

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

RATE AND SERVICE CHANGES TO IMPLEMENT  
BASELINE NEGOTIATED SERVICE AGREEMENT  
WITH BANK OF AMERICA CORPORATION

Docket No. MC2007-1

**INITIAL BRIEF OF THE UNITED STATES POSTAL SERVICE**

UNITED STATES POSTAL SERVICE

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## I. INTRODUCTION

In the last five years, the Postal Regulatory Commission (“Commission” or “PRC”) has recommended the establishment of declining block rates to implement baseline Negotiated Service Agreements (“NSAs”) between the Postal Service and two individual mailers, Capital One and Bookspan.<sup>1</sup> Among other elements, the rates were designed to provide incentives for those mailers to increase their use of First-Class Mail letters (in the case of Capital One) and Standard Mail letters (in the case of Bookspan) and have afforded the Postal Service the opportunity to generate new volumes and new revenue.

The NSA proposed by the Postal Service and Bank of America Corporation (“BAC”) is a novel baseline NSA that provides incentives for measurable improvements in the mail processing performance and address quality of the BAC’s letter-rated First-Class Mail and Standard Mail mailpieces. Additionally, the operational commitments that BAC will adopt under this NSA will allow the Postal Service to test a host of processes, such as the Intelligent Mail Barcode (“IMB”), and will enable the collection of data that will facilitate the development of innovative approaches to pricing that could have “a potential for broad applicability.”<sup>2</sup>

This NSA is not designed to increase Postal Service revenues through increases in mail volumes. Instead, it is designed to provide incentives to BAC for improvements in mail processing performance and address quality with commitments to improved mail

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<sup>1</sup> See Opinion and Recommended Decision, Docket No. MC2002-2; Opinion and Recommended Decision, Docket No. MC2005-3.

<sup>2</sup> Direct Testimony of Ali Ayub on Behalf of United States Postal Service (Revised) (“USPS-T-1”) (filed on June 6, 2007), at 4.

preparation standards, thereby leading to reductions in the Postal Service's costs for handling BAC's mail. This NSA also differs from typical worksharing arrangements because it allows BAC to determine the optimal methods for achieving reductions in costs to the Postal Service of handling BAC's mail. This pay-for-performance NSA is projected to generate cost savings for the Postal Service over the life of the agreement.<sup>3</sup>

The Commission's rules provide that "it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace."<sup>4</sup> The record demonstrates that the NSA proponents have met their burden of showing that the requested rates and classifications are consistent with applicable statutory criteria and will benefit the Postal Service. The record also shows that the proposed NSA poses virtually no risk of unreasonable harm to other mailers or to the marketplace in general. Participants in this proceeding represent both categories of mail encompassed by this NSA, and none has filed factual evidence or analyses that substantially contradict the facts and analyses presented by the Postal Service and BAC, which have been subjected to considerable scrutiny in written and oral cross-examination. Furthermore, no competitor of BAC has even intervened in this proceeding (much less opposed the NSA) – further confirming that the NSA will cause no harm to other mailers. Because this baseline NSA will lead to significant reductions in Postal Service costs and will aid in the development of pricing approaches that could benefit a broad range of mailers, approval of this baseline NSA is warranted and is justified by the record evidence in this proceeding.

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<sup>3</sup> See USPS-T-1, Appendix A, at 1.

<sup>4</sup> 39 CFR § 3001.190(b).

## II. PROCEDURAL HISTORY

The following sections summarize the procedural history in this proceeding.

### A. Filing of Postal Service's Request; Interventions

On February 7, 2007, the Postal Service filed its Request for a recommended decision to implement a baseline negotiated Service agreement ("NSA") with Bank of America Corporation ("BAC").<sup>5</sup> On February 9, 2007, the Commission issued a notice and order on the filing of the Request, noting that the agreement would provide "performance-based incentives to encourage Bank of America to undertake certain mailing activities to reduce Postal Service costs associated with processing Bank of America's letter-rated First-Class Mail and Standard Mail."<sup>6</sup> The Commission designated the Office of the Consumer Advocate ("OCA") to represent the interests of the general public and established March 5 as the deadline for filing notices of intervention.

The following parties intervened in the case: American Postal Workers Union, AFL-CIO ("APWU"); David B. Popkin; GrayHair Software, Inc.; Newspaper Association of America; and Valpak Dealers' Association, Inc. and Valpak Direct Marketing Systems, Inc. (collectively "Valpak"). The first sets of written interrogatories submitted in this proceeding were filed by the OCA on February 15, 2007, eight days after the

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<sup>5</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 Bank of America Corporation ("Request").

<sup>6</sup> Order No. 3 - Notice and Order on Filing of Request Seeking Recommendation of a Baseline Negotiated Service Agreement, at 3.

Postal Service filed its Request.<sup>7</sup> Valpak filed its first set of interrogatories on March 9, 2007.<sup>8</sup> APWU filed its first discovery requests on March 27, 2007, seven weeks into the discovery period.<sup>9</sup>

**B. Establishment of Settlement Procedures; Prehearing Conference**

On March 2, 2007, the Postal Service moved for the Commission to establish settlement procedures, noting that the relatively straightforward nature of the NSA “should result in an expeditious and uncomplicated review,” but that if “disagreement arises over certain aspects of the Agreement ... the extent of any such diverging views can be determined in the course of settlement discussions.”<sup>10</sup> In that motion, the Postal Service requested that the Commission appoint Postal Service counsel as settlement coordinator. The Commission granted the Postal Service’s motion on March 9, 2006.

A prehearing conference was held on March 14, 2007, during which the Presiding Officer requested that the Postal Service file a written report by Friday, March 16, “detailing any progress made on narrowing the issues in this case” and including an estimate of how much additional time parties would need for discovery.<sup>11</sup> The prehearing conference was immediately followed by a settlement conference in the

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<sup>7</sup> Office of the Consumer Advocate Interrogatories to United States Postal Service Witness Ali Ayub (OCA/USPS-T1-1-4) (cover page).

<sup>8</sup> Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. First Interrogatories and Requests for Production of Documents to United States Postal Service Witness Ali Ayub (VP/USPS-T1-1-20), cover page.

<sup>9</sup> Interrogatories of American Postal Workers Union, AFL-CIO to USPS Witness Ayub (APWU/USPS T1-1-3), cover page.

<sup>10</sup> Motion of the United States Postal Service for Establishment of Settlement Procedures, at 1, 2.

<sup>11</sup> Tr. 1/6.

Commission's hearing room during which the participants unanimously agreed that the period for written discovery on the Postal Service's direct case should remain open through April 6, 2007, at which time the period of discovery would be closed, subject to the timely receipt of Postal Service responses to written discovery, and the participants' right to conduct follow-up discovery.<sup>12</sup> Although the participants were not yet ready to agree to terms narrowing the issues in the case or to forgo participation in any stages of the proceeding, no participant expressed a theoretical, philosophical or conceptual objection to the NSA at that time.<sup>13</sup>

**C. Presiding Officer's Issuance of Notice of Inquiry No. 1; Filing of Discovery Motions and Responses**

On April 3, 2007, the Commission issued its Notice of Inquiry No. 1 ("NOI 1") which asked participants to comment on possible methods for establishing the baseline values from which to measure improvement in read and accept rates in "longer term...pay-for-performance agreements" in the absence of mailer-specific information.<sup>14</sup> On April 17, 2007, BAC, the OCA, the Postal Service, and Valpak submitted comments in response to NOI 1. On April 24, 2007, reply comments were submitted by APWU, BAC, the Postal Service, and Valpak. In its reply comments, APWU urged the Commission to issue a subpoena to compel the deposition testimony of Walter O'Tormey, Vice President of Engineering for the Postal Service, citing to section 602 of

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<sup>12</sup> See Report of Settlement Coordinator on March 14, 2007, Settlement Conference (filed on March 19, 2007). Representatives of the American Postal Workers Union, AFL-CIO (APWU), Bank of America Corporation (BAC), the Office of Consumer Advocate (OCA), the Postal Service, Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association Inc. (collectively Valpak) were in attendance.

<sup>13</sup> Report of Settlement Coordinator on March 14, 2007, Settlement Conference, at 2.

<sup>14</sup> NOI 1, at 2.

the Postal Accountability and Enhancement Act (“PAEA”).<sup>15</sup> Also in its reply comments, APWU urged the Commission to grant the following: 1) its motion to stay proceedings;<sup>16</sup> 2) its motion to compel a response to APWU interrogatory APWU/USPS-T1-1;<sup>17</sup> and 3) its motion to file supplemental discovery (*i.e.*, thirteen requests for admission).<sup>18</sup> After receiving APWU’s reply comments, BAC moved for leave to file a response, noting that APWU’s April 24 Reply was the first APWU pleading in this proceeding to advance any arguments that the NSA terms were inconsistent with any section of Title 39 U.S.C. or prior PRC decisions.<sup>19</sup> BAC’s Motion was granted on May 11, 2007.<sup>20</sup>

On April 30, 2007, the Postal Service responded to APWU’s April 24 requests for admission, three days before the Presiding Officer granted APWU’s motion for leave to file those requests.<sup>21</sup> On May 1, 2007, the Postal Service filed responses in opposition

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<sup>15</sup> 39 U.S.C. § 504(f)(2). Reply of American Postal Workers Union to Comments Filed in Response to Notice of Inquiry No. 1, at 5. APWU’s motion for issuance of a subpoena was filed on the following day, April 25, 2007. See Motion of American Postal Workers Union, AFL-CIO for Issuance of A Subpoena to Compel Testimony and the Production of Documents by Walter O’Tormey.

<sup>16</sup> Motion of the American Postal Workers Union, AFL-CIO to Stay Proceedings (filed on April 24, 2007).

<sup>17</sup> Motion of the American Postal Workers Union, AFL-CIO to Compel United States Postal Service to Answer Interrogatory APWU/USPS-T1-1 (filed on April 24, 2007).

<sup>18</sup> Motion of APWU for Permission to File Requests for Admission by the Postal Service (APWU/USPS Requests) (filed on April 24, 2007).

<sup>19</sup> Motion of Bank of America Corporation for Leave to File Response to April 24 Reply Comments of APWU (filed on May 3, 2007); see *also* Reply of American Postal Workers Union to Comments Filed in Response to Notice of Inquiry No. 1 (filed on April 24, 2007), at 1-4.

<sup>20</sup> Presiding Officer’s Ruling Concerning Discovery Motions, P.O. Ruling No. MC2007-1/6.

<sup>21</sup> See Presiding Officer’s Ruling Rescheduling Hearing, P.O. Ruling No. MC2007-1/5, at 4.

to APWU's motion to stay the proceedings,<sup>22</sup> its motion to compel a response to APWU interrogatory APWU/USPS-T1-1,<sup>23</sup> and its motion for issuance of a subpoena to compel testimony and the production of documents by Mr. O'Tormey.<sup>24</sup> In its responses, the Postal Service offered to produce Brent Raney, Manager, Technology Development/Apps, Engineering, for cross-examination during hearings on the Postal Service's direct case, then scheduled for May 8, 2007. The Postal Service noted that APWU and other participants would have a full opportunity to cross-examine Mr. Raney on improvements in letter mail read/accept rates since 1999, the purported subject of the requested subpoena to Mr. O'Tormey. In its response to APWU's motion for issuance of a subpoena, the Postal Service emphasized that the circumstances in this proceeding did not warrant the "extraordinary remedy" of a deposition, that the issuance of the requested subpoena would depart from the general rule that the producing party, not the questioning party, has the right to choose its own witnesses, and that the issuance of a subpoena would be premature because the Commission's subpoena authority has not yet been implemented under the Commission's rulemaking authority.<sup>25</sup> Also, on May 1, 2007, the Postal Service filed a partial response to outstanding APWU

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<sup>22</sup> Response of United States Postal Service in Opposition to Motion of American Postal Workers Union, AFL-CIO, to Stay Proceedings.

<sup>23</sup> Response of United States Postal Service in Opposition to Motion of American Postal Workers Union, AFL-CIO, to Compel Answer to Interrogatory APWU/USPS-T1-1.

<sup>24</sup> Response of United States Postal Service in Opposition to Motion of American Postal Workers Union, AFL-CIO, for Issuance of A Subpoena to Compel Testimony and the Production of Documents by Walter O'Tormey.

<sup>25</sup> See Response of United States Postal Service in Opposition to Motion of American Postal Workers Union, AFL-CIO, for Issuance of A Subpoena to Compel Testimony and the Production of Documents by Walter O'Tormey (filed on May 5, 2007), at 2-5.

interrogatory APWU/USPS-T1-1.<sup>26</sup> In its partial response, the Postal Service stated that it would produce documents responsive to subpart (a) of this interrogatory under protective conditions because, as noted in the Postal Service's motion for protective conditions, the responsive documents contained commercially sensitive, predecisional and deliberative material that merited protection from public disclosure.<sup>27</sup> The Postal Service's motion for leave to file the responsive documents under protective conditions was granted on May 2, 2007<sup>28</sup> and the documents were filed under seal in Library Reference USPS-LR-3 two days later, thereby mooting APWU's April 24 motion to compel a response.<sup>29</sup>

On May 3, 2007, the APWU moved to withdraw its motion for issuance of a subpoena on Mr. O'Tormey and moved for the Commission to issue a subpoena to compel testimony and the production of documents by Brent Raney, reserving its right to request the issuance of a subpoena on Mr. O'Tormey "if Mr. Raney is not able to provide the necessary information."<sup>30</sup> Shortly thereafter, the Presiding Officer issued a

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<sup>26</sup> Partial Response of United States Postal Service Witness Ayub to Interrogatory of the American Postal Workers Union (APWU/USPS-T1-1) (filed on May 1, 2007), cover page.

<sup>27</sup> Motion of United States Postal Service for Leave to File Decision Analysis Reports (DARS) Under Protective Conditions (filed on May 1, 2007).

<sup>28</sup> Presiding Officer's Ruling Granting Motion for Protective Conditions, P.O. Ruling No. MC2007-1/4.

<sup>29</sup> See Notice of the United States Postal Service of Filing of Library Reference USPS-LR-3/MC2007-1; USPS-LR-3 - Responsive Material for Partial Response of USPS Witness Ayub to Interrogatory of the APW Union (APWU/USPS-T1-1, part (a)) [UNDER SEAL] (filed on May 4, 2007); see also Presiding Officer's Ruling Concerning Discovery Motions, P.O. Ruling No. MC2007-1/6, at 1 ("With the Postal Service having filed what appears to be responsive material, the motion to compel is moot.").

<sup>30</sup> Motion of American Postal Workers Union, AFL-CIO for Issuance of A Subpoena to Compel Testimony and the Production of Documents by Brent Raney and to Withdraw

Ruling<sup>31</sup> denying APWU's motion to stay the proceedings as well as its motion for issuance of a subpoena, noting that because the Postal Service had agreed to make Mr. Raney available during the hearing, and because a period of written discovery was being provided, no undue burden or hardship was apparent and "[t]hus, a persuasive argument to allow a formal deposition has not been made."<sup>32</sup> In its ruling, the Presiding Officer granted APWU's May 1 motion to postpone the hearings scheduled for May 8, 2007,<sup>33</sup> a motion that the NSA proponents did not oppose, rescheduled the hearings for June 14, 2007, with the possibility of continuation through June 15, and allowed discovery directed to Mr. Raney through May 25, 2007.<sup>34</sup>

On May 10, 2007, the Postal Service filed a response in opposition to APWU's motion for issuance of a subpoena on Mr. Raney.<sup>35</sup> The next day, the Commission issued a ruling denying this motion and noting that the Commission's Ruling denying APWU's motion for issuance of a subpoena on Mr. O'Tormey mooted APWU's motion to withdraw its earlier motion.<sup>36</sup>

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Without Prejudice APWU's Motion for Issuance of A Subpoena to Walter O'Tormey (filed on May 3, 2007), at 1.

<sup>31</sup> See Presiding Officer's Ruling Concerning Discovery Motions, P.O. Ruling No. MC2007-1/6, at 2.

<sup>32</sup> Presiding Officer's Ruling Rescheduling Hearing, P.O. Ruling No. MC2007-1/5, at 3.

<sup>33</sup> Motion of the American Postal Workers Union, AFL-CIO to Re-Schedule Hearing on Co-Proponents' Case in Chief for June 7, 2007.

<sup>34</sup> Presiding Officer's Ruling Rescheduling Hearing, P.O. Ruling No. MC2007-1/5, at 4.

<sup>35</sup> Response of United States Postal Service in Opposition to Motion of American Postal Workers Union, AFL-CIO, for Issuance of A Subpoena to Compel Testimony and the Production of Documents by Brent A. Raney.

<sup>36</sup> See Presiding Officer's Ruling Concerning Discovery Motions, P.O. Ruling No. MC2007-1/6, at 2-3.

**D. Filing of Discovery Requests Directed to Postal Service Witness Raney**

On May 9, 2007, APWU filed interrogatories APWU/USPS-ST3-1-8 on USPS witness Raney.<sup>37</sup> On May 21, 2007, the Postal Service filed an objection to interrogatory APWU/USPS-ST3-3(d), on the grounds that APWU's request for a single "Sort Plan Area Summary" end-of-run ("EOR") report was not relevant to a proceeding involving an NSA based on systemwide average data and that the requested report contained commercially sensitive information that, if publicly disclosed, could put the Postal Service at a competitive disadvantage.<sup>38</sup> On June 11, 2007, APWU responded to this objection by filing a motion to compel a response, stating that "[t]he purpose of the interrogatory is to further an understanding of the type of data used to determine the baseline measurements in this case" and that "[t]he actual numbers contained in the report are only necessary to understand the information on the form."<sup>39</sup> In its answer to APWU's motion, the Postal Service proposed "to provide a responsive answer to the interrogatory by listing the nature and type of data, and the relationship among the data elements in a typical EOR report."<sup>40</sup> The Postal Service also noted that "APWU made

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<sup>37</sup> American Postal Workers Union, AFL-CIO Interrogatories of USPS Witness Brent Raney (APWU/USPS-ST3-1-8).

<sup>38</sup> Objection of the United States Postal Service to Interrogatory APWU/USPS-ST3-3(d).

<sup>39</sup> Motion of the American Postal Workers Union, AFL-CIO to Compel United States Postal Service to Answer Interrogatory APWU/USPS-ST3-3(d), at 2.

<sup>40</sup> Answer of United States Postal Service to Motion of the American Postal Workers Union, AFL-CIO, to Compel A Response to Interrogatory APWU/USPS-ST3-3(d), at 2.

no attempt to remedy the irrelevancy of its interrogatory by seeking aggregated information in lieu of [the information] requested.”<sup>41</sup>

On June 12, the Presiding Officer directed the Postal Service to file its response to the APWU interrogatory by close of business on June 13, assuming that the Postal Service had consulted with APWU and verified that its proposed response satisfied the needs of APWU.<sup>42</sup> The Presiding Officer encouraged the Postal Service and APWU to resolve this discovery dispute and stated that further consideration of the pleadings related to this dispute would be held in abeyance pending review of the Postal Service’s response. On June 13, the Postal Service filed its proposed response and noted that the parties did not reach an agreement on how to proceed with respect to this discovery dispute but that Mr. Raney would be available at the June 14 hearings for cross-examination concerning the response.<sup>43</sup>

**E. Hearings on the Postal Service’s Direct Case; Responses to Presiding Officer’s Ruling from the Bench**

Hearings on the Postal Service’s direct case were held on June 14, 2007. Oral cross-examination was conducted on USPS witnesses Ayub (USPS-T-1) and Raney (USPS-ST-3). Although BAC tendered its witness, Richard Jones, for cross-examination, no participant chose to cross-examine him.

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<sup>41</sup> Answer of United States Postal Service to Motion of the American Postal Workers Union, AFL-CIO, to Compel A Response to Interrogatory APWU/USPS-ST3-3(d), at 4, fn 1.

<sup>42</sup> Presiding Officer’s Ruling Concerning APWU’s Motion to Compel a Response to APWU/USPS-ST3-3(d) (issued June 12, 2007), at 2.

<sup>43</sup> Response of United States Postal Service Witness Raney to Interrogatory of the American Postal Workers Union, AFL-CIO (APWU/USPS-ST3-3(d)), cover page.

During the closed session of the hearing, counsel for APWU renewed APWU's request "that the Commission require the Postal Service to make Mr. O'Tormey available" for inquiry on Postal Service efforts "to track read-accept rates since 1999, and the further read-accept rate impact of the wide-field-of-view camera."<sup>44</sup> Counsel for the Postal Service objected to APWU's renewed request, citing its responses to APWU's original motion on the issue and emphasizing that Mr. Raney was made available to answer APWU's questions concerning these issues.<sup>45</sup> Toward the end of the hearing, the Presiding Officer issued a ruling directing APWU to renew its request in writing as a "renewed motion" by close of business on June 15 and directing the Postal Service to indicate whether any reports or documents were submitted to the Board of Governors (BOG) that discuss the Postal Service's investments in Wide Field of View (WFOV) Cameras.<sup>46</sup>

On June 15, 2007, the Postal Service responded to the Presiding Officer's ruling, stating that although it was the understanding of the undersigned counsel that no documents had yet been identified as responsive to the Presiding Officer's June 14 ruling, there were a few documents that were submitted to the BOG containing information on improvements resulting from a Performance Improvement Plan (PIP) implemented in connection with the WFOV Cameras.<sup>47</sup> The Postal Service stated that in the interest of reducing motions practice and preserving Commission resources, it

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<sup>44</sup> Tr. 3/528-529.

<sup>45</sup> Tr. 3/529-530.

<sup>46</sup> Tr. 3/531-532.

<sup>47</sup> Response of the United States Postal Service to Ruling of the Presiding Officer at Hearing on June 14, 2007.

would provide these documents under protective conditions.<sup>48</sup> The Postal Service's June 20 motion for leave to file these documents and responsive material discovered since June 15 under protective conditions<sup>49</sup> was granted on June 22, 2007.<sup>50</sup>

#### **F. Posthearing Discovery Motions and Responses**

On June 15, APWU filed a motion for an order compelling further discovery on the Postal Service.<sup>51</sup> This motion included two new document production requests and an interrogatory asking the Postal Service to identify a USPS official who is familiar with: 1) certain reports on read and accept rates, and 2) the read and accept rates on postal automation equipment of the type used to process BAC mail. The Postal Service filed an answer in opposition to this motion on June 22, 2007, noting that discovery on the Postal Service had ended with the receipt of the Postal Service's direct case into evidence on June 14 and the filing of APWU's Notice of Intent Not to File Rebuttal Testimony.<sup>52</sup> The Postal Service submitted that its offer to voluntarily produce the documents identified in its June 20 motion for protective conditions essentially mooted APWU's document production request insofar as that request related to the efficacy of

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<sup>48</sup> Response of the United States Postal Service to Ruling of the Presiding Officer at Hearing on June 14, 2007.

<sup>49</sup> Motion of United States Postal Service for Leave to File Certain Documents As Provided in the Postal Service's Response to Ruling of the Presiding Officer at Hearing on June 14, 2007 Under Protective Conditions.

<sup>50</sup> Presiding Officer's Ruling Granting Motion for Protective Conditions (issued on June 22, 2007), at 2.

<sup>51</sup> Motion of American Postal Workers Union, AFL-CIO for An Order Compelling the Production of Documents and Information by the United States Postal Service.

<sup>52</sup> Answer of United States Postal Service in Opposition to Motion of the American Postal Workers Union, AFL-CIO, for An Order Compelling Production of Documents and Information, at 2-3; see *also* American Postal Workers Union, AFL-CIO, Notice of Intent Not to File Rebuttal Testimony (filed on June 26, 2007).

the WFOV camera. In response, APWU filed under seal a short reply to the Postal Service's answer in opposition on June 26, 2007, essentially restating its request and challenged the Postal Service's interpretation of certain portions of the closed transcript.<sup>53</sup> The Postal Service filed a surreply on June 29, 2007, which noted that APWU did not correctly interpret witness Raney's testimony during the June 14 hearings, that APWU had no foundation to conclude that witness Raney had only "hearsay knowledge" concerning current read and accept rates, and that APWU's request for the identity of a witness with such knowledge had already been satisfied through witness Raney's appearance at those hearings.<sup>54</sup> The Postal Service emphasized that the documents identified in its June 20 motion for protective conditions, filed the previous day in Library Reference USPS-LR-4/MC2007-1 ("LR-4"), essentially mooted APWU's post-hearing document production requests.<sup>55</sup>

On July 9, 2007, the Presiding Officer issued a ruling denying APWU's motion for further discovery, noting that an "adequate opportunity for discovery appears to have run its course" and that "APWU has failed to present a persuasive argument as to why the questions it now seeks to ask could not have been posed during the extended

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<sup>53</sup> Reply of American Postal Workers Union to Opposition of USPS to APWU Motion to Compel Production of Documents and Information, at 3-4.

<sup>54</sup> See Surreply of United States Postal Service to the June 26 Reply of American Postal Workers Union, AFL-CIO. A conditional motion for leave to file the surreply was also filed on June 29.

<sup>55</sup> See *id.*; USPS-LR-4 - Documents Provided as Described in the Motion of USPS for Leave to File Certain Documents as Provided in the Postal Service's Response to Ruling of the Presiding Officer at Hearing on June 14, 2007 Under Protective Conditions (filed on June 28, 2007).

written discovery period agreed to by all participants, or during oral cross-examination.”<sup>56</sup> On July 19, the Presiding Officer closed the record in this proceeding.<sup>57</sup>

**III. THE BANK OF AMERICA (BAC) NSA IS A GROUNDBREAKING AGREEMENT THAT WILL ENABLE THE POSTAL SERVICE TO ACHIEVE COST SAVINGS THROUGH INCENTIVES DESIGNED TO ENCOURAGE IMPROVEMENTS IN MAIL PROCESSING PERFORMANCE AND ADDRESS QUALITY**

The BAC NSA is the first pure cost-savings NSA submitted to the Commission in which financial incentives are linked to measurable reductions in Postal Service costs resulting from activities undertaken by BAC.<sup>58</sup> As noted in the Introduction above, this NSA differs from previous baseline NSAs the PRC has approved in that its core terms are not based on declining block rates to incent increases in the volume of mail sent via the Postal Service.<sup>59</sup> This NSA will encourage BAC to undertake activities that will lead to improvements in the read and accept rates, forwarding rate, return rates, and undeliverable-as-addressed rates of its letter-rated First-Class Mail and Standard Mail mailpieces. Moreover, BAC is obligated to implement several postal processes that will confer additional benefits on the Postal Service, described in Section III E below.

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<sup>56</sup> Presiding Officer's Ruling Denying APWU Motion for Further Discovery, P.O. Ruling No. MC2007-1/14 (issued on July 9, 2007), at 4-5.

<sup>57</sup> Presiding Officer's Ruling Designating Material, Closing the Record and Scheduling Briefs, P.O. Ruling No. MC2007-1/15 (issued on July 19, 2007).

<sup>58</sup> See Request, at 2.

<sup>59</sup> See Section I, above.

**A. The BAC NSA, the First Pure Cost-Savings NSA Submitted to the Commission for Approval, will Link Performance-Based Incentives to Measured Improvements in BAC's Mail Processing Performance**

As a pay-for-performance agreement, the BAC NSA will encourage BAC to use best business practices to determine the optimal means for reducing costs to the Postal Service of processing BAC's First-Class Mail and Standard Mail.<sup>60</sup> As witness Ayub notes, this agreement is a "marked departure" from the Postal Service's "traditional" approach to worksharing discounts generally, in which customers receive discounts for adhering to specified requirements, an approach that "implicitly [assumes] a direct relationship between the activities performed and a reduction in Postal Service costs."<sup>61</sup> In contrast, this NSA is designed to provide BAC with discounts only for measurable cost savings, thereby incenting BAC to reduce postal costs as much as possible. As a result, "the NSA will generate a positive contribution for the Postal Service, regardless of the extent of performance improvement actually achieved" by BAC through predetermined metrics, "as long as some performance improvement occurs."<sup>62</sup>

**B. The Bank of America NSA Will Encourage BAC to Undertake Activities That Will Lead to Incremental Improvements in the Read and Accept Rates of its First-Class Mail and Standard Mail, Thereby Reducing Postal Service Costs**

The per-piece rate incentives set forth in sections IV.C and IV.F of the agreement will lead to cost savings by incenting BAC to improve its mail processing performance for letter-rated First-Class Mail and Standard Mail. For each incremental improvement in BAC's read and accept rates over the negotiated baselines of 96.8 and 96.9 for First-

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<sup>60</sup> USPS-T-1, at 4.

<sup>61</sup> *Id.* at 4, 5.

<sup>62</sup> Tr. 2/132; Tr. 2/240.

Class Mail and Standard Mail respectively, BAC will receive discounts in the form of a refund. The incremental improvements in BAC's read and accept rates will result in measurable cost savings, estimated at \$8.1 million in mail processing operations and \$1.4 million in delivery operations for First-Class Mail, and \$9.8 million in mail processing operations and \$1.6 million in delivery operations for Standard Mail, over the life of the agreement.<sup>63</sup> These cost savings include delivery savings resulting from an increase in the percentage of First-Class Mail and Standard Mail volume that is successfully sorted to the delivery point sequence ("DPS volume").<sup>64</sup>

**C. The Bank of America NSA will Encourage BAC to Undertake Activities that will Lead to Incremental Reductions in the Amount of First-Class Mail and Standard Mail that must be Forwarded or Returned, thereby Reducing Postal Service Costs**

The per-piece rate incentives set forth in sections IV.D and IV.E of the agreement will lead to cost savings by incenting BAC to undertake activities that will reduce its return and forwarding rates for letter-rated First-Class Mail mailpieces. Incremental improvements (*i.e.*, reductions) in the percentage of First-Class Mail mailpieces that must be returned will be measured against a baseline of 0.7 percent for Schedule A First-Class Mail and 2.7 percent for Schedule B First Class Mail. These improvements are estimated to result in measurable cost savings, estimated at \$0.7 million for Schedule A mail volume (largely operations mail) and \$1.5 million for Schedule B mail volume (largely marketing mail).<sup>65</sup> Incremental improvements in the percentage of First-Class Mail mailpieces that must be forwarded will be measured against a baseline of

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<sup>63</sup> USPS-T-1, at 17, 21.

<sup>64</sup> *Id.* at 16.

<sup>65</sup> *Id.* at 19.

1.7 percent. These incremental improvements will result in measurable cost savings, estimated at \$0.7 million.<sup>66</sup>

**D. The Bank of America NSA will Encourage BAC to Undertake Activities that will Lead to Incremental Reductions in the Amount of Undeliverable-As-Addressed Standard Mail Mailpieces, thereby Reducing Postal Service Costs**

The per-piece rate incentives set forth in section IV.G of the agreement will lead to cost savings by incenting BAC to undertake activities that will reduce its undeliverable-as-addressed (UAA) rates for letter-rated Standard Mail mailpieces through improvements in address quality.<sup>67</sup> Incremental improvements (*i.e.*, reductions) in the percentage of Standard Mail mailpieces that are UAA will be measured against a baseline of 6.4 percent. These improvements are estimated to result in measurable cost savings by decreasing Postal Service costs for disposing of UAA Standard Mail.<sup>68</sup>

**E. Bank of America's Commitments to Implementing the Intelligent Mail Barcode, Barcoding BAC Reply Mail, and Adopting OneCode ACS, Seamless Acceptance, CONFIRM, FAST, and eDropship, will Lead to Additional Operational Benefits**

BAC is obligated to utilize several postal processes under this NSA that will benefit the Postal Service. These include: 1) the implementation of the Intelligent Mail Barcode ("IMB" or "Four-State Barcode") on all BAC mail entered under a Qualifying Permit Number ("QPN"); 2) the placement of OneCode ACS ("Address Change Service") markings on all its mail entered under a QPN; 3) implementation of Seamless Acceptance; 4) activation of the OneCode CONFIRM service; and 5) the participation in

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<sup>66</sup> *Id.* at 20.

<sup>67</sup> *Id.* at 21.

<sup>68</sup> *Id.* at 20.

Facility Access and Shipment Tracking (“FAST”) and eDropship systems.<sup>69</sup> Moreover, BAC must adopt Seamless Acceptance, OneCode CONFIRM, and must use the Business Entity Identifier (“BEI”) for the Postal Service to be able to successfully track and measure the mail processing performance of BAC mail.<sup>70</sup>

BAC is also obligated to implement the IMB on its Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail and to waive the physical return of certain letter-rated First-Class Mail and Standard Mail mailpieces. No incentives are directly linked to BAC’s commitment to adopt these postal processes even though the adoption of these processes will result in further operational benefits to the Postal Service.<sup>71</sup>

#### **IV. IMPLEMENTATION OF THE INTELLIGENT MAIL BARCODE IS A KEY STEP FORWARD IN THE MODERNIZATION OF AUTOMATION MAIL ACCEPTANCE AND PROCESSING AND SHOULD BE ENCOURAGED THROUGH AGREEMENTS SUCH AS THIS NSA**

The Postal Service firmly believes that implementation of the IMB holds substantial promise for the Postal Service and its customers in reducing costs and improving service. Use of the barcode will allow the Postal Service to better manage its operations, reducing cost and improving efficiency. Lower costs and efficiency enhancements that improve service will be of great benefit to mailers. Use of the barcode ultimately will benefit both the Postal Service and mailers by allowing “visibility” throughout the entire mailing process. BAC, through its large-scale adoption of the IMB

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<sup>69</sup> *Id.* at 7-12.

<sup>70</sup> See Tr. 2/277-278; Tr. 2/294-295; Tr. 2/304, 333-339

<sup>71</sup> Tr. 2/237.

in this NSA, is one of the pioneers joining the Postal Service in advancing this groundbreaking technology.

The importance of the IMB is manifest. For several decades now, barcode technology has been a driving factor in service quality improvements and productivity growth. Automation, using barcode technology, has allowed the Postal Service simultaneously to achieve reduced costs and improved service. The next key improvement in mail processing automation is widespread introduction of the IMB. Because the IMB allows for inclusion of so much more information than previous barcodes, the capacity for tracking and automated sortation is greatly enhanced. As the Postal Service has stated, “Ultimately, this new capacity will enable total mail visibility – the ability to ‘see’ individual mail of all types at all steps in the process – from creation by the mailer and deposit with the Postal Service through various stages of transportation and processing, up to the point of delivery.”<sup>72</sup> In addition to allowing customers to track their mail as it moves through the network, “total mail visibility” will permit the Postal Service to “improve postal scheduling, provide multiple new ways to address quality problems, and create cost-savings opportunities,” as well as “identify operational issues and eliminate bottlenecks.”<sup>73</sup>

One of the core elements of this NSA is BAC’s commitment to use the IMB with a unique customer identifier, the BEI, embedded in each barcode.<sup>74</sup> Witness Ayub explained that as part of the NSA, BAC agrees to use this barcode on all of its letter-rated First-Class Mail and Standard Mail entered under a Qualifying Permit Number and

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<sup>72</sup> 2006 Comprehensive Statement on Postal Operations, at 44 (emphasis in original).

<sup>73</sup> *Id.* at 45.

<sup>74</sup> See USPS-T-1, at 5.

on BRM, QBRM, and CRM pieces contained in bills, invoices and on certain other mailpieces.<sup>75</sup> While use of the barcode will enable the Postal Service to track BAC mail for purposes of determining read and accept rates, the percentage of UAA mail, and the forwarding rate under this NSA, there also are substantial benefits to the Postal Service and to the broader mailing community.

The Postal Service plans to make IMB use a mandatory requirement in 2009 for all mailers wishing to receive automation discounts.<sup>76</sup> While the Postal Service has been testing the barcode internally and with mailers and vendors for the past several years,<sup>77</sup> large-scale adoption of this technology by BAC will provide a unique opportunity for the Postal Service to see “live” performance of the barcode on automated equipment at mailing sites throughout the country, and to fine tune the technology in advance of its mandatory use. Through this NSA, BAC is accepting the risk associated with being one of the first in helping to build the foundation for full-scale adoption of the IMB by all other affected mailers.

As witness Ayub testified, “[t]he use of the Four-State Barcode also should result in improvements in mail processing and delivery and should allow the Postal Service to increase the amount of mail that is delivery-point sequenced (“DPS”).<sup>78</sup> He further pointed out that information on readability, forwarding and returns collected from BAC’s

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<sup>75</sup> *Id.* at 7.

<sup>76</sup> Tr. 2/273.

<sup>77</sup> *Id.*

<sup>78</sup> USPS-T-1, at 8.

mail via the IMB will enable the Postal Service to create improved incentives for other mailers and will encourage mailers to improve mail preparation and design quality.<sup>79</sup>

This NSA, anchored in large part on BAC's commitment to make widespread use of the IMB, will provide the Postal Service with a rich source of data to use in improving its operations and, potentially, in expanding discount opportunities to other mailers. The Commission's recommendation of this NSA will provide the Postal Service with the chance to gain considerable and valuable experience with the IMB well before it becomes a requirement for other mailers.

**V. THE PROPOSED NSA WILL LIKELY BENEFIT MAILERS GENERALLY BY PROVIDING A TEST BED FOR PROGRAMS AND PROCESSES TO COLLECT DATA THAT WILL FACILITATE THE DEVELOPMENT OF INNOVATIVE APPROACHES TO PRICING**

The mandatory operational commitments that BAC will adopt under this NSA will enable the Postal Service to test and measure the effectiveness of a variety of programs and processes and to collect data that will facilitate the development of innovative approaches to pricing. BAC has agreed to serve as a large scale test bed for the programs listed in section III.E above, providing the Postal Service with the opportunity to determine how well these programs work together to ensure efficient mail processing and delivery.<sup>80</sup> As witness Ayub has emphasized, an important benefit of NSAs is that "they allow the Postal Service to test its ability to offer and manage new operational requirements on a limited scale" and that this NSA will "[ensure] that the Postal Service can effectively manage this type of agreement before promoting its wide-

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<sup>79</sup> *Id.* at 6.

<sup>80</sup> See Tr. 2/278-279.

spread adoption through classifications of broad applicability.”<sup>81</sup> The enhanced tracking capabilities afforded by BAC’s use of these programs, especially the IMB and BEI, will enable the Postal Service to collect information on BAC’s use of the mail that may facilitate the development of improved incentives for other mailers.<sup>82</sup> Because there are costs to the mailer associated with many of these programs and processes, there is no guarantee that a mailer would adopt them in the absence of an agreement such as the one proposed in this proceeding.<sup>83</sup> BAC’s commitment to implementing all of these programs and processes will help to mitigate financial risk from any individual component of the agreement by ensuring generation of additional value to the Postal Service.<sup>84</sup>

#### **VI. THE COMMISSION MAY REASONABLY RELY UPON THE BASELINE VALUES SET FORTH IN THE AGREEMENT FOR MEASURING IMPROVEMENTS IN BAC’S MAIL PROCESSING PERFORMANCE**

The baseline values agreed upon during negotiations between the NSA proponents and set forth in the BAC NSA are appropriate benchmarks for measuring improvements in BAC’s mail processing performance and address quality. They are consistent with the systemwide average data that were submitted in Docket No. R2006-1 and were used as the basis for worksharing discounts involving billions of dollars. Additionally, the baseline values, upon which the incentives are based, should take account of the operational commitments BAC will undertake for which no specified

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<sup>81</sup> *Id.*

<sup>82</sup> USPS-T-1, at 6.

<sup>83</sup> Tr. 2/355-356; see also Tr. 2/286-287 (“If the Implementation were not a factor in the NSA, there would be no guarantee that BAC would adopt Seamless Acceptance at this point in time.”)

<sup>84</sup> Tr. 2/356, 383.

incentives are provided. The baseline values are superior to the alternatives proposed in this proceeding for accomplishing the goals of this NSA. Moreover, the adoption of alternative benchmarks for determining improvements in mail processing performance would reduce BAC's expected return on investment, would weaken the incentives for BAC to make cost-savings investments, and would likely make the deal unpalatable to BAC. The Postal Service submits that the agreement, when viewed in its entirety, will benefit the Postal Service and urges the Commission to adopt without modification the baseline values negotiated by the parties for the discount provisions of the agreement.

**A. The Baseline Values Set Forth in this Agreement are Consistent with the Benchmarks used to Establish Worksharing Discounts in Docket No. R2006-1**

The baseline values contained in this NSA are derived from the benchmarks used to establish worksharing discounts in Docket No. R2006-1. As such, these baseline values, which served as the foundation for billions of dollars in worksharing discounts, were reasonably incorporated into the co-proponents' negotiations as a basis for the incentives in the NSA.

The baseline values are to be used as part of the calculation of BAC's mail processing read and accept rates. The baseline values agreed upon are 96.8 percent for letter-rated First-Class Mail and 96.9 percent for letter-rated Standard Mail.<sup>85</sup> As made clear in the testimony of witness Ayub, these baseline values were derived from

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<sup>85</sup> Negotiated Service Agreement Between United States Postal Service and Bank of America Corporation, Request, Attachment F, Sections IV.C and IV.F.

USPS-LR-L-110 in Docket No. R2006-1 and reflect “an average of system-wide accept rates weighted for BAC’s actual mail mix.”<sup>86</sup>

As the Postal Service stressed in its Response to NOI 1,<sup>87</sup> the baseline values reflect the same basic approach accepted by the Commission in the recent omnibus rate proceeding where systemwide averages were used to recommend billions of dollars in worksharing discounts. Witness Ayub estimated that the savings to BAC over the three years of this NSA would be \$23 million,<sup>88</sup> many orders of magnitude smaller than the value of worksharing discounts in Docket No. R2006-1. It would be incongruous to use such averages in the determination of worksharing discounts, which have a significant financial impact, only to reject such averages in a proceeding with a much more limited monetary value.<sup>89</sup> In addition, a seeming inconsistency would be present in having the base rates from which the BAC incentives are calculated reflect systemwide averages, while the incentives themselves reflect an entirely different methodology and set of assumptions. It would also be manifestly unfair to hold BAC to a different benchmark than that used in Docket No. R2006-1 to determine discounts for all mailers.

Of course, the use of systemwide averages means that all mailers receive the same discount despite the fact that some mailers are above the average and some are

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<sup>86</sup> Tr. 2/81, 82; see *also* USPS-T-1, at 16; Tr. 2/40.

<sup>87</sup> Response of the United States Postal Service to Notice of Inquiry No. 1 (filed on April 17, 2007), unnumbered pages 4-5.

<sup>88</sup> USPS-T-1, at 26.

<sup>89</sup> In fact, as BAC has pointed out, the Commission has suggested in past NSA dockets that systemwide average data may be used as a proxy in the absence of customer-specific data. See Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1 (filed on April 17, 2007), at 8-10.

below. Those below the average are favored, while those above the average are not being fully rewarded. The incentive structure in the BAC NSA is designed to reward BAC for incremental improvements over the systemwide average read and accept rates, an approach that is just as rational as the existing discount structure.

Finally, the financial incentives provided to BAC under the proposed NSA are small. The risk that BAC's mail is "above average" (*i.e.*, exhibiting lower cost characteristics) thus would have an infinitesimal impact, if any on the rates paid by other mailers under the applicable statutory criteria. There is ample reason to endorse the baseline values derived for this case. Accordingly, the Commission should not change them.

**B. The Negotiated Benchmarks for Measuring Improvements in Read and Accept Rates Should Take Into Account the Operational Commitments BAC will Undertake for Which it Will Receive no Separate Compensation**

As previously discussed, BAC has committed to a variety of endeavors under this NSA which will cause it to incur expense, generate cost savings, and benefit the Postal Service and potentially other mailers by providing data that may be used to test and improve new systems. Under the terms of the NSA, however, BAC is not being separately compensated for these activities. Thus, any assessment of the contribution from the incentives provided under the baseline values agreed to by BAC and the Postal Service must, in fairness, also take these uncompensated commitments into account as well.

Under the terms of this NSA, BAC has agreed to:

- Use IMBs on BAC letter-rated First-Class Mail and Standard Mail entered under a Qualifying Permit Number and on certain BRM, QBRM and CRM pieces contained in bills, invoices and other mailpieces.

- Place OneCode ACS markings on certain letter-rated First-Class Mail and Standard Mail entered under a Qualifying Permit Number.
- Activate OneCode CONFIRM service on certain letter-rated First-Class Mail and Standard Mail entered under a Qualifying Permit Number.
- Use CAPS for all transactions.
- Adopt Seamless Acceptance and present electronic manifests in either a Mail.dat or Web Services files.
- Use the *PostalOne!* Transportation Management system to assign surface or air transportation from its mailing facilities.
- Submit electronic documentation to *PostalOne!*, including unique barcode data for letter-rated mailpieces and trays, using Mail.dat or Web Services files.
- Use a unique Business Entity Identifier (BEI) within the IMB on all mailpieces entered under Qualifying Permit Numbers, including mailpieces entered by another company on behalf of Bank of America.
- Use the automated scheduling services provided through the FAST system for all Standard Mail pieces.
- Participate in eDropship for dropshipped First-Class Mail.<sup>90</sup>

Witness Ayub has testified that “this NSA does not provide specific incentives to BAC to undertake these activities. . . .”<sup>91</sup>

Adoption of these practices will cause BAC to incur costs. BAC explained in detail the operational changes it would have to make to its current processes and procedures in order to meet its commitments under the NSA.<sup>92</sup> BAC also, under seal, provided an estimate of the considerable costs of implementing these changes.<sup>93</sup>

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<sup>90</sup> USPS-T-1, at 7-12.

<sup>91</sup> Tr. 2/41; see also Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1 (filed on April 17, 2007), at 14-18.

<sup>92</sup> Tr. 2/494-499.

<sup>93</sup> Tr. 3/537.

Despite the fact that BAC will not be directly compensated for these changes, the Postal Service expects them to reduce its costs, benefiting all postal customers. For example, witness Ayub testified, “Additionally, the NSA mandates certain activities that will lead to savings to the Postal Service. For example, among other things, the NSA requires BAC to undertake activities to improve address hygiene and utilize DPV that will lead to delivery savings to the Postal Service.”<sup>94</sup> Also, as indicated previously, the operational commitments made by BAC under this NSA will allow the Postal Service to collect data that should result in improved efficiency in Postal Service operations.<sup>95</sup> In addition, the information the Postal Service will collect as part of this NSA may result in the Postal Service being able to offer improved incentives to other mailers.<sup>96</sup> A broad range of postal customers may thus ultimately benefit from this NSA.

Witness Ayub stated that “the incentives in this NSA cannot be associated exclusively with particular activities and results.”<sup>97</sup> Any adjustments to the baseline values not only would impact the amount of incentives for read and accept rate improvements, but also would, in essence, serve as a kind of “penalty” against BAC for agreeing to adopt all of the practices which will ultimately benefit the Postal Service and other mailers. In fairness, the baseline values in this NSA, upon which the incentives are based, should reflect BAC’s operational commitments and therefore should not be modified.

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<sup>94</sup> Tr. 2/42.

<sup>95</sup> See USPS-T-1, at 6.

<sup>96</sup> *Id.*

<sup>97</sup> Tr. 2/41.

**C. The Systemwide Average Data Endorsed by the NSA Proponents in this Proceeding are Superior to the Available Alternatives for Achieving the Goals of this NSA**

For purposes of achieving the goals of this NSA, the systemwide average data endorsed by the NSA proponents are superior to the other data on read and accept rates provided on the record. These systemwide average data should inform the Commission's recommendations regarding the benchmarks for measuring BAC's mail processing performance. As shown below, (1) the read and accept rates provided in the End-of-Run (EOR) reports are no more reliable than the systemwide average used as a proxy for BAC's specific read and accept rates; (2) the systemwide average data are a better proxy for BAC's specific read and accept rates than the accept rate data provided in reports to the BOG, which discuss improvements realized from the deployment of the WFOV Cameras, and (3) the results of the Seamless Acceptance pilot test likely overstate BAC's read and accept rates upon implementation of the IMB and are not appropriate for setting benchmarks for determining BAC's after-rates performance. Thus, the record evidence supports the systemwide average data used over alternative sources of data provided in this proceeding.

**1. Average Read and Accept Rates Derived from Aggregated End-of-Run (EOR) Data are Likely to Overstate BAC's Specific Rates and Should Not be Used to Set Benchmarks for Measuring BAC's After-Rates Performance**

The record in this case offers no evidence that aggregated End-of-Run ("EOR") data on read and accept rates on automated mail processing equipment, such as the data voluntarily provided by the Postal Service in LR-4, are more reliable than the systemwide average data discussed in section VI.A above as a proxy for BAC's specific read and accept rates. As noted in the introduction to LR-4, average read and accept

rates derived from the aggregated EOR data provided in LR-4 are likely to overstate BAC's before-rates mail processing performance. Average accept rates in operations where mail is predominantly processed for the first time (*i.e.*, "upstream operations") tend to be lower than in operations where mail has already been run multiple times on postal automated equipment (*i.e.*, "downstream operations").<sup>98</sup> Because BAC's automation mail is likely to receive its first pass in downstream operations, its mail is more likely to experience lower than average accept rates as compared to mail that has been previously processed and accepted in upstream operations.<sup>99</sup> It is also worth noting that, unlike the systemwide average data used to establish the baseline values in this agreement, the aggregated data provided in LR-4 have not previously been subject to detailed scrutiny on the record in omnibus rate proceedings.<sup>100</sup> For these reasons, the Commission should not presume that the aggregated data are superior to the data endorsed by the NSA proponents for setting the benchmarks from which BAC's after-rates performance will be measured.

**2. The Systemwide Average Data are Superior to the Accept Rate Results from the Competitive Test of the Wide Field of View Camera for Setting Benchmarks in this NSA**

The systemwide average data discussed in section VI.A above provide a superior representation of BAC's specific read and accept rates than that provided by the accept rate data collected from a competitive test of the WFOV Camera on postal

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<sup>98</sup> See Tr. 2/403.

<sup>99</sup> *Id.*; see also Tr. 2/457-459.

<sup>100</sup> See Reply Comments of United States Postal Service to Notice of Inquiry No. 1 (filed on April 24, 2007), at 3; Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1 (April 17, 2007), at 13; Response of United States Postal Service to Notice of Inquiry No. 1 (filed on April 17, 2007), unnumbered page 4.

automation mail equipment. According to witness Raney, the purposes for which the systemwide average data were collected (*i.e.*, to establish a rate structure and worksharing discounts for automation mail) differ from the purposes of the WFOV competitive test (*i.e.*, to determine which vendor's camera system resulted in the highest POSTNET read rate with no increase in errors and to measure read and error performance of the Information Based Indicia (IBI) and PLANET barcodes).<sup>101</sup> Witness Raney also stated that it was his understanding that the competitive test was conducted under controlled conditions that do not necessarily reflect the real world conditions under which BAC's mail processing performance will be measured and evaluated.<sup>102</sup> Therefore, the results from the competitive test, while suggesting read and accept rates higher than the systemwide average values used in this NSA, "should not be presumed to reflect the current accept rates for Bank of America Mail."<sup>103</sup>

The read and accept rates reported in the cost model for the WFOV Camera Performance Improvement Plan (WFOV PIP), provided in Library Reference USPS-LR-3 ("LR-3"), are likely to be less reliable than the systemwide average data as a proxy for BAC's specific read and accept rates. The LR-3 data do not account for mailpieces that

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<sup>101</sup> Tr. 2/411. Witness Raney's response refers to data contained in Decision Analysis Report, Wide Area Bar Code Reader Replacement, Engineering, Restricted Information, June 28, 2001, entered into the record on June 27, 2006. See Decision Analysis Report, Wide Area Bar Code Reader Replacement, Engineering, Restricted Information, June 28, 2001, submitted in Library Reference USPS-LR-3 - Responsive Material for Partial Response of USPS Witness Ayub to Interrogatory of the APW Union (APWU/USPS-T1-1, part (a)) [UNDER SEAL] (filed on May 4, 2007). Read and accept rate results are also discussed in certain portions of the Investment Highlights Reports filed under LR-4.

<sup>102</sup> Tr. 2/412.

<sup>103</sup> Tr. 2/410.

are rejected for mechanical reasons, thus resulting in higher read and accept rates than if such pieces were included.”<sup>104</sup>

Finally, neither the read and accept rate data from the competitive test nor the read and accept rates reported in the WFOV PIP cost model have previously been subject to detailed examination on the record in omnibus rate proceedings. For these reasons, the systemwide average data endorsed by the NSA proponents are superior to the data discussed in the investment reports to the BOG for setting the benchmarks from which BAC’s after-rates performance will be measured.

### **3. The Results of the Seamless Acceptance Pilot Test Are Not a Reliable Basis For Setting Benchmarks For Mail Processing Improvements For the NSA At Issue Here**

The results of the Seamless Acceptance pilot test are not a reliable indicator of BAC’s read and accept rates upon implementation of the IMB and should not be relied upon to set the benchmarks for mail processing improvements in this NSA.<sup>105</sup> As witness Ayub emphasized, the results of the Seamless Acceptance pilot test, conducted from November 21, 2006 through March 16, 2007, are likely to “overstate the read/accept rates that mailer-generated barcodes are likely to achieve in the ordinary course of business.”<sup>106</sup> Witness Ayub noted that high profile studies such as the pilot

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<sup>104</sup> See Introduction, Documents Provided as Described in the Motion of USPS for Leave to File Certain Documents as Provided in the Postal Service’s Response to Ruling of the Presiding Officer at Hearing on June 14, 2007 Under Protective Conditions (filed under seal on June 28, 2007), at 3.

<sup>105</sup> See Reply Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1 (April 24, 2007), at 9-11 (rebutting OCA’s suggestion in its Response to NOI 1 that the pilot test indicate that BAC is likely to achieve Before Rates read rates of 97.14 to 99.0 with the Intelligent Mail Barcode).

<sup>106</sup> Tr. 2/205.

test are often used to showcase new technology and the skill of the study participants, and as a result

participants in studies of this kind often devote more resources to maintenance, alignment, cleaning and calibration than might be expected with a mature technology used in the ordinary course of business. Needless to say, special efforts of this kind can hardly be regarded as good proxies for Before Rates performance in an NSA.<sup>107</sup>

Moreover, witness Ayub noted that the because the pilot test results were based on a subsample of the mailpieces that was produced by excluding mailings with a MERLIN success rate below 95 percent, and because barcode readability is one of the grounds for rejection of mailpieces by MERLIN, the sample of mail used in the pilot test “is likely to have higher read/accept rates than for mail as a whole.”<sup>108</sup> The exclusion of these mailings from the results of the pilot test casts doubt on the ability of a mailer to achieve high read and accept rates solely through the application of the IMB.<sup>109</sup>

In any event, given that the weighted average scan rate of the three study participants is not much higher than the baseline values proposed by the NSA proponents, the Commission may confidently rely on the latter as the appropriate benchmarks from which to measure BAC’s after-rates improvements in the read and accept rates of its prebarcoded First-Class Mail and Standard Mail.<sup>110</sup>

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<sup>107</sup> Tr. 2/141, 142.

<sup>108</sup> Tr. 2/142.

<sup>109</sup> See Tr. 2/144. Emphasizing the observed variations in the performance of the three pilot test participants, witness Ayub concluded that “merely adopting IMB’s is by itself insufficient to achieve better-than-1999 read/accept rates” and “to achieve even modest improvements, the mailer must make additional process changes, including more attentive process control,” changes that are likely to require “additional expenditures.” *Id.* See also Tr. 2/331.

<sup>110</sup> See Tr. 2/142.

**D. Adoption of Alternative Benchmarks for Before Rates Performance Based on After-Rates Improvements in Mail Processing Performance During the Agreement Would Reduce the Expected Return of the NSA for BAC and Would Weaken the Parties' Incentives to Make Cost-Savings Investments Under the NSA.**

Other participants in this proceeding have proposed that the baseline values negotiated by the NSA proponents be adjusted to incorporate mailer-specific data gathered during the course of the agreement, as described by the Commission in NOI 1. The Commission should reject such an approach, because it would likely make the Agreement unpalatable to BAC and functionally equivalent customers who must consider “the present value of the expected future payoff over the entire life of the [agreement].”<sup>111</sup> As BAC witness Jones notes, the contractual requirements described in section III above will require BAC to make “a substantial initial investment to participate in this NSA,”<sup>112</sup> as well as “continual further expenditures for technology, labor and other resources.”<sup>113</sup> Because BAC, and presumably, any other economically rational mailer, “will invest in improving address quality only to the extent that its expected marginal benefit exceeds its marginal costs,”<sup>114</sup> it is in the interest of the NSA proponents to establish an incentive structure that incorporates baseline values that will encourage BAC to make investments that will lead to improved performance in mail processing and address quality throughout the three years of the agreement. Adjusting the negotiated baseline values by incorporating BAC-specific read and accept rate data

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<sup>111</sup> See Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1 (April 17, 2007), at 22; see also Response of United States Postal Service to Notice of Inquiry No. 1 (filed on April 17, 2007), unnumbered page 3.

<sup>112</sup> Tr. 2/494

<sup>113</sup> Tr. 2/478.

<sup>114</sup> Tr. 2/478.

into the benchmarks for the second and third years of the agreement could significantly diminish the projected benefits that BAC has forecasted, thereby reducing BAC's incentives to improve its performance or to enter into the NSA.<sup>115</sup> Therefore, the Postal Service submits that its reliance on unmodified baseline values for each year of the Agreement is preferable to the adjustment mechanism described in NOI 1.

**E. The Profitability of a Proposed NSA Must be Evaluated from the Perspective of the Agreement as a Whole, not by Single Elements in Isolation.**

When evaluating the profitability of the proposed NSA, the Commission should consider the net benefits of the entire agreement, rather than focus on any section or sections of the agreement in isolation.<sup>116</sup> As emphasized by witness Ayub, it is not necessary for the incentives in this NSA to be associated exclusively with particular activities and results.<sup>117</sup> The relevant question is whether the *aggregate* benefits of all kind received by the Postal Service under the NSA exceed the *aggregate* costs incurred by the Postal Service in return.<sup>118</sup> As the direct testimony of witness Ayub illustrates, this NSA is expected to generate substantial benefits in the form of cost savings due to BAC's improved address quality and increased mail processing performance under the agreement.<sup>119</sup> Additionally, the Postal Service will benefit from cost-saving activities for

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<sup>115</sup> See Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1 (April 17, 2007), at 20-22.

<sup>116</sup> See Tr. 2/41; Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1 (April 17, 2007), at 14.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> See sections III.B, III.C, and III.D above.

which BAC will not receive direct compensation.<sup>120</sup> As witness Ayub stated “the NSA consists of many different components and in totality we believe the agreement would...be beneficial to the Postal Service.”<sup>121</sup> Accordingly, approval of the entire agreement, without modification, is warranted.

**VII. CHANGES TO THE POSTAL SERVICE'S PROPOSAL ARE UNWARRANTED BECAUSE NO ALTERNATIVE PROPOSALS WERE OFFERED ON THE RECORD**

Only the NSA co-proponents, the Postal Service and BAC, have presented testimony in this proceeding. All other participants declined the opportunity to present a case; accordingly, they have not presented evidence on the record to challenge the NSA. Consequently, the co-proponents' proposal should be adopted without change.

The written and oral testimony of the Postal Service and BAC witnesses constitutes record evidence for the proposed NSA. No contrary proposals were offered, nor was the underlying basis for the NSA challenged, by record testimony from any other party. This suggests a lack of substantial evidence of record required to justify departure from the proposed NSA as presented.<sup>122</sup>

The Commission previously has expressed dissatisfaction where (as here) parties have failed to present affirmative cases, but have offered alternative proposals at the briefing stage. The Commission has stated:

Attempting to present an affirmative case on brief is ill-advised if genuine issues of material fact are in dispute. . . .By presenting their alternative proposals on brief, participants foreclose any opportunity to explore the bases for and to develop the record on their proposals. Had those proposals been sponsored

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<sup>120</sup> See sections III.E, and VI.C above.

<sup>121</sup> Tr. 2/324.

<sup>122</sup> See *Mail Order Ass'n of America*, 2 F.3d 408 (D.C. Cir, 1993).

through testimony, their underpinnings and implications could have been explored on the record.<sup>123</sup>

The lesson of MC2006-7 is equally apropos here. No party that proposes alternatives to the NSA chose to present a direct case where its position would have been subject to examination and testing on the record. In the absence of alternative proposals presented and supported through testimony, the Commission should not modify the NSA.

#### **VIII. THE PROPOSED NSA FULLY ADDRESSES ALL LEGAL REQUIREMENTS AND SHOULD BE RECOMMENDED**

The record demonstrates that the proposed NSA fully complies with all requirements set out in the Commission's Rules of Practice and Procedure, as well as the rate and classification provisions in the Postal Reorganization Act (Act).

Accordingly, the NSA should be recommended.

##### **A. The Proposal Satisfies the Commission's Rules of Practice and Procedure**

The record demonstrates that the proposed NSA fully complies with all requirements set out in the Commission's Rules of Practice and Procedure, as well as the rate and classification provisions in the Act. Accordingly, the NSA should be recommended.

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<sup>123</sup> *Stamped Stationery and Stamped Card Classifications*, PRC MC2006-7 Op. & Rec. Decis., at 9 (citation omitted).

**1. An NSA, as Opposed to a Niche or Experimental Classification, is the Appropriate Vehicle for the Rate and Classification Changes Proposed**

The Commission's Rules of Practice and Procedure contain specific prerequisites pertaining to baseline NSAs. One provision, rule 195(a)(1), requires that the Postal Service's request include "[a] written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification."<sup>124</sup> The Postal Service had addressed this requirement through its Request and the testimony of witness Ayub. Support for the use of an NSA rather than some other type of classification is also evident from the testimony of BAC witness Jones.

In its Request, the Postal Service made clear that an NSA was the most suitable vehicle in the instant circumstances because of BAC's unique mailing profile. The Postal Service explained that all terms and conditions of the NSA were tailored specifically to BAC's mail characteristics and to "the particular effect of the mail on Postal Service operations and cost, as set forth in the testimonies of witnessed Richard D. Jones (BAC-T-1) and Ali Ayub (USPS-T-1)."<sup>125</sup> The Postal Service further explained that the mailing profiles of other mailers, including other banks, likely will differ, and concluded that a more widely available classification would not be an appropriate substitute.<sup>126</sup> As has been repeatedly pointed out, however, other similarly situated mailers will be eligible to negotiate a functionally equivalent NSA with the Postal

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<sup>124</sup> 39 CFR § 3001.195(a)(1).

<sup>125</sup> Request, at 3.

<sup>126</sup> *Id.*

Service.<sup>127</sup> “Any such NSAs would similarly have to be tailored to the specific mailing profiles of those customers.”<sup>128</sup>

The testimony of witness Ayub likewise demonstrates that a more widely applicable type of classification is not an appropriate choice in this case. Witness Ayub emphasized the valuable and distinctive benefits that flow from an NSA as opposed to the traditional classification process. He concluded that “direct discussions between the Postal Service and an individual customer can lead to novel and innovative ideas,” but also indicated that such ideas do hold future potential for broader applicability.<sup>129</sup> Witness Ayub further stressed the performance-based nature of this NSA, stating that “[I]nking incentives directly to the end result of a reduction in the Postal Service’s workload and costs, rather than to the intermediate step of the mailer’s process changes, reflects the difference in substance between this NSA and the traditional workshare incentives.”<sup>130</sup> The novel nature of this arrangement validates the choice of an NSA rather than another type of classification.

BAC’s mail volumes, as testified to by BAC witness Jones, also serve to highlight BAC’s unique mailing profile, again validating the use of an NSA in the present circumstances.<sup>131</sup> The initial filing in this case thus complies with the Commission’s rule.

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<sup>127</sup> *Id.*; see also USPS-T-1, at 26; Tr. 2/371-72.

<sup>128</sup> *Id.*

<sup>129</sup> USPS-T-1, at 3-4.

<sup>130</sup> *Id.* at 5.

<sup>131</sup> See BAC-T-1, at 6-8.

The oral testimony and interrogatory responses of witness Ayub further amplify the reasons that an NSA is the appropriate classification selection. He pointed out that an NSA, as opposed to an experimental or niche classification, permits “the Postal Service to test its ability to offer and manage new operational requirements on a limited scale,”<sup>132</sup> addresses specific mailer needs,<sup>133</sup> limits risk to the Postal Service,<sup>134</sup> and results in “improvement in value for the Postal Service.”<sup>135</sup>

The Commission has rejected arguments in past NSA dockets that fairness can only be achieved through use of niche classifications. The Commission basically has concluded that so long as functionally equivalent NSAs are made available to similarly situated mailers, NSAs do not raise issues of unreasonable discrimination.<sup>136</sup> Here, the information and reasons presented by the co-proponents supporting the choice of an NSA classification remain unrebutted on the record. The Postal Service has thus met the requirements of Commission rule 195(a)(1).

## **2. The Operational Bases of the NSA are Described in the Postal Service’s Request**

Another prerequisite for a baseline NSA set forth in Commission rule 195(a)(2) states that the Postal Service’s request shall contain “[a] description of the operational bases of the Negotiated Service Agreement, including activities to be performed and

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<sup>132</sup> Tr.2/278.

<sup>133</sup> Tr. 2/281.

<sup>134</sup> Tr. 2/368.

<sup>135</sup> Tr. 2/387.

<sup>136</sup> See *generally* Opinion and Recommended Decision, Docket No. MC2002-2, at 137-142; Opinion and Recommended Decision, Docket No. MC2005-3, at 42-43.

facilities to be used by both the Postal Service and the mailer under the agreement.”<sup>137</sup>

The required description is set out in the Postal Service’s Request as well as in the testimonies of witness Ayub and BAC witness Jones.

BAC has made a variety of operational commitments, as explained in the Postal Service’s Request, including “[i]mplementing Four-State Barcode, OneCode ACS, CONFIRM, Seamless Acceptance, FAST and eDropship; barcoding of Courtesy and Business Reply Mail and Qualified Business Reply Mail; and waiver of physical return of certain First-Class Mail and Standard Mail.”<sup>138</sup> These commitments are further addressed in the testimonies of witness Ayub and BAC witness Jones.<sup>139</sup> In addition, to the extent they are determined by BAC to be cost-effective, additional operational changes may be made.<sup>140</sup> BAC witness Jones has testified that BAC intends to use Six Sigma as a management tool “to maximize the value of the proposed NSA,” and believes it will be particularly useful in improving address quality.<sup>141</sup>

For these reasons, the detailed descriptions provided in this proceeding fully satisfy Commission rule 195(a)(2).

### **3. Competitors and Mail Users will not be Adversely Affected by this NSA**

In addition to other requirements, the Commission’s general rule 193(f), applicable to all NSA requests, whether for a baseline NSA, a functionally equivalent

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<sup>137</sup> 39 CFR § 3001.195(a)(2).

<sup>138</sup> Request, at 3.

<sup>139</sup> USPS-T-1, at 7-12; BAC-T-1, at 11-12.

<sup>140</sup> See Request, at 3.

<sup>141</sup> BAC-T-1, at 8 and 13.

NSA, or a renewal or modification of an existing NSA, requires that the Postal Service's request analyze the impact of the NSA on competitors of the Postal Service, the other parties to the NSA and mail users.<sup>142</sup> The Postal Service also has fully addressed this requirement in its filing.

As is indicated in the testimony of witness Ayub, initial competitive concerns over NSAs have proven to be groundless. Mailers and competitors of co-proponents have supported NSAs.<sup>143</sup> Witness Ayub indicates that BAC's competitors should not be affected by the NSA proposed here, because the incentives offered are not intended to increase BAC's volumes and the effect on the number and type of accounts that BAC may obtain through the mail are not expected to be significant.<sup>144</sup> In fact, BAC witness Jones has stated that BAC has "conservatively assumed that the NSA will not incent any additional mail volumes."<sup>145</sup> Witness Ayub also concludes that the potential savings garnered by BAC under the NSA – estimated to be \$23 million – are small in comparison to BAC's likely \$2.3 billion in postage payments over the NSA term as well as its total revenues, which were \$57 billion in 2005.<sup>146</sup> As for the impact on Postal Service competitors, witness Ayub states that there should be none since competitors do not provide First-Class Mail and Standard Mail letter services.<sup>147</sup>

Witness Ayub's testimony has provided the required impact analysis. In addition, no competitor of either BAC or the Postal Service has expressed opposition on the

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<sup>142</sup> 39 CFR § 3001.193(f).

<sup>143</sup> See USPS-T-1, at 25-26.

<sup>144</sup> *Id.*

<sup>145</sup> BAC-T-1, at 8.

<sup>146</sup> USPS-T-1, at 26.

<sup>147</sup> *Id.* at 27.

record to the NSA. And no competitor of BAC has even intervened in this proceeding. The Postal Service's filing is thus in conformance with Commission requirements.

**B. The Requested Rate and Classification Changes are Consistent with the Criteria of the Act**

As this case is being considered under the provisions of Title 39 as they existed prior to passage of the PAEA,<sup>148</sup> the classification provisions of former section 3623 as well as the rate and fee provisions of former section 3622(b) must be considered.

Accordingly, changes in the mail classification schedule must address the following factors:

- the establishment and maintenance of a fair and equitable classification system for all mail;
- the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;
- the importance of providing classifications with extremely high degrees of reliability and speed of delivery;
- the importance of providing classifications which do not require an extremely high degree of reliability and speed of delivery;
- the desirability of special classifications from the point of view of both the user and of the Postal Service; and
- such other factors as the Commission may deem appropriate.

Postal rates and fees must comply with the former pricing criteria as follows:

- the establishment and maintenance of a fair and equitable schedule;
- the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to, the collection, mode of transportation, and priority of delivery;

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<sup>148</sup> Pub. L. No 109-435, 120 Stat. 3198 (2006).

- the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;
- the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;
- the available alternative means of sending and receiving letters and other mail matter at reasonable costs;
- the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;
- simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;
- the educational, cultural, scientific, and informational value to the recipient of mail matter; and
- such other factors as the Commission deems appropriate.

As witness Ayub testified, the testimony on the statutory factors offered in the Capital One NSA docket is equally applicable to the proposed NSA in this docket.<sup>149</sup>

Through means of direct negotiations with customers, as in this NSA, “prices that represent the value that the user places on the service being provided (pricing criterion 2) for mail classifications that are desirable to the mailer and the Postal Service (classification criterion 5)” are accurately and specifically presented.<sup>150</sup> Here, the Postal Service and BAC, the sender of the mail, have negotiated fair and equitable prices and

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<sup>149</sup> USPS-T-1, at 29 *quoting* Docket No. MC2002-2, USPS-T-2, page 9, line 36, to page 10, line 15.

<sup>150</sup> *Id.*

classifications (pricing criterion 1 and classification criterion 1).<sup>151</sup> The proposed prices will cover the costs of providing the service (pricing criterion 3).<sup>152</sup> It is expected that the mail quality improvements that BAC has agreed to will lower the costs of other customers (pricing criterion 6).<sup>153</sup> The classifications and prices presented in this NSA thus benefit the general public and other mailers (classification criterion 1 and pricing criterion 1).<sup>154</sup> The proposed rates have not been demonstrated on the record to adversely affect the rates paid by the general public or other business mail users (pricing criterion 4).<sup>155</sup> The proposed incentive structure is relatively simple and preserves a clear relationship between actual improvements in the processing of BAC's mail and the applicable prices (pricing criterion 7).<sup>156</sup>

Furthermore, because the per-piece incentives that BAC will receive under the proposed NSA are relatively small, there is no basis for concluding that the incentives offered to BAC will not cover the costs of BAC's mail, meeting both the fairness and equity standard (pricing criterion 1) and the requirement to cover costs (pricing criterion 3). However, pricing criterion 6 is at the heart of this NSA. In this case, BAC will engage in mail preparation activities substantially in excess of any existing or contemplated requirements and will only be rewarded for its efforts if it reduces the Postal Service's costs.<sup>157</sup> Finally, although the new standards contained in the PAEA

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> USPS-T-1, at 30.

have not yet become effective, “the value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified mail” is to be taken into account under new section 3622(b)(13).<sup>158</sup> The proposed NSA is directly responsive to this factor due to BAC’s commitment to use the IMB with a unique customer identifier (BEI) on much of its mail.

The NSA in this case meets all applicable statutory criteria and no party to this proceeding has asserted to the contrary. Therefore, the proposed NSA should be recommended by the Commission.

## **IX. CONCLUSION**

For the reasons set forth above, the Postal Service respectfully urges the Commission to recommend the proposed classification language and rates set forth in the Attachments A and B to the Postal Service’s request to allow implementation of the NSA with Bank of America.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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<sup>158</sup> *Id.*

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

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Matthew J. Connolly

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