

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

MARKET DOMINANT PRODUCT PRICES
BILATERAL
NEGOTIATED SERVICE AGREEMENT

Docket Nos.
MC2010-12

MARKET DOMINANT PRODUCT PRICES
CANADA POST – UNITED STATES POSTAL SERVICE
CONTRACTUAL BILATERAL AGREEMENT FOR INBOUND
MARKET DOMINANT SERVICES (MC2010-12)
NEGOTIATED SERVICE AGREEMENT

R2010-2

**REQUEST OF UNITED STATES POSTAL SERVICE TO ADD CANADA POST –
UNITED STATES POSTAL SERVICE CONTRACTUAL BILATERAL AGREEMENT
FOR INBOUND MARKET DOMINANT SERVICES TO THE MARKET DOMINANT
PRODUCT LIST, NOTICE OF TYPE 2 RATE ADJUSTMENT, AND NOTICE OF
FILING AGREEMENT (UNDER SEAL)**
(November 19, 2009)

In accordance with 39 U.S.C. §§ 3622(c)(10) and 3642 and 39 C.F.R. §§
3010.40 *et seq.* and 3020.30 *et seq.*, the United States Postal Service (Postal Service)
hereby requests that the Canada Post – United States Postal Service Contractual
Bilateral Agreement for Inbound Market Dominant Services (Agreement)¹ be added to
the market dominant product list within the Mail Classification Schedule (MCS).² The

¹ “Agreement” is used herein to denote the composite segments of the overarching agreement with Canada Post that have been filed under seal, to the sole extent that they bear on the rates and classifications for inbound market dominant services.

² The Postal Service considers this Agreement to be functionally equivalent to the agreement considered in Docket Nos. MC2009-7 and R2009-1, of which the instant Agreement is the immediate successor. *Cf.*, e.g., PRC Order No. 265, Order Concerning Filing a Functionally Equivalent Global Plus 1 Contract Negotiated Service Agreement, Docket No. CP2009-46, July 31, 2009, at 6 (finding the two Global Plus 1 contracts that supersede the expiring, original Global Plus 1 contracts to be functionally equivalent with the latter and eligible for inclusion in the same product listing). Although the Postal Service contends that such action is therefore unnecessary, it has determined, in the interest of clarity, to supplement the Commission’s record in this proceeding by submitting the instant Agreement anew as a matter of classification and inclusion on the Market Dominant Products List, particularly due to the exclusion of

Postal Service also provides notice that the Governors of the Postal Service have authorized a Type 2 rate adjustment to establish the rates for the Agreement.

Attachment 1 to this Request includes proposed MCS language for the Agreement. Attachment 2 is the Statement of Supporting Justification of Lea Emerson, Executive Director, International Postal Affairs, pursuant to Rule 3020.32. A redacted copy of the Agreement is included in the public version of this filing as Attachment 3. The full Agreement and supporting financial documentation are being filed separately under seal with the Commission. Attachment 4 to this filing is the Postal Service's application for non-public treatment of these materials. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

I. Application for Non-Public Treatment

The Postal Service maintains that certain portions of the Agreement and related financial information should remain confidential. In accordance with Order No. 225,³ the Postal Service files as Attachment 4 to this Request its application for non-public treatment of materials filed under seal. A full discussion of the required elements of the application appears in Attachment 4.

II. Notice of Agreement and Rate Adjustment

A. Criteria under Part 3010, Subpart D of the Rules of Practice and Procedure

The Postal Service provides the following answers, descriptions, and affirmations in response to the criteria for a notice of agreement, as provided in 39 C.F.R. § 3010.42.

inbound Xpresspost traffic from this market dominant Agreement. This filing is not intended to preclude the Postal Service from submitting any similar agreement as functionally equivalent in the future.

³ PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

This statement provides support for the implementation of the Agreement and the establishment of the rates offered therein.

- (a) ... (1) A copy of the negotiated service agreement;*
- (2) The planned effective date(s) of the proposed rates;*
- (3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the proposed new rates; and*
- (4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.*

As described above, a copy of the materials that comprise the Agreement is being filed under seal in connection with the instant filing.⁴ The Agreement's inbound market dominant rates are planned to become effective on January 4, 2010. Public notice of these rates is being given through the instant Request at least 45 days before the effective date. A public notice about this Request will also be sent for publication in the *Federal Register* before the effective date. Ms. Lea Emerson, Executive Director, International Postal Affairs, will be available to provide prompt responses to requests for clarification from the Commission.

- (b) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.*

The parties to the Agreement are the United States Postal Service and the Canada Post Corporation. The Agreement includes inbound Letter Post, in the form of

⁴ The Agreement materials filed under seal in this docket constitute a subset of the overarching agreement between the Postal Service and Canada Post. Although certain aspects of the overarching agreement, including some provisions in the materials submitted here, await finalization between the parties, the current agreement's impending expiration and the regulatory time-frame demand that the Postal Service submit these materials in their present state. Although the parties expect to finalize the overarching agreement by mid-December, any lingering details or revisions will not affect the inbound rates, classification, or other fundamental basis for this Request and Notice. To the extent that the overarching agreement or any portion of it constitutes a "commercial or operational contract[] related to providing international postal services and other international delivery services" with "an agency of a foreign government," the Postal Service will transmit a copy of the finalized agreement to the Commission pursuant to 39 U.S.C. § 407(d).

letters, flats, packets, bags, and containers, and International Registered Mail service ancillary to such inbound Letter Post. In addition to rates, the Agreement provides delivery and scanning performance objectives, as well as incentives to encourage operational improvement.

(c) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

- (1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;*
- (2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;*
- (3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement; and*
- (4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.*

The Postal Service has provided information about expected financial improvements, costs, volumes, and revenues in the financial workpapers that it has filed under seal.

(d) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.

The performance responsibilities are consistent with those that applied under the precursor agreement, which was the subject of Docket Nos. MC2009-7 and R2009-1. These responsibilities include Canada Post's work-sharing arrangements, such as presorting items to a three-digit delivery ZIP Code level and providing transportation for

inbound airmail items to multiple Postal Service International Service Centers for acceptance.

(e) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace.

The Agreement will not result in unreasonable harm to the marketplace. On this point, the arguments and assertions have not changed since the Postal Service's Request in Docket Nos. MC2009-7 and R2009-1, and the Postal Service hereby incorporates those arguments and assertions by reference.⁵

(f) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

In this docket, the Postal Service is presenting only an agreement to deliver Letter Post in the United States that is tendered by Canada Post. The rates paid by the Postal Service to Canada Post for outbound delivery of the Postal Service's market dominant products in Canada have not been presented to the Commission. Those rates represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its mailing customers for outbound market dominant products to be delivered in Canada. An agreement concerning outbound market dominant services with Canada Post would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement to

⁵ Request of United States Postal Service to Add Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services to the Market-Dominant Product List, Notice of Type 2 Rate Adjustment, and Notice of Filing Agreement (Under Seal) (hereinafter "2009 Request"), Docket No. R2009-1, November 13, 2008, at 5-6. See also PRC Order No. 163, Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, December 31, 2008, at 9 (finding that, based on the Postal Service's arguments, the "Agreement will not result in unreasonable harm to the marketplace").

purchase trucking services from highway contractors or to purchase air transportation from air carriers.

B. Data Collection Plan

Under 39 C.F.R. § 3010.43, the Postal Service must include with its notice of agreement “a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. [§] 3622(c)(10).” In past proceedings, such as the Postal Service’s 2007 Annual Compliance Report and filings under former 39 U.S.C. § 3663, the Postal Service has provided data and information on actual experience with these services offered in the context of bilateral agreements with Canada Post. These data and information were ultimately sufficient to allow the Commission to evaluate whether the services complied with statutory criteria. The Postal Service will continue to cooperate with the Commission to provide any necessary information about mail flows from Canada within the course of the annual compliance review process. Therefore, the Postal Service proposes that no special data collection plan be created for the Agreement.

C. Statutory Criteria

Under 39 U.S.C. § 3622(c)(10), the only criteria for the Commission’s review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. The first two criteria have been addressed in Part II.A above. With respect to the third criterion, there are no entities that are similarly situated to

Canada Post in their ability to tender Letter Post from Canada under similar operational conditions, nor any other entities that serve as a designated operator for Letter Post originating in Canada. Therefore, the Postal Service finds it difficult to conceive of a “similarly situated mailer” to whom it could make a similar agreement available; accordingly, the Postal Service views this criterion as inapplicable in this instance.⁶ Because all of section 3622’s criteria have been met, the Postal Service respectfully urges the Commission to act promptly by allowing the Agreement’s rates to be implemented under 39 C.F.R. § 3010.40, as requested.

III. Request to Add Agreement to the Market Dominant Products List

A. Identification of Existing Agreement

At present, the only agreement with Canada Post for inbound market dominant services is described in draft MCS language submitted by the Postal Service in Docket Nos. MC2009-7 and R2009-1.⁷ The market dominant rates and classifications in the existing agreement were established by the Governors of the Postal Service pursuant to 39 U.S.C. § 404(b) and were submitted to the Commission for review in Docket Nos. MC2009-7 and R2009-1.⁸ This agreement is set to expire on December 31, 2009. The terms of the new agreement fit within the new proposed MCS language included as Attachment 1 to the instant filing.

B. Proposed Mail Classification Schedule Language

⁶ See PRC Order No. 163 at 9-10 (“Given its narrow characterization of the underlying Agreement, the Postal Service’s position [as to ‘similarly situated mailers’] is correct. For purposes of this proceeding, the Commission concludes that it would be largely an academic exercise to consider whether a broader characterization should be employed.”).

⁷ See 2009 Request, Attachment 1.

⁸ *Id.* A copy of the full 2009 bilateral agreement with Canada Post was also provided pursuant to 39 U.S.C. § 407(d)(2) to the Commission under cover of letter dated January 2, 2009, to the Secretary of the Commission.

The proposed MCS language in Attachment 1 resembles the language that the Postal Service proposed in reference to the precursor agreement in Docket No. R2009-1.⁹ The differences reflect differences in certain operational details of the two agreements, as well as the Postal Service's decision to classify Canada Post's "Xpresspost-USA" service as a competitive product,¹⁰ rather than as a market dominant product as in Docket Nos. MC2009-7 and R2009-1. Although the proposed MCS language may tend toward terseness, the Postal Service notes the Commission's ruling that "[t]he rules require only minimal descriptive information to be included in the Mail Classification Schedule."¹¹ With respect to the Postal Service's earlier proposed MCS, which included a description of the market dominant aspects of the previous Canada Post bilateral agreement that closely resemble the MCS description attached hereto, the Commission acknowledged that "[t]he level of detail that the Postal Service provided in its [initially] proposed Mail Classification Schedule . . . appears adequate."¹²

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

The Statement of Supporting Justification of Lea Emerson, Executive Director, International Postal Affairs, is included as Attachment 2 in accordance with Part 3020, Subpart B of the Rules of Practice and Procedure. This Statement provides support for the addition of the Agreement to the market dominant products list.

Under 39 U.S.C. § 3642(b), the only criteria for such review are whether the product qualifies as market dominant as a function of the Postal Service's market

⁹ *Id.*

¹⁰ The Postal Service will discuss Xpresspost-USA further in a filing regarding the inbound competitive services offered under the same overarching prospective agreement with Canada Post, which the Postal Service expects to file in the near future.

¹¹ PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. MC2007-1, October 29, 2007, at ¶ 4010.

¹² *Id.*

power, whether it is excluded from the postal monopoly, and whether the proposed classification reflects certain market considerations. Each of these criteria has been addressed in this case. With Order No. 43, the Commission has already assigned all inbound shipments of single-piece Letter Post to the market dominant category,¹³ and the Agreement is the instrument that implements negotiated rates and operational provisions concerning Letter Post. Notably, the Commission agreed that the precursor agreement with Canada Post for market dominant services met the statutory criteria for placement on the market dominant product list, particularly with regard to the inbound Letter Post items that are the sole focus of the instant Agreement.¹⁴ The additional considerations listed in 39 U.S.C. § 3642(b)(3) are addressed in Ms. Emerson's statement. Because all of section 3642's criteria for classification have been met, the Postal Service respectfully urges the Commission to act promptly by adding this product to the market dominant products list as requested.

IV. Conclusion

For the reasons discussed, the Postal Service believes that the Agreement should be added to the market dominant products list. The Postal Service asks that the Commission approve this Request.

As required by 39 U.S.C. § 3642(d)(1), a notice concerning this Request will be sent for publication in the *Federal Register*.

¹³ *Id.* at ¶ 4003 (placing Inbound First-Class Mail International as a subset within the classification for First-Class Mail).

¹⁴ PRC Order No. 163 at 7, 10.

Respectfully submitted,

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November 19, 2009

**1620 Canada Post – United States Postal Service Contractual Bilateral
Agreement for Inbound Market Dominant Services**

This agreement governs the exchange of inbound air and surface letter post (LC/AO) from Canada to the U.S. In particular, the agreement contains operational terms and charges for delivery of inbound air and surface letter post.

Statement of Supporting Justification

I, Lea Emerson, Executive Director, International Postal Affairs, am sponsoring the Request that the Commission add the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services (Agreement) filed in Docket No. MC2010-12 to the market-dominant products list. The proposed Mail Classification Schedule (MCS) language for the Agreement describes this agreement. My statement supports the Postal Service's Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below and in the Request and Notice to which this statement is attached, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Unlike Type 1 and 3 rate adjustments, the Commission has acknowledged in 39 C.F.R. § 3010.2(a) that rate adjustments for negotiated service agreements are authorized by 39 U.S.C. § 3622(c)(10), rather than 39 U.S.C. § 3622(d).

Therefore, the requirements of 39 U.S.C. § 3622(d) do not appear to apply in this instance.

In the Request and Notice to which this statement is attached, the Postal Service has explained how the agreement complies with the applicable factors in 39 U.S.C. § 3622(c)(10). The Agreement also accords with the objectives stated in 39 U.S.C. § 3622(b) and the other factors stated in 39 U.S.C. § 3622(c), to the extent applicable. By negotiating directly with foreign postal administrations through bilateral agreements such as the one submitted here, it is possible to present prices that more accurately represent the services' costs and the value that the foreign postal administration and its customers place on the services being provided (factors 1 and 7), which offer reliability and varying degrees of delivery speed (factor 9). The rates in the agreement will remain in effect for two years, with an adjustment in the second year, and represent modest increases over prior rates, thereby achieving the goal of predictability and stability for Canada Post and its customers, as well as the Postal Service (objective 2). The agreement includes performance-based incentives to promote cost reduction, increase efficiency, and improve service performance (objectives 1 and 3 and factor 12).

The revenues earned by the Postal Service under the agreement will cover the costs attributable to the services offered under the agreement, and they will allow for sufficient retained earnings to maintain financial stability (objective 5). As a result, the agreement is in keeping with the appropriate allocation of such costs between market-dominant and competitive products

(objective 9 and factor 2). These rates provide superior cost coverage to the default rates set by the Universal Postal Union (objectives 5, 8, and 9 and factor 7). The rates represent a modest increase over those provided in the precursor agreement and will likely have little effect on either Canada Post or American recipients (factor 3).

Both senders and recipients typically esteem Letter Post as an economical and reliable option for personal and business correspondence. Therefore, it may be assumed that inbound Letter Post from Canada is of high relative value to the people and that it may tend to contain items with high educational, cultural, scientific, and informational value (factor 8). Alternatives to inbound Letter Post from Canada are available at reasonable cost in the form of electronic, telephone, and facsimile communication (factor 4).

Adding the Agreement to the market-dominant products list will promote simplicity in the MCS's structure (factor 6). The proposed listing features simple, direct language that describes the market-dominant portion of the Postal Service's long-standing relationship with its largest foreign trading partner.

Under the agreement, Canada Post performs certain mail preparation tasks, such as presorting airmail items to a three-digit delivery ZIP Code level and providing transportation for inbound items to multiple Postal Service International Service Centers for acceptance. These activities reduce the Postal Service's costs (factor 5).

If the Commission permits this directly negotiated agreement to be classified and its rates implemented, it will be affirming the Postal Service's

exercise of its pricing flexibility (objective 4 and factor 7) and reducing administrative burden that might impede the flow of inbound mail from Canada (objective 6). Because this type of agreement was not subject to prior Commission review under the Postal Reorganization Act, this proceeding in itself arguably represents an increase in transparency, and the Postal Service's arrangements with Canada will continue to be subject to the annual compliance review process (objective 6). Finally, classification by the Commission would enable the establishment of rates that are considered to be just and reasonable by both the Postal Service and Canada Post (objective 8).

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Not applicable. The Postal Service is proposing to add the Agreement to the market-dominant products list.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

Not applicable. The Postal Service is proposing to add the Agreement to the market-dominant products list.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

The Private Express Statutes generally prohibit entities other than the Postal Service from carrying inbound letters weighing less than 12.5 ounces,

unless postage has been paid or the carriage falls under certain exceptional circumstances. Therefore, the inbound Letter Post from Canada that is a subject of the Agreement is subject to the so-called “letter monopoly” up to the weight threshold, and to the extent that a private entity would not carry the items under exceptional circumstances provided in the Private Express Statutes (e.g., for at least six times the current price of a one-ounce First-Class letter, or within the prescribed time guidelines for “extremely urgent” delivery, or as a special messenger).

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

Due to the Postal Service and Canada Post’s respective statutory frameworks, their status as their respective countries’ designated operators to provide universal Letter Post service under the Universal Postal Convention, and their historically dominant position in the marketplace for letter mail, there are few alternatives for sending and receiving inbound Letter Post from Canada at reasonable costs. It should be noted, however, that electronic, telephone, and facsimile communication represent low-priced alternatives for the type of business and personal correspondence typically transmitted through Letter Post.

- (g) *Provide any available information on the views of those who use the product on the appropriateness of the proposed modification.*

The Canada Post Corporation, the counter-party to the agreement presented in Docket No. MC2010-12, is a foreign postal administration that desires to tender inbound mail volume to the Postal Service under the terms and

conditions it has negotiated with the Postal Service. The Postal Service has concluded similar bilateral agreements with Canada Post since 1888. This indicates that Canada Post, as well as its mailing customers, finds the type of arrangement that this agreement represents to be invaluable for preserving and enhancing mail services from Canada to the United States. However, no specific data are available to the Postal Service on Canada Post's or its mailing customers' views regarding the regulatory classification of this agreement.

(h) Provide a description of the likely impact of the proposed modification on small business concerns.

Addition of the Agreement will likely have little, if any, adverse impact upon small business concerns. By offering the rates in this agreement, the Postal Service is continuing to provide Canada Post and small businesses in the United States affordable, reliable options for mailing letters and merchandise to the United States. As described in response to Part (f) above, there is little direct private competition for inbound Letter Post from Canada, and so classification of the agreement will not have significant impact on small business competitors. The Postal Service is unaware of any small business concerns that offer competing services. Thus, the net impact on small businesses is positive, because of the absence of negative impact on any small business competitors and the positive impact on small businesses served by Canada Post and the Postal Service.

(i) Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

In its 2008 Annual Compliance Determination, the Commission observed that

[f]or a number of years (including FY 2007), terminal dues revenues from foreign postal administrations, with the exception of Canada, failed to cover the attributable costs of inbound First-Class Mail International. . . . Pursuant to the UPU Convention, the Postal Service (or any postal administration) may opt out of the UPU-established rates by negotiating bilateral or multilateral rate agreements with other countries for some or all of its inbound letter post. This suggests another important option available to the Postal Service to obtain compensatory rates and bring the cost coverage for inbound First-Class Mail International into compliance with the requirements of the PAEA.

The Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services addresses the Commission’s concerns, in that compensatory rates for inbound Letter Post have once again been negotiated with Canada Post.

CANADA POST – UNITED STATES POSTAL SERVICE CONTRACTUAL BILATERAL AGREEMENT

BETWEEN

CANADA POST CORPORATION,
a corporation incorporated under the
Canada Post Corporation Act, R.S.C. 1985,
c. C-10 as amended, and having its head
office in the City of Ottawa in the Province
of Ontario
("Canada Post")

AND

THE UNITED STATES POSTAL SERVICE,
an independent establishment of the Executive
Branch of the United States Government
having its headquarters in the City of
Washington, District of Columbia

(the "United States Postal Service")

This Agreement governs the exchange, between Canada Post and the United States Postal Service, of the international products and services addressed in this Agreement (the "International Products and Services") and sets out quality objectives and standards as well as "Pay-for-Performance" incentives for meeting the prescribed quality standards.

NOW THEREFORE in consideration of the mutual covenants set out in this Agreement, Canada Post and the United States Postal Service agree as follows:

1. Definitions

In this Agreement, the following terms shall have the meanings set out below:

"Parties" means Canada Post Corporation (CPC) and the United States Postal Service (USPS).

2. Purposes of this Agreement

The purposes of this Agreement are the following:

- (a) to foster the maintenance and further development of a mutually beneficial relationship on behalf of the Parties' respective customers;
- (b) to set out the principles and general terms and conditions that shall apply to the exchange of International Products and Services between the Parties; and
- (c) to set out the rates that will apply to the exchange of International Products and Services between the Parties.

3. Guiding Principles of the Agreement

The Parties agree to work together to improve the quality of postal services between Canada and the United States in order to better serve the North American market. In particular, the Parties agree to provide access to each other's operating networks and services in such a way that for each service provided, to the extent practicable:

- (i) excellence in quality of service performance will be attained and maintained;
- (ii) the flexibility required to meet changing market and logistical conditions will be supported;
- (iii) the costs to each Party of providing services will be minimized; and
- (iv) settlement and payment processes will be electronically-based to the extent practicable, with the objective being to make such processes efficient, timely, and specific to each particular service or type of service.

4. Quality of Service

[RESERVED]

5. Rates

(a) The Parties agree that each of the *Standard EMS Agreement on the International Exchange of EMS Items between Postal EMS Operators*, and the *Multi-Services Agreement*, and any other services for which a specific agreement with its own terms and conditions is added to this Agreement as an attachment, any adjustments to the rates for the services shall be subject to the terms and conditions of the applicable attached specific agreement.

(b) Each Party agrees that for the services, other than those that are the subject of clause (a), that the other Party provides to it during each of the periods specified in Attachment 1, the first-mentioned Party shall pay the other Party the applicable rates specified in Attachment 1. If the rates are to be amended during the Term, the amendment must be made as an amendment to this Agreement.

(c) If the Parties agree to extend the Term of this Agreement for any subsequent year, then the rates for each such year of extension shall, by amendment to this Agreement made in accordance with Article 31, be added to Attachment 1, and as such shall be the rates that the Parties will pay to each other for services provided during the time period specified in the addition to Attachment 1.

(d) [RESERVED]

6. Terms for the *Delivery of EMS Items*

The terms and conditions for the delivery of EMS items shall be governed by the *Standard EMS Agreement on the International Exchange of EMS Items between Postal EMS Operators*, which is Attachment 3 to this Agreement.

7. Terms for *Multi-Services Agreement*

The terms and conditions of the *Multi-Services Agreement*, which includes International Direct Entry Services, Domestic Entry Services and Ancillary Services, are set out in Attachment 4.

8. Settlement Principles

The Parties are committed to the settlement of accounts according to the following principles:

- (a) use of monthly billing, settlement and payment for streams of mail exchanged between the parties using agreed-upon interim values where applicable;
- (b) generation of independent bills of account for northbound and southbound mail based on the use of PREDES data;
- (c) quarterly exchange of monthly sampling and preliminary weight data; and
- (d) annual settlement of accounts using agreed-upon final values where applicable.

9. Shared Surface Transportation Costs

The terms and conditions for the sharing of transborder transportation costs shall be governed by Attachment 5.

10. Network Improvements

[RESERVED]

General Provisions

11. Audit

The Parties reserve the right to review, in accordance with a mutually agreed to schedule, the account settlement processes and practices used by each in association with the acceptance, dispatching, recording, and accounting for the volumes exchanged under this Agreement. Notwithstanding the foregoing, each Party reserves the right to restrict access to information it deems to be commercially-sensitive.

12. Meetings

(a) The Parties shall hold an annual meeting during each calendar year of the Term. At each annual meeting, the Parties will discuss and review the following:

- (i) the services being provided and any adjustments required;
- (ii) the addition or deletion of any services;
- (iii) implementation of terms outlined in the Agreement;
- (iv) general compliance with this Agreement; and
- (v) any rate adjustments proposed by either Party.

(b) In addition, the Parties may hold *ad hoc* meetings as required to deal with specific issues.

(c) The Parties agree to hold further meetings on Pay-for-Performance, network optimization and operational issues. The objectives of the Parties are set out in Attachment 2.

13. Confidentiality

(a) Confidential information shared in connection with this Agreement is subject to the confidentiality provisions that are set out in Attachment 6 of this Agreement.

(b) The Parties, through the USPS Chief Privacy Officer and Canada Post's Director, Privacy, respectively (each being the Party in question's "Privacy Representative") shall keep each other apprised of significant changes in the administration of records pertaining to individual customers of international mail and the content of those records. In particular, each Party's Privacy Representative shall advise the other of any significant changes in connection with the following:

- (i) the purposes for which the other Party may use records about individual customers of international mail,
- (ii) the implementation of adequate measures to safeguard those records,
- (iii) measures to segregate those records,
- (iv) the time period for which those records may be kept, and
- (v) the manner in which that information is to be destroyed when the relevant time period has expired.

(c) If after having received information of a change under clause (b) the receiving Privacy Representative has a concern, the other Privacy Representative shall give due consideration to the receiving Privacy Representative's concerns with the objective, to the extent possible, of resolving the concern to the mutual satisfaction of both Parties.

14. Procedure Respecting USPS Filings with the PRC

(a) The USPS represents that as part of its legislated requirement to secure U.S. Postal Regulatory Commission ("PRC") approval of this Agreement and in other subsequent regulatory filings, the USPS is required to file this Agreement and supporting documentation with the PRC in a docketed proceeding. Given that this Agreement contains confidential information of CPC, the disclosure of which could cause harm to CPC, the USPS shall, prior to filing any part of this Agreement with the PRC or any redacted version of any part of this Agreement, consult with CPC with the objective of achieving consensus between the parties with respect to the scope of what the USPS will file, particularly

(i) the parts of the Agreement that are to be identified as non-public and claimed as exempt from disclosure,

(ii) the wording of any redactions that are to appear in place of the parts identified as non-public, and

(iii) the wording of any submissions that the USPS proposes to make in conjunction with the filing.

(b) CPC further understands that any unredacted portion of the Agreement and any redactions and supporting information will be available on the PRC's public website, www.prc.gov. In addition, the Postal Service is required to file other information in connection with this Agreement (including the USPS's revenue, the USPS's cost, or the USPS's volume data) in other PRC dockets. For such filings, the parties agree that the provisions of clause (a) shall be read with the necessary changes with the objective of the parties always reaching a consensus with respect to the parts of the material to be filed that are to be identified as non-public and the wording of any redactions and submissions.

(c) The USPS agrees that CPC at all times maintains the right, in accordance with the PRC's rules, to address CPC's confidentiality concerns directly with the PRC. The USPS will provide CPC with timely notice of the docket numbers of all PRC proceedings in which the USPS has a filing requirement that may involve disclosure to the PRC of matters related to this Agreement or other confidential information of CPC.

(d) Without limiting the generality of the other clauses of this Article, the USPS represents that one aspect of its filing requirements is to give notice to the PRC as to which parts of the Agreement are to be added to the competitive products list and which are to be added to the market dominant products list. In this regard, both parties acknowledge that what may be identified as competitive products and what may be identified as market dominant products in any filing with the PRC are so identified with respect to the U.S.A. market only and would not necessarily have the same classification in the Canadian Market.

15. Dispute Resolution Process

[RESERVED]

16. Temporary Suspension of Service

Except for payment obligations, neither Party shall be liable for temporary suspension of services, delays, or inability to perform due to causes outside of its reasonable control including, but not limited to, acts of God, or labour disruptions. On-Time and Scanning Pay-for-Performance objectives and penalties shall, however, be adjusted to take account of the temporary service suspensions, delays or inability to perform due to causes outside a Party's reasonable control.

17. Assignment

Neither Party may assign this Agreement without the prior written consent of the other Party.

18. Waiver

(a) No delay or omission by either Party to exercise any right or power accruing upon any non-compliance or default by the other Party with respect to any of the terms of this Agreement shall be construed as a waiver of such non-compliance or default.

(b) A waiver by either of the Parties of any breach of the terms of this Agreement shall not be construed to be a waiver of any preceding or succeeding breach.

(c) A Party shall not be deemed to have waived any matter under this Agreement unless that Party has given the other Party a written notice that the first-mentioned Party has waived the matter in question.

19. Conditions Precedent

The Parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by (hereinafter "Conditions Precedent") one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include but are not limited to: approvals or, if applicable, non-objection, from USPS management's executive committee, the USPS executive committee, the Governors of the USPS, and the U.S. Postal Regulatory Commission. The Parties acknowledge that the Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS or CPC and no benefit or rights granted through this Agreement shall inure to either Party unless and until the Effective Date occurs and upon such occurrence the Condition Precedent shall have been fulfilled.

20. Effect of Partial Invalidity

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

21. Notices

(a) For each of the *Standard EMS Agreement on the International Exchange of EMS Items between Postal EMS Operators*, the *Multi-Services Agreement*, and any other services for which a specific agreement setting out its own terms and conditions is added to this Agreement as an attachment, notices, requests, or other communications with respect to the specific agreement and the services provided under it shall be given in accordance with the terms and conditions of the relevant attachment without reference to any aspect of the notice provisions that are set out here in the body of this Agreement. All other notices, requests, or other communications required or permitted to be given under this Agreement ("Notices") shall, unless otherwise specifically provided for in this Agreement, be given in writing in accordance with clause (b).

(b) Notices may be:

(i) personally delivered,

(ii) sent by registered mail, or

(iii) sent by facsimile to a number provided in each Party's entry in the UPU List of Addresses

to each of the Parties at its respective address as follows:

to United States Postal Service,

EXECUTIVE DIRECTOR
INTERNATIONAL POSTAL AFFAIRS
1735 NORTH LYNN STREET ROOM 6043
ARLINGTON VA 22209-6111
USA

and to Canada Post,

GENERAL MANAGER
INTERNATIONAL RELATIONS
2701 RIVERSIDE DRIVE SUITE N0220
OTTAWA ON K1A 0B1
CANADA

and to such other individuals or addresses as the Parties may advise the other of from time to time.

(c) Any Notice sent by registered mail shall be deemed to have been received by the Party to whom it was addressed on the 5th mail delivery day following the day on which it was posted. Any Notice sent by facsimile shall be deemed to have been received by the Party to whom it was addressed on the day following the day on which it was sent.

(d) Either Party may change its address for Notice to another address by Notice to the other Party given in accordance with clause (b). All addresses for Notice must be addresses to which Notices can be personally delivered.

22. Term

Subject to Article 19, this Agreement and its Attachments shall bind the Parties beginning on January 1, 2010 (the "Effective Date") and that ends on December 31, 2011, (the "Term"), unless terminated earlier in accordance with Article 23. Notwithstanding the Effective Date set forth in the previous sentence, Articles 11 through 31 of this Agreement and Attachment 6 (Confidentiality Provisions) shall be effective immediately upon the later of the Parties' signatures below. This Agreement and all Attachments shall remain in effect from the Effective Date until the Agreement end date or until terminated, except where an Attachment provides otherwise.

23. Termination

(a) Subject to clause (b), either Party may terminate this Agreement without cause upon at least 90 days' written notice to the other Party. However, if this Agreement is terminated under the preceding sentence, each of the specific agreements that are attached to this Agreement shall be deemed to be unaffected by such termination, to the extent that those agreements contain an express method of termination. Each of the specific agreements that are attached to this Agreement may only be terminated in accordance with the terms and conditions of that specific agreement.

(b) If a Party exercises the right to terminate this Agreement in accordance with clause (a), the only liability that the Parties shall have to each other is to make final settlement of all amounts owing as of the effective date of termination. Each Party shall bear its own costs in the event of termination. In the event of termination, and unless otherwise provided, the Parties shall maintain the rates under this Agreement effective at the time of such termination until such time as they can reach a renewed agreement, and neither Party shall be liable to the others for any damages including, without limitation, actual, special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason.

24. Negotiated Commercial Arrangement

Each of the Parties acknowledges that this Agreement sets out the terms and conditions of a negotiated commercial arrangement between the Parties and is not an agreement entered into or subject to international law. This Agreement is only binding on the United States Postal Service and Canada Post Corporation as a crown corporation.

25. Compliance with Applicable Laws when Operating in the Other Party's Country

Nothing in this Agreement shall relieve a Party of its obligation to comply with the laws in force in the other Party's country with respect to any operations that the first-mentioned Party carries out in the other Party's country.

26. Application of the *Universal Postal Convention*

For the period during which both Parties are signatories to the *Universal Postal Convention*, the obligations of the Parties under the *Universal Postal Convention* remain in effect except to the extent that this Agreement defines other terms and conditions or arrangements between the Parties, in which case this Agreement shall take precedence. Charges billed under Universal Postal Convention include but are not limited to missent mail and transit mail.

27. Customer Inquiry Support and Acceptance of Liability for Claims Respecting the Loss, Rifling, or Damage of Parcels

(a) The Parties agree to continue the practice between them as of the signing date of this Agreement, which is that the administration of origin is responsible for, and undertakes the payment of indemnity for, the loss, rifling, and damage of parcels in accordance with its postal laws and regulations.

(b) The Parties agree to continue to receive and respond to inquiries relating to parcels received by each other's administration consistent with the mutually agreed practices and procedures developed and implemented between the parties as of July 1, 2009 using the CSS Parcels module within the IPC Customer Service System. The process and procedures to support an automated customer inquiry system are outlined here.

(i) Provision of Inquiry, Customer Service and Support Services for Northbound Priority Mail International Parcels and Northbound Surface Parcels:

Procedures are as follows, no charges are applied by either party.

For Inquiries:

US Sender (American or Canadian) initiates inquiry with USPS no earlier than 10 Days after Date of Mailing. (No later than 6 months after Date of Mailing.)

USPS verifies scan events. If status of article is unknown, USPS submits Full Investigation via the CSS Parcels module within the IPC Customer Service System (CSS). CPC confirms delivery of parcel via CSS. CPC investigates status of parcel and provides status via CSS. CPC sends CN18 to Canadian addressee to ascertain delivery status. If addressee is contacted via letter, a pre-paid Business Reply envelope addressed to the USPS is included with letter. CPC responds to USPS via CSS: "Letter sent to customer to confirm delivery" and closes Full Investigation request within 20 days. USPS receives confirmation of delivery from CPC or Canadian customer, OR in the event of Loss: if article is deemed lost after 20 days from start of Full Investigation, US Sender (American or Canadian) is sent a claim form. USPS assumes full liability.

For Damaged or Missing Contents:

Canadian Addressee contacts CPC for article received damaged or missing contents. Canadian Addressee is informed that the US Sender (American or Canadian) must initiate the inquiry with the USPS. US Sender initiates inquiry with USPS. USPS submits Full Investigation with Canada via CSS.

CPC sends addressee a questionnaire to confirm damage or missing contents. A pre-paid Business Reply envelope addressed to the USPS is included with letter.
CPC responds to USPS via CSS: "Letter sent to customer to confirm damage (or Missing Contents)" and closes Full Investigation request within 20 days.
USPS receives confirmation of damage (or missing contents) from addressee. USPS sends the US Sender a claim form. USPS assumes full liability.

(ii) Provision of Inquiry, Customer Service and Support services for Southbound Xpresspost-USA (exclusion applies to LE articles) Parcels and Expedited Parcel-USA
Procedures are as follows, no charges are applied by either party.

For Inquiries:

Canadian Sender (Canadian or American) initiates inquiry with CPC no earlier than 10 Days after Date of Mailing. (No later than 6 months after Date of Mailing.)
CPC verifies scan events. If status of article is unknown, CPC submits Full Investigation via the CSS Parcels module within the IPC Customer Service System (CSS).
USPS confirms delivery of parcel via CSS. USPS investigates status of parcel and provides status via CSS. USPS sends CN18 to American addressee to ascertain delivery status. If addressee is contacted via letter, a pre-paid Business Reply envelope addressed to CPC is included with letter. USPS responds to CPC via CSS: "Letter sent to customer to confirm delivery" and closes Full Investigation request within 20 days. CPC receives confirmation of delivery from USPS or American customer OR in the event of Loss: if article is deemed lost after 20 days from start of Full Investigation, Canadian Sender (Canadian or American) is sent a claim form.
CPC assumes full liability.

For Damaged or Missing Contents:

American Addressee contacts USPS for article received damaged or missing contents. American Addressee is informed that the Canadian Sender (whether Canadian or American) must initiate the inquiry with CPC. Canadian Sender initiates inquiry with CPC. CPC submits Full Investigation with USPS via CSS. USPS sends addressee a questionnaire to confirm damage or missing contents. A pre-paid Business Reply envelope addressed to CPC is included with letter. USPS responds to CPC via CSS: "Letter sent to customer to confirm damage (or Missing Contents)" and closes Full Investigation request within 20 days. CPC receives confirmation of damage (or missing contents) from addressee. CPC sends the Canadian Sender a claim form. CPC assumes full liability.

28. Survival of Various Articles of the 1981 Postal Convention

With respect to the "Postal Convention between Canada and the United States of America" that was signed on September 14, 1981, by the Postmasters General of Canada and the United States (the "*1981 Postal Convention*"), the Parties agree to apply Article 7 and Article 23 of the *1981 Postal Convention* and, shall consider taking such steps as necessary to suspend the outdated provisions of the *1981 Postal Convention* and in any event, between the Parties, the Parties shall consider those outdated provisions to be suspended.

29. Previous Bilateral Agreement Superseded

The Canada Post – United States Postal Service Bilateral Agreement that was signed on December 31, 2008, by the United States Postal Service as represented by its Managing Director, Global Business and Senior Vice President, Paul Vogel and signed on December 23, 2008 by Canada Post as represented by its Chief Operating Officer, Jacques Cote, is superseded by this Agreement.

30. Entire Agreement

(a) This Agreement, including the Attachments listed in clause (b), and any other document or portion of a document that is expressly incorporated into this Agreement by reference constitutes the entire umbrella agreement between the Parties for the exchange of International Products and

Services and no representations, negotiations, or conditions either oral or written shall bind the Parties except as expressly set out in this Agreement. However, where an attachment to this Agreement is itself set up with a signature block at the end of the attachment, it is a specific agreement in itself and the services to be provided under that specific agreement shall be provided in accordance with the terms and conditions of that specific agreement.

- (b) The Attachments to this Agreement as of the signing date are as follows:
- Attachment 1 - Rates
 - Attachment 2 - Scanning and On-Time Quality of Service Pay for Performance
 - Attachment 3 - Standard EMS Agreement on the International Exchange of EMS Items
between Postal EMS Operators
 - Attachment 4 - Multi-Services Agreement
 - Attachment 5 - Terms for Shared Surface Transportation Costs
 - Attachment 6 - Confidentiality Provisions
- (c) Subject to Article 14, the entire Agreement, or portions thereof, will be filed with the U.S. Postal Regulatory Commission with a notice to add it to the competitive and/or market dominant products list.

31. Amendments to this Agreement

- (a) This Agreement may only be amended, or extended, by mutual written agreement signed by authorized representatives of Canada Post and the United States Postal Service.
- (b) Any amendments may be contingent upon any and all necessary approvals by USPS management's executive committee, the Board of Governors of the USPS, the Governors of the USPS, the U.S. Postal Regulatory Commission, the Antitrust Division of the Department of Justice, the Federal Trade Commission and/or any other governmental body with oversight responsibility for the USPS. If such approvals are required, the amendments will not become effective until such time as all necessary approvals are obtained. The USPS will notify CPC of the date the amendments become effective within thirty (30) days after receiving the approval of the entities that have oversight responsibility for the USPS.

DRAFT

Attachment 3 to Postal Service Request
PRC Docket Nos. MC2010-12 and R2010-2

This Agreement is made in duplicate between:

United States Postal Service

Canada Post Corporation

Signature

Signature

**Pranab Shah
Vice President and Managing
Director, Global Business**

**Jacques Côté
Chief Operating Officer**

Date

Date

TABLE OF CONTENTS *To BE UPDATED ONCE MAIN BODY IS FINALIZED*

1.	DEFINITIONS.....	1
2.	PURPOSES OF THIS AGREEMENT	1
3.	GUIDING PRINCIPLES OF THE AGREEMENT	2
4.	QUALITY OF SERVICE	2
5.	RATES	2
6.	TERMS FOR THE <i>DELIVERY OF EMS ITEMS</i>	2
7.	TERMS FOR <i>MULTI-SERVICES AGREEMENT</i>	2
8.	SETTLEMENT PRINCIPLES	2
9.	SHARED SURFACE TRANSPORTATION COSTS	3
10.	NETWORK IMPROVEMENTS	3
11.	AUDIT	4
12.	MEETINGS	4
13.	CONFIDENTIALITY.....	4
14.	PROCEDURE RESPECTING USPS FILINGS WITH THE PRC.....	5
15.	DISPUTE RESOLUTION PROCESS.....	5
16.	TEMPORARY SUSPENSION OF SERVICE.....	5
17.	ASSIGNMENT	5
18.	WAIVER	6
19.	CONDITIONS PRECEDENT	6
20.	EFFECT OF PARTIAL INVALIDITY.....	6
21.	NOTICES	6
22.	TERM.....	7
23.	TERMINATION	7
24.	NEGOTIATED COMMERCIAL ARRANGEMENT.....	8
25.	COMPLIANCE WITH APPLICABLE LAWS WHEN OPERATING IN THE OTHER PARTY'S COUNTRY	8
26.	APPLICATION OF THE <i>UNIVERSAL POSTAL CONVENTION</i>	8
27.	CUSTOMER INQUIRY SUPPORT AND ACCEPTANCE OF LIABILITY FOR CLAIMS RESPECTING THE LOSS, RIFLING, OR DAMAGE OF PARCELS.....	8
28.	SURVIVAL OF VARIOUS ARTICLES OF THE <i>1981 POSTAL CONVENTION</i>	9
29.	PREVIOUS BILATERAL AGREEMENT SUPERSEDED.....	9
30.	ENTIRE AGREEMENT	9
31.	AMENDMENTS TO THIS AGREEMENT.....	10

ATTACHMENT 1 RATES

Rates for the Contractual Bilateral Agreement between Canada Post Corporation and the United States Postal Service

Terminal dues rates listed in the tables included below are product steam rates per item and per kilogram stated in Special Drawing Rights (SDRs) unless noted otherwise. The rates are set on the conditions that current work sharing arrangements are substantially maintained. Any changes to current work sharing (i.e. sortation and preparation) arrangements will be subject to negotiation and mutual agreement first being reached including, but not limited to, agreement as to any impact on pricing.

Southbound Stream Rates

	Service Description (Southbound)	Stream ID = Category + Subclass + Receptacle Type	2010 Rates (SDR's)		2011 Rates (SDR's)	
			Per item	Per kg	Per item	Per kg
	PRIORITY LETTER-POST					
1.1	Priority Letter Tray					
1.2	Priority Flat Tray					
1.3	Priority Bag					
1.4	Priority Large Container					
2.1	Priority "IPA" Letters					
2.2	Priority "IPA" Flats					
2.3	Priority "IPA" Bag					
2.4	Priority "IPA" Large Container					
3	Priority Registered Mail Bag					
	NON-PRIORITY LETTER-POST					
5.1	Non-Priority Flat Tray					
5.2	Non-Priority Large Container (Flat trays)					
5.3	Non-Priority Bag					
5.4	Non-Priority Large Container					

Specifications of Mail Product Categories and Formats

The rates for the stream categories above shall be based upon the following format and product definitions:

- Letters** Any piece which has:
- a length less than or equal to 292 mm (11 1/2 inches) and
 - a width less than or equal to 155 mm (6 1/8 inches) and
 - a thickness equal to or less than 6 mm (1/4 inch)
 - and which has a weight of less than or equal to 2 kilograms
- Flats** Any piece exceeding any maximum limit for a Letter and which has:
- a length less than or equal to 381 mm (15 inches) and
 - a width less than or equal to 292 mm (11 1/2 inches) and
 - a thickness less than or equal to 20 mm (3/4 inch)
 - and which has a weight of less than or equal to 2 kilograms
- Packets** Any piece exceeding any of the maximum size limits for a Flat, but within the maximum size limits as set forth in the Universal Postal Union Letter Post regulations Article RL 122 and which has a weight of less than or equal to 2 kilograms
- Parcels** Any piece corresponding to size limits as set forth in the Universal Postal Union Parcel Post regulations Article RC 115 and which has a weight of less than or equal to 30 kilograms
- M-Bags** Printed matter in a direct sack to a single foreign address, subject to the Reservations of Canada and the United States of America in Universal Postal Union Prot Article RE II, which has a weight less than or equal to 30 kilograms
- Registered Mail** Any piece that meets the size and weight dimensions of Letters, Flats, or Packets and bears a Registered label on the mail piece

**Scanning and On-Time Quality of Service
 Pay for Performance**

		EMS	Air Parcels & Xpresspost USA	Surface Parcels	Letter Post
Scanning Elements					
	Included Scans				
	Performance Target Threshold				
	Measurement				
	Payment for items w/ missing scans and below threshold ("failures")				
On-Time Delivery Elements					
	Categories Included				
	Delivery Standards used				
	Performance Target Threshold				
	Payment for items late and below threshold ("failures")				
Reporting Elements					
	Diagnostic Reporting Frequency				
	PFP Calculation Frequency				
	Invoicing Frequency				

ATTACHMENT 4

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (Agreement). The Agreement and supporting documents establishing compliance are being filed separately under seal with the Commission. A redacted copy of the Agreement is filed with the Request as Attachment 3. In addition, a redacted version of the supporting financial documentation is included with this public filing as a separate Excel file.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that under good business practice would not be publicly disclosed. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).² Because the portions of the

¹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

² In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury,

materials that the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of the instant Agreement, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the contract is made. The Postal Service has already informed Canada Post Corporation (Canada Post), in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service identifies Dave Eagles, Director, International Relations, Canada Post Corporation, as the appropriate contact on behalf of Canada Post. Mr. Eagles' telephone number is (613) 734-6043, and his email address is dave.eagles@canadapost.ca. Canada Post has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Dennis Jarvis, General Manager, International Product Management, Canada Post Corporation. Mr. Jarvis's telephone number is (613) 734-8149, and his email address is dennis.jarvis@canadapost.ca.³

such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

³ In the event of a request for early termination of non-public treatment under 39 C.F.R. § 3007.31, a preliminary determination of non-public status under 39 C.F.R. § 3007.32, or a request for access to non-public materials under 39 C.F.R. § 3007.40, the Postal Service notes, on Canada Post's behalf, that differences in the official observation of national holidays might adversely and unduly affect Canada

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In connection with its Request filed in this docket, the Postal Service included an Agreement and financial work papers. These materials were filed under seal, with redacted copies filed publicly, after notice to Canada Post. The Postal Service maintains that the redacted portions of the Agreement and related financial information should remain confidential.

With regard to the Agreement filed in this docket, the redactions in Attachment 1 withhold the actual prices being offered between the parties under the Agreement. The redactions made to Attachment 2, as well as that on page 5 of Attachment 1, contain details about certain delivery performance thresholds, product tracking levels, and the connection of delivery performance and certain anomalies with payment between operators, all of which is commercially sensitive. The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the work papers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b).

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the Agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be

Post's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, Canada Post has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect Canada Post's interests. A listing of Canada's official holidays can be found at <http://www.pch.gc.ca/pgm/ceem-cced/jfa-ha/index-eng.cfm>.

disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Foreign postal operators could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. Finally, competitors could use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. This latter concern applies to the extent that the prices in the filed agreement text cover both market dominant and competitive services for which competition exists (e.g., with respect to Letter Post, extraterritorial offices of exchange), as well as to the extent that competing providers are not fully cognizant of or compliant with the Private Express Statutes. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial work papers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingency rates included to account for market fluctuations and exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing, in light of statutory, regulatory, or policy constraints. Thus, competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze

the Postal Service out of the relevant inbound delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the Agreement or from the information in the work papers whether additional margin for net profit exists under the Agreement's prices. The charges between the Postal Service and Canada Post constitute costs underlying the postal services offered in customer contracts, and disclosure of this cost basis would upset the balance of Postal Service negotiations with contract customers by allowing them to negotiate, rightly or wrongly, on the basis of the Postal Service's perceived supplier costs. From this information, each foreign postal operator or customer could attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator involved in this Agreement could use the information in the work papers in an attempt to renegotiate its own rates by threatening to terminate its current agreement, although the Postal Service considers this risk to be lower in comparison to those previously identified.

Price information in the Agreement and financial spreadsheets also consists of sensitive commercial information of a foreign postal operator. Disclosure of such information could be used by competitors of the postal operator to assess the operators' underlying costs, and thereby develop a benchmark for the development of a competitive alternative.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the price charts in Attachment 1 of the Agreement would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: Canada Post's negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional profit margin below the rates provided to Canada Post. The other postal operator, which was offered rates comparable to those published in Canada Post's agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered it, or it will not use the Postal Service for its inbound delivery needs.

Harm: Competitors could use performance information to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's and Canada Post's detriment.

Hypothetical: The delivery standards information in Attachment 2 of the Agreement is released to the public. Another delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the Postal Service's and/or Canada Post's performance targets as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's and/or Canada Post's.

Harm: Public disclosure of information in the financial work papers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. It analyzes the work papers to determine what the Postal Service would have to charge

its customers in order to comply with business or legal considerations regarding cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of one or more relevant international delivery markets. Even if the competing providers do not manage wholly to freeze out the Postal Service, they will significantly cut into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the financial workpapers would be used by Canada Post's competitors to its detriment.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. The competitor analyzes the work papers to assess Canada Post's underlying costs for the corresponding Canada Post products. The competitor uses that information as a baseline to negotiate with U.S. customs brokers and freight companies to develop lower-cost alternatives.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international expedited and parcels products (including both private sector integrators and foreign postal operators), as well as their consultants and

attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-public materials. This includes Canada Post with respect to all materials filed under seal except for the Agreement, to which Canada Post already has access.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.