

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

Section 407 Proceeding

Docket No. IM2016-1

NOTICE OF POSTING OF VIEWS

(Issued October 7, 2016)

Consistent with 39 U.S.C. § 407(c), the Commission provided views to the Secretary of State on whether certain proposals for the 26<sup>th</sup> Congress of the Universal Postal Union are consistent with the standards and criteria for modern rate regulation established by the Commission under 39 U.S.C. § 3622. Pursuant to 39 C.F.R. § 3017.3(b), these views have been posted on the Commission's website in Docket No. IM2016-1:<sup>1</sup>

Commission views dated August 31, 2016.

Commission's supplemental views dated September 19, 2016.

Ruth Ann Abrams  
Acting Secretary

---

<sup>1</sup> In Order No. 2960, the Commission stated, "[a]s indicated in section 3017.3(b), the Commission intends to post its views in the docket with which it is associated after conclusion of deliberations on a related treaty, convention, or amendment." Docket No. RM2015-14, Order No. 2960, Order Adopting Final Rules on Procedures Related to Commission Views, December 30, 2015, at 29.

| <b>Title of Documents</b>                                 |
|---|
| Commission's views dated August 31, 2016.                 |
| Commission's supplemental views dated September 19, 2016. |

Docket No. IM2016-1

Attachment B

## File of Documents



POSTAL REGULATORY COMMISSION  
Washington, DC 20268-0001

Office of the Chairman

August 31, 2016

VIA U.S. MAIL AND EMAIL

The Honorable Bathsheba N. Crocker  
Assistant Secretary for International  
Organization Affairs  
U.S. Department of State  
2201 C Street NW, Room 6323  
Washington, DC 20520

Dear Ms. Crocker:

This responds to the April 1, 2016, letter from the Department of State, pursuant to 39 U.S.C. § 407(c)(1), and our subsequent correspondence earlier this month, requesting the views of the Postal Regulatory Commission (Commission) concerning proposals to amend the Universal Postal Union (UPU) Convention currently in force (current UPU Convention). These proposals will be considered at the upcoming 26<sup>th</sup> Congress of the UPU (2016 UPU Congress). I am writing to provide the Secretary of State the Commission's views with respect to the consistency of proposals to amend rates or classifications for market dominant products with the standards and criteria for market dominant products established by the Commission under 39 U.S.C. § 3622.

In reviewing these proposals, the Commission also considers the policy of the United States governing international postal arrangements. Under 39 U.S.C. § 407(a), it is the policy of the United States – (1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes; (2) to

promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States; (3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and (4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

By order dated December 30, 2015, the Commission adopted final procedural rules in part 3017 of title 39 of the Code of Federal Regulations applicable to the development of the Commission's views on certain international mail matters. In explaining its reasoning for the new rules, the Commission stated that, "Despite no legal requirement that it do so, the Commission is creating a new part 3017 to allow for increased public input and transparency into the development of its views pursuant to 39 U.S.C. 407(c)." On April 20, 2016, the Commission established a public proceeding under Docket No. IM2016-1 to solicit comments on "the general principles that should guide the Commission's development of views on relevant proposals, in a general way, and on specific relevant proposals, if the Commission is able to make these available." Consistent with the purpose of the Commission's new procedural rules, to facilitate public participation in, and promote the transparency of, the development of Commission views, some of these proposals and related documents were made available to the public. Nineteen interested individuals and parties, representing a broad array of postal stakeholders, submitted comments.

The Commission has reviewed all UPU Congress proposals available on the UPU website as of August 30, 2016. The Commission identified eight proposals that affect a market dominant rate or classification and, accordingly, require the Commission's view. These proposals all affect rates or classifications for the Postal

Service's Inbound Letter Post product, which includes letters, flats, and small packages weighing up to 2 kilograms. Three proposals relate to classifications within Inbound Letter Post and five proposals establish rates for Inbound Letter Post, also referred to as terminal dues. Attached is a summary of each of these proposals.

The three proposals that establish classifications are 20.1.2.Rev 1, 20.16.2.Rev 1, and 20.16.3.Rev 2. Proposal 20.1.2.Rev 1 amends Article 1, Definitions, of the recast UPU Convention,<sup>1</sup> while proposals 20.16.2.Rev 1 and 20.16.3.Rev 2 amend Article 16, Basic services, also of the recast UPU Convention.<sup>2</sup> As a whole, these proposals create classifications for letter post by content (documents or goods). Currently, small letters, large letters, and bulky letters within letter post may contain both documents and goods. Under the proposed classification, small, large, and bulky letters would only contain documents, while a new "small packet" classification would only contain goods.

Following close examination of these proposals, the Commission finds that the classification proposals identified above are consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622. In particular, these proposals would facilitate the Postal Service's ability to offer its customers a more user-friendly, rationalized international product suite based on both content and speed of service with optional, value-added features such as tracking, registry, and insurance. Small packets containing only goods would facilitate the future transmission of advance electronic customs data to customs authorities and the operational separation of letter post items containing documents and goods for security and customs purposes. As a result,

---

<sup>1</sup> The recast UPU Convention is a restructured and streamlined version of the current UPU Convention. UPU member countries will deliberate and vote on the proposal to adopt the recast UPU Convention before considering proposals to amend it. Article 1 of the recast Convention is Article 1 of the current UPU Convention.

<sup>2</sup> Article 1 and Article 16 of the recast UPU Convention are Article 1 and Article 13, respectively, of the current UPU Convention.

customs and other security authorities would be able to inspect Inbound Letter Post and apply security measures more efficiently and expeditiously. These proposals should increase the Postal Service's efficiency, reduce its costs, improve mail security, and deter terrorism.

The Commission also identified five proposals that amend rates for Inbound Letter Post: 20.27.1, 20.27.3, 20.28.1.Rev 1, 20.28.3, and 20.29.1. These proposals amend Articles 27, 28, and 29 of the recast UPU Convention, which address the general terminal dues provisions that apply to all UPU member countries, the rates for countries in the terminal dues target system, and the rates for countries in the terminal dues transitional system.<sup>3</sup> For the first time, these proposals establish separate rates for letters/flats and for bulky letters/small packets that are more reflective of cost, and provide for higher annual increases in maximum rates (caps) than in the past. In addition, they promote the transition of all UPU member countries into the terminal dues target system.

Proposals 20.27.1, 20.28.1.Rev 1, and 20.29.1 from the Postal Operations Council (POC) reflect increased rates, which the Postal Service projects to be compensatory by 2018. The Commission recognizes the increases in the terminal dues rates reflected in these proposals. The separate rates for bulky letters and small packets should serve to increase revenue for the Postal Service. In addition, the increases in maximum rates (caps), particularly for bulky letters and small packets from countries in groups II and III, should have a similar effect. Proposal 20.27.3 and proposal 20.28.3 are from individual UPU member countries, and will result in revenue for the Postal Service that is greater than under the current terminal dues system but less than under proposals 20.27.1 and 20.28.1.Rev 1 from the POC.

---

<sup>3</sup> Articles 27, 28, and 29 of the recast UPU Convention are Articles 29, 30, and 31, respectively, of the current UPU Convention.

With respect to proposals 20.27.1, 20.27.3, 20.28.1.Rev 1, 20.28.3, and 20.29.1, which establish rates for Inbound Letter Post, the Commission is unable to determine whether these proposals are consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622 due to lack of a majority opinion.

The Commission maintains its long-standing concern with noncompensatory UPU terminal dues rates and has repeatedly highlighted this concern in its views before the 2008 and 2012 UPU Congresses, as well as in every Annual Compliance Determination (ACD) since 2007. For example, in its views before the 2008 UPU Congress, the Commission expressed concern regarding Inbound Letter Post's negative contribution of \$73 million in FY 2007. The Commission stated that this net loss was a direct result of terminal dues rates failing to cover attributable costs. The Commission also expressed its position that the rates paid by postal operators in the UPU system should be aligned as closely as possible with domestic postage rates, and reiterated this position in its views prior to the 2012 UPU Congress.

The Postal Service has repeatedly assured the Commission prior to previous UPU Congresses that UPU terminal dues proposals would improve cost coverage. However, there were negligible cost coverage improvements in FY 2014 and FY 2015, a trend that is likely to continue until FY 2017. In the FY 2015 ACD, the Commission reported a FY 2015 negative contribution of \$97.9 million from terminal dues that did not cover the cost of Inbound Letter Post. Although the Postal Service's projections could have been influenced, at least in part, by factors unknown at the time such as fluctuations in exchange rates, the results have not been close to the Postal Service's projections.

The Commission continues to maintain its position that the U.S. Government should promote terminal dues rates that cover the costs incurred by the Postal Service for handling, transporting, and delivering inbound international mail. In light of significant past differences between projections and the outcomes, the Commission



finds that there is insufficient reliable information to accurately project the proposals' actual effects.

The Commission is mindful of the specific roles filled by both it and the Department of State in considering and approving proposals submitted within the context of the UPU. The Commission's role is to determine whether the proposals are consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622. The Department of State must consider a multitude of factors before presenting the United States position on any proposal.

Given that the UPU International Bureau is continuing to publish proposals for the 2016 UPU Congress on its website, the Commission will continue to review these additional proposals and identify those that require a view from the Commission under 39 U.S.C. § 407(c). In the event that there are such additional proposals, the Commission will send you its additional views in a timely manner.

Lastly, please find attached separate views submitted by me and Commissioner Acton regarding proposals 20.27.1, 20.27.3, 20.28.1.Rev 1, 20.28.3, and 20.29.1, which establish rates for Inbound Letter Post.

Bathsheba Crocker  
August 31, 2016  
Page 7 of 7

On behalf of the Postal Regulatory Commission, I wish the U.S. delegation the greatest success at the 26<sup>th</sup> UPU Congress.

With best wishes, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert G. Taub", with a long, sweeping horizontal line extending to the right.

Robert G. Taub  
Acting Chairman

Enclosures:

Commission's Views  
Separate Views of Acting Chairman Taub  
Separate Views of Commissioner Acton

cc: Tracey Ann Jacobson  
Principal Deputy Assistant Secretary  
Bureau of International Organization Affairs

Nerissa Cook  
Deputy Assistant Secretary  
Bureau of International Organization Affairs

Greg Thome  
Director  
Office of Specialized and Technical Agencies  
Bureau of International Organization Affairs

Joe Murphy  
Chief, Postal Policy Unit  
Office of Specialized and Technical Agencies  
Bureau of International Organization Affairs

## COMMISSION'S VIEWS

### 1. Proposals that Establish Classifications for Market Dominant Products

#### (a) Proposal 20.1.2.Rev 1

*Summary.* Proposal 20.1.2.Rev 1 from the Postal Operations Council (POC) amends Article 1, Definitions, of the recast Universal Postal Union (UPU) Convention to define “documents,” “goods,” “letter-post item,” and “EMS<sup>1</sup> item.”<sup>2</sup> These definitions do not exist in the current UPU Convention. The proposal also modifies the definition of “parcel-post item.”

Proposal 20.1.2.Rev 1 complements proposals 20.16.2.Rev 1 and 20.16.3.Rev 2, which create a classification within letter post for small packets that would be similar to the current bulky letter, but would only contain goods.<sup>3</sup> These definitions of documents and goods are a result of the UPU's proposed Integrated Product Plan. The proposed first step in implementing the Integrated Product Plan is to identify items as containing either “documents” or “goods.” As the current UPU Convention does not define either term, the POC introduces these two new definitions and definitions for related terms.

*View.* The Commission finds this proposal consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622 as it should increase the Postal Service's efficiency, reduce its costs, improve mail security, and deter terrorism.

---

<sup>1</sup> EMS stands for Express Mail Service.

<sup>2</sup> The recast UPU Convention is a restructured and streamlined version of the UPU Convention currently in force (current UPU Convention). UPU member countries will deliberate and vote on the proposal to adopt the recast UPU Convention before considering proposals to amend it. Article 1 of the recast Convention is Article 1 of the current UPU Convention.

<sup>3</sup> Under the current UPU Convention, letter post includes small letters, large letters, and bulky letters.

(b) Proposal 20.16.2.Rev 1

*Summary.* Proposal 20.16.2.Rev 1 from the POC amends Article 16, Basic services, of the recast UPU Convention.<sup>4</sup> It establishes a classification for “small packets” within letter post, which is the basis of the Postal Service’s Inbound Letter Post market dominant product.<sup>5</sup> This classification is an outcome of the UPU’s Integrated Product Plan, which is designed to realign and harmonize the UPU’s portfolio of products and services. Under the current UPU Convention, letter post is made up of three formats: “small letters” (letters), “large letters” (flats), and “bulky letters.” Each format may weigh up to 2 kilograms and may contain documents and goods. Under the Integrated Product Plan, small, large, and bulky letters would only contain documents, and “small packets” (versus “bulky letters”) would only contain goods.

*View.* The Commission finds this proposal consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622 as it should increase the Postal Service’s efficiency, reduce its costs, improve mail security, and deter terrorism.

(c) Proposal 20.16.3.Rev 2

*Summary.* Proposal 20.16.3.Rev 2 revises Article 16 of the recast UPU Convention to establish a classification for “small packets,” which would only contain goods weighing up to 2 kilograms. “Bulky letters,” on the other hand, would only contain documents. This proposal complements proposals 20.1.2.Rev 1 and 20.16.2.Rev 1.

*View.* The Commission finds this proposal consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622 as it should increase the Postal Service’s efficiency, reduce its costs, improve mail security, and deter terrorism.

---

<sup>4</sup> Article 16 of the recast UPU Convention is Article 13 of the current UPU Convention.

<sup>5</sup> Amendments to other paragraphs of Article 16 do not establish rates or classifications for market dominant products.

## 2. Proposals that Establish Rates for Market Dominant Products

Regarding the following proposals that establish rates for market dominant products, the Commission maintains its long-standing concern with noncompensatory UPU terminal dues rates. While the Postal Service has repeatedly assured the Commission prior to previous UPU Congresses that UPU terminal dues proposals would improve cost coverage, there were negligible cost coverage improvements in FY 2014 and FY 2015, a trend that is likely to continue until FY 2017. In the FY 2015 Annual Compliance Determination, the Commission reported a FY 2015 negative contribution of \$97.9 million from terminal dues that did not cover the cost of Inbound Letter Post. Although the Postal Service's projections could have been influenced, at least in part, by factors unknown at the time such as fluctuations in exchange rates, the results have not been close to the Postal Service's projections.

The Commission continues to maintain its position that the U.S. Government should promote terminal dues rates that cover the costs incurred by the Postal Service for handling, transporting, and delivering inbound international mail and that are aligned as closely as possible with domestic postage rates.

### (a) Proposal 20.27.1

*Summary.* Proposal 20.27.1 from the POC amends Article 27, General provisions, of the recast UPU Convention.<sup>6</sup> This article sets terminal dues rates and related provisions that apply to all UPU member countries.

Proposal 20.27.1 classifies UPU member countries into four groups for purposes of terminal dues and the Quality of Service Fund for the 2018–2021 UPU cycle;<sup>7</sup> increases the rate for M bags by 2.8 percent annually over the 2017 rate; gradually

---

<sup>6</sup> Article 27 of the recast UPU Convention is Article 29 of the current UPU Convention.

<sup>7</sup> In the current UPU Convention, countries are classified into six groups. This reclassification of countries combines groups 1.2 and 2 into group II, and groups 4 and 5 into group IV.

increases the supplementary rate for registered items from 0.670 SDR<sup>8</sup> per item in 2017 to 1.400 SDR per item in 2021; gradually increases the supplementary rate for insured items from 1.342 SDR per item in 2017 to 1.700 SDR per item in 2021;<sup>9</sup> sets the weight threshold for the required sampling of letters/flats and bulky letters/small packets among country groups; and sets the weight threshold for application of per item/per kilogram rates among country groups.

*View.* The Commission is unable to determine whether this proposal is consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622.

(b) Proposal 20.27.3

*Summary.* Proposal 20.27.3 from Poland and Portugal and supported by Hungary, Slovakia, and Slovenia, amends only the supplementary rates for registered and insured items in Article 27, General provisions, of the recast UPU Convention. Unlike proposal 20.27.1, this proposal creates separate supplementary rates for registered letters and registered flats/bulky letters/small packets. The supplementary rate for registered letters increases by approximately 2.8 percent annually from the 2017 rate. The supplementary rate for registered flats/bulky letters/small packets are identical to the proposed supplementary rates for all registered items in proposal 20.27.1. The supplementary rates for insured letters, flats, and bulky letters/small packets are equivalent to the proposed rates in proposal 20.27.1 from the POC.

*View.* The Commission is unable to determine whether this proposal is consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622.

---

<sup>8</sup> An SDR is a Special Drawing Right, which, as of August 9, 2016, equals \$1.3914 USD. International Monetary Fund, August 9, 2016.

<sup>9</sup> As the Postal Service does not offer insurance for Inbound Letter Post, the supplementary rates for insured items in Article 27 are not applicable.

(c) Proposal 20.28.1.Rev 1

*Summary.* Proposal 20.28.1.Rev 1 from the POC amends Article 28, Terminal dues, Provisions applicable to mail flows between designated operators of countries in the target system, of the recast UPU Convention.<sup>10</sup> Proposal 20.28.1.Rev 1 separates terminal dues rates for letters/flats and for bulky letters/small packets based on per item and per kilogram components. If adopted, this would be the first time that different terminal dues rates would be applied to bulky letters/small packets. Currently, the same rates apply to letters, flats, and bulky letters.

For the 2018–2021 UPU cycle, proposal 20.28.1.Rev 1 increases annual cap and floor rates for letters/flats and sets cap and floor rates for bulky letters/small packets (if adopted) based on a country's classification for terminal dues purposes. These increases maintain a common floor rate for all groups and will harmonize the bulky letter/small packet cap rates for groups I, II, and III by 2021. Provided that the Postal Service's terminal dues rates for Inbound Letter Post reach the cap, the Postal Service would receive a 3 percent increase for letters/flats and bulky letters/small packets from group I countries; a 6 and 9.6 percent increase for letters/flats and bulky letters/small packets, respectively, from group II countries; and a 6 and 13 percent increase for letters/flats and bulky letters/small packets, respectively, from group III countries. The minimum (floor) rates, if applied, would increase 2.8 percent annually from the 2017 rates.

*View.* The Commission is unable to determine whether this proposal is consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622.

---

<sup>10</sup> Article 28 of the recast UPU Convention is Article 30 of the current UPU Convention.

(d) Proposal 20.28.3

*Summary.* This proposal from China, Korea, Myanmar, Singapore, and Thailand amends proposal 20.28.1.Rev 1 from the POC. Proposal 20.28.1.Rev 1 amends Article 28, Terminal dues, Provisions applicable to mail flows between designated operators of countries in the target system, of the recast UPU Convention. Proposal 20.28.3 amends proposal 20.28.1.Rev 1 by making a technical amendment to the methodology for setting terminal dues rates for bulky letters/small packets. As a consequence, the maximum (cap) terminal dues rates for bulky letters/small packets exchanged between countries in group I; groups I and II; and groups I, II, and III are lower than the caps in proposal 20.28.1.Rev 1.

*View.* The Commission is unable to determine whether this proposal is consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622.

(e) Proposal 20.29.1

*Summary.* This proposal from the POC amends Article 29, Terminal dues, Provisions applicable to mail flows to, from and between designated operators of countries in the transitional system, of the recast UPU Convention.<sup>11</sup> For mail flows below a specified weight threshold, proposal 20.29.1 establishes a per kilogram rate for letters, flats, and bulky letters/small packets based on the floor rates in the terminal dues target system in Article 28. For the 2018–2021 UPU cycle, these rates represent a 2.8 percent annual increase over the 2017 rates. For mail flows above a specified weight threshold, proposal 20.29.1 establishes separate per item/per kilogram rates for letters/flats and bulky letters/small packets.

---

<sup>11</sup> Article 29 of the recast Convention is Article 31 of the current UPU Convention.



*View.* The Commission is unable to determine whether this proposal is consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622.

## SEPARATE VIEWS OF ACTING CHAIRMAN ROBERT G. TAUB

### Proposed Terminal Dues Rates are Inconsistent with the Law

I believe that the terminal dues' proposals 20.27.1, 20.27.3, 20.28.1.Rev 1, 20.28.3, and 20.29.1 are inconsistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622. Even if the Postal Service *projections* for proposed terminal dues rates are fully accurate for the first time in history, domestic mailers will continue to subsidize the entry of Inbound Letter Post by foreign mailers. Simple improvement of existing below cost rates to "less below" cost rates is not a foundation for declaring proposed terminal dues rates consistent with the law in 2016. It is my view that the proposed terminal dues rates would still be wholly inconsistent with the Commission's standards and criteria for evaluating these proposals, which by law includes considering nine statutory objectives that must be met and 14 factors that must be taken into account, most of which go well beyond a singular focus on coverage of attributable costs.

Moreover, I see nothing in the current proposals that would eliminate the significant distortions identified by two groundbreaking reports analyzing the economics of the terminal dues system that were published by the Commission in 2014 and 2015. Not only would the many distortions to competition remain locked in place for the duration of the existing framework through 2021, but, based on past history, would most likely be exacerbated during that time.

The terminal dues proposals maintain a system in which the solution to the distortions as articulated by the Commission in its Testimony to Congress in June 2015<sup>1</sup> – similar prices for similar services regardless of country of origin or status as a private or public operator – is not achieved. Most significantly, the law mandates a clear policy

---

<sup>1</sup> Testimony of Robert G. Taub, Acting Chairman, On Behalf of the Postal Regulatory Commission, Before the U.S. House of Representatives Committee on Oversight and Government Reform Subcommittee on Government Operations, June 16, 2015 (Testimony to Congress in June 2015).

for the United States to, among other goals, “**promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services...**” 39 U.S.C. § 407(a)(2). The Commission must consider this policy objective when evaluating whether the terminal dues proposals are consistent with the law.

#### Volume of Small Packets Exploding

As background, the phrase “terminal dues” refers to the fee a nation’s postal operator charges to foreign posts for delivering their letter post items. The Universal Postal Union (UPU) generally defines “letter post” as including letters and postcards, printed papers, and small packets weighing up to 4.4 pounds. Conceptually, letter post can be considered to include three broad categories – small letters, large letters (flats), and bulky letters (small packets, *i.e.*, packets up to 4.4 pounds with a maximum combined dimension of 35.4 inches). Letter post items subject to terminal dues are regulated as Market Dominant products in the United States, and are referred to as “Inbound Letter Post.”

The UPU was founded by international treaty in 1874, when postal systems were the dominant domestic and almost exclusive international communications medium. It has been a United Nation's specialized agency since 1947. Unlike in the 19<sup>th</sup> and 20<sup>th</sup> centuries, the Internet, email, and cell phones have revolutionized patterns of personal and business communication. As a result, conventional personal correspondence and remittance payments have declined as a proportion of the domestic and international mail streams. However, as e-commerce has exploded, more and more small packets are entering the international mail stream because they offer a convenient means of shipping consumer goods, especially relatively low-cost, lightweight items. These small packets are in many cases items that compete with private carriers’ products, a fact substantiated by many commenters in the Commission’s International Mail docket on this matter. As stated in the Commission’s Testimony to Congress in June 2015 at 7-8:

*The Commission's technical staff has prepared an analysis that shows the impact of these developments in sharp relief. In FY 1999, the average weight per piece was 1.7 ounces for U.S. inbound letter post. In FY 2014, the average weight was 4.7 ounces. This can only mean that the inbound letter post mail stream included very few small packets in FY 1999, but is now dominated by small packets.*

The Commission has Consistently Criticized Terminal Dues Rates While Relying on Postal Service Projections of Improvement

The Commission has maintained a long-standing concern that UPU terminal dues rates are noncompensatory. The Commission has repeatedly highlighted this problem in its views to the Department of State before the 2008 and 2012 UPU Congresses, as well as in every Annual Compliance Determination (ACD) since 2007. For example, in its views before the 2008 UPU Congress, the Commission expressed concern regarding Inbound Letter Post's *negative contribution of \$73 million in FY 2007*. The Commission stated that this net loss was a direct result of terminal dues rates failing to cover attributable costs. The Commission also expressed its position that the rates paid by postal operators in the UPU system should be aligned as closely as possible with domestic postage rates, and reiterated this position in its views prior to the 2012 UPU Congress.

The Postal Service has repeatedly assured the Commission prior to previous UPU Congresses that UPU terminal dues proposals would improve cost coverage. Based on these Postal Service assurances and projections of improvement, the Commission found the terminal dues proposals consistent with the law in 2008 and 2012, while at the same time expressing these deep concerns with the system.

Despite the Postal Service's projections, throughout this period, negligible cost coverage improvements were achieved. In the most recent ACD, the Commission

reported a FY 2015 negative contribution of \$97.9 million from terminal dues that did not cover the cost of Inbound Letter Post. Indeed, the total contribution of Inbound Letter Post was negative \$316 million from FY 2012 to FY 2015. The Postal Service's own numbers clearly demonstrate that the eventual results have never been close to its projections. In light of the past gaps between projections and the actual outcomes, it is highly unlikely that the Postal Service suddenly this time has accurately projected the current proposals' actual effects.

In 1999, the Postal Rate Commission first began to fulfill a statutory role in evaluating international mail rates, a role that was substantially expanded in the Postal Accountability and Enhancement Act of 2006. For more than 17 years, the Commission has consistently reiterated its position that terminal dues rates should cover the costs incurred by the Postal Service for handling, transporting, and delivering inbound international mail and should be aligned as closely as possible with domestic postage rates. As stated in the Commission's Testimony to Congress in June 2015 at 8:

*Despite several adjustments, the terminal dues formula still does not generate cost-based rates. Moreover, terminal dues for industrialized countries are subject to a rate cap. This rate cap keeps terminal dues artificially low, thereby preventing them from reaching full cost coverage for most postal operators. It also affects private operators' ability to compete because the terminal dues are lower than domestic rates.*

The Commission also concluded in its most recent ACD that:

*The Commission recognizes that the pricing regime for the Inbound Letter Post product, based upon the current UPU formula, results in noncompensatory terminal dues. As a result, domestic mailers continue to subsidize the entry of*

*Inbound Letter Post by foreign mailers who use the same postal infrastructure but bear none of the burden of contributing to its institutional cost. Because UPU terminal dues rates are not equivalent to domestic postage rates in the destination country, the Commission considers them discriminatory.<sup>2</sup>*

### The Commission Publishes Groundbreaking Analysis of Terminal Dues Finding Significant and Persistent Distortions

As the Commission's understanding of the UPU terminal dues system grew, it realized that while some work had been done to estimate the potential magnitude of distortions related to insufficient compensation for Inbound Letter Post, no one had analyzed the wider effects of the terminal dues system through the lens of economic theory. Therefore, in 2014 and 2015, the Commission contracted with Copenhagen Economics to address terminal dues issues from this perspective. The Commission published the first Report on September 30, 2014,<sup>3</sup> and the findings were presented at a public briefing the Commission convened on November 17, 2014. The Commission published the second Report on November 18, 2015, which quantified the conclusions of the 2014 report.

As the Commission's Testimony to Congress in June 2015 at 5-6 detailed, the principal findings of the Copenhagen Economics Report are:

- The application of different terminal dues to designated operators and non-designated operators distorts competition among first-mile delivery

---

<sup>2</sup> Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, at 70 (FY 2015 ACD).

<sup>3</sup> Copenhagen Economics, *The Economics of Terminal Dues Report*, September 30, 2014.

operators (service providers who compete for the business of the original senders (or shippers) of mail).

- Terminal dues set at a level below the cost of last-mile activities distort competition among last-mile operators.
- The current terminal dues system increases demand for delivery services covered by the system relative to services outside the system, leading to excessive use of packet delivery services at the expense of parcel delivery services.
- The current terminal dues structure leads to distortions in mail and trade flows by increasing demand for less efficient cross-border delivery of letter post (which includes small packets), especially from certain countries.
- Terminal dues create financial transfers between delivery operators which, in turn, may cause distortionary spillover effects (such as higher taxes to fund the postal operator's loss).
- Alternative systems, such as bilateral agreements, create many of the same distortions as the UPU system.
- An optimal and non-distortionary solution would require that terminal dues (the price for last-mile handling of *cross-border* letter post items) are set equal to the price for *domestic* and cross-border letters. To allay potential diplomatic or political concerns, this non-distortionary solution could be complemented with an aid program for developing countries that truly need assistance.
- To prevent foreclosure of as-efficient non-designated operators, non-distortionary terminal dues must be at least as high as the long-run average incremental cost of last-mile activities.

The Report's bottom line solution is that a postal administration should charge its customers similar prices for similar services, irrespective of a mailer's country of origin or its status as a private or public operator. The Copenhagen Economics Report is a

groundbreaking effort that provided the Commission and all policymakers, for the very first time, a thorough analytical framework to assess the effects of the terminal dues system.

Proposed Terminal Dues Rates are Inconsistent with the Statutory Objectives and Factors

The Commission's statutory responsibility in submitting this view to the Secretary of State is to decide whether the terminal dues rates are consistent with the standards and criteria established by the Commission. By law, there are nine objectives that must be achieved and 14 factors that must be taken into account under the standards and criteria established by the Commission. In reviewing these standards and criteria, I can only conclude that the terminal dues proposals are not consistent with the law. Most significantly, the proposed terminal dues violate the policy of the United States governing international postal arrangements, which requires "...**unrestricted and undistorted** competition in the provision of international postal services and other international delivery services." 39 U.S.C. § 407. The findings of the Copenhagen Economics Reports confirm that severe distortions exist. None of the terminal dues proposals remove the many distortions to competition; indeed, the distortions would remain locked in place for the duration of the existing framework through 2021 and may well be exacerbated during that time.

Seventeen of the 19 commenters in the International Mail docket concurred with the view that the pending terminal dues proposals are inconsistent with the law. Those 17 commenters include FedEx, UPS, U.S. Chamber of Commerce, Lexington Institute, Frontiers of Freedom, eCommerceBytes, and 11 different Internet-based American small businesses.

In addition to violating the statutory policy of undistorted competition, I view the terminal dues proposals as inconsistent with at least seven of the nine objectives in 39 U.S.C. § 3622 in the following ways:



- *To maximize incentives to reduce costs and increase efficiency:* The proposed rates fail to reflect any connection to the costs or efficiency of delivery services provided.
- *To allow the Postal Service pricing flexibility:* The proposed rates are inflexible on Postal Service pricing.
- *To assure adequate revenues, including retained earnings, to maintain financial stability:* Even if all Postal Service assumptions for future terminal dues rates were suddenly correct for the first time in history, domestic mailers will still continue to subsidize the entry of Inbound Letter Post because full cost coverage would not be achieved by 2021; hence, the current terminal dues proposal still would fail to assure adequate revenues, including financial stability, let alone any retained earnings.
- *To reduce the administrative burden and increase the transparency of the ratemaking process:* No reduction in administrative burden or increased transparency will be achieved; in that regard, it is important to note that in the International Mail docket for this matter, the Commission's Public Representative outlined his concerns with the inaccessibility of information and details directly related to the terminal dues proposals.<sup>4</sup>
- *To enhance mail security and deter terrorism:* No enhancing of mail security or deterring terrorism will be achieved; in fact, the distortions of the terminal dues system that incentivizes the astronomical increase in small packets burdening existing postal customs processes. This perpetuates the threats in place from use of those postal processes; thereby avoiding the higher scrutiny required of private sector shipments.<sup>5</sup>

---

<sup>4</sup> See Docket No. IM2016-1, Public Representative Comments, July 21, 2016, at 2-4 (PR Comments).

<sup>5</sup> See Rep. Michael McCaul, *It's time to make it harder to get dangerous drugs through the mail*, Washington Post, August 4, 2016.

- *To establish and maintain a just and reasonable schedule for rates and classifications...*: The proposed rates will leave in place all of the economic distortions identified by the Copenhagen Economics Reports and hence in no way establishes and maintains a just and reasonable schedule for rates and classifications.
- *To allocate the total institutional costs of the Postal Service appropriately between market dominant and competitive products:* No appropriate allocation of the total institutional costs of the Postal Service will be achieved. The proposed rates will continue the longstanding problem the Commission has consistently identified of foreign mailers bearing none of the burden of contributing to Postal Service institutional costs.

The other two of the nine statutory objectives (*to create predictability and stability in rates, and to maintain high quality service standards*) are at best a mixed bag: while the proposed terminal dues rates provide fixed rates, there is uncertainty on the reliability of the Postal Service's assumptions, as confirmed by the complete failure of such estimates in 2008 and 2012. Moreover, the Postal Service has consistently failed to meet the quality of service standards in terminal dues rates as detailed in previous Commission ACDs, and there is little to demonstrate the proposals would change that problem.

Turning to the 14 factors that the Commission must take into account, I similarly find that the proposed terminal dues rates are inconsistent with all of them.

- *The value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery:* The proposals fail to reflect the value of service to either the sender or the recipient.
- *The requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of*

*all other costs of the Postal Service reasonably assignable to such class or type:* As outlined above, even using the optimistic assumptions of the Postal Service – which have never proved accurate for past terminal dues proposals – coverage of attributable costs will still not be achieved, even by the end of 2021.

- *The effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters:* As the Commission has consistently concluded, domestic mailers would continue to subsidize the entry of Inbound Letter Post by foreign mailers who use the same postal infrastructure but bear none of the burden of contributing to its institutional cost. Hence, the proposed rates would negatively affect private competitors as well as American mailing consumers and businesses.
- *The available alternative means of sending and receiving letters and other mail matter at reasonable costs:* Again, by having domestic mailers continue to subsidize the entry of Inbound Letter Post by foreign mailers, the proposed terminal dues rates would discourage efficient alternative means of sending and receiving mail matter.
- *The degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service:* The proposals have no direct relation to preparation of mail.
- *Simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services:* The entire terminal dues rates are extremely complex and the information for the public to fully understand the impact of the proposals is not accessible. As the Commission's Public Representative stated "[w]ithout ready and open access to the pertinent

*documents, the public is unable to interpret or adequately comment on the proposals.”* PR Comments at 3.

- *The importance of pricing flexibility to encourage increased mail volume and operational efficiency:* The terminal dues proposed rates would be locked in place until 2021 and are inflexible.
- *The relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail:* In no way, shape, or form could this factor be found to be consistent with the terminal dues proposals when domestic mailers would continue to subsidize the entry of Inbound Letter Post by foreign mailers.
- *The importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery:* As historically demonstrated in the Commission ACDs, the Postal Service has repeatedly failed to qualify for compensation available for meeting quality of service standards. The proposed terminal dues rates do not demonstrate how the Postal Service would be any more encouraged to provide the type of high quality service it has failed to achieve in the past.
- *The desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title...:* Again, in no way, shape, or form could this factor be found to be consistent with the terminal dues proposals when domestic mailers would continue to subsidize the entry of Inbound Letter Post by foreign mailers.
- *The educational, cultural, scientific, and informational value to the recipient of mail matter:* The terminal dues rates fail to recognize the educational, cultural, scientific, and informational value to the recipient.

- *The need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable postal services:* Due to the fact that even by 2021 the proposed terminal dues rates, under the most favorable assumptions, will still be below cost, the terminal dues proposals would hinder the Postal Service's ability to make critical investments to increase efficiency and reduce costs.
- *The value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified mail:* The proposed terminal dues rates would not promote intelligent mail.
- *The policies of this title as well as such other factors as the Commission determines appropriate:* Given the findings of the groundbreaking Copenhagen Economics Reports that were prepared for the Commission in 2014 and 2015 – and hence were unavailable when the Commission prepared its views in 2008 or 2012 – it is clear that the global postal and delivery service sector will continue to be extremely distorted by the terminal dues system, notwithstanding some classification changes. As the Commission's Testimony to Congress in June 2015 outlined, the UPU terminal dues system creates distortions in first-mile services, last-mile services, and end-to-end services. Terminal dues restrain competition between designated postal operators as well as between designated postal operators and private carriers. Therefore, I believe that the proposed terminal dues rates are wholly inconsistent with the postal policies of law to "*promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services*" and to "*promote and encourage...efficient operation of international postal services and other international delivery services.*" See 39 U.S.C. § 407(a)(1) and (2).

Taking into account the significant inconsistency with this last factor, combined with the failure to be consistent with almost all nine objectives and 14 factors, I am compelled to find the terminal dues proposals inconsistent with the law.

## SEPARATE VIEWS OF COMMISSIONER MARK D. ACTON

Pursuant to 39 U.S.C. § 407(c)(1), the Postal Regulatory Commission (PRC) has provided its views to the United States Department of State concerning eight proposals to amend the Universal Postal Union (UPU) convention currently in force that affect a market dominant rate or classification. Three of those proposals related to classifications within Inbound Letter Post, and five proposals establish rates for Inbound Letter Post. While the classification proposals were deemed by the PRC to be consistent with the applicable standards and criteria, the Commission reached no majority view as to whether or not these five proposals to amend rates for Inbound Letter Post were likewise consistent. I provide my separate views as to why I believe these five rate proposals are not consistent with the applicable standards and criteria established by the Commission.

Over the 14 year course of my involvement with postal rate setting, it is a matter of record that the UPU proposals for establishing terminal dues rates have, with each iteration, been challenged in terms of clearing the threshold of being found consistent with lawful U.S. standards and criteria. Indeed, the Commission's mounting concerns are expressed in our latest Annual Compliance Determination, where we state: *Because UPU terminal dues rates are not equivalent to domestic postage rates in the destination country, the Commission considers them discriminatory.*<sup>1</sup> Additionally, a 2014 study commissioned by the PRC and developed by Copenhagen Economics, entitled "*The Economics of Terminal Dues Report*," determined that "the application of different terminal dues to designated and non-designated operators distort competition among first-mile delivery operators, that is, service providers who compete for the business of the original senders (or shippers) of mail."<sup>2</sup> Participants who commented for the record in the Commission's latest development of views (Docket No. IM2016-1) - spanning from the largest and most sophisticated mailers and shippers in the world to

---

<sup>1</sup> Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, at 70.

<sup>2</sup> Copenhagen Economics, *The Economics of Terminal Dues Report*, September 30, 2014, at 10.

the smallest U.S. business owners - were unanimous in opposing the proposed UPU rates due to their noncompensatory and discriminatory nature.

This rising tide of regulatory findings, expert studies and industry concerns indicates a disturbing trend. It is my view that as a function of emergent global market realities alone, these proposals are becoming increasingly problematic with respect to meeting the relevant statutory objectives and factors. The unique nature of the Commission's narrow role in a policy arena (the UPU) driven by an assembly of international and diplomatic interests beyond domestic operational or regulatory control complicates the Commission's ability to render conclusive findings and (even more so) outcomes. One inference, however, now appears sure to me: despite years of Postal Service efforts and Commission concern in addressing the plain inequities that exist in the present UPU rate setting approach, meaningful systematic reform at the UPU level appears no nearer at hand today than it was eight or even four years past. In today's transnational marketplace where package services occupy an exponentially expanding segment, the economic and competitive distortions promulgated by the present program seem likewise intent to grow more quickly and manifest themselves more largely. The latest proposed forecasts to marginally improve product cost coverages, while directionally correct if accurate, in the modern market growth pattern appear destined to be outpaced (perhaps vastly) by cumulative losses due to historic, digital-age driven package delivery volume growth. These are not static considerations, and the Commission's views in this pursuit, past and present, have been measured and incremental. At some point in this quadrennial continuum, however, these profound anti-competitive market dynamics may mature to jeopardize the integrity and ultimately the solvency of our free market structure. A change of course toward more reasonable, non-discriminatory, cost-based rate setting seems needed. For me, the notion that today the American consumer can find on Amazon the same item delivered from overseas at a rate significantly less than from, say Dallas, speaks powerfully to this fundamental injustice.

History informs us these are challenging policy goals with no quick or simple solution. I recognize that ours is one party negotiating among 191 other UPU nations,



each guarding its own self-interest, and that the United States, fairly or unfairly, is allotted but one vote. Dialogues conducted under the current system governing terminal dues rates may consistently conclude in compromise (inherently unfavorable to the United States), but that does not mean the resulting compromise comports necessarily with the applicable standards and criteria the Commission must consider under U.S. law. But arguably it should. If a more market-centric resolution cannot be brokered within the UPU, perhaps a coordinated member state initiative without the UPU offers a brighter, longer term prospect toward driving fuller cost coverage and reducing unfair trade distortions.



POSTAL REGULATORY COMMISSION  
Washington, DC 20268-0001

Office of the Chairman

September 19, 2016

VIA U.S. MAIL AND EMAIL

The Honorable Bathsheba N. Crocker  
Assistant Secretary for International  
Organization Affairs  
U.S. Department of State  
2201 C Street NW, Room 6323  
Washington, DC 20520

Dear Ms. Crocker:

I am writing to follow up on my August 31, 2016, letter, in which the Commission, in accordance with 39 U.S.C. § 407(c), expressed its views on whether certain proposals for the upcoming 26<sup>th</sup> Universal Postal Union (UPU) Congress are consistent with the standards and criteria promulgated by the Commission under 39 U.S.C. § 3622. In that letter, I indicated that the Commission would provide the Department of State with views on any additional UPU Congress proposals that establish a rate or classification for a market dominant product that the UPU makes available after August 31, 2016.

On September 9, 2016, the UPU posted proposal 20.17.2.Rev 1 on its website. If adopted, this proposal would require the Postal Service to establish a market dominant product, delivery confirmation, under International Ancillary Services because the Postal Service does not currently offer this service.

In addition, on September 14, 2016, the UPU posted proposal 20.1.2.Rev 2. This proposal amends UPU Convention Article 1, Definitions, and updates proposal

20.1.2.Rev 1, which the Commission included in its views sent to the Department of State on August 31, 2016. Like proposal 20.1.2.Rev 1, this proposal also establishes a classification for a market dominant product.

The Commission views on updated proposal 20.1.2.Rev 2 and proposal 20.17.2.Rev 1 are attached.

Again, on behalf of the Postal Regulatory Commission, I wish the U.S. delegation the greatest success at the 26<sup>th</sup> UPU Congress.

With best wishes, I am

Sincerely yours,



Robert G. Taub  
Acting Chairman

Enclosure:  
Commission's Views

cc: Tracey Ann Jacobson  
Principal Deputy Assistant Secretary  
Bureau of International Organization Affairs

Nerissa Cook  
Deputy Assistant Secretary  
Bureau of International Organization Affairs

Greg Thome  
Director  
Office of Specialized and Technical Agencies  
Bureau of International Organization Affairs

Joe Murphy  
Chief, Postal Policy Unit  
Office of Specialized and Technical Agencies  
Bureau of International Organization Affairs

## COMMISSION'S VIEWS

### Proposals that Establish a Classification for a Market Dominant Product

#### 1. Proposal 20.1.2.Rev 2

*Summary.* Proposal 20.1.2.Rev 2 from the Postal Operations Council (POC) updates proposal 20.1.2.Rev 1. The update reflects a renumbering of the paragraphs of Article 1 to reflect that the proposed definitions of documents and goods would apply to letter post items, parcel post items, and Express Mail Service (EMS), in accordance with the UPU Integrated Product Plan. The numbering of paragraphs in proposal 20.1.2.Rev 1 gave the impression that the new definitions of documents and goods would only apply to EMS. Nonetheless, it was the Commission's understanding that these definitions would apply to letter post, parcel post, and EMS, in accordance with the UPU Integrated Product Plan.

*View.* The Commission's view on proposal 20.1.2.Rev 2 is the same as its view on proposal 20.1.2.Rev 1. The Commission finds proposal 20.1.2.Rev 2 consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622 as it should increase the Postal Service's efficiency, reduce its costs, improve mail security, and deter terrorism.

#### 2. Proposal 20.17.2.Rev 1

*Summary.* Proposal 20.17.2.Rev 1 was submitted by Bhutan, Cambodia, China (People's Republic), Indonesia, Korea (Republic), Lao People's Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Singapore, and Thailand. This proposal amends Article 17, Supplementary services, of the recast Universal Postal Union (UPU) Convention.<sup>1</sup> As background, proposal 20.17.1 from the POC would change the name

---

<sup>1</sup> The recast UPU Convention is a restructured and streamlined version of the UPU Convention currently in force (current UPU Convention). UPU-member countries will deliberate and vote on the proposal to adopt the recast UPU Convention before considering proposals to amend it. Article 1 of the recast UPU Convention is Article 1 of the current UPU Convention. Article 17 of the recast UPU Convention is Article 15 of the current UPU Convention.

of the current "express" letter post delivery service to "tracked" delivery service (delivery confirmation) and would limit the service to letter post items only. When read in conjunction with proposal 20.17.1, proposal 20.17.2.Rev 1 would require countries in the terminal dues target system to offer this service. Currently, postal operators in the UPU may choose to provide delivery confirmation service for letter post. If postal operators provide this optional service, they may receive a supplemental rate of 0.5 Special Drawing Rights per item. However, the supplemental rate is only paid if the postal operators meet specified quality of service standards. The Postal Service does not currently provide this service under the UPU.

The Commission notes that proposal 25.29-104.1 (POC proposal 25.29-104.1), which will be considered at the December 2016 POC session, would establish a new supplemental rate for delivery confirmation for letter post items. This supplemental rate would also be conditional on the postal operator meeting specified quality of service standards.

*View.* The Commission currently has insufficient information to make a determination on whether proposal 20.17.2.Rev 1 is consistent with the standards and criteria established by the Commission under 39 U.S.C. § 3622. Specifically, because supplemental rates are only paid if the Postal Service meets specified quality of service standards, the Commission requires data on the Postal Service's ability to meet those standards. As the Postal Service does not currently offer delivery confirmation through the UPU, there is no applicable quality of service data available for the Commission to analyze. Furthermore, the Commission does not have access to data that would be an appropriate proxy suitable for assessing the Postal Service's ability to meet specified quality of service standards.

Additionally, the supplemental rate for delivery confirmation is currently unknown. Proposal 20.17.2.Rev 1 states that the remuneration for delivery confirmation is set out in POC proposal 25.29-104.1. However, because POC proposal 25.29-104.1 will not be considered until December 2016, when the UPU Congress deliberates on proposal 20.17.2.Rev 1, member countries will not know whether the remuneration suggested in POC proposal 25.19-104.1 will be adopted or not.