

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Products Prices
Global Expedited Package Services 1
(CP2008-5) Negotiated Service Agreements

Docket No. CP2008-18
Docket No. CP2008-19
Docket No. CP2008-20
Docket No. CP2008-21
Docket No. CP2008-22
Docket No. CP2008-23
Docket No. CP2008-24

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO UNITED STATES POSTAL SERVICE
NOTICE OF GLOBAL EXPEDITED PACKAGE SERVICES CONTRACT
(September 2, 2008)

The Public Representative hereby comments on the Postal Service's notices announcing price and classification changes for Competitive Products not of general applicability. The notices seek to modify the product lists within the Mail Classification Schedule (MCS).¹ The Commission assigned Docket Nos. CP2008-18 through CP2008-24 (*ad seriatim*) to these changes, designated the undersigned as Public Representative in these proceedings and directed that comments would be due no later than September 2, 2008.²

In filing these notices and sealed supporting materials with the Commission, the Postal Service seeks Commission approval to add seven

¹ Notice of United States Postal Service of Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreements, August 14, 2008, filed in Docket Nos. CP2008-18 through CP2008-24 (Notices). The Postal Service filed copies of the seven contracts and supporting materials under seal.

² See PRC Order 100, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreements, August 19, 2008, at 3.

Negotiated Service Agreements (NSAs) for certain competitive outbound international package services to the Global Expedited Package Services Contracts 1 (GEPS 1) product category. GEPS 1 was established by decision of the Governors of the United States Postal Service³ under the authority granted the Governors by the PAEA.⁴

The Postal Service filed its notices pursuant to 39 U.S.C. § 3633, 39 CFR § 3015.5 and Commission Order No. 86. In Order No. 86, the Commission reiterated its position that NSAs may be grouped and included as elements of the GEPS 1 product if they meet the requirements of 39 U.S.C. § 3633, and if they are functionally equivalent to the existing GEPS 1 contract(s), and if they exhibit similar cost and market characteristics.⁵ The Commission recently found certain NSAs met both the financial and substantial similarity criteria for addition to the GEPS 1 product umbrella.⁶

³ See Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts, issued May 6, 2008 (Governors' Decision No. 08-7). A redacted copy of Governors' Decision No. 08-7 was filed July 23, 2008; an unredacted copy was filed under seal on May 20, 2008 in Docket CP2008-4.

⁴ See Postal Accountability and Enhancement Act (PAEA), Pub. Law 109-435, Title II, §202, 120 Stat. 3206; 39 U.S.C. §§ 3632(b)(3), 3633.

⁵ See PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts (June 27, 2008) at 2 (*citing* Order No. 78, Notice and Order Concerning Prices Global Expedited Package Services Negotiated Service Agreements, June 3, 2008, at 2-3).

⁶ See *generally* PRC Order No. 103, Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreements (August 22, 2008).

Overview

The Public Representative is satisfied in this instance that these contracts meet the important public interest in adequate cost coverage and appropriate categorization. These contracts also seem to be substantially similar to the umbrella description of GEPS 1.⁷ And undoubtedly these contracts promote increased access to U.S. goods by consumers (including Americans living abroad).

However, as described below, the Postal Service (perhaps in consultation with the Commission) should exercise increased attention to two areas that could at some point impair the ability to gauge the accuracy and validity of cost coverage assessment:

- carefully identifying the source of and basis for projected volume figures; and
- using reliable adjustment factors that respond predictably to the effects of national economic volatility or uncertainty.

The Public Interest in Adequate Cost Coverage

An essential public interest in competitive products contracts of this sort is to ensure that these contracts adequately cover their costs so cross-subsidization by market dominant products does not occur.⁸ In other words, there is a strong public interest in ensuring that these products pay their own way

⁷ At some point in the future, the question will likely arise of how far the envelope of “functionally equivalent” and “substantially similar” can be stretched. These contracts do not at all approach that limit.

⁸ See § 3633 (a)(1) & (2).

and are not supported by mailing prices paid by the general public or other mailers of market dominant products.⁹ In addition, this is linked to an interest in ensuring that the undertaking of these contracts will enable competitive products as a whole to cover their costs, and to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.¹⁰

The Public Representative, after reviewing the materials under seal in this proceeding and appropriate consultation with technical staff, acknowledges that the provisions of the contracts, including the pricing structure, comport with the requirement that they will generate sufficient revenue to cover attributable costs for the services provided, enable competitive products as a whole to cover their costs, and as a whole to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. These factors should assure that there is no subsidization of these NSAs by market dominant products.

The Public Interest in Appropriate Categorization of NSAs

The mailing public relies on the statutory role of the Governors to evaluate proposed postal rates to help ensure that these rates will benefit rather than detriment the Postal Service.¹¹ In this instance, a public interest exists in ensuring that proposed NSAs (competitive product rates or classes not of

⁹ *Id.*

¹⁰ See § 3633 (b).

¹¹ For example, on the infrequent occasion when one or more Governors take exception to a Decision, the public benefits from awareness of the reservations expressed by the dissenting Governor or Governors.

general applicability) have been actually considered and approved by the Governors.¹²

The Commission's recognition of NSA shell classifications effectively permits the Governors to exercise their authority in a more measured fashion by directing the establishment of categories encompassing a set of similar NSAs.¹³

The contracts in these seven dockets are "functionally equivalent" to those described by the shell classification already approved by the Governors, and thus they appear to fall within the scope of the Governors' approval.

The Public Representative concurs with the Postal Service that the cost and market characteristics of these agreements are substantially similar and that any differences are not material for purposes of inclusion in GEPS 1.¹⁴ These contracts appear appropriately categorized as a Competitive Product under the umbrella of the GEPS 1 shell classification.

Public Interest in Increased Access to U.S. Goods by Consumers

It is often difficult for those living in other countries (including Americans who work and live overseas) to purchase their favorite American retail goods and supplies locally at what they consider to be reasonable prices. The reasons for this could include:

- the cost of shipping small quantities of specialty items by traditional routes and through traditional business channels;

¹² See § 3632(a), (b).

¹³ See, e.g., PRC Order No. 78 at 2-3.

¹⁴ See Notices *passim*.

- the increasing cost of containerized shipping and air shipping;
- currency and exchange rate volatility;
- local market situations with limited competition; and
- the innate perishability, fragility and/or time-sensitive nature of many consumer products.

As a result, consumers with the resources to purchase goods from the U.S. are increasingly turning to the internet to order goods from American suppliers and have them shipped overseas.

Deployment of Negotiated Service Agreements for the sorts of mailers identified in the sealed agreements help make it easier for individuals and families in other countries (including Americans and their families who live and work overseas) to purchase their preferred retail goods and products from the United States.

Negotiated shipping services procured in bulk by companies selling products by mail make the purchase of those products by consumers more affordable by increasing the vendor's flexibility to adjust their shipping and handling charges according to rapidly-changing business conditions.

By reducing impediments to mail order export, these NSAs also serve to make a incremental contribution toward the U.S. trade deficit.

Better Identification of Sourcing for NSA Volume Projections

The Postal Service in its sealed filing provides projected shipping volumes for each NSA, broken down by destination and weight cell, as part of the process

of evaluating its cost coverage. Many of these filings appear to be based upon actual international mailing patterns for the particular customer. However, it seems possible that some of these projected mailing profiles are based upon customer-supplied data derived either from actual shipments through other channels or even upon company-specific marketing and sales projections.

The Public Representative sees no specific cause for concern about the accuracy of the volume projections associated with these contracts. Moreover, the contractual inclusion of minimum volume requirements along with a type of liquidated damages covering transactional expenses in the event of a shortfall helps to protect the Postal Service against direct losses. However, to avoid the risk of unwarranted volume forecasts that might affect cost coverage, the Postal Service should in its sealed filings identify the nature and source of these volume projections, in general terms, so that the Commission might properly evaluate the significance of possible vulnerabilities or weaknesses underlying those projections.¹⁵

Exercise of Care in the Selection of Economic Adjustment Factors

The Postal Service typically incorporates mechanisms to adjust for extrinsic economic conditions that occur during the course of Negotiated Service Agreements. These mechanisms may or may not provide sufficient protection in the event of ongoing economic volatility or inflationary effects that are expressed

¹⁵ Information on the source of volume projections would tend to be sensitive in nature because it might disclose the nature and extent of existing business relationships. As a result, such data would likely be filed under seal.

heterogeneously across various sectors of the economy. Should the specified inflationary adjustment factors not keep up with costs due to outside events, the Postal Service could be placed at a disadvantage and cost coverages may not fully meet statutory requirements.

The Postal Service might wish to re-review this question internally and to consult with the Commission for guidance on whether various economic adjustment factors are suitable and optimal for NSAs.

The Public Representative respectfully submits the preceding Comments for the Commission's consideration.

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