

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

COMPETITIVE PRODUCT PRICES
GLOBAL DIRECT CONTRACTS (MC2009-9)
NEGOTIATED SERVICES AGREEMENT

Docket No.
CP2009-18

**REPLY OF UNITED STATES POSTAL SERVICE TO PUBLIC REPRESENTATIVE
COMMENTS IN RESPONSE TO ORDER NO. 159**
(January 7, 2009)

The Postal Service hereby offers comments in reply to those filed in response to the Commission's Order No. 159 by the Public Representative on January 5, 2009. The Postal Service welcomes the Public Representative's concurrence that "this Negotiated Service Agreement (NSA) is appropriately categorized as a competitive product and comports with the PAEA statutory requirements . . . and appears to be functionally equivalent to the existing product agreements."¹ However, because the Public Representative uses this docket as an occasion to recommend a Commission study into alleged "privileged access to recipient-nation delivery charges (such as bilateral negotiated rates or terminal dues) and disparate customs clearance treatment,"² the Postal Service wishes to file this brief reply to dispel any concerns raised in the Public Representative's submission.

¹ Public Representative Comments in Response to Order No. 159, January 5, 2009, at 1.

² *Id.* at 13.

The Public Representative acknowledges that this docket is not the appropriate forum in which to address the concerns he raises.³ Thus, he encourages the Commission to undertake a Public Inquiry to create such a forum. The Postal Service does not believe that any such review is necessary. Moreover, there already exists a forum for the Commission to present its views on the subjects raised by the Public Representative, and it would accordingly be contrary to sound economy of government operations to duplicate existing processes for consideration of these matters.

With regard to its access to terminal dues, it is difficult to understand the apprehension expressed by the Public Representative in context. The very definition of “universal postal service,” which every member country of the Universal Postal Union (UPU) must provide, is “the permanent provision of quality basic postal services at all points in a member country’s territory, for all customers, at affordable prices.”⁴ These international rates are established through a years-long treaty negotiation process among the 191 member countries of the UPU, are reviewed by the PRC and are ultimately approved by the State Department when it signs the draft Acts, which are then ratified by the President. Terminal dues rates are paid on reciprocal exchanges of mail between postal operators designated by governments to fulfill the mandatory universal service obligations of the UPU treaty. The rates are designed to cover worldwide average costs, which entails underpayment on some items and overpayment on other items. The assertion made by the Public Representative that terminal dues are favorable rates which are less than rates available to other mailers⁵ does not reflect the

³ *Id.* at 11.

⁴ Universal Postal Convention art. 1.1.

⁵ Public Representative’s Comments at 8-9.

reality of the international mail market. Rates more favorable than terminal dues rates are available to other mailers, especially in the case of heavier weight items, such as publications and advertising mail.

Suggestions that the terminal dues rates that flow from the Acts create an unfair advantage for postal operators over private operators also overlook the many differences between the Postal Service and private operators. Without belaboring the details of these differences, a few of the more meaningful ones can be identified. First, private operators are created to generate profits and are free to target only the most lucrative markets (“cream-skimming”), unlike postal operators that must fulfill domestic universal service obligations, other domestic legislative mandates, and the international universal service provisions of the UPU Acts. Second, private operators can offer unidirectional service to or from a country without having to carry reverse traffic at a loss, while postal operators must offer reciprocity to their counterparts in the UPU so as to fulfill the Convention’s aim of creating a single postal territory. Third, private operators are not designed to serve individual (single-piece) customers or offer network delivery services, and they therefore can operate with comparatively negligible infrastructure expense. Postal operators, in contrast, must maintain very different network structures to support universal service.

Finally, postal operators and private operators differ in regard to their customer bases. Private operators cater primarily to bulk business customers: a more cost-effective strategy than handling single-piece mail, while postal operators are obligated to carry and deliver single-piece mail, including letters, parcels, and printed matter, as well as bulk mail. Thus, the Public Representative is remiss in suggesting that strict

parity in treatment of postal and private operators is required, or even worthy of considerable study. The fact is that the postal system is structured to support noncommercial objectives, and hence differences in treatment are not only expected but also justified.

To the extent that parties might still urge further consideration of international postal policy, the appropriate course of action would be to pursue existing channels dedicated to that exercise. Congress required the State Department to establish a Federal Advisory Committee (FAC), which includes members who are representatives of Postal Service competitors, agency representatives, including Commission staff, and other stakeholders interested in the postal sector.⁶ The public is invited to attend the meetings of the FAC, and the State Department responds to comments and concerns of both the members of the FAC and the public. Concerns that the terminal dues provisions of the UPU Acts provide an undue or unreasonable preference to any person, including the Postal Service, with respect to a competitive product can be debated within this forum.

Moreover, the Commission is identified by statute as one of the agencies that the State Department must consult in formulating international postal policy.⁷ The Public Representative is free to advise the Commission what positions it may wish to advance in both the public consultation and interagency processes managed by the State Department, and the Commission is welcome to submit its views for consideration based on input from the Public Representative. In short, it would be inappropriate and

⁶ 39 U.S.C. § 407(b)(3)

⁷ 39 U.S.C. § 407(b)(2)(A).

an inefficient use of government resources for the Commission to engage in a public inquiry on the issues raised concerning terminal dues.

Insofar as the Public Representative is concerned that the Postal Service might engage in unfair competition through policy, Congress addressed this situation as well. If the Postal Service establishes rules or regulations that would “preclude competition or establish the terms of competition” in violation of the provisions of 39 U.S.C. § 404a(a)(1), the Public Representative can file a complaint with the Commission by virtue of the process Congress provided in §404a(c).

With respect to the Public Representative’s concerns regarding customs parity, the Postal Service previously provided its comments concerning this subject in its Reply Comments Of The United States Postal Service In Response To Order No. 26 (October 9, 2007), in Docket No. RM2007-1, which are incorporated in these comments by reference. Those comments continue to represent the views of the Postal Service. Therefore, concerns regarding customs parity are within the province of other federal agencies, as provided by Congress in 39 U.S.C. § 407(e)(2) and (3) and need not be reopened before the Commission.

In summary, the Postal Service respectfully urges the Commission to reject the Public Representative’s call for a public inquiry into these matters. The Public Representative’s suggestion calls for a process that is both unnecessary and duplicative of the already existing fora in which the concerns expressed may be adequately addressed as Congress intended.

Respectfully submitted,

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