

BEFORE THE
POSTAL RATE COMMISSION

PROPOSED AMENDMENT
TO THE COMMISSION'S RULES

Docket No. RM2004-1

**COMMENTS OF UNITED PARCEL SERVICE
IN SUPPORT OF PROPOSED RULE
(March 9, 2004)**

Pursuant to Commission Order No. 1389 (January 16, 2004), United Parcel Service ("UPS") hereby files its comments in support of the rule proposed by the Commission in its Order, with two suggested revisions.

DISCUSSION

UPS supports the adoption by the Commission of a definition of the term "postal service," so that the Commission, the Postal Service, and interested parties are able to determine the extent of the Commission's jurisdiction with greater certainty.

The Commission should assure that the definition it adopts captures all Postal Service activities over which the Commission has jurisdiction. This is important because of the Postal Service's uncommon position as a government entity that is both a monopolist and a competitor of private enterprise. This double status gives the Postal Service a strong incentive to subsidize competitive products with monopoly revenues. Such subsidization harms the public by, among other things, unfairly discriminating among the Postal Service's customers -- charging captive customers monopoly rates

that are unnaturally high while undercharging customers who purchase competitive services -- and allows the Postal Service to compete unfairly with private commercial enterprise.

Congress recognized this great potential for public harm when it enacted the Postal Reorganization Act (the "Act"). The Act specifically addresses Congress' concern by creating the Commission to review the Postal Service's rates and service offerings in order to assure that each service carries its own fiscal weight.

As the Commission itself has recognized, "the need for Commission review, with an opportunity for public participation, is heightened because of the possibility (or even the likelihood) that new postal services may operate in competition with private sector services." Docket No. RM2004-1, Order No. 1389, at 10-11 (January 16, 2004). Thus, the Commission should exercise its jurisdiction to the fullest extent permitted by the Act by making clear that the Postal Service must submit any new or altered "postal service" rates or offerings to the Commission for prior review and public input.

SUGGESTED REVISIONS

In order to achieve this result, UPS suggests that the Commission's proposed definition be revised to read as follows:

Postal service means the acceptance, collection, processing, transmission, or delivery of letters, printed matter, or packages weighing up to 70 pounds (including, but not limited to, partially or wholly electronic services), and other services supportive or ancillary thereto.

This definition differs from that of the Commission in only two ways:

1. As proposed by the Commission, the definition of "postal service" could be read to include the acceptance, collection, processing, and transmission of mail only if

there is ultimate delivery by the Postal Service. This could lead to an argument that services involving only the acceptance, processing, and transportation or transmission of mail are not “postal services” when delivery is performed by another entity. It would permit the Postal Service to avoid Commission review by providing what are now incontestably “postal services” under an arrangement where another entity undertakes the delivery commitment. That result would be contrary to the Commission’s apparent view of the “postal” or “non-postal” nature of services in prior proceedings, in which the Commission has examined

. . . the relationship of the service to the carriage of mail. Those which can fairly be said to be ancillary to the collection, transmission, or delivery of mail are postal services within the meaning of § 3622.

Order No. 1128 (July 30, 1996), at 10 (citations omitted) (emphasis added).

In short, UPS suggests that the Commission revise its definition so that a service offering need not include “delivery” in order to be a “postal service.” This definition would clearly encompass each of the acts of acceptance, collection, processing, transmission, or delivery of the mail, independently or in combination.

2. The Commission’s proposed definition should explicitly include service offerings that are either partially or wholly electronic. As the Commission points out, the definition of “postal service” should take technological changes into account and should include “afford[ing] the Postal Service sufficient flexibility to engage in functions ordinarily performed by a national post as may be affected, from time-to-time, by changes in technology.” Docket No. RM2004-1, Order No. 1389, at 12 (January 16, 2004). Because the Postal Service has in the past questioned whether a service

offering is “postal” if it does not involve hard-copy material, the Commission’s definition should directly address that question by explicitly stating that it does.

Respectfully submitted,

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Dated: March 9, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused the foregoing document to be served in accordance with Section 12 of the Rules of Practice.

John E. McKeever

Dated: March 9, 2004

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