

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION

Before:

Chairman Blair,
Vice Chairman Tisdale,
and Commissioners
Acton, Goldway and Hammond

Rate and Service Changes to
Implement Baseline Negotiated Service
Agreement with Bank of America
Corporation

Docket No. MC2007-1

OPINION
AND
RECOMMENDED DECISION
(Released from Protective Conditions)



Washington, DC 20268-0001

October 3, 2007

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RECOMMENDED DECISION

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I. INTRODUCTION AND SUMMARY

[1001] The Postal Service and the Commission are in the process of transitioning to operation under the Postal Accountability and Enhancement Act of 2006 (PAEA). Congress directed the Commission to provide a system of modern rate regulation that recognizes the desirability of special classifications that improve either the net financial position or operations of the Postal Service. The Postal Service has been given broad rate and classification authority to act within that system.

[1002] These overarching reform priorities are the reason the Commission provides a recommendation of the Postal Service's request for a Negotiated Service Agreement with Bank of America. 39 U.S.C. §§ 3622(b)(9) and 3623(c)(6). At the same time, the Commission strongly cautions the Governors that several significant financial concerns related to this Agreement have come to light. This independent evaluation should be used by the Governors to inform their decision on whether or not to proceed with this Agreement.

[1003] This Negotiated Service Agreement is described in the Postal Service request as a pay-for-performance agreement that will produce a \$5.5 million net benefit. As described, Bank of America commits to implement several advanced mailing practices, and is provided discounts for proven performance improvements relative to six negotiated baselines. Two of these baselines, those for First-Class Mail and Standard Mail read/accept rates, govern the vast majority of potential cost savings to the Postal Service and discounts paid to Bank of America.

[1004] In its request, the Postal Service explains it has no information on Bank of America's actual read/accept rates. It chooses to use 1999 data for read/accept rates to develop these baselines.

[1005] Read/accept rates have improved steadily since 1999. Through the diligent discovery efforts of an employee organization, recent, reliable Postal Service read/accept rate data from 2006 and 2007 surfaced. The Commission concludes that read/accept rates have improved to such an extent that Bank of America will not have to

make any improvements in barcode readability to receive all available mail processing performance discounts. This is not indicative of a pay-for-performance agreement.

[1006] Applying the most recent read/accept rates, assuming that Bank of America continues to perform at systemwide average levels, and generally accepting the Postal Service's estimates relating to the other four incentive discounts, the financial analysis reveals that the Postal Service will lose up to \$45.8 million from the Agreement. Even in the unlikely event that Bank of America achieves perfect read/accept rates, the Postal Service will lose more than \$25 million from the Agreement.

[1007] Faced with such arguments, the Postal Service on brief contends that the Commission should look at the other benefits that it may obtain through this Agreement. The evidentiary record provides no substantive qualitative or quantitative insight into how to measure such benefits. The Governors must balance these unspecified operations benefits against the financial losses identified by the Commission in this opinion.

[1008] Additional problems with this Agreement must be considered. Other mailers are in ongoing pilot tests of various features of this Agreement for which they receive no incentives. Also, the Postal Service has announced its intention to mandate use of Intelligent Mail Barcodes for all automation discount mail in the near future. Incentives under this Agreement would be paid to Bank of America while other mailers may be required to adopt the same mailing practices without similar incentives. As a result, many mailers similarly situated to Bank of America may qualify for functionally equivalent agreements, and demand equivalent discounts even after these mailing practices become mandatory. The Postal Service has expressed its intent to make comparable agreements available to similarly situated mailers. This reduces the possibility that other mailers would find the Agreement discriminatory, but increases the financial risk to the Postal Service as it may have to provide substantial additional rate incentives for mandated practices.

[1009] This situation raises many concerns over the practices and procedures that are in place for developing successful negotiated agreements. The Commission reaches its findings by examining information that is readily available at the Postal

Service. Yet the personnel negotiating and the officers reviewing this Agreement apparently were unaware of the existence of this data before filing the request and even following several months of litigation.

[1010] The PAEA clearly contemplates that Postal Service management will be responsible for developing pricing strategies. In this new environment, price caps will limit the Postal Service's ability to recapture the losses associated with bad business decisions.

[1011] With the more limited Commission pre-implementation review under the PAEA, the burden of thoroughly reviewing new agreements has shifted to the Postal Service. To facilitate this shift in responsibilities, the Postal Service must ensure effective communication between those developing and approving Negotiated Service Agreements and the operational organizations that have the technical knowledge to assure successful agreements.

[1012] Moreover, it is imperative that the Postal Service develop and adopt review procedures, at the highest levels, to assure that the agreements make business and economic sense. Multi-million dollar Negotiated Service Agreements should receive careful internal scrutiny comparable to decisions to purchase major facilities or expensive equipment systems.

II. PROCEDURAL HISTORY

[2001] On February 7, 2007, the United States Postal Service filed a formal request with the Postal Regulatory Commission seeking a recommended decision approving a mail classification and related rates and fees predicated on a Negotiated Service Agreement with Bank of America Corporation.¹ The Negotiated Service Agreement is proffered as a new baseline Negotiated Service Agreement.²

[2002] The Postal Service identified Bank of America Corporation (BAC), along with itself, as parties to the Negotiated Service Agreement. Thus, BAC has been considered a co-proponent, procedurally and substantively, of the Postal Service's Request during the Commission's review.

[2003] The Request, which includes six attachments,³ was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. § 3601 *et seq.*⁴ In support of the Request, the Postal Service filed Direct Testimony of Ali Ayub on Behalf of United States Postal Service, February 7, 2007 (USPS-T-1). Bank of America separately filed Direct

¹ 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, February 7, 2007 (Request).

² Various material has been provided under seal by the Postal Service and BAC in this proceeding. Access to this material is controlled by the following protective rulings: Presiding Officer's Ruling MC2007-1/4, May 2, 2007, Presiding Officer's Ruling MC2007-1/7, May 25, 2007, and Presiding Officer's Ruling MC2007-1/11, June 22, 2007.

³ Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of Postal Service testimony; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the Negotiated Service Agreement.

⁴ The procedures of the former Postal Rate Commission apply to this Request under 39 U.S.C. § 3622(f) as established by the Postal Accountability and Enhancement Act, Pub. L. No. 109-435, 120 Stat. 3198 (2006) (PAEA). Section 3622(f) specifies, for the mail categories which are the subject of this Request, that: "[p]roceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year [transition] period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section."

Testimony of Richard D. Jones on Behalf of Bank of America Corporation, February 7, 2007 (BAC-T-1).

[2004] The Commission issued Order No. 3 to announce the filing of the Request; docket the Request as described by rule 195 [39 CFR § 3001.195] for baseline Negotiated Service Agreements; designate the director of the Commission's Office of the Consumer Advocate (OCA) as the representative of the interests of the general public; establish the deadline for intervention; and set the date and agenda for a prehearing conference.⁵

[2005] The Postal Service requested the establishment of settlement procedures, and the appointment of Postal Service counsel as settlement coordinator.⁶ The Commission granted the Postal Service's motion and made its facilities available for conducting a settlement conference.⁷ A settlement conference convened on March 14, 2007, where the participants came to agreement on a desired discovery period and expressed openness to the possibility of a second settlement conference, but were not ready to agree to terms narrowing the issues in this case or willing to forgo participation in any stage of the proceeding.⁸

[2006] The prehearing conference was held on March 14, 2007 to identify issues in this docket and to solicit information necessary to establish a procedural schedule. Subsequently, the Presiding Officer issued P.O. Ruling MC2007-1/1 establishing the procedural schedule.

[2007] The Commission issued Notice of Inquiry No. 1, April 3, 2007 (NOI) to explore use of systemwide averages in establishing baselines for offering incentives, and the potential for incorporating actual mailer-specific data into the baselines as it becomes

⁵ Notice and Order on Filing of Request Seeking Recommendation of a Baseline Negotiated Service Agreement, February 9, 2007.

⁶ Motion of the United States Postal Service for Establishment of Settlement Procedures, March 2, 2007.

⁷ Order Granting Postal Service Motion to Establish Settlement Procedures, March 9, 2007.

⁸ Report of Settlement Coordinator on March 14, 2007, Settlement Conference, March 19, 2007.

available. Comments were filed on April 17, 2007 by BAC, OCA, the Postal Service, and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak).⁹ Reply comments were filed on April 24, 2007 by American Postal Workers Union, AFL-CIO (APWU), BAC, the Postal Service, and Valpak.¹⁰ Supplemental comments were filed on May 3, 2007 by BAC.¹¹

[2008] The Commission also issued a Presiding Officer's Information Request to clarify technical aspects of the record and to examine the rationale for the methodology by which forwarding rates were interpolated.¹²

[2009] The cumulative effect of the Postal Service's inability to promptly respond to interrogatory requests caused considerable delay in this proceeding. Twenty-seven motions for late acceptance of responses concerning multiple interrogatories were submitted for consideration by the co-proponents.

[2010] With the May 8, 2007 hearing on the co-proponents' direct case approaching, and interrogatories concerning recent improvements in read/accept rates unanswered (the central issue in this docket), APWU exercised procedural options to obtain relevant information. On April 24, 2007, APWU filed a motion to stay the proceeding until such time that the Postal Service responded to all outstanding discovery requests;¹³ a motion for a subpoena to compel the testimony of Walter O'Tormey, Vice

⁹ Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1 (BAC NOI Comments); Office of the Consumer Advocate Comments in Response to Notice of Inquiry No. 1 (OCA NOI Comments); Response of United States Postal Service to Notice of Inquiry No. 1 (Postal Service NOI Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Response to Notice of Inquiry No. 1 (Valpak NOI Comments); all filed on April 17, 2007.

¹⁰ Reply of American Postal Workers Union to Comments Filed in Response to Notice of Inquiry No. 1; Reply Comments of Bank of America Corporation in Response to Notice of Inquiry No. 1; Reply Comments of United States Postal Service to Notice of Inquiry No. 1; Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments to Notice of Inquiry No. 1; all filed on April 24, 2007.

¹¹ Response of Bank of America Corporation to Reply Comments of American Postal Workers Union, AFL-CIO, May 3, 2007.

¹² Presiding Officer's Information Request No. 1, April 3, 2007.

¹³ Motion of the American Postal Workers Union, AFL-CIO to Stay Proceedings, April 24, 2007.

President, Engineering, United States Postal Service, to explore the read/accept rates proposed as baselines for measuring performance,¹⁴ a motion to compel a response to an interrogatory on recent improvements to equipment,¹⁵ and a request for admissions covering similar materials.¹⁶

[2011] The Postal Service indicated its intent to respond to outstanding discovery prior to the hearing and offered to produce Brent Raney, Manager, Technology Development and Applications, in place of Walter O'Tormey, during the hearing for cross-examination on improvements in letter mail read/accept rates since 1999.¹⁷ However, with the late receipt of interrogatory responses, participants would be denied their procedural right to ask follow-up questions based on the Postal Service's initial interrogatory responses. Furthermore, witness Raney had not been subjected to any discovery and his ability to answer relevant questions was unknown. APWU filed motions to delay the hearing by 30 days to allow for follow-up interrogatories, and to conduct discovery on witness Raney.¹⁸

[2012] A short period for discovery directed to witness Raney was established, and follow-up questions to late-answered interrogatories were allowed.¹⁹ The hearing on the co-proponents' direct case was rescheduled for June 14, 2007. The Presiding Officer

¹⁴ 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, April 25, 2007.

¹⁵ Motion of the American Postal Workers Union, AFL-CIO to Compel United States Postal Service to Answer Interrogatory APWU/USPS-T1-1, April 24, 2007.

¹⁶ Requests for Admission by the Postal Service Filed by American Postal Workers Union, AFL-CIO (APWU/USPS Requests), April 24, 2007.

¹⁷ Response of United States Postal Service in Opposition to Motion of American Postal Workers Union, AFL-CIO, to Stay Proceeding, May 1, 2007 (Response to APWU Motion to Stay); 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, May 1, 2007.

¹⁸ Motion of the American Postal Workers Union, AFL-CIO to Re-Schedule Hearing on Co-Proponents' Case in Chief for June 7, 2007, May 1, 2007; 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 Without Prejudice APWU's Motion for Issuance of a Subpoena to Walter O'Tormey, May 3, 2007.

had informally been advised by counsel that the Postal Service and Bank of America did not oppose this delay. *Id.* at 3. An open session of the hearing was held on the morning of June 14, 2007, and a closed session to discuss matters under seal was held that afternoon.

[2013] After the conclusion of the June 14, 2007 hearing, APWU continued to pursue discovery concerning the Wide Field of View camera and read/accept rates.²⁰ However, the Presiding Officer concluded that an adequate opportunity for discovery had appeared to have run its course, and brought further discovery to a close. P.O. Ruling MC2007-1/14, July 9, 2007.

[2014] No intervenor filed a direct case in this docket. The record was closed on July 19, 2007. P.O. Ruling MC2007-1/15, July 19, 2007. Briefs were filed on August 2, 2007 by APWU, BAC, OCA, the Postal Service, and Valpak.²¹ Reply briefs were filed on August 13, 2007 by APWU, BAC, the Postal Service, and Valpak.²²

¹⁹ P.O. Ruling MC2007-1/5, May 3, 2007. This ruling also denied without prejudice APWU's motions to stay the proceeding and subpoena Walter O'Tormey.

²⁰ Motion of American Postal Workers Union, AFL-CIO for an Order Compelling the Production of Documents and Information by the United States Postal Service, June 15, 2007.

²¹ Brief of American Postal Workers Union, AFL-CIO (APWU Brief) (both a redacted version and a version under seal); Initial Post-Hearing Brief of Bank of America Corporation (BAC Brief); Office of the Consumer Advocate Initial Brief (OCA Brief); Initial Brief of the United States Postal Service (Postal Service Brief); Initial Brief of Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak Brief), all filed on August 2, 2007.

²² Reply Brief of American Postal Workers Union, AFL-CIO; Reply Post-Hearing Brief of Bank of America Corporation (BAC Reply Brief) (both a redacted version and a version under seal) (both refiled August 14, 2007); Reply Brief of the United States Postal Service (Postal Service Reply Brief); Reply Brief of Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc., all filed on August 13, 2007.

III. SUMMARY OF PROPOSAL

A. Witness Jones' Testimony

[3001] Bank of America witness Jones (BAC-T-1) is the Senior Vice President of Enterprise Sourcing, Products and Services, for Bank of America Corporation. He describes BAC as the second largest bank in the United States with FY 2005 revenue approaching \$57 billion.

[3002] Witness Jones asserts that the proposed Negotiated Service Agreement benefits both the Postal Service and all users of the mail. "Its pay-for-performance nature assures that we [BAC] collect rate discounts if and only if we save the Postal Service money." BAC-T-1 at 2.

[3003] Witness Jones explains that BAC uses mail for operational purposes and for solicitations both to existing customers and to prospective customers. First-Class Mail is used for mailing statements, plastics, privacy notifications, some solicitations, and a small amount of miscellaneous correspondence. Standard mail is used for solicitations and other non-personalized communications. *Id.* at 6. He notes that BAC also receives approximately 450 million pieces of Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail annually. *Id.* at 7. BAC's historical and projected First-Class Mail and Standard Mail volumes are presented in Table III-1. The projected before- and after-rates volumes for the three years of the Agreement, 2007 through 2009, are equivalent, as the Agreement is assumed to not provide an incentive to increase mail volume.

Table III-1
Bank of America Corporation
Historical and Projected Mail Volumes
(Millions of Pieces)

	2003 Estimated	2004 Historical	2005 Historical	2006 Historical	2007 Projected	2008 Projected	2009 Projected
First-Class Mail: Solicitation	640	561	211	82	100	100	100
First-Class Mail: Operational	1,100	1,169	1,257	1,225	1,300	1,300	1,300
First-Class Mail: Total	1,740	1,730	1,468	1,307	1,400	1,400	1,400
Standard Mail	1,400	1,547	1,677	1,852	1,900	1,900	1,900
Total	3,140	3,277	3,145	3,159	3,300	3,300	3,300

Id. at 7-8 (footnote omitted); Tr. 2/482.

[3004] Witness Jones describes the Negotiated Service Agreement as a pure cost-savings agreement where BAC offers to change its mail preparation and mailing practices in ways that will reduce Postal Service handling costs in exchange for a share of the resulting cost savings paid through First-Class Mail and Standard Mail postage discounts. He outlines the following operational commitments agreed to by BAC:

- Place Four-State Barcodes on all Bank of America First-Class Mail and Standard Mail that will qualify for the proposed rate discounts.²³
- Place Four-State Barcodes on all Bank of America Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail.
- Use the automated scheduling services provided to the FAST system through the *PostalOne!* electronic data exchanges for entry of all letter-rated Standard Mail with destination entry discounts.
- After eDropship features become available for First-Class Mail, implement use of the service for entry of all letter-rated First-Class Mail.

²³ Four-State Barcodes are now referred to as Intelligent Mail Barcodes.

- Subject to narrow exceptions, use Seamless Acceptance for all Bank of America First-Class Mail and Standard Mail that will qualify for the proposed rate discounts.
- Subject to narrow exceptions, use Confirm service on all Bank of America First-Class Mail and Standard Mail that will qualify for the proposed rate discounts.
- Subject to narrow exceptions, place OneCode ACS markings on all Bank of America First-Class Mail and Standard Mail that will qualify for the proposed rate discounts.
- Accept electronic information instead of physical return for certain letter-rated First-Class Mail and Standard Mail that is undeliverable-as-addressed.

Id. at 11-12. He asserts that BAC will incur costs in implementing these commitments, but will not be directly compensated by the Postal Service for doing so. *Id.*

[3005] The terms and conditions of the Agreement provides that discounts may be earned for improvements in First-Class Mail and Standard Mail read/accept rates, reductions in returned and forwarded First-Class Mail, and reductions in undeliverable-as-addressed Standard Mail. The improvements/reductions are measured relative to six baseline values specified in the Agreement.

[3006] Witness Jones contends that the incentives offered for these improvements in address quality are the most significant and innovative features of the Agreement. He states that BAC is offered discount incentives for achieving end results, but not for implementing any particular means for obtaining these results. In this respect, he contends that this is a pay-for-performance agreement. He explains that BAC intends to use its Six Sigma system to facilitate improving address quality and maximizing the value of the Agreement. *Id.* at 13-16.

[3007] Witness Jones discusses the six baseline values from which mail processing and quality performance improvements are measured and discounts are paid. He states that BAC and the Postal Service have agreed to the following baselines:

- First-Class Mail systemwide average read/accept rate used as a proxy for BAC's current read/accept rate.

- BAC's actual First-Class Mail return rate of 0.7 percent for operational mail.
- BAC's actual First-Class Mail return rate of 2.7 percent for marketing mail.
- An estimated First-Class Mail forwarding rate of 1.7 percent calculated using BAC's National Change of Address data.
- Standard Mail systemwide average read/accept rate used as a proxy for BAC's current read/accept rate.
- Standard Mail undeliverable-as-addressed national average of 6.4 percent used as a proxy for BAC's Standard Mail letters.

Id. at 16-17.

[3008] For the purpose of evaluating the financial effect of the Agreement on the Postal Service, witness Jones estimates that averaged over the three years of the Agreement mail processing performance will improve by 1 percentage point, undeliverable-as-addressed mail will decline by 10 percent, and mail that requires forwarding will decline by 10 percent. He asserts that these preliminary and highly approximate percentages are not critical to determining the benefit to the Postal Service. He contends that the Postal Service will benefit financially from the Agreement in any event as the discounts pass through less than 100 percent of cost savings for every rate cell. *Id.* at 17-18. See *also*, Tr. 2/490.

B. Witness Ayub's Testimony

[3009] Witness Ayub (USPS-T-1) testifies on behalf of the Postal Service.²⁴ He contrasts the BAC Negotiated Service Agreement with previous agreements by describing the BAC Agreement as a pure cost-savings agreement; whereas previous agreements included incentives designed to encourage increases in mail volume. He states that the BAC Agreement also departs from past Postal Service practice in that it does not mandate process changes; it offers BAC incentives to reach desired end results by whatever means BAC believes cost effective. *Id.* at 4.

[3010] Witness Ayub states that a pay-for-performance agreement has become practical for the first time because of advances in barcoding technology and standards, which allows tracking of the mail through the postal system to provide accurate and reliable measures of mail performance. It also is practical because BAC is willing to adopt the mailing practices needed to make the measurement system function. BAC has agreed to utilize the Four-State Barcode, and employ a unique customer identifier (Business Entity Identifier or BEI) on all letter-rated First-Class Mail and Standard Mail. *Id.* at 5.

[3011] Witness Ayub reviews the major elements of the BAC Negotiated Service Agreement: BAC's operational commitments; the performance-based incentives; and the termination and penalty clauses. He describes each of the mandatory operational commitments: Four-State Barcode (OneCode); OneCode ACS (Address Change Service); Confirm; Seamless Acceptance; FAST (Facility Access and Shipment Tracking System); and eDropship. *Id.* at 7-12. Then, he reviews the performance-based incentives. He asserts that the performance-based incentives generally will be earned through improvements in mail processing read/accept rates, and for reductions in mail that is undeliverable-as-addressed. He explains that for First-Class Mail,

²⁴ Witness Ayub is an economist in the Pricing Strategy group of the United States Postal Service. USPS-T-1 at 1.

undeliverable-as-addressed includes incentives to reduce mail that must either be forwarded or returned, and for Standard Mail, undeliverable-as-addressed includes incentives to reduce mail that would have to be disposed of. *Id.* at 13-14. Witness Ayub concludes by stating that termination and penalty clauses provide the right for either party to terminate the contract under certain specified conditions. *Id.* at 14.

[3012] *Estimate of cost savings.* Witness Ayub estimates the Postal Service's cost savings generated by each of the six incentive-based elements of the Agreement given the projections of improvements provided by witness Jones.

(1) Improvements in First-Class Mail read/accept rates. Witness Ayub explains that mail processing improvements for First-Class Mail are determined by measuring a read/accept rate on a quarterly basis and comparing this to a baseline value representative of BAC's before-rates mail. He defines the read/accept rate as the total number of letter-rated First-Class Mail mailpieces that are read and accepted during their first pass through mail sorting equipment, divided by the total number of mailpieces that receive a first pass through the mail sorting equipment on a quarterly basis. He asserts that a mailer-specific baseline read/accept rate is not available so the co-proponents have agreed to a value of 96.8 percent, which is a systemwide average weighted to BAC's mail mix derived from Docket No. R2006-1, USPS-LR-L-110. *Id.* at 16-17.

There is no reason to believe that any individual mailer's read and accept rates vary significantly from the system-wide average, since read and accept rates are likely to depend primarily on the generation of barcoding protocol used by the mailer and the scanning equipment used by the Postal Service—factors that are unlikely to generate wide mailer-to-mailer variations.

Id. at 15. Witness Ayub estimates a First-Class Mail cost savings of \$9.7 million from processing performance improvements over the three years of the Agreement — \$8.1 million in mail processing operations and \$1.6 million in delivery operations. *Id.* at 17.

(2 and 3) Reductions in First-Class Mail Schedule A (largely operations mail) and Schedule B (largely solicitations mail) return rates. Witness Ayub explains that BAC has agreed to waive physical return of at least 10 percent of Schedule A mail and all Schedule B mail. He states that the cost savings are from the cost difference between physical returns and electronic returns for the pieces that have waived physical return, and from corrections of bad addresses that will reduce future returns for the pieces that have not waived physical return. The baselines upon which reductions are measured are the actual return rates reported by BAC — 0.7 percent for Schedule A mail and 2.7 percent for Schedule B mail. Witness Ayub estimates cost savings of \$0.7 million from reducing the return rate of Schedule A mail and \$1.5 million from reducing the return rate of Schedule B mail over the three years of the Agreement. *Id.* at 17-19.

(4) Reduction in First-Class Mail forwarding rate. The reduction in the First-Class Mail forwarding rate is measured relative to a baseline forwarding rate of 1.7 percent. Witness Ayub explains that this is an estimate based on National Change of Address runs for BAC First-Class Mail. He notes that the cost savings will be offset by the Postal Service cost of providing OneCode Address Correction Service for these mailpieces.²⁵ He estimates a cost savings of \$0.7 million from reducing the number of BAC First-Class Mail mailpieces that will have to be forwarded over the three years of the Agreement. *Id.* at 19-20.

(5) Improvements in Standard Mail read/accept rates. Witness Ayub explains that Standard Mail processing improvements are determined by measuring a read/accept rate on a quarterly basis and comparing this to a baseline value representative of BAC's before-rates mail. He defines the read/accept rate as the total number of letter-rated Standard Mail pieces that are read and accepted during their first pass through mail sorting equipment, divided by the total number of pieces that receive a first pass through the mail sorting equipment on a quarterly basis. He asserts that a mailer-specific baseline read/accept rate is not available so the co-proponents have

²⁵ The first two OneCode ACS notices are provided free of charge for First-Class Mail.

agreed to a value of 96.9 percent which is a systemwide average weighted to BAC's mail mix derived from Docket No. R2006-1, USPS-LR-L-110. Witness Ayub estimates a cost savings of \$11.4 million from Standard Mail processing performance improvements over the three years of the Agreement — \$9.8 million in mail processing operations and \$1.6 million in delivery operations. *Id.* at 20-21.

(6) Reduction in undeliverable-as-addressed Standard Mail. Witness Ayub explains that reducing undeliverable-as-addressed Standard Mail decreases Postal Service costs by reducing the expense to dispose of the undeliverable mail. He states that a baseline of 6.4 percent, which is the systemwide average for FY 2004 of all Standard Mail for all shapes and subclasses, will be used as a proxy for BAC's before-rates undeliverable-as-addressed Standard Mail. He notes that the Postal Service also receives additional revenue through OneCode ACS notice fees for these mailpieces. Witness Ayub estimates a cost savings of \$5.3 million by reducing the volume of undeliverable-as-addressed Standard Mail over the three years of the Agreement. *Id.* at 21-22, Appendix A at 1.

[3013] *Rate design.* Witness Ayub explains that based on the estimated cost savings, BAC and the Postal Service negotiated rate schedules to provide discounts relative to various performance improvement levels. The following is a summary of the negotiated discounts:

- First-Class Mail processing performance improvements: discounts of 0.032 to 0.575 cents for incremental mail processing improvements of 0.1 to 1.9 percent.
- First-Class Mail Schedule A (largely operations mail) return rate reductions: discounts of 0.022 to 0.145 cents for reductions of 10 to 90 percent.
- First-Class Mail Schedule B (largely solicitations mail) return rate reductions: discounts of 0.036 to 0.600 cents for reductions of 10 to 90 percent.
- First-Class Mail forwarding rate reductions: discounts of 0.013 to 0.150 cents for reductions of 10 to 90 percent.

- Standard Mail processing performance improvements: discounts of 0.024 to 0.466 cents for incremental mail processing improvements of 0.1 to 1.9 percent.
- Standard Mail undeliverable-as-addressed reductions: discounts of 0.040 to 0.170 cents for reductions of 10 to 90 percent.

Request, Attachment F, Sections IV.C.1, D.1, E.1, F.1, and G.1.

[3014] *Financial analysis.* Appendix A of witness Ayub's testimony provides the financial model used to evaluate the Agreement. He notes that the value of the Agreement is based on measured improvements in specific mail quality variables, and not on anticipated changes in mail volume as with previous agreements. Although he contends that the actual value of the Agreement can not be known until the Agreement has ended, he estimates the Agreement will increase Postal Service net contribution by \$5.5 million over the life of the Agreement based on the address and mail quality improvement assumptions provided by witness Jones.²⁶

[3015] *Competitive impact analysis.* Witness Ayub asserts that the Commission has not found any of the previously submitted Negotiated Service Agreements injurious to competitors of the previous co-proponents, and that the same finding is warranted in this case. He argues that the BAC Negotiated Service Agreement is not intended to increase BAC's mail volume, or have a measurable effect on its number of accounts. He estimates that BAC will accrue \$23 million in savings due to the Agreement, in comparison to the \$2.3 billion BAC spends on postage, and to BAC's total 2005 revenue of \$57 billion. Finally, he affirms the Postal Service recognizes an obligation to make comparable terms available to companies that are deemed to have functionally equivalent mail characteristics. USPS-T-1 at 25-27.

²⁶ Witness Ayub subsequently re-estimates the value of the Agreement by incorporating the rates from the Governors' decision, dated March 19, 2007, and the Commission's recommended methodologies from Docket No. R2006-1. This increases the value to the Postal Service to \$12.4 million over the three years of the Agreement. Tr. 2/216.

C. Witness Raney's Testimony

[3016] The Postal Service made Brent Raney, Manager, Technology Development and Applications, available during hearings on the Postal Service's direct case for cross-examination concerning APWU interrogatories, including inquiries on improvements in letter mail read/accept rates since 1999. Response to APWU Motion to Stay, *supra*. His testimony, predominately under seal, significantly aided the intervenors' and the Commission's understanding of the current state of read/accept rates.

D. Read/Accept Rates

[3017] Testimony on read/accept rates are discussed separately in this section because of their importance to this decision, and because read/accept rates control the bulk of the quantified cost savings and discounts provided under the Agreement.

[3018] During the prehearing conference, OCA identified the source of the read/accept rates derived from USPS-LR-L-110 as a potential issue in this case. Tr. 1/6. It noted that some of the underlying data are at least 11 years old and speculated that the Postal Service must have improved its ability to read barcodes since then. *Id.* at 7.

[3019] Witness Ayub explains that if acceptance rates are higher than identified in USPS-LR-L-110, the savings generated from improvements in acceptance rates would be lower. Tr. 2/40. However, he contends that BAC is undertaking activities under this Agreement for which BAC is not provided specific incentives. Thus, he argues the incentives under this Agreement cannot be associated exclusively with any particular activity or result. He argues that it is sufficient that the aggregate benefits of all kinds exceed the aggregate costs. *Id.* at 41.

[3020] Witness Ayub explains that the “information reported in USPS-LR-L-110 was gathered from a one-time survey in 1999 providing a snapshot of acceptance rates.” *Id.* at 258-59. He asserts that the Postal Service does not have any data showing the trend in accept rates since 2000, and asserts that he is “unaware of comparable information that could indicate trends since 1999.” *Id.* Nor is witness Ayub aware of any plans to update data on the accept rate for letter mail. *Id.* at 293.

[3021] Witness Ayub reports that a Wide Field of View system is to be fully deployed by the end of this fiscal year (2007), but he is unaware of any studies that analyze the relationship between the Wide Field of View camera and accept rates. *Id.* at 274. During oral cross-examination he clarifies his understanding of the effects of the Wide Field of View camera. He asserts that during preparation of the Negotiated Service Agreement, he was not aware that the purpose of the Wide Field Of View camera was to increase read/accept rates. Tr. 3/513. He became aware of this during the course of

discovery. *Id.* He acknowledges that the Wide Field Of View camera has increased read/accept rates, but reiterates that he only became aware of the magnitude of the improvements during the course of discovery. *Id.* at 513-14.

[3022] Witness Ayub was then able to present read/accept rate data from a Seamless Acceptance pilot test conducted in the November 2006 through March 2007 time frame. Tr. 2/140-202. During the pilot test, three mailers achieved read/accept rates of 97.28, 97.28, and 96.88 percent.²⁷

[3023] He presented several caveats to interpreting the results of the pilot test. Witness Ayub argues that the results are likely to overstate read/accept rates in the ordinary course of business because of the special efforts undertaken by participants to showcase the new technology and their skill at mastering it. He notes that the test was performed on a subset of mail which excluded mail with MERLIN success rates below 95 percent. He contends the weighted average of all three test scores, 97.14 percent, is not much higher than what is relied upon in this case, and that there is significant variation in results between the three mailers, which implies that more is involved than just applying an Intelligent Mail Barcode. Thus, he concludes that significant improvements in read/accept rates for bulk pre-barcode mail (of the type entered by large-service bureaus that prepare mail for BAC) are unlikely to have occurred since 1999. *Id.* at 141-42.

[3024] Witness Ayub also presents read/accept rate data reflecting the average monthly Confirm scan rates for move validation letter mailings. He reports that for January 2007 the rate was 99.0 percent and for February 2007 it was 98.6 percent. For the three mailers using Intelligent Mail Barcodes during the test, he reports an average scan rate of 97.55 percent and a weighted average scan rate of 97.14 percent. He references the same caveats in interpreting these results as provided for the Seamless Acceptance pilot test. *Id.* at 205.

²⁷ *Id.* at 142, 145. At the time the Negotiated Service Agreement was signed, BAC was using both mailers that achieved read/accept rates of 97.28. *Id.* at 239.

[3025] Witness Raney provides further testimony reflecting his supervisory responsibilities concerning read/accept rates. Based on his experience, the current average acceptance rate for pre-barcoded letter mail on a delivery barcode sorter ranges from 97 percent to over 99 percent. The lower bound represents the accept rate at upstream operations. He contends that because BAC's mail is predominantly 3- and 5-digit, it will likely bypass upstream operations, and be more likely to experience a lower than average accept rate compared with other mail that previously had been processed in upstream operations. *Id.* at 403. However, witness Raney does not have any knowledge of how BAC mail was processed before getting to the Postal Service, thus it may or may not actually resemble downstream mail. *Id.* at 459-61.

[3026] Witness Raney is aware of the Decision Analysis Reports (DARs) to the Board of Governors that project improvements in the barcode read rates for Wide Field of View (for pre-barcoded mail) and Identification Code Sorter (ICS) (for anonymous mail). *Id.* at 405. He specifically discusses "Decision Analysis Report: Wide Area Bar Code Reader Replacement, June 28, 2001."²⁸ He states that the Wide Field of View camera (WFOV) was justified as enhancing the read rates of pre-barcoded mail. He testifies that in tests First-Class Mail that was pre-barcoded read 0.45 percent better than with the previous Wide Area Barcode Reader. Accept rate improvements based on data from 10 weeks of testing in Tampa, Florida and San Diego, California are presented in Table III-2.

²⁸ USPS-LR-3 (filed under seal).

Table III-2

Camera System	Accept Rates	
	First-Class Mail	Standard Mail
WABCR	99.01%	97.33%
WFOVC	99.46%	98.41%
Percent Improvement	0.45%	1.09%

Tr. 4/Attachment.

[3027] After review of the WFOV Test Plan, witness Raney argues that the test results contained in the DAR should not be presumed to reflect the current accept rates for BAC. Tr. 2/410. He notes that the intent of collecting the data was for a competitive test and not for setting rates, that the test was conducted under controlled circumstances that may not reflect the real world, and that the DAR sample size was for a short period of time and only based on data from 3,000 samples. *Id.* at 411-12. This led him to conclude that if Bank of America was preparing its mail to meet automation compatibility requirements, then the read rate improvement from the WFOV would presumably be less than the average improvements measured. *Id.* at 409-10. However, he acknowledges that a Board of Governors' consideration in going forward with the WFOV cameras was whether or not the expenditure of money for the WFOV camera would result in an improvement in read/accept rates. Tr. 3/523.

[3028] The Postal Service provided under seal further information on improvements resulting from a Performance Improvement Plan related to WFOV cameras, and information that discusses improvements in read/accept rates of barcode readers equipped with WFOV cameras. See USPS-LR-4. These improvements have occurred since the 1999 data were collected. The library reference, in part, contains two documents, National DBCS BCS Sortation March 2007 and National DBCS BCS Mode Volumes January 1, 2006 through December 31, 2006. These documents demonstrate significant improvements in read/accept rates since 1999. The second report provides a

summary of what appears to be essentially “census” data for an entire year. This is to be contrasted against the “sample” data upon which the 1999 numbers were developed.

E. Current Status of Pilot Tests

[3029] Witness Ayub testified on the status of Postal Service's testing of the Intelligent Mail Barcode, Seamless Acceptance, and eDropship.

[3030] He reports that the Postal Service began testing the Intelligent Mail Barcode on live mail in February 2005, and plans on making it a requirement for certain automation rate mailings in 2009. Tr. 2/273.

[3031] The Postal Service is currently pilot testing Seamless Acceptance, with an expectation that it will become fully operational in 2009. *Id.* at 246. Witness Ayub notes that there are currently fewer than five mailers in the pilot test. *Id.* at 286. He explains that BAC will be required to implement Seamless Acceptance once the beta testing of the service is completed. *Id.* at 287. However, "the part of the seamless acceptance which will be required to measure the read-and-acceptance rates for Bank of America is already operational." *Id.* at 388. He asserts that BAC will not be compensated for adopting Seamless Acceptance after it is deployed, and other mailers will not be offered inducements. *Id.* at 247.

[3032] Witness Ayub indicates that the Postal Service is currently pilot testing eDropship, with an expectation that it will begin being deployed in 2009. *Id.* at 255. He states that there are currently fewer than ten mailers in the pilot test. *Id.* at 291. He asserts that BAC will not be compensated for adopting eDropship after it is deployed, and other mailers will not be offered inducements. *Id.* at 256.

F. Notice of Inquiry

[3033] The Commission issued Notice of Inquiry No. 1, April 3, 2007, to solicit comments on methods of establishing baselines in longer term pay-for-performance agreements where actual mailer information is unavailable. The Commission hypothesized that it might be acceptable to establish initial baselines, as the co-proponents have proposed, using systemwide averages (in this case for read/accept rates). The baselines then could be modified at the ends of the first and second years to incorporate actual mailer-specific data. The Commission encouraged comments discussing the need to incorporate adjustment mechanisms, and discussing the benefits and detriments of incorporating the hypothetical approach outlined above compared with an approach that solely utilizes systemwide averages. NOI at 2-3.

[3034] The Commission hypothetical suggested averaging the initial baseline with BAC's Year 1 actual data to establish the baselines for the second year of the Agreement, and averaging the Year 2 baseline with Year 2 actual data to establish the baselines for the third year of the Agreement. *Id.* at 2. OCA argues that this is "eminently sensible given that BAC will benefit from improvements in barcode reading and printing technology that have occurred since 1999." OCA NOI Comments at 2. OCA further suggests as another alternative to use an average of actual test results for the Four-State Barcode as the baseline for Year 1, then use actual read rates on non-BAC Four-State Barcodes in Year 1 as the baseline for Year 2, and similarly use actual Year 2 data as the baseline for Year 3. *Id.*

[3035] Valpak argues that before accepting a systemwide average as a baseline in a pay-for-performance agreement the Commission should examine the quality, the age, and any plans for updating the underlying systemwide average data. Valpak NOI Comments at 2-5. It contends that developing mailer-specific information may become possible in the near future with widespread use of the Four-State Barcode. Once this occurs, Valpak suggests one to two years of actual Four-State Barcode use as a prerequisite to be considered for a pay-for-performance agreement. *Id.* at 5-7. Noting

that an advantage of Negotiated Service Agreements is the ability to tailor the terms of an agreement to fit an individual mailer's specific situation, it argues that it is premature to consider an agreement that uses systemwide averages as baselines. *Id.* at 7-8.

Valpak states that it seems appropriate to develop and incorporate some mechanism for adjusting baselines based on mailer-specific information as it becomes available. It warns that offering the largest discounts to mailers that have not invested in improving read/accept rates on their own may not be fair to mailers who have invested in improving read/accept rates without being offered discounts. Valpak contends that this also may act as a disincentive for mailers to make improvements on their own because they may await a future discount before taking any independent action to improve read/accept rates. *Id.* at 8-10.

[3036] The Postal Service believes that the baselines used in the Agreement are appropriate, and that any approach using data collected during the Agreement to modify the systemwide average baselines should not be adopted. Postal Service NOI Comments at 2. It argues that the incentives for improvements in read/accept rates must cover more than the expense of achieving such rates because adjusting the incentives influences the amount of incentives not only for improvements in read/accept rates, but for BAC's commitment to other activities for which no specific incentives are provided. It argues that use of systemwide average baselines helps mitigate the risk to BAC due to uncertainty of how much its read/accept rates might improve, and contends that imposing adjustments would intrude on the negotiation process. *Id.* at 3. The Postal Service attempts to support the use of systemwide averages for this Agreement by drawing parallels to the use of systemwide averages in omnibus rate cases. *Id.* at 4. Finally, the Postal Service argues that requiring parties to use mailer-specific data will increase the cost and time of entering into agreements, and may discourage parties from pursuing agreements. It also may invite manipulation of mailing practices to influence data in a direction favorable to the mailer. *Id.* at 6.

[3037] BAC argues that the adjustments hypothesized by the Notice of Inquiry are unlawful and a counterproductive solution to a nonexistent problem. BAC NOI

Comments at 3. It contends that the adjustments are inconsistent with the PAEA, which BAC argues mandates light-handed regulation of downward rate adjustments. *Id.* at 5-7. BAC asserts that baseline adjustments would be an arbitrary and unjust departure from the long-standing policy of relying on system-average data when more specific data are unavailable. BAC argues that the Commission must look at the profitability of the Agreement as a whole rather than focus on any one item. It notes the other commitments made by BAC which add contribution and provide an additional safety margin for the Postal Service. *Id.* at 8-18. BAC continues that baseline adjustments will not provide meaningful results because it will give progressively less weight to before-rates performance data and more weight to after-rates performance data, when the baseline is purported to reflect before-rates conditions. *Id.* at 18-20. Finally, BAC argues that adjustments may make the Postal Service worse off by reducing the incentives for BAC to improve performance. *Id.* at 20-22.

IV. FINDINGS AND CONCLUSION

A. Overview

[4001] The Postal Service proposes to enter into a three-year Negotiated Service Agreement with Bank of America. The Agreement can be considered in two parts. The first part consists of BAC's commitment to utilize several advanced mail systems that have been either recently introduced or are currently under development. The most prominent system is the Intelligent Mail Barcode system. The other systems facilitate entry of mail into the postal network, and reduce the quantity of physically returned mail by providing the mailer with electronic notification of undeliverable mail. The second part of the Agreement provides discounts to BAC based on the quality and mail processing characteristics of BAC's mail measured relative to six negotiated baselines.

[4002] The Commission endorses the concept of the overall Agreement. It finds merit in the Postal Service seeking out a very large volume mailer to facilitate introduction of a panoply of modern mail processing systems. This approach may present advantages over a piecemeal approach of soliciting individual mailers to run pilot tests on individual features in that it could provide valuable information on a modern integrated system. If the Agreement is appropriately monitored and the Postal Service expends the effort to further the development of these new systems through this Agreement, all mailers may benefit in the long term by having a modern mail processing system in place for their use with many typical start-up problems reduced or resolved.

[4003] There is the possibility that more mailers may become involved through functionally equivalent agreements. The availability of functionally equivalent agreements reduces the discriminatory effects of agreements that otherwise might be considered neither fair nor equitable to nonparticipating mailers.

[4004] This Agreement combines six bases for discounts: First-Class Mail processing performance; First-Class Mail operational mail return rates; First-Class Mail solicitation mail return rates; First-Class Mail forwarding rates; Standard Mail processing

performance; and Standard Mail undeliverable-as-addressed. Discounts are paid based on BAC's measured performance relative to six negotiated baselines, one baseline for each category of discount. The potential discounts available in the First-Class Mail processing performance and the Standard Mail processing performance categories dominate the quantified financial impact of this Agreement. The baselines associated with these categories, concerning read/accept rates for First-Class Mail and Standard Mail, were highly contested in this case and are the major focus of this Opinion.²⁹

[4005] The co-proponents negotiated and agreed upon baselines for read/accept rates for First-Class Mail (96.8 percent) and Standard Mail (96.9 percent) based on data derived from Docket No. R2006-1, USPS-LR-L-110. Early on in the proceeding, OCA traced the source of this data back at least as far as FY 1999. Tr. 1/6-7. This triggered further discovery into whether or not the negotiated baselines were based on outdated data, and whether or not they remain valid for use in this case.

[4006] Through discovery, a trend of improvements in read/accept rates since 1999 was developed. There was a Seamless Acceptance pilot test where three mailers achieved read/accept rates of 97.28, 97.28, and 96.88 percent. Data were presented reflecting the average monthly Confirm scan rates for move validation letter mailings which showed a one month read/accept rate of 99 percent for January 2007, and 98.6 percent for February 2007. An average scan rate of 97.55 percent and a weighted average scan rate of 97.14 percent were reported for the three mailers using Intelligent Mail Barcodes during this test. Witness Raney indicated that the current average acceptance rate for pre-barcoded letter mail on a delivery barcode sorter ranges from 97 to 99 percent. There was a Decisional Analysis Report dated June 28, 2001 indicating a First-Class Mail read/accept rate of 99.46 percent and a Standard Mail rate of 98.41 percent. The Postal Service presented caveats for interpreting the applicability of the above results to the instant Agreement and argued that the data should not be relied

²⁹ The remaining four categories received less attention by participants. The Commission finds the associated provision of discounts relative to the negotiated baselines reasonable.

upon. The Commission would be cautious before relying on just one of these tests as a basis for establishing rates. However, *en masse*, the Commission finds that the more recent data provides a strong indication that read/accept rates have improved since 1999.

[4007] Immediately prior to the close of the record, the Postal Service provided additional read/accept data in library reference USPS-LR-4. The library reference, in part, contains two documents, National DBCS BCS Sortation March 2007, and National DBCS BCS Mode Volumes January 1, 2006 through December 31, 2006. Both summarize essentially census data for read/accept rates, one set over a one-month time span and one set for an entire year. The Docket No. R2006-1, USPS-LR-L-110 data were based on a far less inclusive “sample.” The library reference data are consistent with the improvement trend indicated by other testing discussed above. The Commission finds that the more recent data provides the best available information of current read/accept rates. At a minimum, the totality of the record indicates that read/accept rates have improved substantially since 1999, and the read/accept rates derived from the 1999 data should not be relied on.

[4008] Applying the most recent data to BAC’s mail mix results in a First-Class Mail read/accept rate of 98.7 percent and a Standard Mail read/accept rate of 98.8 percent. Each of these percentages are 1.9 percentage points above the negotiated baseline levels. If it is assumed that BAC currently is operating at the systemwide average read/accept rates as the Postal Service contends³⁰ and the most recent data are used, they would be eligible for the maximum allowable discounts without further improvement to their read/accept rates.³¹ Incorporating this information into the financial analysis of the Agreement demonstrates that the Postal Service will realize less in net contribution as a result of entering into the Agreement.

³⁰ USPS-T-1 at 15.

³¹ BAC will be converting all applicable mail to the new Intelligent Mail Barcode and applying new systems to enter its mail. The Commission is aware that as with any new system, there may be start-up problems.

[4009] The Postal Service argues that since the 1999 read/accept data were acceptable for use in Docket No. R2006-1 and influenced billions of dollars in worksharing discounts, it would be unfair to BAC to use a different baseline in this Agreement which has a much more limited monetary value. Postal Service Brief at 23-26.

[4010] This position is misguided. Once up-to-date information becomes available, there is no justification for continuing to use out-of-date, inaccurate information. In many instances, the Commission has accepted use of systemwide values as a proxy for actual data. This approach, however, is not blind. There must be an indication that the selected proxy has a valid basis, and that it is appropriate to use that proxy in the particular circumstance. The 1999 data were not challenged in Docket No. R2006-1. It has been challenged in this case, and shown to be out of date when contrasted with new, more comprehensive data that were not available when Docket No. R2006-1 was litigated. Furthermore in Docket No. R2006-1, the data were used to allocate costs among presort rate tiers. The end result did not directly affect the net revenue to the Postal Service. The data are being used in this case to determine absolute discounts. This is a very different purpose that directly affects net Postal Service revenue. To accurately assess the merits of this proposal, the more recent and reliable data should be used.

[4011] The co-proponents argue that the Commission should evaluate the Agreement as a whole, i.e., not focus solely on the mail processing improvement features related to read/accept rates, but look at all of the elements. BAC Brief at 25-26; Postal Service Brief at 35-36. Witness Ayub paraphrases the Capital One Decision stating that “[i]t suffices that the *aggregate* benefits of all kinds received by the Postal Service under the NSA exceed the *aggregate* costs incurred by the Service in return.” (Emphasis in original.) Tr. 2/41. The Commission continues to find that, depending on the particular circumstances of an individual agreement, it is not necessary for every element to be contribution positive for the Agreement to be acceptable. The Commission has financially evaluated the Agreement as a whole. When evaluating all of

the quantified elements of the Bank of America Negotiated Service Agreement, the Commission finds the Agreement as a whole to be contribution negative.

[4012] The Postal Service further argues that the value to the Postal Service of the uncompensated operational commitments agreed to by BAC must be considered when assessing contribution. Postal Service Brief at 26-28. The Postal Service has not provided the Commission with either a qualitative or a quantitative estimate of value for any of the BAC uncompensated operational commitments on this record. Thus, the Commission has no record basis for assigning a value to any of these unquantified elements to include in a financial analysis of the Agreement.

[4013] The Postal Service frames this Agreement as a pay-for-performance agreement where discounts are only paid for actual measured improvements in performance. The Postal Service asserts that:

- this NSA is the first pure cost-savings NSA submitted to the Commission for approval, and the first NSA in which the financial incentives for cost savings are keyed to measured reductions in Postal Service costs through means largely left to the judgment of the mailer (“pay for performance”). Request at 2.
- It is important to note that the Postal Service will not pay any incentives except for actual and measurable improvements in Bank of America’s mail processing performance over the documented baselines. USPS-T-1 at 5.
- As noted above, this Agreement does not require the Postal Service to pay any incentives to BAC unless and until it achieves a measurable improvement in actual mail processing performance—i.e., the read and accept rate of mail processing, and the percentage of UAA mail that must be returned, forwarded, or destroyed. *Id.* at 13.

BAC asserts that:

- Its pay-for-performance nature assures that we collect rate discounts if and only if we save the Postal Service money. BAC-T-1 at 2.

[4014] In discussing other costs that BAC may incur, witness Ayub states: “the incentives in this NSA cannot be associated exclusively with particular activities and results”. Tr. 2/41. The Commission interprets a pay-for-performance agreement as implying a *quid pro quo*; the mailer does something of benefit for the Postal Service, and

the Postal Service provides the mailer with some benefit in return. There should be some substantial relationship, if not a direct relationship, between what the mailer is providing, and the benefit that it is receiving from the Postal Service. Incentives that do not relate to the actions undertaken are not indicative of a real pay-for-performance agreement.

[4015] The Postal Service personnel responsible for negotiating this Agreement presumably intended to achieve a real pay-for-performance arrangement. However, neither those negotiators, nor reviewing personnel, made themselves aware of essential, relevant data and information collected and prepared within the Postal Service itself that shows BAC will probably qualify for the maximum possible processing discounts without any improvement in mail processing performance.

[4016] With the passage of the Postal Accountability and Enhancement Act, the Postal Service has broad authority to negotiate agreements for mailer-specific discounts. If properly exercised, this flexibility should allow both the Postal Service and the mailing community to reap substantial benefits. However, agreements must not be concluded without adequate internal review procedures, and without proper due diligence to obtain the most up-to-date available relevant information. Without adequate internal review procedures, the Postal Service risks undermining the public's trust through poorly developed agreements that squander essential financial resources.

[4017] In this case, an intervening employee organization called attention to relevant information within the Postal Service itself that was unknown to those individuals responsible for negotiating and reviewing this Agreement. The Postal Service must develop procedures to assure that officers negotiating agreements dependent on mail processing performance have and take advantage of access to all sources for the most recent accurate relevant information.

[4018] The Postal Service intended to require BAC to improve its performance relative to baselines related to BAC's performance prior to entering into the Agreement. Because the Postal Service does not know BAC's mailer-specific baseline performance,

it appropriately proposes using systemwide averages as proxies for BAC's read/accept rate baselines.

[4019] In many instances, systemwide averages may be appropriately used when mailer-specific data are unknown. The systemwide averages that the Postal Service chose to employ in this instance, however, have been demonstrated on this record to be out of date and inappropriate as proxies. Because inappropriate baselines are used to measure performance, it is highly probable that the Postal Service will be paying BAC for levels of performance that it has already achieved. It will not be paying BAC to improve its performance. The Commission finds that as evaluated, this is not a pay-for-performance agreement.

[4020] The Commission issued Notice of Inquiry No. 1 to solicit information on how to reduce the problems associated with not having mailer-specific baseline information. The Commission queried whether there was an acceptable method of incorporating mailer-specific information into the baselines as that information became available over the duration of an agreement. Incorporating mailer-specific information would reduce problems associated with use of less than perfect systemwide average proxies. The goal of this exercise was to improve baselines such that incentives could be designed that more accurately pay mailers for improvements in performance that they were actually achieving. Although the co-proponents preferred to stay with the negotiated baselines for this Agreement, the Commission suggests that the Postal Service consider the approaches presented in the NOI in future pay-for-performance agreements.

B. Financial Analysis

[4021] The financial analysis of the Agreement evaluates the potential Postal Service cost savings offset by the payment of discounts associated with each of the six incentive elements of the Agreement. The analysis also includes the additional revenue received due to subscription to Confirm Service. The analysis is performed using Docket No. R2006-1 methodologies, costs, and rates.

[4022] The Commission finds reasonable witness Ayub's assumptions on percentage performance improvements and selections of baselines for First-Class Mail Schedule A and Schedule B return rate reductions, First-Class Mail forwarding rate reductions, and Standard Mail undeliverable-as-addressed reductions. These assumptions are incorporated into the financial analysis. The lowering of fees for Confirm service in Docket No. R2006-1 substantially reduces the revenue from this item from what is shown in the Request. The associated reduction in revenue is reflected in the financial analysis.

[4023] The two elements that dominate the financial impact of the Agreement are the discounts paid and the cost savings associated with First-Class Mail and Standard Mail processing performance improvements. Discounts are paid and cost savings accrued relative to negotiated read/accept rate baselines for First-Class Mail and Standard Mail. The major point of contention in this case is whether the selected baselines are representative of the current state of mail processing for BAC's mail.

[4024] The Postal Service does not know BAC's actual read/accept rates, which could have been used as baselines for measuring relative performance levels. Because of the absence of mailer-specific read/accept rates, the Postal Service asserts that it has no reason to believe that BAC's mail differs from systemwide averages. It then derives baselines from systemwide average data. In developing the baselines, the Postal Service uses read/accept rate data for various automated mail processing operations based on data provided in Docket No. R2006-1, USPS-LR-L-110. It then weighs this data by the 2006 volume of BAC's mail in the rate categories that correspond to those

mail processing operations. Tr. 2/81. The Commission has found that significant improvements in read/accept rates have occurred since the Docket No. R2006-1, USPS-LR-L-110 data were developed, and that it would not be appropriate to rely on this outdated data when more recent data are available.

[4025] The Commission found that data provided in Docket No. MC2007-1, USPS-LR-4 based on data from 2006 and 2007 is more recent, provides a more accurate description of the Postal Service's current read/accept rates, and is reliable for use in this case. Using the more recent data, the Commission calculates BAC's weighted average read/accept rate for First-Class Mail to be 98.7 percent, and 98.8 percent for Standard Mail; a 1.9 percentage point increase above the read/accept rates proposed in the Negotiated Service Agreement for both First-Class and Standard Mail.³² The Commission uses these read/accept rates in its financial analysis.

[4026] If BAC currently is performing at the systemwide averages, as the Postal Service contends, BAC will achieve the maximum read/accept improvements and incentive payments contemplated in the Negotiated Service Agreement without having to make any further improvements in barcode readability. At this level of performance, the Postal Service will not realize delivery or mail processing cost savings. The initial financial analysis assumes BAC is performing at these levels with no further improvements. As BAC will not be eligible for further discounts beyond these levels, it may not have an incentive to make further mail processing improvements on its own.

[4027] The analysis of each component of the Agreement shows that the Postal Service will realize \$45.8 million less in net contribution by entering into the Agreement than it would have realized otherwise. This is summarized in Table IV-1.

³² See New_weighted_average_read_rates.xls, and New Average RA.xls, PRC-LR-1.

Table IV-1
Change in Net Contribution
(Thousands)

Activity	Change in Contribution
First-Class Mail Processing Performance Improvements	-\$24,150
First-Class Mail Schedule A Return Rate Reduction	198
First-Class Mail Schedule B Return Rate Reduction	738
First-Class Mail Forwarding Rate Reduction	136
Standard Mail Processing Performance Improvements	-26,562
Standard Mail Undeliverable-As-Addressed Reduction	3,824
Confirm Revenue	59
Net Change in Contribution	-\$45,757

[4028] The Commission performed a second version of the financial analysis to place a lower bound on the net reduction in contribution. Although BAC will not obtain a financial incentive from improving its read/accept rates beyond current levels, it is possible that BAC's use of Six Sigma, and the commitments it has entered into under the terms of the Negotiated Service Agreement, will still produce improvements in BAC's read/accept rates above the current read/accept rates of 98.7 percent for First-Class and 98.8 percent for Standard Mail. The Commission used the yearly percentages of improvements in read/accept rates assumed by witness Ayub in his model, with the total improvements limited to read/accept rates of 100 percent in Year 3. Using these new assumptions, the analysis of each component of the Agreement shows that the Postal Service will realize \$25.1 million less in net contribution by entering into the Agreement than it would have realized otherwise. This is summarized in Table IV-2. This number is appropriately used only as a lower bound because it assumes improvements over already high read/accept rates, and 100 percent read/accept rates in Year 3.

Table IV-2
Change in Net Contribution
(Thousands)

Activity	Change in Contribution
First-Class Mail Processing Performance Improvements	-\$13,251
First-Class Mail Schedule A Return Rate Reduction	198
First-Class Mail Schedule B Return Rate Reduction	738
First-Class Mail Forwarding Rate Reduction	136
Standard Mail Processing Performance Improvements	-\$16,824
Standard Mail Undeliverable-As-Addressed Reduction	3,824
Confirm Revenue	59
Net Change in Contribution	-\$25,120

[4029] The co-proponents frequently allude to other benefits that the Commission should look to when analyzing the Agreement. The Commission would consider incorporating these benefits into the analysis; however, a record has not been developed which either qualitatively or quantitatively describes how the Commission should undertake this task. Two items, however, are discussed on brief and in a response to the Notice of Inquiry. They discuss potential savings from applying an Intelligent Mail Barcode to reply mail and a reduction of personal knowledge required mail.³³ For future consideration of this Agreement, these items could be further developed and then considered given the following caveats.

[4030] BAC describes potential cost savings for various levels of mail processing improvements from use of Intelligent Mail Barcodes on reply mail. BAC Reply to NOI at 16-17, and Exhibit 2. The estimates rely on read/accept rate information that the Commission has found out of date and must be updated to reflect the most recent information before being considered. There is no record development as to what levels

³³ Personal knowledge required mail is mail with a defect in its address that requires manual intervention by a Postal Service employee with personal knowledge of the local delivery address to complete delivery. BAC NOI Comments at 15.

of improvement are realistically achievable. This is especially relevant given that reply envelopes are typically of high quality and must go through a screening process before being supplied by the mailer.

[4031] The co-proponents were unable to agree on a baseline for personal knowledge required mail and on a method for measuring improvements from a baseline. Thus, this feature was not included in the Agreement. BAC Brief at 18; BAC Reply to NOI at 15-16, and Exhibit 1. If a baseline and measurement method can be developed, this item could be considered.

[4032] The Commission estimates that BAC will contribute nearly \$1.5 billion towards the recovery of the Postal Service's institutional costs and overhead over the three-year period of the Agreement.³⁴ This assumes BAC's mail mix and volumes as presented in the Request. The net reduction in contribution as a result of proceeding with the Negotiated Service Agreement does not significantly reduce the overall level of contribution provided by BAC's mail. Thus, the mail sent by BAC continues to cover its costs after implementation of the Negotiated Service Agreement.

³⁴ See Appendix PRC-LR-1, BAC Contribution.xls.

C. Barcoding of Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail

[4033] “Bank of America will implement use of the Four-State Barcode on all Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail envelopes enclosed in its mail by the Commencement Date.” Request, Attachment F at III.G.1. Certain limited exceptions, and the right to use up existing stock within 12 months of the Commencement Date, are provided.

[4034] Witness Jones testifies that BAC receives approximately 450 million pieces of mail annually that may fall under this requirement. BAC-T-1 at 7. BAC is not directly compensated for incorporating the Four-State Barcode on this mail, even though it should result in reduced Postal Service costs.³⁵ The Postal Service asserts that the additional cost savings realized from this element of the Agreement, in part, will help to mitigate the financial risk from any individual component of the Agreement.³⁶

[4035] BAC was asked to discuss “any logistical problems causing each reply mail piece to bear a unique barcode, or, stated differently, what is the approach that Bank of America will take in implementing this part of the contract[.]” Tr. 2/501. The response, which was very general, did not indicate that much advance planning had been undertaken to comply with this requirement. The statement “[t]he reply mail component of the NSA is one of the many NSA elements that will be handled as an internal ‘Pay for Performance’ approach” does not inspire confidence that this aspect of the Agreement will be successfully met on schedule. Tr. 4/1.

[4036] The Commission finds the contract clearly indicates that Bank of America must promptly implement use of the Four-State Barcode on all Courtesy Reply Mail,

³⁵ Tr. 2/468; BAC Brief at 2, 23; BAC Reply Brief (Redacted Version) at 24-25, 31; Postal Service Brief at 19.

³⁶ Postal Service Reply Brief at 12-13, 14-15. See *also*, BAC Response to NOI at 4, 14, 16-17.

Business Reply Mail, and Qualified Business Reply Mail envelopes.³⁷ It is not a pay-for-performance aspect of the Agreement in the context of BAC only receiving a benefit if it chooses to barcode this mail. Even though there is no direct monetary benefit directly associated with this requirement, it is part of the operational requirements of the Agreement. Both BAC and the Postal Service have stressed that this element will provide financial benefit to the Postal Service, and have argued the value of this element in reducing the Postal Service's financial risk of entering into the Agreement.

[4037] The Commission recommends that the Postal Service and BAC develop an implementation plan to facilitate compliance with this requirement. The Commission further adds item 9 to the data collection plan, which directs the Postal Service to report on compliance with the return mail barcoding requirement upon completion of the first year of the Agreement. The report shall discuss the approaches taken to apply Intelligent Mail Barcodes to the various types of return mail, including whether the barcodes provided unique or generic identification for each type of return mailpiece; discuss any significant problems encountered; report on the volumes of return mail envelopes provided by BAC that include, and that do not include, an Intelligent Mail Barcode (by quarter); and report on the level of compliance with this requirement after the Agreement has been in effect for 12 months. This will provide visibility to better inform the Postal Service on actions it may exercise under the contract. It also will affect the evaluation of this requirement with respect to functional equivalency if similar arrangements are proposed in the future.

³⁷ The contractual limitations allowing use of *existing* inventories of non-barcoded envelopes for up to 12 months, joint or cooperative mailing limitations, and limitations on control over customer mail preparation, are recognized.

D. Competitive Issues

[4038] Every request proposing a Negotiated Service Agreement shall include an analysis of the impact of the Agreement on competitors to the parties to the Agreement, competitors of the Postal Service, and mail users in general. Rule 193(f)(1).

[4039] The Postal Service argues that the Commission has not found any of the previous Negotiated Service Agreements injurious to competitors, and that the same finding is warranted here. It contends that the incentives are not intended to increase the volume of BAC's mail, or produce a measurable effect on the number or type of accounts that BAC may acquire. It further recognizes an obligation to make agreements available on comparable terms to other mailers. USPS-T-1 at 25-27. The Postal Service has not provided any special studies to substantiate its opinion. See rule 193(f)(2).

[4040] No party presented evidence on the record indicating that this Agreement will cause direct competitive harm. However, APWU and Valpak raise several related issues on brief.

[4041] APWU reviews past Commission opinions which articulate policies of revenue neutrality (as a worst case) for recommending Negotiated Service Agreements, and avoiding preferential special low rates for one mailer that may likely result in higher rates for other mailers.³⁸ These remain serious concerns. Although the Commission finds that entering this Agreement comes at a substantial financial cost, the Commission assumes that the Governors will appropriately weigh that cost against the value that they expect to obtain before proceeding with implementing this Agreement.

³⁸ APWU Brief (Redacted Version) at 2-3. APWU also argues that the NSA would effectively de-link single-piece First-Class letter mail from workshare mail contrary to the Commission's Docket No. R2006-1 decision. *Id.* at 5. This concept is not developed in the record or sufficiently developed on brief; thus, the Commission takes no position on this issue.

[4042] Valpak argues that the Postal Service has failed to provide any justification for not using a niche classification as opposed to a Negotiated Service Agreement.³⁹ The Commission's policy has been: "all other things being equal, more inclusive mail classifications are preferable to more restrictive alternatives." PRC Op. MC2002-2, ¶¶ 3037-40. The Negotiated Service Agreement rules direct proponents to justify why they chose a Negotiated Service Agreement classification over a more general classification. Rule 195(a)(1). They are not required to prove that a more general classification is inappropriate. The Commission further allows participants to "inquire into the feasibility of more inclusive classification provisions, and to propose more expansive alternatives...." PRC Op. MC2002-2, ¶ 3040.

[4043] The Postal Service addresses the requirements of rule 195(a)(1) in its Request:

The terms and conditions of the NSA were tailored specifically to the particular characteristics of the mail entered by the Bank of America, and the particular effect of the mail on Postal Service operations and cost, as set forth in the testimonies of witnesses Richard D. Jones (BAC-T-1) and Ali Ayub (USPS-T-1). Because the mailing profiles of other mailers (including other banks) are likely to differ, a generally available classification would not be a reasonable substitute for the NSA presented in this Request.

Request at 3.

[4044] The Commission finds that the Postal Service has minimally complied with the requirements of the Commission's rules, but also finds that Valpak makes a valid point. Proposing a niche classification that encourages wide use of many of the features of this Agreement may have been more fair and equitable to a broader spectrum of mailers and still provide the Postal Service with valuable information on its new and

³⁹ Valpak Brief at 13-16. Valpak also comments that the Agreement was filed as a Negotiated Service Agreement, and that it is not an experiment. Recognizing that this Agreement appears potentially applicable to a large number of bulk mailers, it ponders whether "one could see this NSA as opening the floodgates to a revenue hemorrhage of substantial proportions." *Id.* at 18-21.

innovative systems. However, no specific niche classification is proposed on the record for consideration, and the record does not address whether such a classification could easily be administered.

[4045] Valpak also contends that the Postal Service could be rewarding one mailer for activities that will either be required in the near future or may be undertaken voluntarily by other mailers. *Id.* at 16-18. Witness Ayub has reported that the Intelligent Mail Barcode will be required for certain automation rate mailings, and that Seamless Acceptance and eDropship will be functionally operational/deployed by 2009. Valpak makes its argument in the context of treatment of mailers that may or may not already have implemented various features of the Agreement, and that subsequently seek an incentive-based functionally equivalent agreement. The Commission finds that the issues raised by Valpak may be issues for mailers seeking functionally equivalent agreements, and that the Postal Service should be aware of these issues, but concludes that the issues will best be resolved in the context of proposals or complaints by specific mailers.

E. OCA Discount Cap Proposal

[4046] OCA suggests that the risks associated with the read/accept rate elements of the Agreement should be mitigated. OCA Brief at 7-10. It proposes to mitigate this risk by limiting the discounts available to BAC to an estimated return and forwarding cost savings of \$8,339,991. *Id.* at 1. OCA argues that the relationship between BAC's before- and after- read/accept rates are unknown, and there is substantial evidence that current before- read/accept rates are higher than the baselines incorporated into the Agreement. It contends that this condition parallels similar circumstances occurring with previous Negotiated Service Agreements where the Commission conditioned its recommendation on the addition of a stop-loss cap. OCA further questions whether BAC can actually take actions to improve its read/accept rates, arguing that BAC does not print its own barcodes, has not begun to investigate how the quality of barcodes might be improved, and that the read/accept rates depend primarily on print quality and Postal Service equipment. *Id.* at 7-9.

[4047] BAC and the Postal Service oppose a stop-loss cap. The Postal Service argues that a discount cap "likely would have an adverse effect on BAC's willingness to invest in technology, labor, and other resources to achieve improvements in its mail processing performance, to the detriment of the NSA." Postal Service Reply Brief at 15. It further contends that a discount cap is unnecessary, has not been tested on the record, and does not account for BAC's other operational commitments under the Agreement. *Id.* at 14.

[4048] BAC argues that a discount cap would cut the bargained for benefit of the Agreement by two-thirds. BAC Reply Brief (Redacted Version) at 31-34. It would not give credit for benefits to the Postal Service unrelated to read/accept rates such as the likely savings from barcoding reply mail, and it would increase the Postal Service's financial risk by choking off the financial benefits that the Postal Service otherwise would receive with an uncapped agreement. BAC contends that applying a discount cap would be tantamount to rejection of the Agreement, and states that BAC is only willing to invest

in improvements to the extent that the incremental benefits exceed its expected costs over the three years of the Agreement. *Id.* at 32.

[4049] The Commission does not recommend the addition of a discount cap. Stop-loss caps can be effective tools for mitigating risk. With previous agreements, there was some record basis for determining the level of the stop-loss cap. In each instance the value of the cap exceeded the discounts projected by the participant so as to not choke off benefits to any party, barring unforeseen circumstances. Theoretically, the stop-loss cap would have no effect upon the Agreement.

[4050] In this case, the proposed level of the discount cap is well below the perceived value that the parties to the Agreement have negotiated. Assuming that the parties had confidence in their financial analysis of the Agreement, they would not agree to a discount cap at this level. This practical limitation, under the circumstances of this Agreement, prevents the Commission from recommending the discount cap as proposed.

[4051] A discount cap set at a higher value still could be an effective protective mechanism. However, the record is not sufficient for the Commission to suggest an alternative level for a discount cap. BAC and the Postal Service frequently allude to other benefits to the Postal Service through the operational commitments made by BAC. None of these benefits are quantified on the record. Without more information, the Commission can not establish a discount cap without potentially creating an adverse effect on the Agreement.

F. Statutory Criteria

[4052] In every rate and classification decision, the Commission is required to evaluate how the criteria of sections 3622 and 3623 apply to the pending proposal. The Commission has reviewed each of the applicable factors and determined that on balance, its recommended decision is consistent with the policies of the Postal Reorganization Act.

[4053] The Commission first considers whether the proposed classification is consistent with the establishment and maintenance of a fair and equitable rate schedule and classification system for all mail. § 3622(b)(1) and § 3623(c)(1). In every request predicated on a Negotiated Service Agreement the Commission considers the impact of the Agreement on competitors to the parties of the Agreement (other than the Postal Service), competitors of the Postal Service, and mail users in general. Rule 193(f). No record evidence has been presented indicating any adverse effect on competitors to either party to the Agreement.

[4054] Valpak has raised issues concerning the details of implementing functionally equivalent agreements with other mailers which relate to the fairness and equity of the Agreement. To help mitigate these concerns, the Postal Service clearly recognizes its obligation to make functionally equivalent agreements available where appropriate.

[4055] The Commission estimates that the Postal Service will realize less net contribution as a result of entering into this Agreement than it would have without the Agreement. This loss will have to be made up by all users of the mail. This may or may not be fair and equitable to other users of the mail depending on the extent of the other benefits the Postal Service expects from entering into the Agreement. It potentially also creates an adverse “effect of rate increases upon the general public, [and] business mail users....” § 3622(b)(4). Counterbalancing these negatives, the Postal Service asks consideration of potential, but unquantified, benefits from operational commitments that BAC has agreed to. Witness Ayub also asks consideration of “the value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified

mail” under § 3622(c)(13) of the PAEA. USPS-T-1 at 30. These considerations help mitigate the adverse financial impact on users of the mail.

[4056] Given the conclusion that the Postal Service will realize less net contribution as a result of entering into this Agreement, the postal services provided must: “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.”

§ 3622(b)(3). Although the Commission finds that there will be a net contribution loss, revenues will still be greater than the attributable costs for BAC’s mail. The portion of all other costs of the Postal Service reasonably assignable to such class or type is reduced from what was determined to be fair and equitable in the previous omnibus rate case, but the reduction may not be unreasonable when considering the unquantified potential of this Agreement.

[4057] This Agreement is designed to provide incentives to encourage BAC to improve the mail processing and quality of its mail. Importantly, it requires use of the Intelligent Mail Barcode that will soon be required for all deep discount mail. It also promotes use of several advanced mail processing systems. To the extent that it achieves these objectives, the Agreement should enhance “the degree of preparation of mail for delivery into the postal system performed by the mailer” and have a positive “effect upon reducing costs to the Postal Service.” § 3622(b)(6).

[4058] Negotiated Service Agreements allow the Postal Service to tailor its rates and services to the particular needs of individual mailers. They also potentially facilitate mail preparation by the mailer in a way that is advantageous for the Postal Service to handle. Thus, the Negotiated Service Agreement classification is highly desirable from the point of view of both the user and the Postal Service. § 3622(b)(5). Although a high degree of tailoring of agreements can be beneficial, some of this benefit may be lost, as in the BAC Agreement, when the Postal Service must rely on systemwide data because of the unavailability of mailer-specific information.

[4059] OCA argues that the future policies of the PAEA have no legal force in this docket. OCA Brief at 2. BAC provides argument to the contrary contending that the

effect of the PAEA should be considered. BAC Reply Brief (Redacted Version) at 34-36. The Commission finds the enactment of the PAEA a clear Congressional expression of public policy. The Commission therefore concludes that the enunciated policies and objectives of that legislation are both material and relevant, and that they should be applied under the aegis of “such other factors as the Commission deems appropriate.” §§ 3622(b)(9) and 3623(c)(6).

[4060] One goal of the PAEA is to provide the Postal Service with a level of flexibility to set rates and develop classifications, including the ability to enter into mailer-specific agreements that it finds beneficial. To provide this flexibility, it is necessary to shift the initial responsibility to review and to determine whether or not to proceed with mailer-specific agreements to the Governors of the Postal Service. The Commission provides this Opinion and Recommended Decision with its analysis of the BAC Agreement, both financial and statutory, to the Governors for consideration. Although the Commission’s review is consistent with the legislation that predates the PAEA, the Commission is well aware that review under PAEA standards is soon to become the norm.

[4061] BAC is a very high-volume sophisticated mailer that has the experience to mail utilizing complicated rate and fee structures. The rates under this Agreement are not available to other mailers. Thus, the “simplicity of structure for the entire schedule and simple, identifiable relationships between rates and fees” is not an issue in this case. § 3322(b)(7).

[4062] This Agreement has *de minimus* effect on the value of the mail service or kinds of mail (§ 3622(b)(2) and § 3623(c)(2)), the importance of classifications with high degrees of reliability and speed of delivery (§ 3623(c)(3)), and the importance of classifications which do not require high degrees of reliability and speed of delivery (§ 3623(c)(4)). Current tariff rates remain available to all users of the mail. Thus, this Agreement does not impact “the available alternative means of sending and receiving letters and other mail matter at reasonable costs[.]” § 3622(b)(5). The mail matter sent by BAC and received by the recipients is generally business related in nature. “[T]he

educational, cultural, scientific, and informational value to the recipient of mail matter” is not the primary focus of this type of mail. § 3622(b)(8).

G. DMCS Language

[4063] The Commission recommends the Domestic Mail Classification Schedule language proposed by the Postal Service in its Request at Attachment A with minor technical corrections that should have no effect on the intended meaning.

[4064] The Commission recommends Rate Schedules 630A, 630B, 630C, 630D and 630E as proposed by the Postal Service in its Request at Attachment B with minor technical changes to improve the presentation of the data.

H. Data Collection Plan

[4065] The Commission provides a data collection plan based on the plan proposed by witness Ayub. USPS-T-1 at 24-25. The reporting format was modified to facilitate replication of the financial analysis of the Agreement. An item was added requiring the reporting of discounts paid. See Tr. 2/129. An item also was added requiring a report on barcoding of Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail.

[4066] The data collection and reporting requirements for BAC's letter-shaped mail, as defined in the Agreement at ¶ II.Q, are set out below:

1. Volume of Schedule A First-Class Mail by rate category in eligible BAC permit accounts.
2. Volume of Schedule B First-Class Mail by rate category in eligible BAC permit accounts.
3. Volume of Standard Mail by rate category in eligible BAC permit accounts.
4. Actual performance levels for each of the six rate incentives, and incremental improvements/degradations relative to each of the six baselines.
5. Discounts paid by each of the six rate incentive categories.
6. Measured data necessary to complete Table IV-3.
7. Confirm delivery and processing reports.
8. Report of FAST scores.
9. Report on compliance with barcoding of Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail (at completion of the first year only).
10. As part of each data collection plan report, the Postal Service will provide an evaluation of the impact of the Agreement on contribution, showing all calculations.
11. A comparison of the estimated mailer-specific costs, volumes, and revenues with the actual mailer-specific costs, volumes, and revenues.

12. Monthly estimate of the amount of time spent on compliance activity and a description of the activities performed.

Table IV-3

	MAIL CATEGORY							
	Schedule A First-Class Mail				Schedule B First-Class Mail		Standard Mail	
	Right to Physical Return Retained		Right to Physical Return Waived		Right to Physical Return Waived		No Physical Return	
Volumes	Physical Return, Without Electronic Notice	Physical Return, With Electronic Notice	Physical Return, Without Electronic Notice	No Physical Return, With Electronic Notice	Physical Return, Without Electronic Notice	No Physical Return, With Electronic Notice	Without Electronic Notice	With Electronic Notice
Returned (Physical or Electronic)								
Forwarded								
Undeliverable- As-Addressed								
First-Pass Successful Read								
Accepted								
<p>Note: Additional data may be supplied as necessary to provide a more accurate representation of the status of the Negotiated Service Agreement. For example, data that technically does not fit in the above categories, but that is necessary for evaluating the Agreement, may be broken out and reported separately.</p>								

Notes:

1. Schedule A First-Class Mail is defined in the Agreement at ¶ II.DD, and generally refers to operational mail.
2. Schedule B First-Class Mail is defined in the Agreement at ¶ II.EE and generally refers to solicitations mail.
3. Electronic Notice refers to Electronic OneCode ACS.
4. Data are to be presented by quarter for items 1, 2, 3, 4, 5, and 6 to coincide with the determination of discounts under the Agreement.

5. The Data Collection Report shall be reported to the Commission annually.
6. Each report is to be provided within 90 days after the anniversary of the date of implementation of the Negotiated Service Agreement.
7. The Postal Service shall provide the data in a PC-available format.

I. Conclusion

[4067] The Commission has reviewed the evidentiary record pursuant to its statutory obligation under chapter 36 of title 39 of the U.S. Code. This includes an independent review of the evidentiary testimony of Postal Service witnesses Ayub and Raney, the testimony of Bank of America witness Jones, the designated written cross-examination, and the designated responses to a Presiding Officer's Information Request. The responses to a Notice of Inquiry also help inform the Commission. This review leads to the conclusion that the record supports the proposed classification changes and the related discounts set out in the February 7, 2007 Request, and that these changes are consistent with the policies of the Postal Reorganization Act. The Commission therefore recommends to the Governors of the Postal Service that the DMCS be amended as set forth in Appendices One and Two of the accompanying Recommended Decision.

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

Before Commissioners:

Dan G. Blair, Chairman;
Dawn A. Tisdale, Vice Chairman;
Mark Acton, Ruth Y. Goldway and Tony
Hammond

Rate and Service Changes to Implement
Baseline Negotiated Service Agreement with
Bank of America Corporation

Docket No. MC2007-1

RECOMMENDED DECISION

(Issued October 3, 2007)

The Commission, having considered the Postal Service Request, has issued its Opinion thereon. Based on that Opinion, which is attached hereto and made a part hereof,

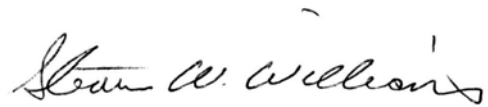
IT IS ORDERED:

1. The Commission's Opinion and Recommended Decision shall be transmitted to the Governors of the Postal Service and that the Governors shall thereby be advised that the proposed discounts (set forth in Appendix One) and the proposed amendments to the Domestic Mail Classification Schedule (set forth in Appendix Two) are in accordance with the policies of title 39 of the United States Code and the factors set forth in §§ 3622(b) and 3623(c) thereof; and they are hereby recommended to the Governors for approval.

Docket No. MC2007-1

2. Except to the extent granted or otherwise disposed of herein, all motions, exceptions, and other outstanding requests filed in Docket No. MC2007-1 hereby are denied.

By the Commission.

A handwritten signature in cursive script that reads "Steven W. Williams". The signature is written in black ink and is positioned centrally on the page.

Steven W. Williams
Secretary

CONCURRING OPINION OF COMMISSIONER GOLDWAY

The new PAEA provides the Postal Service with the flexibility to adjust rates within classes of mail for market-dominant products, adopt special classifications that improve the net financial position or increase the efficiency of operations, and to price and market competitive products to accrue profits.

It also gives the PRC expanded oversight with regard to the financial soundness, efficiency, and fairness of Postal Service operations.

The negotiated service agreement (NSA) before the Commission demonstrates that the Postal Service is not yet capable of negotiating a good bargain within the framework of the PAEA. The Commission's majority opinion points out serious shortcomings in Postal Service management decision making. First, and foremost, through this NSA, the Postal Service will lose between \$25 and \$45 million and opens itself — if it is to be fair to other similarly situated mailers — to lose much more.

Second, the record of the case indicates that Postal Service negotiators did not prepare themselves with all the necessary financial and costing data when conducting the bargaining process with Bank of America. And third, the complex bureaucracy of the Postal Service has not yet been capable of identifying, analyzing, and distributing the appropriate data needed to make accurate cost-benefit decisions, nor did it pass on the data it did have to the group assigned to enter into negotiations for the NSA.¹

¹ Robinson, et al., *Negotiated Volume Discounts in a Regulated Post*, available on the Commission's website, www.prc.gov, provides an instructive analysis of the impact of previously approved negotiated service agreements.

This is the first opportunity the Commission has had to act on an NSA since passage of the new law.² I appreciate that my fellow Commissioners want to show their support for the concepts embodied in the new law and express their willingness to give the flexibility to the Postal Service provided therein. In the scheme of a \$75 billion budget, it will not be significant if the Postal Service loses \$45 million on an experimental venture. Therefore, I am willing to go along with the majority and approve the Bank of America NSA.

However, I feel obliged to emphasize that the flaws identified above in the Postal Service/business bargaining process do not bode well for the Postal Service under the PAEA regime. Unless the Postal Service takes the cautionary advice provided within the Commission's opinion, it may find it difficult to participate in a significant number of NSAs and still operate within the price cap, much less be optimistic that profits can be made in the competitive products sector.

I commend Commissioner Tisdale, the only one of my fellow Commissioners with direct operational experience at the Postal Service, for his forthright dissent. I am hopeful that his strong statement and my more detailed description of the concerns he identified will prove helpful to the Postal Service.



Ruth Y. Goldway, Commissioner

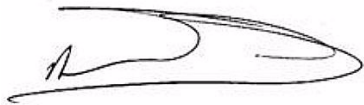
² I recognize that the PAEA system of rate regulation has not yet been implemented, so that this request arguably could have been evaluated giving less weight to the new legislation.

DISSENTING OPINION OF VICE-CHAIRMAN TISDALE

I and my colleagues have long been strong supporters of negotiated service agreements. It is sound policy to encourage agreements designed to take advantage of special situations that should benefit the Postal Service and one or more private sector partners, without harming either competitors or other mail users.

My review of the evidence in this case leads me to conclude that the proposed arrangement with Bank of America is not such an agreement. I do not reach this conclusion simply because the Postal Service "might" lose money. I realize that businesses enter into many contracts with knowledge that future events may lead to unexpected results.

In this instance, the Postal Service has information showing that this is a bad deal financially that is likely to be viewed by other mailers as discriminatory. It is too certain that the Postal Service will lose money, and certain that the losses will be too substantial, between \$25 - \$45 million, for me to recommend this agreement.



Dawn A. Tisdale, Vice Chairman

RECOMMENDED CHANGES IN RATE SCHEDULES

The following changes represent the rate schedule recommendations of the Postal Regulatory Commission in response to the Postal Service's Docket No. MC2007-1 Request. The changes require the addition of five new rate schedules — 630A, 630B, 630C, 630D and 630E.

**BANK OF AMERICA CORPORATION NSA
RATE SCHEDULE 630A
(FIRST-CLASS MAIL IMPROVED MAIL PROCESSING PERFORMANCE)**

Incremental Improvement	Rate Incentive (Per Piece)
0.1%	\$0.00032
0.2%	\$0.00065
0.3%	\$0.00097
0.4%	\$0.00129
0.5%	\$0.00162
0.6%	\$0.00194
0.7%	\$0.00227
0.8%	\$0.00260
0.9%	\$0.00292
1.0%	\$0.00325
1.1%	\$0.00358
1.2%	\$0.00391
1.3%	\$0.00424
1.4%	\$0.00457
1.5%	\$0.00483
1.6%	\$0.00506
1.7%	\$0.00529
1.8%	\$0.00552
1.9%	\$0.00575

SCHEDULE 630A NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).
2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedule 221.

**BANK OF AMERICA CORPORATION NSA
RATE SCHEDULE 630B
(FIRST-CLASS MAIL REDUCED RETURN RATES)**

Incremental Improvement	Rate Incentive Schedule A (Per Piece)	Rate Incentive Schedule B (Per Piece)
10.0%	\$0.00022	\$0.00360
20.0%	\$0.00037	\$0.00390
30.0%	\$0.00053	\$0.00420
40.0%	\$0.00068	\$0.00450
50.0%	\$0.00083	\$0.00480
60.0%	\$0.00099	\$0.00510
70.0%	\$0.00114	\$0.00540
80.0%	\$0.00130	\$0.00570
90.0%	\$0.00145	\$0.00600

SCHEDULE 630B NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).
2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedule 221.

**BANK OF AMERICA CORPORATION NSA
RATE SCHEDULE 630C
(FIRST-CLASS MAIL REDUCED FORWARDING RATES)**

Incremental Improvement	Rate Incentive (Per Piece)
10%	\$0.00013
20%	\$0.00030
30%	\$0.00047
40%	\$0.00064
50%	\$0.00081
60%	\$0.00098
70%	\$0.00116
80%	\$0.00133
90%	\$0.00150

SCHEDULE 630C NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).
2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedule 221.

**BANK OF AMERICA CORPORATION NSA
RATE SCHEDULE 630D
(STANDARD MAIL LETTERS
IMPROVED MAIL PROCESSING PERFORMANCE)**

Incremental Improvement	Rate Incentive (Per Piece)
0.1%	\$0.00024
0.2%	\$0.00049
0.3%	\$0.00073
0.4%	\$0.00097
0.5%	\$0.00122
0.6%	\$0.00146
0.7%	\$0.00171
0.8%	\$0.00195
0.9%	\$0.00220
1.0%	\$0.00244
1.1%	\$0.00269
1.2%	\$0.00294
1.3%	\$0.00319
1.4%	\$0.00343
1.5%	\$0.00363
1.6%	\$0.00379
1.7%	\$0.00396
1.8%	\$0.00419
1.9%	\$0.00466

SCHEDULE 630D NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).
2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedules 321B or 322.

**BANK OF AMERICA CORPORATION NSA
RATE SCHEDULE 630E
(STANDARD MAIL LETTERS
REDUCED UNDELIVERABLE-AS-ADDRESSED RATES)**

Incremental Improvement	Rate Incentive (Per Piece)
10%	\$0.00040
20%	\$0.00060
30%	\$0.00100
40%	\$0.00110
50%	\$0.00130
60%	\$0.00150
70%	\$0.00170
80%	\$0.00170
90%	\$0.00170

SCHEDULE 630E NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).
2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedules 321B or 322.

**RECOMMENDED CHANGES IN
DOMESTIC MAIL CLASSIFICATION SCHEDULE**

The following material represents changes to the Domestic Mail Classification Schedule recommended by the Postal Regulatory Commission in response to the Postal Service's Docket No. MC2007-1 Request. The underlined text signifies that the text is new, and shall appear in addition to all other Domestic Mail Classification Schedule text. Information to be added upon approval by the Board of Governors appears in brackets and is underlined.

**NEGOTIATED SERVICE AGREEMENTS
CLASSIFICATION SCHEDULE**

630 BANK OF AMERICA CORPORATION NEGOTIATED SERVICE AGREEMENT**630.1 Definitions**

The following terms shall have the meanings ascribed to them in the Negotiated Service Agreement (NSA or Agreement) between Bank of America Corporation (Bank of America) and the United States Postal Service (Postal Service): Bank of America mail, Confirm service, Courtesy Reply Mail, eDropship, FAST (Facility Access and Shipment Tracking System), Four-State Barcode (OneCode), Letter-Rated Mail, OneCode ACS, PostalOne!®, Qualifying Permit Numbers, Schedule A First-Class Mail, Schedule B First-Class Mail, and Seamless Acceptance.

630.2 Eligible Mail

630.21 **Bank of America.** Bank of America mail eligible for discounts under Rate Schedules 630A, 630B, 630C, 630D, and 630E is limited to letter-rated mail that (1) is entered by or on behalf of Bank of America or a subsidiary or affiliate, (2) relates to the business activities of Bank of America or a subsidiary or affiliate, and (3) complies with the machinability requirements specified in the Agreement. Such mail includes cooperative mailings and mail entered pursuant to marketing arrangements with other entities.

630.22 **Other Mailers.** Functionally equivalent NSAs, involving worksharing discounts for performance-based improvements resulting from (1) the implementation of Four-State Barcode, OneCode ACS, Confirm service, Seamless Acceptance, FAST, and eDropship, (2) the barcoding of Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail, and (3) the adoption of electronic Address Correction Service in lieu of physical returns for letter-rated First-Class Mail that would otherwise be eligible for Standard Mail rates, may be entered into with other customers, as specified by the Postal Service, and implemented pursuant to proceedings under chapter 36 of title 39, of the United States Code.

630.3 Operational Commitments of Bank of America

- 630.31** **Four-State Barcode.** Bank of America will use the Four-State Barcode on all Bank of America mail entered under a Qualifying Permit Number as letter-rated First-Class Mail or Standard Mail.
- 630.32** **OneCode ACS.** Bank of America will place OneCode ACS markings on all Bank of America mail entered under a Qualifying Permit Number as letter-rated First-Class Mail and Standard Mail, subject to the conditions and exceptions set forth in the text of the NSA.
- 630.33** **Waiver of Physical Return of Certain Letter-Rated Mailpieces.** Bank of America will accept electronic information about certain kinds of undeliverable-as-addressed letter-rated mailpieces instead of their physical return, as specified in the text of the NSA.
- 630.34** **Confirm Service.** Bank of America will implement use of Confirm service in accordance with section 991. Bank of America will use Confirm service for all Bank of America mail entered under a Qualifying Permit Number as letter-rated First-Class Mail and Standard Mail.
- 630.35** **Seamless Acceptance.** Bank of America will use seamless acceptance for Bank of America mail entered under a Qualifying Permit Number as letter-rated First-Class Mail and Standard Mail. Bank of America will use a Mail.dat file (or Web-services) in conjunction with Four-State Barcodes to enable the Postal Service to use performance-based verification procedures for mail entered by Bank of America, subject to the conditions and exceptions set forth in the text of the NSA.
- 630.36** **FAST and eDropship.** Bank of America will use the automated scheduling services provided to the FAST system through the PostalOne! electronic data exchange services to enter its letter-rated Standard Mail mailpieces with destination entry discounts, subject to the conditions and exceptions set forth in the text of the NSA.
- 630.37** **Barcoding of Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail.** Bank of America will implement use of the Four-State Barcode on all Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail envelopes enclosed in its mail. All mailpieces will be machinable, automation compatible, and properly marked with a OneCode Four-State Barcode. This requirement is subject to certain conditions and exceptions as provided in the text of the NSA.

630.4 **Discounts**

630.41 **General Terms and Conditions.** The Postal Service shall pay rate discounts in the form of refunds to Bank of America for improved address quality and mail processing in accordance with the text of the NSA. Discounts shall be calculated as adjustments to the rates of postage otherwise established by the DMM. Discounts shall be determined quarterly, over the life of the Agreement, based on Bank of America's actual mail volumes and address quality for each quarter just ended, subject to the conditions in the text of the NSA.

630.42 **First-Class Mail Discounts**

630.421 **Discounts for Improved Mail Processing.** Eligible mail that is sent via First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221, less the discounts shown in Rate Schedule 630A for improved mail processing performance for letter-rated First-Class Mail mailpieces.

630.422 **Discount Formula for Improved Mail Processing.** The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630A:

- a. The Postal Service will determine the total number of letter-rated First-Class Mail mailpieces of Bank of America mail that are read and accepted during their first pass through Postal Service mail sorting equipment during an applicable quarter.
- b. The Postal Service will divide the number identified in section 630.422(a) above by the total number of letter-rated First-Class Mail mailpieces of Bank of America mail that receive a first pass through Postal Service mail sorting equipment during the same quarter.
- c. The Postal Service will subtract the baseline value set forth in the agreement from the percentage obtained in section 630.422(b) to obtain the incremental improvement within the meaning of the table in Rate Schedule 630A.

630.423 **Discounts for Reduced Return Rates.** Eligible mail that is sent via First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221, less the discounts shown in Rate Schedule 630B for reduced return rates for letter-rated First-Class Mail mailpieces.

630.424 **Discount Formula for Reduced Return Rates.** The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630B:

- a. The Postal Service will identify the number of undeliverable-as-addressed letter-rated First-Class Mail mailpieces of Bank of America mail that have been returned to the sender by the Postal Service, as determined through OneCode ACS, for the applicable quarter.
- b. The Postal Service will divide the number identified in section 630.424(a) above by the total number of letter-rated First-Class Mail mailpieces of Bank of America mail for the applicable quarter.
- c. The percentage obtained in section 630.424(b) will be subtracted from the applicable baseline undeliverable-as-addressed rate set forth in the Agreement, and the difference divided by that baseline undeliverable-as-addressed rate. The result, expressed as a percentage, will serve as the incremental improvement percentage used to determine the applicable rate incentive in Rate Schedule 630B.

630.425 **Discount for Reduced Forwarding Rates.** Eligible mail that is sent via First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221, less the discounts shown in Rate Schedule 630C for reduced forwarding rates for letter-rated First-Class Mail mailpieces.

630.426 **Discount Formula for Reduced Return Rates.** The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630C:

- a. The Postal Service will identify the number of undeliverable-as-addressed letter-rated First-Class Mail mailpieces of Bank of America mail that have been forwarded by the Postal Service, as determined through OneCode ACS, for the applicable quarter.
- b. The Postal Service will divide the number identified in section 630.426(a) above by the total number of letter-rated First-Class Mail mailpieces of Bank of America mail for the applicable quarter.
- c. The percentage obtained in section 630.426(b) will be subtracted from the baseline forwarding rate set forth in the Agreement, and the difference divided by that baseline forwarding rate. The result, expressed as a percentage, will serve as the incremental improvement

percentage used to determine the applicable rate incentive in Rate Schedule 630C.

630.43 **Standard Mail Discounts**

630.431 **Discounts for Improved Mail Processing.** Eligible mail that is sent via Standard Mail is subject to the otherwise applicable Standard Mail postage in Rate Schedules 321B or 322, less the discounts shown in Rate Schedule 630D for improved mail processing performance for letter-rated Standard Mail mailpieces.

630.432 **Discount Formula for Improved Mail Processing.** The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630D:

- a. The Postal Service will determine the total number of letter-rated Standard Mail mailpieces of Bank of America mail that are read and accepted during their first pass through Postal Service mail sorting equipment during an applicable quarter.
- b. The Postal Service will divide the number identified in section 630.432(a) by the total number of letter-rated Standard Mail mailpieces of Bank of America mail that receive a first pass through Postal Service mail sorting equipment during the same quarter.
- c. The Postal Service will subtract the baseline value set forth in the Agreement from the percentage obtained in section 630.432(b) to obtain the incremental improvement percentage within the meaning of the table in Rate Schedule 630D.

630.433 **Discounts for Reduced Undeliverable-As-Addressed Rates.** Eligible mail that is sent via Standard Mail is subject to the otherwise applicable Standard Mail postage in Rate Schedules 321B or 322, less the discounts shown in Rate Schedule 630E for reduced undeliverable-as-addressed rates for letter-rated Standard Mail mailpieces.

630.434 **Discount Formula for Reduced Undeliverable-As-Addressed Rates.** The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630E:

- a. The Postal Service will identify the number of undeliverable-as-addressed letter-rated Standard Mail mailpieces of Bank of America mail

that have been returned by the Postal Service, as determined through OneCode ACS, for the applicable quarter.

- b. The Postal Service will divide the number identified in section 630.434(a) above by the total number of letter-rated Standard Mail mailpieces of Bank of America mail for the applicable quarter.
- c. The percentage obtained in section 630.434(b) will be subtracted from the baseline undeliverable-as-addressed rate set forth in the Agreement, and the difference divided by that baseline undeliverable-as-addressed rate. The result, expressed as a percentage, will serve as the incremental improvement percentage used to determine the applicable rate incentive in Rate Schedule 630E.

630.5 Rounding Convention

For the purposes of the Agreement, the following rounding convention will apply:

- a. numbers expressed as percentages will be rounded to the nearest tenth of a percent, and
- b. numbers expressed in dollars and cents will be rounded to the nearest thousandth of a cent.

630.6 Rates and Fees

The rates applicable to this Agreement are set forth in the following Rate Schedules:

630A
630B
630C
630D
630E

630.7 Expiration

The provisions of section 630 expire on [insert date three years from implementation date set by the Board of Governors].

630.8 **Precedence**

To the extent any provision of section 630 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

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