

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON DC 20268-0001**

Rate and Service Changes To Implement )  
Functionally Equivalent Negotiated Service ) Docket No. MC2004-3  
Agreement with Bank One Corporation )

**STIPULATION AND AGREEMENT**

The undersigned participants submit this Stipulation and Agreement under Rule 29 of the Commission's Rules, 39 C.F.R. § 3001.29, as a negotiated settlement of all issues in this docket. The undersigned participants hereby stipulate and agree to the following:

**I. BACKGROUND**

1. On June 21, 2004, pursuant to 39 U.S.C. §§ 3622 *et seq.* and 39 C.F.R. §§ 3001.190 *et seq.*, the United States Postal Service and Bank One Corporation (Bank One) jointly filed with the Commission a request for a decision recommending the establishment of rate and classification changes needed to implement a negotiated service agreement ("NSA") between the Postal Service and Bank One. The grounds for the request are stated in the direct testimony of Postal Service witness Michael Plunkett (USPS-T-1); Bank One witnesses Brad Rappaport (BOC-T-1) and Lawrence G. Buc (BOC-T-2); and the answers of the co-proponents and their witnesses to the Presiding Officer's Information Requests and the discovery requests of other participants, all of which have been designated as written cross-examination.

2. The Commission docketed the request as Docket No. MC2004-3. On July 23, 2004, the Presiding Officer ruled that the proposed NSA would be considered under Rule 196 as functionally equivalent to the Capital One NSA approved by the Commission in Docket No. MC2002-2.

3. The following persons intervened in the case: Alliance of Nonprofit Mailers, American Bankers Association, American Postal Workers Union, AFL-CIO, Association for Postal Commerce, Discover Financial Services, Inc., Magazine Publishers of America, National Association of Postmasters of the United States, National Newspaper Association, National Postal Policy Council, Inc., Newspaper Association of America, Parcel Shippers Association, David B. Popkin, Valpak Dealers' Association, Inc. and Valpak Direct Marketing Systems, Inc. Except for the two Valpak entities and the Office of Consumer Advocate, no participant requested a hearing. Valpak and the OCA withdrew their hearing requests on August 20 and September 2, 2004, respectively.

## **II. TERMS AND CONDITIONS**

4. This Stipulation and Agreement represents a negotiated settlement of all issues raised in Docket No. MC2004-3, *Rate and Service Changes To Implement Functionally Equivalent Negotiated Service Agreement with Bank One Corporation*.

5. As a condition of settlement, the Postal Service and Bank One have agreed to modify the DMCS language originally proposed by them in this case by adding a trigger mechanism that would terminate the Negotiated Service Agreement ("NSA") two years after its implementation if the cumulative financial impact to the Postal Service after the first two years of the NSA is negative. The trigger mechanism

is set forth in Section 612.52 of the proposed DMCS language. The revised DMCS language is set forth in Attachment A to this Stipulation and Agreement. The originally proposed Rate Schedules, which have not been modified, are set forth in Attachment B hereto. The undersigned participants have also agreed to a modification of the originally filed data collection plan (USPS-T-1, Appendix C). The revised data collection plan is set forth in Attachment C hereto.

6. The OCA joins Bank One and the Postal Service in requesting the Commission not to impose in this case a stop-loss cap, or any other constraints on the proposed NSA, different from that set forth in the proposed DMCS language submitted herewith. Based on the record developed in this case, and the amended DMCS language, the OCA is satisfied that the Postal Service is protected against the risk of significant financial loss. Further, the potential of the NSA to provide additional contribution to the Postal Service by generating new First-Class Mail volume growth is preserved.

7. The undersigned participants agree that the direct testimony and designated written cross-examination of the Postal Service, Bank One, and their witnesses provide substantial evidence supporting and justifying a Recommended Decision recommending the rate and classification changes proposed by the Postal Service and Bank One in this docket, as reflected in the proposed DMCS language and rate schedule attached hereto as Attachments A and B, respectively. On the basis of this record, for this proceeding only, the undersigned participants stipulate and agree that the experimental DMCS and Rate Schedule changes set forth in Attachments A and B to this Stipulation and Agreement comply with the polices of Title 39, United States Code, and in particular, the criteria and factors of 39 U.S.C. §§ 3622 and 3623.

The undersigned parties also agree that the Bank One NSA is functionally equivalent to the NSA in Docket No. MC2002-2 (Capital One NSA).

8. This Stipulation and Agreement is offered in total and final settlement of this proceeding. The undersigned participants agree not to file any further pleadings or testimony with the Commission in this proceeding, except for: (a) pleadings or testimony explicitly requested by the Commission or in reply to such pleadings; (b) pleadings or testimony opposing pleadings or testimony filed in opposition to this Stipulation and Agreement; or (c) pleadings, testimony or comments in support of this Stipulation and Agreement.

9. If the Commission adopts a Recommended Decision that materially differs from the rates and classifications attached to this Stipulation and Agreement, or if the Governors of the Postal Service fail to approve the Commission's Recommended Decision, then each signatory reserves the right to withdraw from this Stipulation and Agreement. Any signatory withdrawing under the terms of this paragraph must provide written notice of its intention to withdraw to all participants within five (5) business days of the occurrence of the specific event giving rise to the right to withdraw. Any exercise of such right by one or more signatories shall not affect the operation of this Stipulation and Agreement as to other signatories.

10. This Stipulation and Agreement pertains only to the instant proceeding. The undersigned participants shall not be considered as necessarily agreeing with or conceding the applicability of any ratemaking principle, any method or principle of classification, any terms and conditions of service, any method of cost of service determination, any principle or method of rate or fee design, the validity or use of any data relied upon by the Postal Service or Bank One in this docket for any other

purposes or in any other classification or ratemaking proceeding, or the application of any rule or interpretation of law, that may underlie, or be thought to underlie, this Stipulation and Agreement.

11. Execution of, support for, or acquiescence in this Stipulation and Agreement by a participant in this docket shall not bind, estop, serve as an admission by, or otherwise prejudice that participant in Docket No. MC2004-4, *Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Discover Financial Services, Inc.*, or any future negotiation or proceeding (other than any proceedings involving the honoring, enforcement, or construction of this Stipulation and Agreement).

12. The undersigned participants also agree that, to the extent that matters presented in the Postal Service/Bank One Request, in any Commission Recommended Decision on that Request, or in any decision of the Governors of the Postal Service in this docket, have not actually been litigated, the resolution of such matters will not be entitled to precedential effect in any other proceeding.

13. The undersigned participants request that the Commission expeditiously issue a decision recommending adoption of the proposed DMCS provisions and Rate Schedule appended to this Stipulation and Agreement.

14. This Stipulation and Agreement represents the entire agreement of the signatories, and supersedes any understandings or representations not contained herein.

\* Signature pages are attached.

**DOCKET NO. MC2004-3**

**PROPOSED DMCS CHANGES**

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.

Additions are underlined,

## 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

Additions are underlined.

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

612.51 Normal Expiration

This provision (Section 612) expires 3 years from the implementation date set by the Board of Governors unless expiration occurs earlier under Section 612.52.

612.52 Early Expiration

If (1) the cumulative financial impact of Section 612 on the Postal Service at the end of the second year after implementation is negative or (2) the Postal Service fails to submit the analysis described in this subsection within 2 years and 3 months after implementation, this provision (Section 612) expires 2 years and 3 months from the implementation date set by the Board of Governors, rather than at the end of the third year, as otherwise provided by Section 612.51. If early expiration occurs, Bank One shall be ineligible for discounts under Section 612.3 on mail entered after the end of the second full year after implementation. The determination of the cumulative financial impact shall be based on the financial analysis submitted into the record as Appendix A to USPS-T-1 by the Postal Service in Postal Rate Commission Docket No. MC2004-3,

Additions are underlined,

adjusted solely to reflect the return, forwarding and ACS success rates actually experienced by the Postal Service on eligible solicitations (as defined in Section 612.1) entered as First-Class Mail under this provision during the first two years after implementation. The Postal Service shall submit its determination under this section, along with the Postal Service's supporting analysis, within 2 years and 3 months from the implementation date of this provision.

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.

DOCKET NO. MC2004-3

## PROPOSED RATE SCHEDULE CHANGES

## BANK ONE NSA

## RATE SCHEDULE 612A

III. Volume Block	Incremental Discounts
<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.)**

IV. Volume Block	Incremental Discounts
<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>

**DOCKET NO. MC2004-3**

**PROPOSED DATA COLLECTION PLAN**

**BANK ONE CORPORATION NSA  
PROPOSED DATA COLLECTION PLAN**

The Postal Service plans to collect the following data pertaining to the NSA with Bank One Corporation (Bank One):

1. The volume of First-Class Mail solicitations by rate category in eligible Bank One permit accounts;
2. The volume of First-Class Mail customer mail by rate category in eligible Bank One permit accounts;
3. The amount of discounts paid to Bank One for First-Class Mail by incremental volume block;
4. The volume of First-Class Mail solicitations bearing the ACS endorsement that are physically returned to Bank One;
5. The number of electronic address correction notices provided to Bank One for forwarded solicitation mailpieces, including the number of notices processed by CFS units and separately for PARS (when fully operational).
6. The number of electronic address correction notices provided to Bank One for solicitation mailpieces that would otherwise be physically returned, including the number of notices processed by CFS units and separately for PARS (when fully operational).
7. Monthly estimate of the amount of time spent on compliance activity and a description of the activities performed.
8. For each First-Class Mail solicitation mailing list run against NCOA, Bank One will provide NCOA contractor reports that separately identify the number of address records checked and the number of corrections made.
9. For each Change of Address record that is used to forward a piece of Bank One solicitation mail through ACS under the Agreement, the Postal Service will provide the date the record was created, its move effective date, whether it was

Additions are underlined.

for a family or individual move, and each date that the record was used to forward a mail piece. No other information from the record would be provided.

10. Volume of Standard Mail solicitations by rate category.

As part of each data collection plan report, the Postal Service will provide an evaluation of the impact on contribution. It will also provide an assessment of trends of Bank One's First-Class Mail volume as compared to overall First-Class Mail volume.

Data collected under the plan shall be reported annually following the end of the fiscal year, with the first report being made available at the end of FY 2004. The Postal Service shall provide the data in a PC-available format.

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**SIGNATURE PAGE FOR STIPULATION AND AGREEMENT**

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Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking  
United States Postal Service

September 15, 2004

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September 15, 2004

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For Intervenor:

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Date: \_\_\_\_\_

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Pro Se

Date: \_\_\_\_\_