

ORDER NO. 1458

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

George Omas, Chairman;  
Dawn A. Tisdale, Vice Chairman;  
Ruth Y. Goldway; and  
Tony L. Hammond

Rate and Service Changes to Implement  
Baseline Negotiated Service Agreement  
With Washington Mutual Bank

Docket No. MC2006-3

NOTICE AND ORDER ON FILING OF REQUEST  
SEEKING RECOMMENDATION OF A  
BASELINE NEGOTIATED SERVICE AGREEMENT

(March 31, 2006)

On March 29, 2006, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a Negotiated Service Agreement with Washington Mutual Bank.<sup>1</sup> The Negotiated Service Agreement is proffered as a new baseline Negotiated Service Agreement. The Request, which includes six attachments, was filed pursuant to Chapter 36 of the Postal Reorganization Act, 39 U.S.C. § 3601 *et seq.*<sup>2</sup>

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<sup>1</sup> Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement a Baseline Negotiated Service Agreement with Washington Mutual Bank, March 29, 2006 (Request).

<sup>2</sup> Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of Postal Service testimony; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the Negotiated Service Agreement.

The Postal Service has identified Washington Mutual Bank (WMB), along with itself, as parties to the Negotiated Service Agreement. This identification serves as notice of intervention by WMB. It also indicates that WMB shall be considered a co-proponent, procedurally and substantively, of the Postal Service's Request during the Commission's review of the Negotiated Service Agreement. Rule 191(b) [39 CFR §§ 3001.191b]. An appropriate Notice of Appearance by Washington Mutual Bank, March 29, 2006, also has been filed.

In support of the Request, the Postal Service has filed Direct Testimony of Ali Ayub on Behalf of the United States Postal Service, March 29, 2006 (USPS-T-1). WMB has separately filed Direct Testimony of Michael Rapaport on Behalf of Washington Mutual Bank, March 29, 2006 (WMB-T-1). Witness Ayub has reviewed the testimony of witness Rapaport on behalf of the Postal Service and, in accordance with rule 192(b) [39 CFR § 3001.192b], states that such testimony may be relied upon in presentation of the Postal Service's direct case.<sup>3</sup>

The Postal Service submitted several contemporaneous related filings with its Request. The Postal Service has filed a proposal for limitation of issues in this docket.<sup>4</sup> The proposal identifies issues that the Postal Service contends are well-established and need not be relitigated. It proposes limiting issues unique to the Washington Mutual Bank Negotiated Service Agreement, specifically citing the financial impact of the agreement upon the Postal Service and the fairness and equity issues in regard to other users of the mail and competitors of the parties to the agreement.

The Postal Service has filed a request to establish settlement procedures.<sup>5</sup> The Postal Service believes that there is a distinct possibility of settlement as the substance of the agreement concerns the availability of declining block rates, which are now a well established feature of Negotiated Service Agreements. The Postal Service further asserts that the new features of the agreement consist of risk mitigation safeguards.

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<sup>3</sup> USPS-T-1 at 2.

<sup>4</sup> United States Postal Service Proposal for Limitation of Issues, March 29, 2006.

<sup>5</sup> Motion of the United States Postal Service for Establishment of Settlement Procedures, March 29, 2006.

The Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 195 [39 CFR § 3001.193, 195]. It has filed a motion requesting that if the Commission concludes that the submitted materials and incorporations are not sufficient, that those requirements be waived.<sup>6</sup>

The Postal Service's Request, the accompanying testimonies of witnesses Ayub (USPS-T-1) and Rapaport (WMB-T-1), and other related material are available for inspection at the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's website ([www.prc.gov](http://www.prc.gov)).

#### I. THE WMB NEGOTIATED SERVICE AGREEMENT

The Postal Service proposes to enter into a three-year Negotiated Service Agreement with WMB. It asserts that although the WMB Negotiated Service Agreement is similar in structure to the Capital One Negotiated Service Agreement, Docket No. MC2002-2, in that it contains an address correction element and a declining block rate volume discount element, it is unique in that the economic value of the agreement derives primarily from the gain in contribution derived from the declining block rate discount element.

The declining block rate volume discount element provides WMB with per-piece discounts on those portions of its First-Class Mail that exceed specified volume thresholds. The initial volume threshold, which must be exceeded to receive any discount, is 450 million pieces. The discounts range from 2.0 cents to 5.0 cents depending on the block volume.

The address correction element provides WMB, at certain levels of volume, with electronic address corrections without fee for properly endorsed First-Class Mail solicitations. WMB will receive the services associated with Change Service Requested, Option 2, which include forwarding. In return, WMB agrees to forgo

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<sup>6</sup> Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, March 29, 2006 (Request for Waiver).

physical return of undeliverable mail, which otherwise is provided under the existing service features of First-Class Mail for mail that cannot be forwarded. WMB also will apply for participation in the *PostalOne!* system for permit mail that is entered directly into the mailstream by WMB. Furthermore, the Negotiated Service Agreement envisions that WMB will use commercially reasonable efforts to implement OneCode ACS, once such service becomes available.

Because the rationale for the agreement focuses on the additional contribution derived from the declining block rate element, and not on the cost savings associated with the address correction element, the agreement does not establish a limit on the maximum cumulative discount available to WMB based on projected cost savings. In place of this risk mitigating mechanism, the WMB Negotiated Service Agreement provides a solicitations mail volume guarantee.

The agreement also provides an annual adjustment mechanism to the volume thresholds, an enhanced mergers and acquisitions clause, a termination clause which allows the Postal Service to cancel the agreement without cause or penalty with 30 days' advance written notice, and a transactions penalty clause.

The Postal Service estimates it will benefit by \$45.3 million over the life of the Negotiated Service Agreement. This is based on estimates of \$47.6 million in increased contribution due to increased First-Class Mail volume, and a net leakage of minus \$2.3 million due to the discount feature of the agreement.<sup>7</sup>

The Postal Service does not include the savings from the Address Correction Service (ACS) element in the overall value of the agreement. Including these savings would increase the values of the agreement by \$7.3 million based on conversion of before-rates First-Class Mail marketing volume to ACS.<sup>8</sup> The potential savings based on the future conversion of ACS to OneCode ACS have not been calculated.

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<sup>7</sup> USPS-T-1 at 26. The Request estimates a benefit of \$46.3 million over the life of the agreement. Request at 7.

<sup>8</sup> USPS-T-1 at 31.

## II. COMMISSION RESPONSE

*Applicability of the rules for baseline Negotiated Service Agreements.* For administrative purposes, the Commission has docketed the instant filing as a request predicated on a baseline Negotiated Service Agreement as described by rule 195 [39 CFR § 3001.195].

*Request for waiver of certain filing requirements.* Although the Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 195 [39 CFR §§ 3001.193, 195], it has filed a Request for Waiver if the Commission concludes that the submitted materials and incorporations are not sufficient. Such requests sometimes serve a purpose under the Commission's general filing rules, when compliance with the standard filing requirements far exceeds what is required to justify a particular proposal. However, the rules promulgated for Negotiated Service Agreements attempt to narrow the filing requirements to only what is necessary, and are specific as to what is required. Because the rules are narrow and specific, a request for waiver should also be narrow and specific as to the request to waive a particular item. General requests for waivers of filing requirements do not meet this standard. The Postal Service's Request for Waiver is denied. If, at a later time, it is concluded that a specific filing requirement has not, need not, or cannot be met, the Postal Service may, without prejudice, request a waiver of that requirement.

*Settlement.* The Commission encourages communications among the Postal Service and other participants to facilitate resolving issues early in a proceeding. These communications can be either informal, or at formally sanctioned settlement conferences. Settlement conferences early in a proceeding have substantial value in exploring the various positions of the different participants.

The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall report on the status of settlement discussions at the prehearing conference. The Commission authorizes the settlement coordinator to hold settlement conferences and will make the Commission's hearing room available for such

conferences. Authorization of settlement discussions does not constitute a finding on the proposal's procedural status or on the need for a hearing.

*Representation of the general public.* In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

*Intervention.* Those wishing to be heard in this matter are directed to file a notice of intervention on or before April 21, 2006. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's website ([www.prc.gov](http://www.prc.gov)), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR §§ 3001.9a and 10a]. Notices should indicate whether participation will be on a full or limited basis, and shall indicate if a hearing on this Request is desired. See rules 20 and 20a [39 CFR §§ 3001.20 and 20a].

*Prehearing conference.* A prehearing conference will be held April 25, 2006, at 9:30 a.m. in the Commission's hearing room. Participants shall be prepared to address the Postal Service's proposal for limiting issues, and any issue(s) that justify scheduling a hearing. The Commission strongly urges participants to file supporting written argument in advance of the prehearing conference in regard to the identification of any issue(s) that would indicate the need to schedule a hearing, and any objection to the Postal Service's proposal for limiting issues. The Commission intends to consider these issues shortly after the prehearing conference.

It is ordered:

1. The Commission establishes Docket No. MC2006-3 to consider the Postal Service Request referred to in the body of this Order.
2. The Commission will sit en banc in this proceeding.
3. The Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, March 29, 2006, is denied, without prejudice.
4. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.
5. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
6. The deadline for filing notices of intervention is April 21, 2006.
7. A prehearing conference will be held April 25, 2006 at 9:30 a.m. in the Commission's hearing room.
8. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

By the Commission  
(SEAL)

Steven W. Williams  
Secretary