

Respondents Obligation to Reply:

Voluntary.

Burden on the Public:

- a. *Annual reporting burden:* 80 hours.
- b. *Annual record keeping burden:* 0 hours.
- c. *Estimated average burden per response:* 8 minutes.
- d. *Frequency of response:* One time.
- e. *Estimated number of likely respondents:* 600.
- f. *Estimated costs to respondents:* 0.

This notice issued in Washington, DC, on March 28, 2006.

Al Miller,

Chief, Administrative Services Division.

[FR Doc. 06-3244 Filed 4-4-06; 8:45 am]

BILLING CODE 6051-01-M

POSTAL RATE COMMISSION

[Docket No. MC2006-3; Order No. 1458]

Negotiated Service Agreement

AGENCY: Postal Rate Commission.

ACTION: Notice and order.

SUMMARY: This document informs the public that the Postal Service and Washington Mutual Bank (WMB) are seeking Commission approval of an agreement they have reached involving discounted First-Class Mail rates for certain WMB solicitation mail. The document describes the agreement, identifies certain preliminary decisions, and addresses procedural steps, including key deadlines.

DATES: 1. *April 21, 2006:* Deadline for intervention. 2. *April 25, 2006:* Reserved for prehearing conference.

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

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Procedural History

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

Negotiated Service Agreement Final Rule, 69 FR 7574 (February 18, 2004).

On March 29, 2006, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a Negotiated Service Agreement (NSA) with Washington Mutual Bank.¹ The

NSA is proffered as a new baseline NSA. The Request, which includes six attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*²

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

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

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

The Postal Service has filed a request to establish settlement procedures.⁵ The Postal Service believes that there is a

distinct possibility of settlement as the substance of the agreement concerns the availability of declining block rates, which are now a well established feature of NSAs. The Postal Service further asserts that the new features of the agreement consist of risk mitigation safeguards.

The Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 195 [39 CFR 3001.193, 3001.195]. It has filed a motion requesting that if the Commission concludes that the submitted materials and incorporations are not sufficient, that those requirements be waived.⁶

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

I. The WMB NSA

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

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

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

² 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.

³ USPS-T-1 at 2.

⁴ United States Postal Service Proposal for Limitation of Issues, March 29, 2006.

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

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

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 Washington Mutual Bank, March 29, 2006 (Request).

forwarded. WMB also will apply for participation in the *PostalOne!* system for permit mail that is entered directly into the mailstream by WMB. Furthermore, the NSA envisions that WMB will use commercially reasonable efforts to implement OneCode ACS, once such service becomes available.

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

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

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

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

II. Commission Response

Applicability of the rules for baseline NSAs. For administrative purposes, the Commission has docketed the instant filing as a request predicated on a baseline NSA as described by rule 195 [39 CFR 3001.195].

Request for waiver of certain filing requirements. Although the Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 195 [39 CFR 3001.193, 3001.195], it has filed a Request for Waiver if the Commission concludes that the submitted materials and

incorporations are not sufficient. Such requests sometimes serve a purpose under the Commission's general filing rules, when compliance with the standard filing requirements far exceeds what is required to justify a particular proposal. However, the rules promulgated for NSAs attempt to narrow the filing requirements to only what is necessary, and are specific as to what is required. Because the rules are narrow and specific, a request for waiver should also be narrow and specific as to the request to waive a particular item. General requests for waivers of filing requirements do not meet this standard. The Postal Service's Request for Waiver is denied. If, at a later time, it is concluded that a specific filing requirement has not, need not, or cannot be met, the Postal Service may, without prejudice, request a waiver of that requirement.

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

The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall report on the status of settlement discussions at the prehearing conference. The Commission authorizes the settlement coordinator to hold settlement conferences and will make the Commission's hearing room available for such conferences. Authorization of settlement discussions does not constitute a finding on the proposal's procedural status or on the need for a hearing.

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

Intervention. Those wishing to be heard in this matter are directed to file a notice of intervention on or before

April 21, 2006. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (<http://www.prc.gov>), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR 3001.9a and 3001.10a]. Notices should indicate whether participation will be on a full or limited basis, and shall indicate if a hearing on this Request is desired. See rules 20 and 20a [39 CFR 3001.20 and 3001.20a].

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

Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2006-3 to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. The Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, March 29, 2006, is denied, without prejudice.

4. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.

5. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

6. The deadline for filing notices of intervention is April 21, 2006.

7. A prehearing conference will be held April 25, 2006 at 9:30 a.m. in the Commission's hearing room.

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

By the Commission.

Issued: March 31, 2006.

Steven W. Williams,
Secretary.

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

⁸ USPS-T-1 at 31.