Postal Rate Commission
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**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	)	

**JOINT MOTION OF THE UNITED STATES POSTAL SERVICE, BANK ONE CORPORATION, VALPAK DIRECT MARKETING SYSTEMS, INC., VALPAK DEALERS' ASSOCIATION, INC., AND THE OFFICE OF CONSUMER ADVOCATE FOR CONSIDERATION OF MODIFIED STIPULATION AND AGREEMENT AS THE BASIS FOR RECOMMENDED DECISION
(October 5, 2004)**

The United States Postal Service, Bank One Corporation, the Office of Consumer Advocate, Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc., hereby jointly move that the Commission base its recommended decision in this case on the Modified Stipulation and Agreement filed herewith, in accordance with 39 U.S.C. §§ 3622 and 3623.[1] The Modified Stipulation and Agreement, its attachments, and related documents are filed today. These documents are being circulated to all intervenors, and further signatories are expected.[2]

The Modified Stipulation and Agreement builds upon the original Stipulation and Agreement which the Postal Service, Bank One and the Office of Consumer Advocate

[1] This Joint Motion is in support of the Modified Stipulation and Agreement, and shall be governed by the terms of the Modified Stipulation and Agreement.

[2] Parties who wish to sign the Modified Stipulation and Agreement should file their signature page directly with the Commission, along with an appropriate notice. All parties are kindly requested to inform undersigned counsel as soon as possible as to whether they are signing the Stipulation and Agreement, not signing but not opposing, or opposing.

filed on September 15, 2004.[3] As part of that initial settlement, the Postal Service and Bank One agreed to modify their proposed DMCS language by adding a trigger mechanism to protect the Postal Service and other ratepayers from the risk of significant financial loss caused by errors in the projections of the costs and revenues of the Postal Service. The mechanism required early termination of the Negotiated Service Agreement ("NSA") if the cumulative financial impact to the Postal Service is negative at the end of the second year after implementation.[4]

The Modified Stipulation and Agreement provides that if the two-year cumulative financial impact to the Postal Service is negative, the agreement would not end. Instead, there would be an additional analysis to determine whether the incremental financial impact of the mail entered under one (or more) of the discount blocks is also negative. If any discount block produces a negative financial impact then that discount would be unavailable. The deepest discount under which the financial impact would no longer be negative would then apply.

As contemplated in the original settlement, the cumulative analysis would be based upon the financial analysis submitted into the record by the Postal Service in this docket (*i.e.*, Appendix A to the Direct Testimony of USPS witness Michael Plunkett, USPS-T-1). The Appendix A analysis will be adjusted solely to reflect actual return,

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[3] The following parties have signed the September 15, 2004 Stipulation and Agreement: the Alliance of Nonprofit Mailers, American Bankers Association, American Postal Workers Union, AFL-CIO, Association for Postal Commerce, Magazine Publishers of America, Inc., National Association of Postmasters of the United States, National Postal Policy Council, and Parcel Shippers Association.

[4] A copy of the entire proposed DMCS and accompanying rate schedules, with the changes to the rates and fees necessary to implement the Bank One NSA and designated as Section 612 is attached to the Modified Stipulation and Agreement as Attachment A. It amends the proposed DMCS language filed as Attachment A to the Request by adding a third year discount section, Section 612.35.

forwarding and ACS success rates experienced by the Postal Service on eligible solicitations (as defined in proposed DMCS § 612.1) that are entered as First-Class Mail under this provision during the two-year period. Attachment D to the Modified Stipulation and Agreement is the model that will be used to calculate the cumulative financial impact. In addition, under the Modified Stipulation and Agreement, the same model will be used to conduct the incremental financial analysis, except that the analysis shall report separately the net incremental contribution per piece for volume within each rate discount block and shall be based on inputs from the second year only.

The OCA and Valpak support the proposed NSA and recommend the issuance of the attached DMCS and rate schedules, as amended by the Stipulation and Agreement. The OCA and Valpak believe that the Stipulation and Agreement, the NSA, and the amended DMCS language serve the interests of the Postal Service, consumers, and competitors, and comply with the standards and policies of Chapter 36 of Title 39 of the United States Code.

The OCA and Valpak join 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 those set forth in the proposed DMCS language submitted herewith. Based on the record developed in this case and the amended DMCS language, the OCA and Valpak are 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. Moreover, the OCA, Postal Service, and Bank One agree that the record in the Bank One case demonstrates that the risk of loss to the Postal Service from “anyhow” volumes relating to misestimates of Before Rates volumes is de minimis. (Valpak has not litigated this issue and thus takes no position.)

Section 612.35 reflects a careful balance of several competing objectives. The mailer-specific variables specified for updating the Appendix A financial analysis—actual forwarding, return, and ACS success rates—correspond to the primary concerns of the OCA and Valpak regarding potential sources of uncertainty in the profitability of the NSA. The undersigned parties decided not to specify additional variables which might complicate the analysis or inject controversy and uncertainty.[5] The particular conditions under which specific discounts apply pursuant to the profitability review, and the formula for determining which discounts (if any) would become unavailable, would be stated with specificity in the Commission’s Recommended Decision and the Governor’s Decision.

The timing of the profitability review—two years after the implementation of the NSA—balances the importance of allowing sufficient time for the mailer to adjust its business plans to incorporate the NSA’s incentives against the remote possibility that the deal may yield a negative financial impact after one year. Setting the review at the end of one year would increase the risk to mailers that their litigation, transaction and

[5] In Appendix C to the Direct Testimony of Michael Plunkett, the proposed data collection plan inadvertently omitted a provision that the Commission added in its Opinion and Recommended Decision in the Capital One NSA case. This provision would require the reports to include “Volume of Standard Mail solicitations by rate category..” *See* PRC Op. & Rec. Dec.. MC2002-2 at ¶ 9029 n. 12.

The Postal Service requests the Commission to correct this omission by adding this provision to the data collection plan proposed herein. A copy of the data collection plan, as modified, is attached here to the Stipulation and Agreement as Attachment C The reference to "eligible . . . permit accounts" is not included because there are no eligible Bank One permit accounts for Standard Mail.

other initial sunk costs would be stranded, and thus would discourage mailers from pursuing NSAs.

The parties also considered but rejected a variety of other risk-limitation mechanisms, including a stop-loss cap akin to the one adopted in Docket No. MC2002-2 (the Capital One NSA). The parties rejected this kind of cap because the record presented in this case—the stable trend of Bank One's historical volumes (which made the Before Rates Forecast credible), the presence of significant cost savings, and the forecast of substantial new volume—all gave assurance that the Postal Service would not lose money. Furthermore, the record in this particular case shows that Bank One would send significant First-Class Mail volumes in response to the NSA's incentives. A stop-loss cap would thus result in significant lost contribution to the Postal Service. The parties are attempting to move in the direction of the perfect stop-loss mechanism, namely one that would prevent Postal Service losses without reducing potential gains for the Postal Service and the NSA partner.

For these reasons and those set forth in the related documents filed today and in the post-hearing briefs to be filed in accordance with the procedural schedule, the joint movants ask the Commission to base its recommended decision on the Stipulation and Agreement filed today in this docket.

Respectfully submitted,

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October 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have today caused the foregoing document to be served in accordance with Section 12 of the Commission's Rules of Practice

/s/

Nan K. McKenzie

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October 5, 2004