000,000), then the volume block for the 2.5¢ discount would begin at 415,000,000, and end at 445,000,000. The remaining volume blocks would similarly begin and end at thresholds that are 10,000,000 higher.

- G. Acquisition or Merger: DFS agrees that the First-Class Mail Volume Threshold (405,000,000 for the initial year) will be adjusted to the extent that DFS 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. DFS further agrees that the First-Class Mail Volume Threshold will also be adjusted to the extent that in any Postal Service fiscal year, DFS merges with or acquires multiple entities with combined annual First-Class Mail Volume in excess of 25 million pieces. DFS must notify the Postal Service of any merger or acquisition with an entity that has annual First-Class Mail volume in excess of 10 million pieces. In addition, at the end of any Postal Service fiscal year during the term of this Agreement, DFS will notify the Postal Service if during that fiscal year it has merged with or acquired multiple entities with combined annual First-Class Mail volume in excess of 25 million pieces. The notification must include the name of the acquired entity, the existing number of non-overlapping new accounts, the mail volume of the acquired entity for the twelve (12) months preceding the merger or acquisition, and the permit accounts through which the mail volume was processed. If the merger or acquisition results in a material increase as described herein, the First-Class Mail Threshold will be adjusted to add the volume of First-Class Mail sent by the acquired entity during the 12 months preceding the merger or acquisition. All threshold adjustments due to

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mergers or acquisitions shall be made on a quarterly basis in the succeeding fiscal quarter immediately following the date of acquisition or merger.

H. Volume Accounting:

1. DFS will provide the Postal Service with the numbers of the permit accounts that will determine DFS's eligibility for discounts. The accounts may be used to determine the discounts only upon the Postal Service's written acknowledgement. Only First-Class Mail letter mail in these accounts will be counted toward the thresholds. Separate qualifying permit accounts will be used for customer mail and for solicitation mail. The data in the Postal Service's permit accounts will be used to determine whether the thresholds have been met, and those records must be kept in a form auditable by DFS.
2. Only First-Class Mail solicitations complying with Postal Service rules and regulations associated with CSR, Option 2, may be mailed through the First-Class Mail solicitation permit account.
3. If DFS's First-Class Mail volume exceeds the Quarterly Volume Threshold for the applicable quarter, DFS will be eligible to receive a credit for discounts on subsequent First-Class Mail volume, sent through the designated permit accounts during the remaining portion of that quarter.
4. At the end of each Postal Service fiscal quarter, the Postal Service shall promptly deliver its summary of First-Class Mail usage and applicable credit due DFS. The Postal Service will identify DFS's quarterly First-Class Mail postage usage and corresponding credit due DFS. Any applicable credit due DFS will be realized at the commencement of the subsequent fiscal quarter, once volumes have been reconciled. The credit shall be paid to DFS either through a wire transfer, by check, or by the Postal Service promptly posting an appropriate credit to DFS's CAPS account.
5. At the end of the fourth Postal Service fiscal quarter, all DFS First-Class Mail volumes and discounts will be reconciled and the Postal Service will promptly disclose to DFS whether additional credits are available or whether more discounts have been given than due under the Agreement. If DFS has received more discounts than due, DFS authorizes the Postal Service to deduct the amount from any of its CAPS accounts, upon ten (10) business days notice. Any additional amounts owed to DFS will be credited per instructions from DFS within ten (10) business days.
6. DFS understands that in the normal course of business, the Postal Service occasionally edits permit data after the close of a quarter to reconcile a discrepancy. If such an edit affects the First-Class Mail volume in either the Postal Service's or DFS's favor, the change will be accounted for under the terms of this Agreement.

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- I. Only DFS's First-Class Mail will be mailed through the permit accounts described in Article III, Paragraph H(1) and counted toward the thresholds set forth in this Agreement. DFS mail is limited to credit and banking services customer mail and solicitations for DFS's credit and banking products and services. DFS may not use the threshold permit accounts to mail on behalf of any other company or entity.

IV. Compliance and Other Issues

A. Compliance

1. DFS will continue to use return addresses with Wilmington, Delaware 3-Digit ZIP Codes for solicitation mail and return addresses with Salt Lake City, Utah 3-Digit ZIP Codes for customer mail unless DFS notifies the Postal Service fifteen (15) days in advance that a different address will be used. Separate return addresses will be used for customer mail and for solicitation mail. DFS must notify the Postal Service of all return addresses for customer and solicitation mail before use.
2. Upon 5 days written notice, DFS will permit the Postal Service to select returned First-Class Mail pieces, DFS will open the mail in the presence of Postal Service employees, DFS will copy the contents and provide a copy to the Postal Service, and DFS will retain the original pieces, provided that any opening and/or copying will be in accordance with applicable laws, regulations, and DFS's agreements. The parties agree that only a reasonable number of samples will be inspected, and that DFS can redact the copied pieces by blacking out all personally identifiable information.
3. DFS agrees to keep a representative mail piece for each campaign mailed through the solicitation permit accounts. The copy must include the front and back cover and all contents. Included with the copy must be the date of mailing, the amount mailed, and enough information to tie the mailing to a specific postage statement(s).
4. DFS will make necessary records and data available to the Postal Service to facilitate and monitor compliance with this Agreement.

B. Appeals

DFS may appeal a Postal Service decision regarding: mail counted toward the thresholds set forth in Article III, Paragraph C; threshold adjustments set forth in Article III, Paragraphs F and G; the volume of mail in the threshold accounts set forth Article III, Paragraph H; or the amount of discounts paid set forth in Article III, Paragraph H, by sending a written appeal within 30 days of receipt of notification of the decision to the Rates and Classification Service Center in New York. The decision of the Manager, RCSC, will be final. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

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This appeal process relates only to the issues identified above that arise as a result of the implementation of this agreement.

C. Effective date

The Agreement is effective on the latest date of signing by both Parties.

D. Regulatory Review

1. In accordance with the Postal Reorganization Act and the Postal Rate Commission's Rules of Practice and Procedure and upon approval of the Postal Service Board of Governors, the Postal Service will file a request with the Postal Rate Commission ("Commission") for recommended changes in rates, fees, and classifications that would allow the Postal Service to implement this agreement. This request will seek to have this agreement reviewed as functionally equivalent, in accordance with 39 C.F.R. § 3001.196, to the agreement that was the subject of the Commission's recommendation and the Governors' decision in Docket No. MC2002-2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One Services, Inc.
2. DFS agrees to file with the Commission its direct case supporting the Postal Service's request on the date the Postal Service files its request. DFS will file any motions for waiver necessary to support these filings.
3. The Parties agree to provide the other with each full draft of its testimony and accompanying workpapers and library references when available. The Postal Service will approve the final version of these materials.
4. DFS agrees that its testimony will address, among other issues, the impact or lack thereof of this agreement on its First-Class Mail and Standard Mail volume.
5. Each party agrees to consult with the other on positions to be taken in pleadings prior to filing. DFS agrees not to take any position in the litigation contrary to those of the Postal Service.
6. Each party agrees to bear its own costs related to the subject matter of this Agreement and its costs of participating in Commission and court proceedings resulting from the Postal Service's request for a recommended decision.
7. Each party agrees to bear its own costs associated with any data collection needs associated with this Agreement.

E. Term & Implementation Date

Pursuant to the Postal Reorganization Act, and upon approval by the Governors of the Postal Service of the changes in rates, fees, and classification recommended by the Commission, the Board of Governors will set the Implementation Date. It is further agreed that should the Implementation Date fall prior to the commencement of a Postal Service

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fiscal quarter, then for the period of time between the Implementation Date and the first full Postal Service fiscal quarter, any applicable volume thresholds will be pro-rated as mutually agreed by the Parties, and thereafter the Agreement will continue for a period of three years from the Implementation Date set by the Board of Governors or until (i) the provisions of the Domestic Mail Classification Schedule relative to this Agreement expire or (ii) the Agreement is terminated by one of the Parties pursuant to Article IV, Paragraph F set forth herein. It is further agreed that should the termination date of this Agreement fall prior to the end of a Postal Service fiscal quarter, then for the period of time between the end of the preceding Postal Service fiscal quarter and the termination date, any applicable volume thresholds will be pro-rated as mutually agreed by the Parties.

F. Termination

Each party reserves the right to terminate this Agreement, without penalty (including, but not limited to, the terms of Section II, Paragraph D), under one or more of the following conditions:

1. If the Board of Governors fails to approve the filing of the request with the Commission.
2. If the Commission fails to issue a Recommended Decision based on the agreement.
3. If the Commission adopts a Recommended Decision that deviates from the rates, fees, and classification changes set forth in this agreement.
4. If the Governors of the Postal Service fail to approve a Commission Recommended Decision adopting the rates, fees, and classification changes set forth in this agreement.
5. If a material change in the Domestic Mail Classification Schedule or the Domestic Mail Manual is implemented that affects the basic structure of this agreement or changes the benefits of the arrangement.
6. If, during the litigation before the Commission, DFS is required to divulge information it deems confidential, and which, in its business judgment, it does not wish to reveal.

Either signatory withdrawing under the terms of this paragraph must provide written notice of withdrawal to the other party within fifteen business days of the occurrence of the specified event giving rise to the right to withdraw.

G. Cancellation

1. During the term of the agreement, the Postal Service may cancel the agreement for the following reasons provided that the Postal Service shall provide written notice to DFS of DFS's failure and DFS shall have failed to cure such failure within sixty (60) days of its receipt of such notice :
 - a. A material failure by DFS to provide accurate data.
 - b. A material failure by DFS to present properly prepared and paid mailings.

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- c. DFS's failure to comply with a material term of this Agreement.
 - d. DFS's lack of use of the Agreement.
2. During the term of the agreement, DFS may cancel the agreement without cause by providing thirty business days' advance written notice provided that it must still comply with Section II, paragraph D. If DFS already has complied with Section II, paragraph D, then DFS may cancel without cause or penalty and shall specifically have no liability under Section II, Paragraph D of this Agreement.

H. Inapplicability of Contract Disputes Act:

The Contract Disputes Act, 41 U.S.C. 601 et seq., shall not be applicable to any dispute arising from this negotiated service agreement, any of its terms and conditions, its approval, administration, or implementation. However, this waiver shall not apply to any other contract to which either party is a party or is privy to a party.

V. Public Communications

The form, substance, and timing of any press release or other public disclosure of matters related to this Agreement shall be mutually agreed to by DFS and the Postal Service in writing which consent shall not be unreasonably withheld, except to the extent of disclosure which DFS or the Postal Service is required by law to make, in which instance the non-disclosing Party shall be advised and the Parties shall use their reasonable efforts to cause a mutually agreeable disclosure to be issued.

VI. Amendments

This Agreement shall not be amended except expressly, in writing, by authorized representatives of the Parties.

VII. Notices

Service of all notices under this Agreement shall be in writing and sent by either U.S. Certified Mail, return receipt requested, postage paid, addressed to the Party to be served notice, or by nationally recognized overnight mail service, at the following addresses. All such notices and communications shall be effective upon receipt.

Discover Financial Services, Inc.
2500 Lake Cook Road
Riverwoods, IL 60015
Attention: Vice President, Direct Response Marketing

with a copy to:

Robert J. Brinkmann, Esq.
Olive, Edwards, & Brinkmann, LLC
1101 17th Street, N.W., Suite 602
Washington, DC 20036

and to:

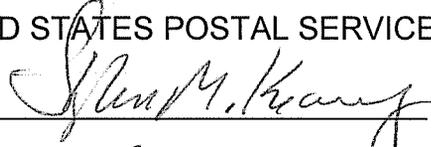
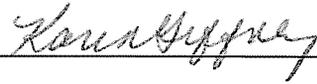
Discover Financial Services, Inc.
2500 Lake Cook Road
Riverwoods, IL 60015
Attention: General Counsel

United States Postal Service
475 L'Enfant Plaza, SW, Room 5014
Washington, DC 20260-5014
Attention: Stephen Kearney
Vice President, Pricing and Classification

United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-1100
Attention: Managing Counsel, Legal Policy & Ratemaking

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

UNITED STATES POSTAL SERVICE	DISCOVER FINANCIAL SERVICES, INC.
By: <u></u>	By: <u></u>
Printed Name: <u>STEPHEN M. KEARNEY</u>	Printed Name: <u>KARIN GIFFNEY</u>
Title: <u>VICE PRESIDENT</u>	Title: <u>VICE PRESIDENT</u>
Date: <u>5/10/04</u>	Date: <u>MAY 7, 2004</u>