

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

RATE AND SERVICE CHANGES TO IMPLEMENT  
FUNCTIONALLY EQUIVALENT NEGOTIATED  
SERVICE AGREEMENT WITH BANK ONE  
CORPORATION

Docket No. MC2004-3

**REQUEST OF THE UNITED STATES POSTAL SERVICE  
FOR A RECOMMENDED DECISION ON CLASSIFICATIONS, RATES  
AND FEES TO IMPLEMENT FUNCTIONALLY EQUIVALENT NEGOTIATED  
SERVICE AGREEMENT WITH BANK ONE CORPORATION**

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

Nan K. McKenzie  
Sheela A. Portonovo  
Michael. T. Tidwell  
Brian M. Reimer

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-3089; Fax -5402  
June 21, 2004

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

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AGREEMENT WITH BANK ONE CORPORATION

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 Bank One Corporation (Bank One). Accordingly, the Postal Service requests that the Postal Rate Commission submit to the Governors of the Postal Service a recommended decision favoring the changes, as herein requested.

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 Bank One NSA, appended here as Attachment F, is a negotiated contract founded on the operational and service relationship between the Postal Service and Bank One. 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.<sup>1</sup> Attachment A to this Request contains proposed Domestic Mail Classification Schedule (DMCS) language implementing the Bank One NSA, and Attachment B contains proposed Rate Schedule language.

The Commission's recently promulgated rules for consideration of NSAs properly separate a so-called "baseline" NSA 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 reasons explained in the testimony and materials submitted with this filing, the Bank One NSA follows this lead and is submitted as functionally equivalent to the baseline Capital One NSA.

It is worth noting that Bank One is a direct competitor of Capital One and, in pertinent respects, is similarly situated. See Direct Testimony Of Brad Rappaport On Behalf Of Bank One Corporation (BOC-T-1) at 3.<sup>2</sup> Accordingly, Bank One should have an opportunity to participate in a functionally equivalent NSA. As explained in the

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<sup>1</sup> 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.

<sup>2</sup> The Postal Service has reviewed the testimony of Bank One witness Brad Rappaport 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

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. Plunkett Testimony (USPS-T-1) at 3-4.

Under the terms of the NSA, the Postal Service, Bank One, 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 changes are expected to enable Bank One to reduce its postage costs. If the volume conditions are met, the contribution to institutional costs required from all other mail users will be reduced.

### **1. Functional Equivalence**

As noted above, the Postal Service submits that the Bank One NSA is functionally equivalent to the current Capital One NSA. The Commission pointed out in Docket No. RM2003-5, Order No. 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 No. 1391 at 50. As explained in the testimony of Postal Service witness Plunkett (USPS-T-1) at 5-6, the Bank One NSA is based on the same two key substantive functional elements that are central to the Capital One NSA and recommended changes -- an address collection

element and a declining-block rate element. As to the first element, if the DMCS is amended as proposed, the Postal Service would provide to Bank One, 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 (Bank One NSA) at ¶¶ I.B and II.B-E. In return, Bank One 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, Bank One would be eligible for per-piece discounts on those portions of its First-Class Mail volume that exceed specified volume thresholds. Attachment F at ¶¶ III.A and C. The Bank One NSA also has a comparable effect on the Postal Service, including the provision of real ACS savings. Plunkett 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 Bank One 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 the 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 Attachment E to this request reveals that while there are differences in wording between the Bank One 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 Bank One NSA as functionally equivalent to the Capital One NSA, under the procedures specified in the Commission's Rules of Practice and Procedure (39 C.F.R. § 3001.196).

## **2. Economic effects of the Bank One NSA on the Postal Service.**

The overall cost, volume, and revenue effects of the proposed Bank One 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. The rates, fees and classifications for 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 Plunkett (USPS-T-1) at 11-14, Appendices A and B. The Postal Service estimates that it will benefit by \$11.6 million over the life of the NSA -- \$7.7 million in

ACS cost savings plus \$6.8 million in increased contribution, minus \$2.9 million in revenues referred to in the Capital One proceedings as leakage.<sup>3</sup>

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

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 Bank One, a competitor of Capital One, should garner similar concern. The converse is not true, however. Failure to permit Bank One, 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 No. 1391 at 52.

### **3. Other Matters**

Attachment A to this Request includes the proposed addition of Domestic Mail Classification Schedule 612. Attachment B sets forth the proposed addition of Rate Schedules 612A and 612B. To implement the Bank One NSA, the Postal Service

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<sup>3</sup> Witness Plunkett refers to this amount as "discount exposure" in his testimony. Plunkett Testimony (USPS-T-1) at 9.

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

requests that the Commission recommend these additions. Among other provisions, DMCS 612 prescribes the criteria for determining eligibility of Bank One 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 Bank One's First-Class Mail volume, and specifies a duration of three years for the NSA. As explained in witness Plunkett's testimony, USPS-T-1 at 17-18, the requested changes would conform to the criteria of 39 U.S.C. §§ 3622(b) and 3623(c).

The NSA provides a foundation for these 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 Bank One NSA specifies: (1) the key conditions making the NSA possible; (2) obligations undertaken by Bank One 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 Bank One NSA is submitted as functionally equivalent to the baseline Capital One NSA, this evidence consists of the testimony of Postal Service witness Michael K. Plunkett

(USPS-T-1). The Postal Service also invites the Commission's attention to the testimony of Bank One witness Brad Rappaport (BOC-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 Bank One today,<sup>5</sup> other evidence on which the Postal Service intends to rely is being filed today by Bank One. All 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

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<sup>5</sup> 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.

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.

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

By its attorneys:

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Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

Nan K. McKenzie  
Sheela A. Portonovo  
Michael T. Tidwell  
Brian M. Reimer

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-3089 Fax -5402  
June 21, 2004

INDEX OF ATTACHMENTS TO REQUEST, MC2004-3  
RATE AND SERVICES CHANGES TO IMPLEMENT FUNCTIONALLY EQUIVALENT  
NEGOTIATED SERVICE AGREEMENT WITH BANK ONE CORPORATION (BANK ONE)

- Attachment A: Domestic Mail Classification Schedule 612 Language
- Attachment B: Rate Schedule 612A and 612B
- Attachment C: Certification
- Attachment D: Index of Testimonies, Exhibit Titles, and Associated Attorneys
- Attachment E: Compliance Statement
- Attachment F: Negotiated Service Agreement Between United States Postal Service and Bank One Corporation

NEGOTIATED SERVICE AGREEMENTS  
CLASSIFICATION SCHEDULE

612            BANK ONE NEGOTIATED SERVICE AGREEMENT

612.1        Eligible First-Class Mail

Eligible First-Class Mail under this section is defined as: (1) All Bank One letter shape First-Class Mail customer account mail (statements and 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, except that no more than 35 million flat shape solicitation pieces will be counted annually toward the discount threshold or be eligible for discounts. Eligible First-Class Mail does not include Business Reply Mail, Qualified Business Reply Mail, Cards, or Priority Mail.

612.2        Waiver of Address Correction Fees

The fees for address correction in Fee Schedule 911 are waived for those First-Class Mail solicitations on which Bank One uses the endorsement specified by the Postal Service.

In exchange for a waiver of ACS fees, Bank One will update any databases it maintains for solicitation mail, other than First-Class Mail customer correspondence related to account holders, and use the information in all future marketing campaigns.

If, during the first year after implementation, Bank One Corporation mails fewer than 25 million pieces of eligible First Class Mail, Bank One agrees to pay \$200,000.

612.3        First-Class Mail Discounts

612.31       Discount Threshold

The Discount Threshold is set at 535 million pieces of eligible First-Class Mail for the first year of the agreement.

612.32       Discounts

Bank 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 612A, for the first year of this Agreement if Bank 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.

612.33 Annual Threshold Adjustment

The Postal Service shall annually adjust the Discount Threshold based on the percentage change from year to year in the sum of the number of Bank One's credit card and checking accounts, as listed in Bank One's annual report. This adjustment shall be determined as follows: if the percentage change is an increase or a decrease of greater than 5%, the threshold shall be adjusted upward or downward by the difference between the percentage change and 3%. No adjustment shall be made for a percentage change of 5% or less. If the percentage change is more than 5%, Rate Schedule 612B would apply in lieu of Rate Schedule 612A.

612.34 Threshold Adjustment for Mergers and Acquisitions; and Portfolio Purchases

In the event that:

- (a) Bank One merges with and/or acquires an entity and/or purchases a portfolio with annual First-Class Mail volume in excess of 10 million pieces but less than 300 million pieces, the discount threshold will be adjusted to add the volume of First-Class Mail sent by the merged or acquired entity, or on behalf of the purchased portfolio during the 12 months preceding the merger, acquisition, or purchase. In that event, beginning in the succeeding fiscal quarter immediately following the date that mail volumes due to the merger, acquisition, or purchase begin to be mailed through the threshold permit accounts, Rate Schedule 612B would apply in lieu of Rate Schedule 612A.
- (b) Bank One merges with, or acquires, another banking entity that has an annual First-Class mail volume of over 300 million pieces, the discount threshold will be adjusted upward to add the volume of the merged or acquired entity for the 12 months prior to the date the mail of the merged entity is first mailed through the threshold permit accounts. In that event, beginning in the succeeding fiscal quarter immediately following the date the mail of the merged entity is first mailed through the threshold permit accounts, Rate Schedule 612B would apply in lieu of Rate Schedule 612A.
- (c) Bank One loses or sells a portfolio with annual First-Class Mail volume of at least 10 million pieces, the discount threshold will be

adjusted downward by the product of the number of active accounts lost or sold multiplied by 12. In that event, beginning in the succeeding fiscal quarter immediately following the date that the mail volumes due to the loss or sale will no longer be mailed through the threshold permit accounts, Rate Schedule 612B will apply in lieu of Rate Schedule 612A.

612.4      Rates

The rates applicable to this Agreement are set forth in Rate Schedules 612A and 612B.

612.5      Expiration

This provision (Section 612) expires 3 years from the implementation date set by the Board of Governors.

612.6      Precedence

To the extent any provision of Section 612 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

BANK ONE NSARATE SCHEDULE 612A

<u>Volume Block</u>	<u>Incremental Discounts</u>
<u>535,000,001 – 560,000,000</u>	<u>2.5¢</u>
<u>560,000,001 – 585,000,000</u>	<u>3.0¢</u>
<u>585,000,001 – 610,000,000</u>	<u>3.5¢</u>
<u>610,000,001 – 645,000,000</u>	<u>4.0¢</u>
<u>645,000,001 – 680,000,000</u>	<u>4.5¢</u>
<u>680,000,001 and above</u>	<u>5.0¢</u>

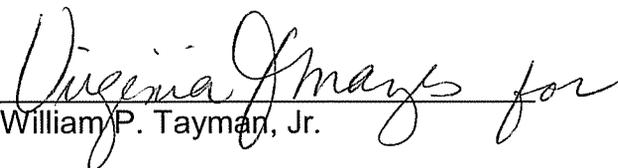
RATE SCHEDULE 612B  
FOR ADJUSTED THRESHOLDS (A.T.)

<u>Volume Block</u>	<u>Incremental Discounts</u>
<u>(A.T.) to (A.T.+25,000,000)</u>	<u>2.5¢</u>
<u>(A.T. + 25,000,001) to (A.T.+ 50,000,000)</u>	<u>3.0¢</u>
<u>(A.T. + 50,000,001) to (A.T.+ 75,000,000)</u>	<u>3.5¢</u>
<u>(A.T. + 75,000,001) to (A.T.+ 110,000,000)</u>	<u>4.0¢</u>
<u>(A.T. + 110,000,001) to (A.T. + 145,000,000)</u>	<u>4.5¢</u>
<u>(A.T. + 145,000,001) and above</u>	<u>5.0¢</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. Mays for  
William P. Tayman, Jr.

INDEX OF TESTIMONIES: DOCKET NO. MC2004-3

<b>WITNESS</b>	<b>TESTIMONY</b>	<b>EXHIBITS</b>		<b>WORKPAPERS</b>	<b>ATTORNEY</b>
		<b>TITLE</b>	<b>NO.</b>		
Mr. Plunkett	USPS-T-1	None		None	Nan K . McKenzie 202-268-3089

Docket No. MC2004-3 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 Schedules.

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 Michael K. Plunkett (USPS-T-1) and Brad Rappaport (BOC-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 Michael K. Plunkett (USPS-T-1) and Brad Rappaport (BOC-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 Michael K. Plunkett (USPS-T-1) and Brad Rappaport (BOC-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 Michael K. Plunkett (USPS-T-1) and Brad Rappaport (BOC-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 Michael K. Plunkett (USPS-T-1). It parallels the Data Collection Plan recommended by the Commission and approved by the Governors of the Postal Service in Docket No. 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 Michael K. Plunkett (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

- The paragraphs concerning MPTQM and the National Change of

Address/Coding Accuracy Support System have been omitted.

- ¶ 1.A - the Bank One NSA states that Bank One has mailed 525,000,000 pieces of First-Class Mail, as compared to a figure of 1 billion pieces for Capital One.

- ¶ I.D - states that Bank One'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. Additionally, references to strategic partners and alliances has been omitted.

Part II - Address and Other Quality Issues

- ¶ II.A – makes a reference to 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. Bank One also agrees to follow any regulations that may change.

- ¶ II.B – corresponds with ¶ II.C in the Capital One Agreement. In exchange for a waiver of fees for ACS notices for solicitations, Bank One agrees to update its database within 7 business days (rather than 2 business days as in Capital One).

- ¶ II.D – corresponds to ¶ II.E in Capital One. Bank One agrees to pay \$200,000

if it does not mail at least 25 million First-Class Mail solicitations. This minimum payment complies with DMM G911.2.1.f, which allows for a minimum payment or a transactional penalty (as was negotiated in Capital One). Additionally, USPS must provide an invoice to Bank One, instead of directly deducting the fee from a CAPS account, as was the arrangement in Capital One.

- ¶ II.G – corresponds to ¶ II.H in the Capital One Agreement. Bank One will process customer account addresses with 90 days prior to mailing, unlike 30 days in the Capital One agreement. For solicitations, Bank One agrees to process addresses against NCOA/CASS within 90 days prior to mailing, beginning November 30, 2004, unless it has an extension for the start-date.

### Part III - Volume Threshold Issues

- ¶ 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.c), whereas such a term was not included in the Capital One NSA. Additionally, 35 million flat shape solicitation pieces will be counted annually toward the thresholds and be eligible for discounts.

- ¶ III.D - the numbers for the volume blocks and the incremental discounts differ between the two NSAs. These differences reflect the negotiations between the Postal Service and two different entities that have differing usages of First-Class Mail. The Bank One NSA is fully in accord with G911.2.1.a.

- ¶ III.F - allows for annual adjustments in the volume threshold using a formula based on the percentage changes in the sum of the number of Bank One's credit

cards and checking accounts, as listed in Bank One's annual report. These adjustments are intended to ensure that the incentives will remain in place for Bank One to increase its volumes of First-Class Mail solicitations.

- ¶ III.G – Because adjustments will be made annually, this paragraph has been added to avoid double counting volumes when quarterly adjustments for mergers and acquisitions are made.

- ¶ III.H - Adds a provision which states that the Postal Service can also make credit payments by wire transfer or check, if Bank One prefers. If Bank One receives more discounts than due, then instead of directly debiting Bank One's CAPS account, the Postal Service will send Bank One an invoice, and Bank One shall have 30 days to pay the invoice or authorize the Postal Service to deduct the amount from Bank One's CAPS account. The Capital One NSA did not provide for alternate payment and debit options.

#### Part IV – Mergers and Acquisitions; Portfolio Purchases, Losses, and Sales

Capital One had a paragraph on mergers and acquisitions, and did not discuss purchases and sales of portfolios.

- ¶ IV.A -- The language for mergers and acquisitions with First-Class Mail volumes in excess of 10 million pieces closely tracks the language for mergers and acquisitions in the Capital One Agreement, with the exception that the Capital One Agreement did not discuss purchases of portfolios.

- ¶ IV.B – This paragraph is new – the Capital One agreement did not have such language.

- ¶ IV.C – This paragraph is new – the Capital One agreement did not have such language.

#### Part V - Compliance and Other Issues

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

- ¶ V.B – has more clauses that can be appealed than the Capital One NSA. New additions include: mail counted toward the 25 million piece threshold in the penalty provision, and adjustments made annually or under the merger section.

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

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

- ¶ V.E – provides for a head-start for implementation: the Board of Governors may decide to implement the waiver of ACS fees up to two months before the discounts and related provisions.

- ¶ IV.F.6 - includes a provision that allows Bank One 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.

- ¶ 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 this law is inapplicable, and it is the position of the Postal Service that it would have been inapplicable in the Capital One case.

#### Part VII – Assignability Clause

Bank One has announced plans to merge with J.P.Morgan Chase. This clause was added to give Bank One the flexibility to adopt a new brand name if necessary.

## 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 and associated materials 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 R2001-1:

USPS Library Reference J-58

USPS Library Reference J-60 (as revised 11/15/01)

USPS Library Reference J-69: (as revised 11/5/2001)

PRC Library Reference 2

PRC Library Reference 4

PRC Library Reference 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  
THE UNITED STATES POSTAL SERVICE  
AND BANK ONE CORPORATION**

This Agreement ("Agreement") is made as of May 10, 2004 (the "Agreement Effective Date") by and between Bank One Corporation, a Delaware Corporation, with its principal place of business located at 1 Bank One Plaza, Chicago, Illinois, 60670, and its subsidiaries and affiliates ("Bank One"), and the United States Postal Service (the "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 Bank One 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 benefits the Postal Service, the postal system as a whole, and Bank One, 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 NSA:

- A. Bank One has mailed, for each of the last three calendar years, a minimum of 525 million pieces of First-Class Mail, including both letter-shaped and flat-shaped pieces.
- B. Bank One agrees to receive electronic information about its undeliverable-as-addressed solicitations sent as First-Class Mail, instead of physical return of the pieces.
- C. Bank One can document the number of returns of undeliverable-as-addressed First-Class Mail.
- D. Bank One's mail relates to its own credit and banking products and services.
- E. Bank One 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.

II. Address and Other Quality Issues

- A. As required, by DMM G911.2.1.e(1), Bank One will apply the endorsement “Change Service Requested” (“CSR”) to all First-Class Mail solicitations and comply with the Postal Service rules and regulations associated with this endorsement, unless mutually agreed to in writing by both Parties. Bank One will receive the service associated with CSR, Option 2, which will include forwarding. After providing the service associated with this endorsement, the Postal Service shall dispose of the mail in accordance with applicable Federal laws and Postal Service operating instructions. Bank One is aware that the regulations associated with the service related to this endorsement may change, and will follow those regulations.
- B. 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, Bank One agrees to update its databases within 7 business days and use the information in future marketing campaigns. In addition, Bank One agrees, in accordance with DMM G911.2.1.g, that it will demonstrate how its system procedures comply with this paragraph, and that it will retain records, auditable by the Postal Service, that so demonstrate.
- C. Bank One will become an active ACS participant for its First-Class Mail solicitations for the duration of the agreement. It will comply with all rules and regulations associated with the use of ACS endorsements.
- D. In accordance with DMM G911.2.1.f, if, by the end of the first year of this agreement, Bank One will have mailed less than 25 million of First-Class Mail solicitation pieces as defined in Article III, Paragraph C, Bank One agrees to pay \$200,000. If Bank One is required to pay the amount under this Paragraph D, the Postal Service shall notify Bank One that this amount is due and shall provide an invoice to Bank One. Bank One agrees to pay the invoice within 30 days of receipt or to authorize the Postal Service to deduct the amount due from the Bank One Centralized Account Processing System (CAPS) account designated by Bank One.
- 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. Bank One agrees that it cannot use the CSR endorsement as a means to comply with the published Postal Service Move Update requirements for automation compatible mail. In accordance with DMM G911.2.1.e(2),

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Bank One will continue to comply with Move Update through NCOA match, FastForward, or other Postal Service approved methods.

G. Bank One agrees to the following address management practices for all of its First-Class Mail as follows:

1. For Bank One's customer account mail (statements and correspondence), Bank One will only use addresses that have been processed against NCOA/CASS databases within 90 days prior to mailing, beginning with the date this NSA is first implemented by the Postal Service's Board of Governors.
2. For Bank One solicitations, Bank One will only use addresses that have been processed against the NCOA/CASS databases within 90 days prior to mailing, beginning November 30, 2004. If Bank One cannot begin compliance by November 30, 2004, Bank One shall notify the Postal Service, and Bank One shall have a six-month extension to May 31, 2005, for compliance with this provision. In no event shall compliance begin later than May 31, 2005.

### III. Volume Threshold Issues

- A. In exchange for Bank One's compliance with the Address Management terms and for its agreement to accept electronic returns of its First-Class Mail solicitations rather than physical return of such pieces, and in accordance with DMM G911.2.1.c, declining block rates of postage will be available for volumes above certain thresholds of 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.
- B. Bank One agrees to pay the otherwise applicable rates of postage at the time the mail is entered. The Postal Service will provide Bank One with credits of the appropriate amounts of the discounts as specified in Article III.
- C. Annual Thresholds: In accordance with DMM G911.2.1.a, First-Class Mail that will be counted toward the First-Class Mail threshold set forth in Article III, Paragraph D, and that will be eligible for discounts is limited to:
  1. All letter shape customer account mail;
  2. Solicitations that bear the CSR endorsement and comply with associated postal rules and regulations, except that no more than 35

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million flat shape solicitation pieces will be counted annually toward the thresholds or be eligible for discounts.

Mail that is counted toward 25 million First-Class Mail solicitation threshold under Article II, Paragraph D will be limited to mail described in Article III, Paragraph C, Section 2.

Postcards, Qualified Business Reply Mail, Priority Mail, Business Reply Mail (BRM) will not be counted toward the thresholds referred to in this paragraph, nor will they be eligible for block discounts.

- D. Given the threshold for the first year at 535 million, then the declining block rates are calculated based on the following discounts:

Volume Block	Incremental Discounts
535,000,001 – 560,000,000	2.5¢
560,000,001 – 585,000,000	3.0¢
585,000,001 – 610,000,000	3.5¢
610,000,001 – 645,000,000	4.0¢
645,000,001 – 680,000,000	4.5¢
680,000,001 and above	5.0¢

- 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 seasonality and variations in mailing patterns throughout the fiscal year, Bank One 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, Bank One 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, Volume Accounting, to determine appropriate quarterly volume discounts, for credit to Bank One.

- F. Annual Threshold Adjustment:

The Parties intend this NSA to provide Bank One an incentive to increase entry of First-Class Mail solicitations. Accordingly, the Postal Service may annually adjust the volume threshold at which postage discounts begin based on the percentage change from year to year in the sum of the

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number of Bank One's credit cards and checking accounts, as listed in Bank One's annual report. This adjustment shall be determined as follows: If the percentage change is an increase or decrease of greater than 5%, the threshold shall be adjusted upward (in the event of an increase) or downward (in the event of a decrease) by the difference between the percentage change and 3%. No adjustment shall be made for a percentage change of 5% or less. At the end of each year from the date of implementation of this agreement, Bank One will report its actual change in the number of credit cards and the number of checking accounts to the Postal Service. The threshold adjustment will be made in the immediately following quarter. Bank One's report of these numbers must be supported by records that are auditable by the Postal Service.

G. In order to avoid double counting volumes, any volume used to make quarterly adjustments for mergers and acquisitions under Article IV, shall be excluded from calculation of the corresponding annual adjustment under Article III, Paragraph F.

H. Volume Accounting:

1. Bank One will provide the Postal Service with the numbers of the permit accounts that will determine Bank One's eligibility for discounts. The accounts may be used only upon the Postal Service's acknowledgement. Only First-Class Mail pieces in these accounts will be counted towards the thresholds. Separate qualifying permit accounts will be used for customer account 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.
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. Only the first 35 million pieces of flat shape solicitation mail will be counted toward the volume threshold.
3. If Bank One's First-Class Mail volume exceeds the Quarterly Volume Threshold for the applicable quarter, Bank One 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 Bank One. The Postal Service will identify Bank One's quarterly First-Class Mail postage usage and corresponding credit due Bank One. Any applicable credit due

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Bank One will be credited at the commencement of the subsequent fiscal quarter, once volumes have been reconciled. The credit shall be paid to Bank One by either wire transfer or check, or by posting an appropriate amount to Bank One's CAPS account.

5. At the end of the fourth Postal Service fiscal quarter, all Bank One First-Class Mail volumes and discounts will be reconciled and the Postal Service will promptly disclose to Bank One whether additional credits are available or whether more discounts have been given than due under the Agreement. If Bank One has received more discounts than due, the Postal Service will send Bank One an invoice. Bank One shall have 30 days to pay the invoice or to authorize the Postal Service to deduct the amount from the Bank One CAPS account designated by Bank One.

6. Bank One 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 Bank One's favor, the change will be accounted for under the terms of this Agreement.

I. Only Bank One'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. As required by DMM G911.2.1.c, Bank One's mail under this agreement is limited to mail relating to Bank One's credit and banking products and services. Bank One may not use the threshold permit accounts for any other mail.

#### IV. Mergers and Acquisitions; Portfolio Purchases, Losses, and Sales

A. Mergers and/or acquisitions that involve entities with First-Class Mail volumes of in excess of 10 million pieces but less than 300 million pieces annually, and purchases of portfolios in excess of 10 million First-Class Mail pieces:

1. The parties agree that the First-Class Mail Volume Threshold will be adjusted upward to the extent that Bank One merges with or acquires an entity, or purchases a portfolio, that has annual First-Class Mail volume in excess of 10 million pieces but less than 300 million pieces in the year preceding the merger, acquisition, or purchase.
2. Bank One must notify the Postal Service of any such merger, acquisition, or purchase within 90 days of the closing of the merger, acquisition, or purchase. This notification must include the name of the merged or acquired entity, or purchased portfolio, the

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existing number of non-overlapping accounts at the time of merger, acquisition, or purchase, the mail volume of the merged or acquired entity, or purchased portfolio, for the twelve (12) months preceding the merger, acquisition, or purchase, and the permit accounts through which the mail volume was processed. Bank One will make available to the Postal Service auditable records necessary to support this information, and these records must be reconcilable with the Postal Service's mailing records.

3. If the merger, acquisition, or purchase results in a material increase as described in Article IV, Paragraph A, Section 1, the First-Class Mail threshold will be adjusted to add the volume of First-Class Mail sent by the merged or acquired entity, or on behalf of the purchased portfolio, during the twelve (12) months preceding the merger, acquisition, or purchase. All threshold adjustments shall be made on a quarterly basis in the succeeding fiscal quarter immediately following the date that mail volumes due to the merger, acquisition, or purchase begin to be mailed through the threshold permit accounts. The mail of the merged or acquired entity, or purchased portfolio, may not be mailed through the threshold permit accounts without prior approval by the Postal Service.
- B. Merger with, or acquisition of, an entity with mail volume of greater than 300 million First-Class Mail pieces annually:
1. Initial Notification: If Bank One merges with, or acquires, another banking entity that has a annual First-Class mail volume of over 300 million pieces, then within 90 days of the merger Bank One shall provide notice to the Postal Service with the following information, relating to the 12-month period prior to the merger. Bank One shall update information as it becomes available:
    - a. the name of each merged or acquired entity;
    - b. the number of credit card accounts, as reported in a publicly available document, such as an annual report;
    - c. the number of retail customer accounts, as reported in a publicly available document, such as an annual report;
    - d. a description and approximate volumes of First-Class Mail used for the following categories:
      - i. credit card accounts;

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- ii. credit card solicitations;
- iii. retail financial services accounts;
- iv. retail financial services solicitations;
- v. any other use of First-Class Mail related to the merged entity's credit and banking products and services, excepting mail paid for at the single-piece rate.

### 2. Adjustments:

- a. Bank One will not mail any volume from a merged or acquired entity ("M&A volume") through the permit accounts identified in Article III, Paragraph H, without prior Postal Service authorization in accordance with the procedure described below. This does not preclude Bank One from physically intermingling the M&A volume to qualify for existing workshare discounts as long as the requirements of this paragraph are met. The Postal Service shall not unreasonably withhold such authorization.
- b. "Integration" is defined as the mailing of M&A volume through the threshold permits referenced in Article III, Paragraph H and have it eligible for volume discounts under Article III, Paragraph C. The "date of integration" shall be defined as the date that the mail of the merged entity is first processed through the threshold permits referenced in Article III, Paragraph H.
- c. Bank One will be permitted to integrate mail volumes from categories of mail, as set forth in Article IV, Paragraph B, Section 1, Subsection d above. In order to obtain authorization for integration of the M&A volume, the following must occur:
  - i. Bank One will notify the Postal Service of its desire to integrate the M&A volume, 90 days before the anticipated date of integration, and provide the following information:
    - (a) The category of mail to be integrated;

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- (b) The monthly volume for the twelve (12) months prior to notice for the entire category of mail;
- (c) The permit accounts through which the volume was mailed.

Bank One will also provide the monthly volumes for the period between the notice and the anticipated date of integration as they become available.

- d. Before mail can be integrated, Bank One must show the Postal Service that it has the quality processes in place to ensure that the M&A volume will comply with Articles II and III of this Agreement.
  - e. The thresholds will be adjusted upward to add the M&A volume from the category of mail for the twelve (12) months prior to the date of integration. The threshold adjustment shall be made on a quarterly basis in the succeeding fiscal quarter immediately following the date of integration.
  - f. Once the Postal Service reconciles the mail volumes the Postal Service will give notice to Bank One that it may begin presenting the mail through the permit accounts identified in Article III, Paragraph H. Bank One may then integrate the mail.
  - g. Upon request, Bank One shall provide the Postal Service the undeliverable-as-addressed rates for the First-Class Mail of the merged entity.
  - h. If the Postal Service does not authorize Bank One to mail M&A volume through the permit accounts identified in Article III, Paragraph H, this NSA shall still remain in effect assuming that Bank One complies with the terms of the Agreement.
3. Bank One will retain records, auditable by the Postal Service, supporting the information that must be provided under this paragraph. The volume records of the merged or acquired entity must be reconcilable with the Postal Service's mailing records.

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- C. Losses and Sales of Portfolios of at Least 10 Million Pieces:
1. The Parties agree that the First-Class Mail Volume Threshold will be adjusted downward to the extent that Bank One loses or sells a portfolio with annual First-Class Mail volume of at least 10 million pieces.
  2. Bank One must notify the Postal Service of any loss or sale within 90 days of the loss or sale. This notification must include the name of the lost or sold portfolio, the number of active accounts in the portfolio, an estimate of the mail volume mailed on behalf of the portfolio for the twelve (12) months preceding the loss or sale, and the permit accounts through which the mail volume was processed. Bank One will make available to the Postal Service auditable records necessary to support this information and these records must be reconcilable with the Postal Service's mailing records.
  3. If the loss or sale of a portfolio results in a material decrease as described in Article IV, Paragraph C, Section 1, the First-Class Mail threshold will be adjusted to reduce the threshold by the product of the number of active accounts lost or sold multiplied by 12. All threshold adjustments shall be made on a quarterly basis in the succeeding fiscal quarter immediately following the date that mail volumes due to the loss or sale will no longer be mailed through the threshold permit accounts.

## V. Compliance and Other Issues

### A. Compliance

1. Bank One will continue to use its current return addresses for First-Class Mail unless Bank One notifies the Postal Service fifteen (15) days in advance that a different address will be used. Different return addresses will be used for customer account mail and for solicitation mail. Bank One must notify the Postal Service of all return addresses for customer and solicitation mail before use.
2. In accordance with DMM G911.2.1.b, upon 5 days written notice, Bank One will permit the Postal Service to open returned First-Class Mail pieces in the presence of Bank One employees, copy the contents only after appropriate redactions, and return the pieces to Bank One provided that Bank One will comply with applicable laws, regulations, and agreements. The parties agree that only a reasonable number of samples will be inspected.
3. Bank One agrees to retain a representative mail piece for each campaign mailed through the solicitation permit accounts. The

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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 specific postage statement(s).

4. Bank One will make all its records related to its First-Class Mail mailings available for inspection by postal employees.

### B. Appeals

Bank One may appeal a Postal Service decision regarding: mail counted toward the minimum in Article II, Paragraph D; mail counted toward the thresholds set forth in Article III, Paragraph C; adjustments made under Article III, Paragraph F, and Article IV; the volume of mail accounted for in the threshold accounts set forth Article III, Paragraph H; or the amount of discounts paid as set forth in Article III, Paragraphs 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. However, Bank One does not waive any appeal rights provided by the Postal Service regulations. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

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 upon its execution by both parties. It shall be implemented on the date set by the Postal Service Board of Governors after all appropriate regulatory approvals.

### 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 approved by the Commission in MC2002-2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One Services, Inc.

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2. Bank One agrees to file with the Commission its direct case supporting the Postal Service's request on the date the Postal Service files its request. Bank One will file any motions for waiver necessary to support these filings.
3. The parties agree to provide the other with full drafts of all testimonies, accompanying workpapers, and library references when available. The Postal Service will approve the final version of these materials.
4. Bank One 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 volumes.
5. Each party agrees to consult with the other on positions to be taken in pleadings prior to filing. Bank One 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 litigation costs that arise as a result of testimony presented by its witnesses and related discovery.
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. The Board may decide to implement the waiver of the ACS fee up to two months before the discounts and related provisions. It is further agreed that should the Implementation date fall prior to the commencement of a Postal Service 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 V, 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.

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### F. Termination

Each party reserves the right to terminate, without penalty, this Agreement 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; or
4. If the Governors 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 litigation before the Postal Rate Commission, Bank One is required to divulge information which it deems confidential and which, in its business judgment, it cannot 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, in accordance with DMM G911.2.1.h, the Postal Service may cancel the agreement for the following reasons provided that the Postal Service shall provide written notice to Bank One of Bank One's failure and Bank One shall have failed to cure such failure within 60 days of its receipt of such notice:
  - a. A material failure by Bank One to provide accurate data;
  - b. A material failure by Bank One to present properly prepared and paid mailings;

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- c. Bank One's failure to comply with a material term of this Agreement;
  - d. Bank One's failure to use the Agreement;
2. During the term of the agreement, Bank One may cancel the agreement without cause by providing thirty business days' advance notice provided that it must still comply with Article II, Paragraph D. If Bank One has mailed more than 25 million First-Class Mail pieces, then Bank One may cancel without cause or penalty and shall specifically have no liability under Article II, Paragraph D of this Agreement.

H. Inapplicability of the Contract Disputes Act

The Contract Disputes Act (41 U.S.C. 601 et seq.) shall be inapplicable to any dispute arising from this NSA; any of its terms and conditions; its approval, administration or implementation, or in any other respect. However, this waiver shall not apply to any other contract to which either party is privy.

VI. 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 Bank One and the Postal Service in writing, which consent shall not be unreasonably withheld, except to the extent of disclosure which Bank One 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.

VII. Assignability

Bank One may assign its rights and responsibilities under this agreement to an entity that it merges with or that acquires Bank One at any time before the expiration date of this agreement.

VIII. Amendments

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

IX. 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

USPS – BANK ONE NSA

following addresses. All such notices and communications shall be effective upon receipt.

Bank One Procurement Services  
Mail Code IL1-0479  
1 Bank One Plaza  
Chicago, IL 60670

With a copy to:

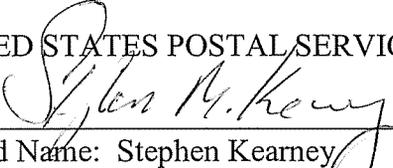
Bank One Law Department  
Mail Code IL1-0120  
1 Bank One Plaza  
Chicago, IL 60670

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

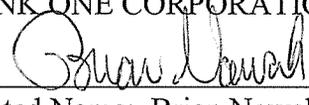
United States Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260-1137  
Attention: Managing Counsel, Legal Policy & Ratemaking

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

By:   
Printed Name: Stephen Kearney  
Title: VP, Pricing & Classification  
Date: 5/10/04

BANK ONE CORPORATION

By:   
Printed Name: Brian Nowak  
Title: SVP Procurement Services Director  
Date: 5/5/04