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## POSTAL RATE COMMISSION

[Docket No. MC2004-3; Order No. 1409]

### Negotiated Service Agreement

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order on a new negotiated service agreement proposal.

**SUMMARY:** This document establishes a docket for consideration of the Postal Service's filing a request for approval of a negotiated settlement agreement with Bank One Corporation. It identifies key elements of the proposed agreement, its relationship to the Capital One Services, Inc. negotiated agreement, and addresses preliminary matters. In a separate notice and order (No. 1410), also issued June 24, 2004, the Commission announces the establishment of a docket for consideration of a separate proposal for a negotiated service agreement with Discover Financial Services, Inc. Issuance of this document provides the public with notice of the Service's filing and of certain key decisions the Commission has made to date, but does not constitute a decision on the merits.

**DATES:** Key dates are:

1. July 12, 2004: deadline for filing notices of intervention.
2. July 14, 2004: settlement conference.
3. July 15, 2004: prehearing conference (10 a.m.).

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, general counsel, at 202-789-6818.

#### SUPPLEMENTARY INFORMATION:

##### Procedural History

*Capital One Services, Inc. Negotiated Settlement Agreement*, 67 FR 61355 (September 30, 2002).

*Negotiated Service Agreement Proposed Rule*, 68 FR 52546 (September 4, 2003).

*Negotiated Service Agreement Final Rule*, 69 FR 7574 (February 19, 2004).

On June 21, 2004, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a negotiated service agreement with Bank One Corporation.<sup>1</sup> The negotiated

service agreement is proffered as functionally equivalent to the Capital One Services, Inc. negotiated service agreement (baseline agreement) as recommended by the Commission in docket no. MC2002-2. 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>

The Postal Service has identified Bank One Corporation (Bank One), along with itself, as parties to the negotiated service agreement. This identification serves as notice of intervention by Bank One. It also indicates that Bank One 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 and filing of testimony as co-proponent by Bank One, June 21, 2004, also has been filed.

In support of the Request, the Postal Service has filed direct testimony of Michael K. Plunkett on behalf of United States Postal Service, June 21, 2004 (USPS-T-1). Bank One has separately filed direct testimony of Brad Rappaport on behalf of Bank One Corporation, June 21, 2004 (BOC-T-1). The Postal Service has reviewed the Bank One testimony 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 Request relies substantially on record evidence entered in the baseline docket, docket no. MC2002-2. The Postal Service's Compliance Statement, Request Attachment E, identifies the baseline docket material on which it proposes to rely.

Requests that are proffered as functionally equivalent to baseline negotiated service agreements are handled expeditiously, until a final determination has been made as to their proper status. The Postal Service's Compliance Statement, Request

and Fees to Implement Functionally Equivalent Negotiated Service Agreement with Bank One Corporation, June 21, 2004 (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 testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the negotiated service agreement.

<sup>3</sup> Request at 2-3, fn. 2.

Attachment E, is noteworthy in that it is required to identify information to facilitate rapid review of the Request to aid participants in evaluating whether or not the procedural path suggested by the Postal Service is appropriate.

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> Rule 196(a)(6) [39 CFR 3001.196a(6)]. The proposal identifies issues that were previously decided in the baseline docket, and a limited number of issues that remain in the instant Request.

Rule 196(b) [39 CFR 3001.196b] requires the Postal Service to provide written notice of its Request, either by hand delivery or by First-Class Mail, to all participants in the baseline docket, MC2002-2. This requirement provides additional time, due to an abbreviated intervention period, for the most likely participants to decide whether or not to intervene. A copy of the Postal Service's notice was filed with the Commission on June 21, 2004.<sup>5</sup>

The Postal Service has filed a request to establish settlement procedures.<sup>6</sup> The Postal Service believes that there is a distinct possibility of settlement as the agreement is likely to be found functionally equivalent to the Capital One negotiated service agreement.

The Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 196 [39 CFR 3001.67-3001.193, 196]. 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>7</sup>

The Postal Service's Request, the accompanying testimonies of witnesses Plunkett (USPS-T-1) and Rappaport (BOC-T-1), the baseline docket no. MC2002-2 material, 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 Web site (<http://www.prc.gov>).

<sup>4</sup> United States Postal Service Proposal for Limitation of Issues, June 21, 2004.

<sup>5</sup> Notice of the United States Postal Service Concerning the Filing of a Request for a Recommended Decision on a Functionally Equivalent Negotiated Service Agreement, June 21, 2004.

<sup>6</sup> Request of the United States Postal Service for Establishment of Settlement Procedures, June 21, 2004.

<sup>7</sup> Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, June 21, 2004 (Request for Waiver).

<sup>1</sup> Request of the United States Postal Service for a Recommended Decision on Classifications, Rates

## I. Background: The Baseline Capital One Negotiated Service Agreement, Docket No. MC2002-2

If a request predicated on a negotiated service agreement is found to be functionally equivalent to a previously recommended and currently in effect negotiated service agreement, it will be afforded accelerated review. Rule 196 [39 CFR 3001.196]. The Postal Service asserts that the negotiated service agreement in its instant Request is functionally equivalent to the now in effect Capital One negotiated service agreement recommended by the Commission in docket no. MC2002-2.<sup>8</sup> The Capital One negotiated service agreement will remain in force from September 1, 2003 to September 1, 2006.<sup>9</sup>

The Capital One negotiated service agreement is based upon two significant mail service features—an address correction service feature, and a declining block rate volume discount feature.

The address correction service feature provides Capital One, at certain levels of volume, electronic address corrections without fee for First-Class Mail solicitations that are undeliverable as addressed (UAA). In return for receipt of electronic address correction, Capital One will no longer receive physical return of its UAA First-Class solicitation mail that cannot be forwarded. Capital One will also be required to maintain and improve the address quality for its First-Class Mail.

Use of the address correction service feature is a prerequisite to use of the second feature of the negotiated service agreement, a declining block rate volume discount. This feature provides Capital One with a per-piece discount for bulk First-Class Mail volume above an annual threshold volume. The per-piece discount varies from 3 to 6 cents under a “declining-block” rate structure. Should first-year mail volume decline under a predetermined quantity, a reduced threshold and lower initial discounts take effect. To account for several unknowns, total discounts pursuant to this agreement are limited by a stop-loss provision in the amount of \$40.637 million.

## II. The Bank One Negotiated Service Agreement

The Postal Service proposes to enter into a three-year negotiated service agreement with Bank One. It asserts that the Bank One negotiated service

agreement is based on the same two substantive functional elements that are central to the Capital One negotiated service agreement—an address correction element and a declining block rate volume discount element.

The address correction element provides, at certain levels of volume, electronic address corrections without fee for properly endorsed First-Class Mail solicitations. Bank One will receive the services associated with Change Service Requested, Option 2, which include forwarding. In return, Bank One agrees to forgo physical return of undeliverable mail, which otherwise is provided under the existing service features of First Class Mail for mail that cannot be forwarded.

The declining block rate volume discount element provides Bank One 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 535 million pieces. The discounts range from 2.5 cents to 5.0 cents depending on the block volume.

The Postal Service estimates it will benefit by \$11.6 million over the life of the negotiated service agreement. This is based on estimates of \$7.7 million in savings due to the address correction feature, \$6.8 million in increased contribution due to increased First-Class Mail volume, and a net leakage of minus \$2.9 million due to the discount feature of the agreement. The agreement provides an annual adjustment mechanism to the volume thresholds. The agreement does not establish a limit on the maximum cumulative discount available to Bank One.

Bank One has announced plans to merge with J.P. Morgan Chase. The agreement provides a customer-specific merger and acquisitions clause, which has been designed to account for the possibility of this merger.

## III. Commission Response

*Applicability of the rules for functionally equivalent negotiated service agreements.* For administrative purposes, the Commission has docketed the instant filing as a request predicated on a negotiated service agreement functionally equivalent to a previously recommended and ongoing negotiated service agreement. A final determination regarding the appropriateness of characterizing the negotiated service agreement as functionally equivalent to the Capital One negotiated service agreement, docket no. MC2002-2, and application of the expedited rules for functionally equivalent negotiated service

agreements, rule 193 [39 CFR 3001.67–3001.193], will not be made until after the prehearing conference.

*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 196 [39 CFR 3001.67–3001.193, 196], 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 has established rules for expeditiously issuing recommendations in regard to requests predicated on functionally equivalent negotiated service agreements. If, after a prehearing conference, it is determined that the Postal Service’s request is properly submitted as a functionally equivalent request, and there are no outstanding issues, the Commission will promptly issue its recommendations. In such instances, conducting a settlement conference for the purpose of eventually developing a proposed stipulation and agreement is both unnecessary and could interfere with the intent of the rules to expedite the schedule.

However, 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 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

<sup>8</sup> See, Opinion and Recommended Decision, Docket No. MC2002-2, May 15, 2003.

<sup>9</sup> Notice of the United States Postal Service of Decision of the Governors, June 3, 2003.

shall report on the status of settlement discussions at the prehearing conference. The Commission authorizes the settlement coordinator to hold settlement conferences on July 14, 2004, in the Commission's hearing room. 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 (OCA), 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 July 12, 2004. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (<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. See rules 20 and 20a [39 CFR 3001.20 and 20a], and shall indicate if a hearing on this Request is desired.

*Prehearing conference.* A prehearing conference will be held July 15, 2004, at 10 a.m. in the Commission's hearing room. Participants shall be prepared to address whether or not it is appropriate to proceed under rule 196 [39 CFR 3001.196], on the Postal Service's proposal for limiting issues, and any issue(s) that justify scheduling a hearing. Rule 196(c) [39 CFR 3001.196c].

The Commission strongly urges participants intending to object to proceeding under rule 196 [39 CFR 3001.196] to file supporting written argument in advance of the prehearing conference. It would also greatly assist the Commission if participants 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 on deciding upon these issues shortly after the prehearing conference.

### Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2004-3 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. Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, June 21, 2004, is denied, without prejudice.

4. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for settlement conferences on July 14, 2004, and at such times deemed necessary by the settlement coordinator.

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 July 12, 2004.

7. A prehearing conference will be held July 15, 2004, at 10 a.m. in the Commission's hearing room.

8. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

*Issued:* June 24, 2004.

By the Commission.

**Steven W. Williams,**

*Secretary.*

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**BILLING CODE 7710-FW-P**

### POSTAL RATE COMMISSION

[Docket No. MC2004-4; Order No. 1410]

#### Negotiated Service Agreement

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order on new negotiated service agreement case.

**SUMMARY:** This document establishes a docket for consideration of the Postal Service's request for approval of a negotiated service agreement with Discover Financial Services, Inc. It identifies key elements of the proposed agreement, its relationship to the Capital One Services, Inc. negotiated service agreement, and addresses preliminary procedural matters. Issuance of this document provides the public with notice of the Service's filing, but does not constitute a decision on the merits. In a separate notice and order (No. 1409), also issued June 24, 2004, the Commission announces the establishment of a docket for consideration of a separate proposal for

a negotiated service agreement with Bank One, Inc.

**DATES:** Key dates are:

1. July 12, 2004: Deadline for filing notices of intervention.

2. July 14, 2004: Settlement conference.

3. July 15, 2004: Prehearing conference (11 a.m.).

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, general counsel, at 202-789-6818.

#### SUPPLEMENTARY INFORMATION:

##### Procedural History

Capital One Services, Inc. Negotiated Service Agreement, 67 FR 61355 (September 30, 2002).

Negotiated Service Agreement Proposed Rule, 68 FR 52546 (September 4, 2003).

Negotiated Service Agreement Final Rule, 69 FR 7574 (February 19, 2004).

On June 21, 2004, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a negotiated service agreement with Discover Financial Services, Inc.<sup>1</sup> The negotiated service agreement is proffered as functionally equivalent to the Capital One Services, Inc. negotiated service agreement (baseline agreement) was recommended by the Commission in docket No. MC2002-2. 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>

The Postal Service has identified Discover Financial Services, Inc. (DFS), along with itself, as parties to the negotiated service agreement. This identification serves as notice of intervention by DFS. It also indicates that DFS shall be considered a co-proponent, procedurally and substantively, of the Postal Service's

<sup>1</sup> Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement Functionally Equivalent Negotiated Service Agreement with Discover Financial Services, Inc., June 21, 2004 (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 testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the negotiated service agreement.