

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Plus
Negotiated Service Agreements

Docket No. CP2008-8
Docket No. CP2008-9
Docket No. CP2008-10

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO UNITED STATES POSTAL SERVICE
NOTICE OF GLOBAL PLUS SERVICES CONTRACTS
(June 19, 2008)

The Public Representative hereby comments on the United States Postal Service's Governors' Decision Establishing Prices and Classifications for Global Plus Contracts (Governors' Decision No. 08-8), assigned Docket No. CP2008-8, and Postal Services Notices of Filing Global Plus Contracts, CP2008-9 (under seal) and CP2008-10 (under seal). The Commission's Order 81, Notice and Order Concerning Prices under Global Plus Negotiated Service Agreements (NSAs), issued June 6, 2008 noted the relation among this proposed shell pricing classification and the two first NSAs (Docket Nos. CP2008-9 and CP2008-10, respectively).¹ By notice and order, the Commission designated the undersigned as Public Representative in these three proceedings, and directed that comments would be due no later than June 19, 2008.

¹ See Order 81, Notice And Order Concerning Prices Under Global Plus Negotiated Service Agreements, June 6, 2008, p. 2-3.

Confidentiality

First, the Public Representative notes that on June 16, the Postal Service provided a redacted version of Governors' Decision 08-8, which in conjunction with the Postal Service's Response to Order No. 81 (United States Postal Service Response to Order No. 81 and Notice of Filing Information Responsive to Part 3020 of the Commission's Rules of Practice and Procedure, June 13, 2008), ("Response"), helps justify why aspects of the Governors' Decision, and the initial two Global Plus NSAs, should remain under seal.

As in the previous Docket Nos. CP2008-5 and CP2008-7, the Postal Service acknowledged having "no objection"² to making publicly available the expiration dates of these Global Plus contracts proposed for review by the Commission. The Postal Service acknowledged that such information, "considered in isolation," would not be "commercially sensitive."³ The Public Representative can appreciate the need for aspects of commercially sensitive business agreements, including names of the parties to these contracts, to be proposed and reviewed under seal. As noted in the Response, the customers in both CP2008-9 and CP2008-10 are "large Postal Qualified Wholesalers (PQWs)." (sic)⁴

² United States Postal Service Response to Order 81, June 13, 2008, at 6.

³ *Op cit.*

⁴ *Ibid*, at 3.

Nevertheless, the Commission rightfully questioned the extent to which details of these Negotiated Service Agreements should be under seal. This comports with the spirit of Federal Rules of Civil Procedure Rule 26(c).⁵ The Postal Service, as proponent, should justify the specific limits of all such confidentiality requests, if simply to permit identification of, and distinction between, confidential agreements. Ultimately, the Commission shall be the arbiter of what information, in matters before it, shall be under seal or made public.⁶

Filing under Part 3020, Subpart B of the Rules of Practice and Procedure

The Postal Service has been responsive, generally and procedurally, to the Commission's Order (and to Orders 78 and 79). The Statement of Supporting Justification (Response, Attachment A) is not simply a *pro forma* exercise; it certifies data that is necessary for the Commission to evaluate as a matter of law. See 39 USC 3633. Filing responsively to §3020, Subpart B, empowered the Postal Service to present facts which bolster its arguments for confidentiality and functional equivalency of the two instant Global Plus contracts in Docket Nos. CP2008-9 and CP2008-10.

If in the alternative, the Commission were to consider the Postal Service's proposals in these Dockets as initially filed, under 39 CFR 3015.5, the next section, 39

⁵ See Postal Accountability and Enhancement Act (PAEA), Pub. Law 109-435, §602(g)(3)(B), 120 Stat 3240; 39 U.S.C. §504 (g)(3)(B).

⁶ *Op. cit.*, §602(g)(3)(A), 120 Stat 3240.

CFR 3015.6, provides the Commission the authority to, in its discretion, require the Postal Service to provide additional information as deemed necessary. The Public Representative submits that it is in the interest of the Postal Service to assist the Commission in performing its statutory obligations by providing as much information as possible. Doing so – filing under §3020 – will enable expeditious review of NSAs which could be grouped together in the Mail Classification Schedule (MCS) due to their conformance with a shell classification.

Accordingly, the Order that prices and classification changes established pursuant to the Governors' Decision 08-8 "will take effect fifteen days after the date on which the agreement is filed with the Postal Regulatory Commission"⁷ is unsound, because it presumed a review under §3015. One would note that the Governors' vote was not unanimous⁸ -- not that it need be – with one Governor opposed. This would indicate that one very-well informed official did not support this shell pricing arrangement for Global Plus contracts. This piques the curiosity of the Public Representative, and invites a deeper level of review. The Postal Accountability and Enhancement Act (PAEA)⁹ affords the Postal Service greater flexibility while at the

⁷ Governors' Decision 08-8, May 28, 2008, at 3.

⁸ *Ibid*, Certification of the Governors' Vote in the Governors' Decision No.08-8

⁹ See Postal Accountability and Enhancement Act (PAEA), Pub. Law 109-435, 120 Stat 3198.

same time, encouraging enhanced regulatory review. Arguably, this is in the best interest of the public and the Postal Service. As a former Postmaster General noted, “He that won’t be counseled can’t be helped.”¹⁰

Governors’ Decision 08-8

The Governors’ Decision establishes a shell classification, with price floor and ceiling formulae, and authorizes contracts whose prices fall within the price range. The revised MCS Section 2610.5 (Global Plus Contracts) includes a threshold for mailers to qualify for such a contract: those who are able to tender at least 5,000 pieces of qualifying mail per annum, or those paying at least \$100,000 in international postage.¹¹ This public record establishes a benchmark which assures a reasonable incentive for Global Plus contracts to provide value to both parties.

The Public Representative, after reviewing the materials under seal in this proceeding, acknowledges that the price floor and ceiling formulae proposed in the Governors’ Decision No. 08-8 comport with provisions of Title 39. The pricing shell provides that these contracts generate sufficient revenue to cover attributable costs for the Global Plus contract services, enable competitive products as a whole to cover their costs, and contribute a minimum of 5.5 percent to the Postal Service’s total institutional

¹⁰ Benjamin Franklin, *Poor Richard’s Almanack*.

¹¹ Governor’s Decision 08-8, Attachment A.

costs.¹² These formulae should assure that there is no subsidization of Global Plus negotiated service agreements by market dominant products.

The Specific Agreements

The NSAs filed in CP2008-9 and CP2008-10 both manage to fall within the rubric of Governors' Decision 08-8, Global Plus contracts. The Postal Service posits in its Response that these are functionally equivalent contracts. Sound reasons are presented: they both comply with the Governors' Decision, and they share similar market and cost characteristics.¹³ Nevertheless, they are not identical. The differences that do exist may or may not warrant their classification as separate products. The Public Representative does not take a position on this issue.

Because these two Global Plus contracts both comply with the stipulations of the Governor's Decision 08-8, they can be expected to fulfill the criteria of Title 39: these contracts generate sufficient revenue to cover their attributable costs, enable competitive products as a whole to cover their costs, and contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.

¹² See 39 U.S.C. 3633.

¹³ Response, 2-4

Retroactivity

The Postal Service points to the pragmatic issue of having retroactivity provisions in these contracts.¹⁴ Providing stability to on-going customer relationships is good for any business, particularly as negotiations and the duration of contracts may overlap pricing changes. The retroactivity provisions apply only to established customers – parties to these new contracts with the Postal Service. If the Postal Service is to offer Competitive Products, let it then compete using the customary business practices in similar industries. The flexibility to provide such terms has positive implications for both the Postal Service and its Global Plus customers, without disadvantaging non-customers.

Conclusion

The shell classification proposed in the Governors Decision 08-8, Docket CP2008-8 complies with Title 39 pricing provisions for Competitive Products. The Global Plus contracts in CP2008-9 and CP2008-10 do likewise.

As in CP2008-5 and CP2008-7, the Public Representative would caution that in the case of outbound international service agreements, settlement costs (what the Postal Service pays to a foreign postal administration for delivery of mailpieces in destination countries) might negatively impact NSAs. For this reason, the Public Representative encourages the Commission to use its authority and influence to

¹⁴ Response, 8-10.

promote equitable settlement cost arrangements among members of the Universal Postal Union.

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

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