

BEFORE THE  
POSTAL REGULATORY COMMISSION

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Annual Compliance Report, 2017

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: Docket No. ACR2017  
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**COMMENTS OF UNITED PARCEL SERVICE, INC. IN  
RESPONSE TO NOTICE OF PRELIMINARY  
DETERMINATION TO UNSEAL THE POSTAL SERVICE'S  
RESPONSE TO CHAIRMAN'S INFORMATION REQUEST  
NO. 15  
(February 23, 2018)**

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United Parcel Service, Inc. ("UPS") respectfully submits these comments in response to the Postal Regulatory Commission's Order No. 4409 (February 16, 2018), where the Commission made a preliminary determination that the Postal Service's response to Chairman's Information Request No. 15 should be unsealed.<sup>1</sup> These materials are composed of information related to terminal dues revenues, specifically, the "revenue data, by country group and shape, for Inbound Letter Post, as defined in section 1130 of the Mail Classification Schedule for FY 2016."<sup>2</sup>

UPS agrees with the Commission's preliminary determination that the Postal Service has not justified filing its response to CHIR No. 15 under seal. UPS remains concerned about issues related to terminal dues, and supports the public filing of the material for several reasons.

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<sup>1</sup> Notice of a Preliminary Determination to Unseal the Postal Service's Response to Chairman's Information Request No. 15, Dkt. No. ACR2017 (Feb. 16, 2018) ("Order No. 4409"), at 8-9.

<sup>2</sup> Chairman's Information Request No. 15, Dkt. No. ACR2017 (Feb. 7, 2018) ("CHIR No. 15"), at 2.

*First*, UPS reiterates its concern that the Postal Service is charging lower rates to foreign merchants to deliver mail domestically, compared to higher rates charged to U.S. businesses.<sup>3</sup> Both members of Congress and the U.S. Chamber of Commerce have raised concerns that U.S. businesses are placed at an economic disadvantage to foreign businesses due to artificially low rates paid by foreign shippers for delivery of their merchandise within the U.S. at rates not available to domestic shippers.<sup>4</sup> UPS reiterates its view that it makes no sense to treat foreign merchants as deserving of a Postal Service subsidy, and believes that unsealing the Postal Service's response to CHIR No. 15 will facilitate the public's ability to evaluate and address the problem of subsidization of foreign shippers.

*Second*, UPS supports greater transparency in the Postal Service's treatment of terminal dues. UPS believes that aggregate revenue data by country group is unlikely to unmask commercially sensitive information, because CHIR No. 15 clarifies that the Postal Service's response only includes revenue data from government posts, and excludes revenue data from private companies under negotiated service agreements.<sup>5</sup> Further, there are at least 30 countries or territories in each of the four UPU country

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<sup>3</sup> Comments of United Parcel Service, Inc. in Response to Notice of Preliminary Determination to Unseal the Material Filed in Response to Chairman's Information Request No. 1, Question 1, Dkt. No. ACR2017 (Jan. 24, 2018), at 1.

<sup>4</sup> U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, Dkt. No. R2018-1 (Oct. 13, 2017), at 1; Letter from Kenny Marchant, John Duncan, et al. to Rex Tillerson, Secretary of State and Megan Brennan, Postmaster General, Dkt. No. IM2016-1 (Nov. 8, 2017), at 1.

<sup>5</sup> CHIR No. 15 at 2 (stating that the response should only include "revenue data for mailpieces for which foreign operators paid UPU terminal dues rates, and should not include revenue data for mailpieces for which foreign postal operators paid negotiated prices pursuant to any market dominant negotiated service agreements.").

groups, which serves to mask operator-specific revenue data and reduce the likelihood of commercial injury to either the Postal Service or foreign postal operators.<sup>6</sup>

UPS agrees with the U.S. Chamber of Commerce that “the public interest in financial transparency is no different with respect to international market dominant products than with respect to domestic market dominant products.”<sup>7</sup> UPS also shares the concern, expressed by members of Congress, that the Commission should “give the terminal dues program the full scrutiny and oversight that it deserves.”<sup>8</sup> Market-dominant rates are ordinarily regulated and disclosed, and UPS remains concerned that the terminal dues rates, which lack transparency, are not based on actual delivery costs and result in the Postal Service losing money. For instance, in one of its recent information requests, the Commission asked why the Postal Service “did not use the referenced shape-based costs data when developing or reporting costs for the Inbound Letter Post and Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 products.”<sup>9</sup> UPS believes that unsealing terminal dues information will advance the goal of transparency of government entities that compete against the private sector. See 39 C.F.R. § 3007.33(a). UPS is not persuaded by previous comments by the Postal Service under a related filing that such “request [to stay the unsealing of data] will protect the interests of the Postal Service and any other parties who are likely to be adversely impacted by the public disclosure; that impact far

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<sup>6</sup> Order No. 4409 at 7.

<sup>7</sup> U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, Dkt. No. R2018-1 (Oct. 13, 2017), at 1.

<sup>8</sup> Letter from Kenny Marchant to Robert Taub, Dkt. No. ACR2017 (Jan. 25, 2018), at 1.

<sup>9</sup> See Chairman’s Information Request No. 18, Dkt. No. ACR2017 (Feb. 13, 2018), at 1.

outweighs any impact on other parties.”<sup>10</sup> U.S businesses, including UPS and other competitors, along with U.S. merchants, retailers and manufacturers are being harmed daily by the terminal dues program that favors foreign merchants and posts, and any assertion otherwise is inaccurate.

*Third*, UPS remains sensitive to the concerns of market-dominant mailers. The Commission has proposed in the 10-year rate review (Docket No. RM2017-3) to permit price increases to improve the Postal Service’s fiscal sustainability,<sup>11</sup> and transparency into inbound international rates will, at a minimum, assist interested parties in making informed comments. UPS also shares the concerns of U.S.-based market-dominant mailers that they may be asked to generate the revenues needed to cover losses generated by subsidizing foreign mailers on the delivery of inbound international parcels. The consideration of these losses should not be limited to just the revenues minus the actual costs of delivery, but should also include consideration of the revenues that the Postal Service would receive on international inbound parcels if such service were priced at the same level as domestic rates. For similar reasons, UPS remains concerned about the risk that market-dominant mailers may be asked to pay for Postal Service costs and investments that primarily benefit the Postal Service’s competitive products business. To the extent that newly released data sheds light on whether non-U.S. based market-dominant mailers are paying less than the full cost of Postal Service facilities and services that they use, this evidence has the potential to either amplify or

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<sup>10</sup> Motion of the United States Postal Service to Stay Order No. 4394 Concerning the Unsealing of Material Filed in Response to Chairman’s Information Request No. 1, Question 1, Dkt. No. ACR2017 (Jan. 29, 2018), at 1.

<sup>11</sup> See Notice of Proposed Rulemaking for the System of Regulating Rates and Classes for Market Dominant Products, Dkt. No. RM2017-3 (Dec. 1, 2017), at 26-102.

assuage UPS concerns that non-U.S. based competitive product mailers may be benefitting from similar subsidies.

UPS agrees with the Commission's (and a member of Congress') current position that the public interest in financial transparency outweighs the concerns raised by the Postal Service, and that "because the data is aggregated, the potential commercial harm to foreign postal operators has been alleviated."<sup>12</sup> Aggregating data is a commonly accepted way to avoid the disclosure of truly commercially sensitive information, and UPS agrees with the Commission that it is "unlikely that disclosure will necessarily reveal proprietary third party data."<sup>13</sup> For all these reasons, UPS supports unsealing the Postal Service's response to CHIR No. 15. In addition, for the aforementioned reasons, UPS also reiterates its call for the Commission to order the further disclosure of data involving volumes, cost, and weight data of inbound international parcels (by country group and shape), to ensure that practices related to terminal dues will be consistent with national laws and regulations.

Respectfully submitted,

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<sup>12</sup> See Order No. 4409 at 7.

<sup>13</sup> *Id.*