

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

Competitive Product Prices
Inbound E-format Letter Post

Docket No. CP2019-155

COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE
(June 21, 2019)

Pursuant to Order No. 5102, the Association for Postal Commerce (“PostCom”) submits these comments on the Postal Service’s request to establish competitive rates for Inbound E-format Letter Post. The Postal Service request is preceded by a Presidential Memorandum¹ and subsequent State Department statement² declaring the United States’ intention to withdraw as a member country of the Universal Postal Union unless necessary changes to the existing terminal dues system are achieved. The history of Administration actions appears to have shaped the novel proposal that the Postal Service has put forward and therefore requires comment. In general, PostCom does not oppose efforts by the Postal Service to improve the cost coverage of its international mail products and did not oppose the Postal Service’s request to move Inbound E-format Letters to the Competitive Product category. However, while we generally support the Postal Service’s intentions, there are specific aspects of the Postal Service’s proposal that require comment and consideration. Further, even if the policy goals the Postal Service is pursuing are worthy, the Commission’s decision must turn on the proposal’s compliance with 39 U.S.C. § 3633 and the Commission’s regulations implementing that section.

¹ Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail, 83 Fed. Reg. 47791 (Sept. 20, 2018) (“Presidential Memorandum”)

² Statement from the Press Secretary, <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-38/> (Oct. 17, 2018).

I. RATE RANGES DO NOT NEGATE THE NEED FOR KNOWN REFERENCE PRICES

PostCom does not oppose the Postal Service's proposal to establish a range of prices. In fact, PostCom would argue that the Postal Service should consider a similar approach with some of its market dominant products to perhaps facilitate negotiation and approval of Negotiated Service Agreements (NSA), to the extent consistent with the PAEA. Nor is PostCom insensitive to the need for NSA prices to remain non-public; we have not sought access to the price ranges filed as non-public library references in this proceeding. On the other hand, users of the Postal Service's market dominant products have been subsidizing inbound international mail for years and have a clear interest in the specific remedy that the Postal Service is proposing. The hundreds of domestic NSAs that the Postal Service has executed for Priority Express and First-Class Mail Parcels are ample evidence that having published rates that are generally available is not an impediment to effectively using pricing as a competitive tool. The Commission should require the Postal Service to publish tariffs that would obtain in the absence of a contract between the Postal Service and a private entity, or bilateral agreement between the Postal Service and a foreign postal operator.

If, as is claimed, the Postal Service has chosen prices used in negotiated service agreements as reference points, that should not allow the Postal Service a free hand to evade its obligation to balance the desire to protect competitively sensitive information with its obligation as a government agency to be accountable to ratepayers. The specific reference prices were in fact chosen by the Postal Service. We do not know what other reference prices were available, but consciously choosing reference points that are in existing contracts could give the impression that the choice was made to provide a rationale for avoiding public disclosure of any rates whatsoever.

II. THE POSTAL SERVICE'S RELIANCE ON THE PRESIDENTIAL MEMORANDUM IS SELECTIVE AND INAPPROPRIATE

The Postal Service explains its approach in this proceeding, in part, by pointing to the need to retain flexibility given ongoing negotiations within the Universal Postal Union (UPU), specifically citing the October 17 deadline and describing ongoing negotiations among UPU member countries.³ The Presidential Memorandum, however, suggests a broad range of actions; for instance, it says that self-declared rates should be made available not just to foreign postal operators, but to private carriers as well, yet this specific element does not appear to have been addressed in the Postal Service's notice. The fact that the Administration and Department of State are exercising their authority with regard to the UPU does not negate or alter the Postal Service's statutory obligations, and the Postal Service, as evidenced by its selective responsiveness to the Presidential Memorandum's directives, remains an independent establishment.⁴

Even if one accepts the Postal Service's rationale, it remains unclear why the Postal Service could not have proposed specific prices. Current regulations allow the Postal Service to change prices on competitive products with 30 days' notice. If UPU negotiations take an unexpected turn, or if market conditions change, the current regulations allow the Postal Service to adjust in a month; the implicit claim that regulations exert some extraordinary constraint on USPS pricing is unfounded.

On a similar note, Order No. 5102 requests comment on whether "the proposed prices are consistent with the policies and reforms outlined in the Presidential Memorandum."⁵ While the

³ Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment at 5 (May 20, 2019) ("USPS Notice").

⁴ See 39 U.S.C. § 201 (describing USPS as "an independent establishment of the executive branch").

⁵ Order no. 5102 at 4.

Commission is free to request comment on this issue, its ultimate decision is governed by the criteria in 39 U.S.C. § 3633. The Commission is an independent agency tasked with ensuring the Postal Service complies with its governing statute,⁶ and that statute establishes the standards with which prices for competitive products must comply. The Commission lacks authority to evaluate the proposed prices on any other basis.

III. THE COMMISSION SHOULD REQUIRE USPS TO PUBLISH DEFAULT RATES

The Postal Service is an independent establishment of the Executive Branch of the United States Government. The Postal Accountability and Enhancement Act (PAEA) provides a framework within which the Commission has established regulations that appropriately govern how the Postal Service may set rates for competitive products. While the Postal Service's general approach in this docket, including proposing a range of prices, may comply with those requirements, its decision not to publish a default, public tariff rate (or range of rates) unnecessarily occludes scrutiny by mailers with a legitimate interest in the Postal Service's actions. As indicated above, we believe that the Commission can, and should, require the Postal Service to propose specific prices, including reference prices that would be available for public review. Doing so would improve transparency in postal pricing and regulation without impairing the Postal Service's ability to compete. The industry could then comment on whether these prices comply with 39 U.S.C. § 3633 to assist the Commission with its ultimate determination.

⁶ See 39 U.S.C. § 501 ("The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States."); *id.* at § 502 (providing that Commissioners "may be removed by the President only for cause" and will serve for a term of 6 years).

Respectfully submitted,

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