

BEFORE THE
POSTAL REGULATORY COMMISSION

Competitive Product Prices Inbound
E-Format Letter Post

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: Docket No. CP2019-155
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COMMENTS OF UNITED PARCEL SERVICE, INC. ON NOTICE
AND ORDER CONCERNING RATES NOT OF GENERAL
APPLICABILITY FOR INBOUND E-FORMAT LETTER POST
(June 21, 2019)

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United Parcel Service, Inc. (“UPS”) respectfully submits these comments in response to the Commission’s Notice and Order Concerning Rates Not of General Applicability For Inbound E-Format Letter Post, Dkt. No. CP2019-155 (May 22, 2019) (“Order No. 5102”).

INTRODUCTION

On May 20, 2019, the Postal Service requested that the Commission review and approve new rates for inbound letter post small packets and bulky letters (“inbound E-format mail”) and inbound registered services associated with such items.¹ The Postal Service’s request comes after the Commission issued Order No. 4980 on January 9, 2019, conditionally approving the transfer of these products to the competitive product list.²

As context, the President issued a memorandum (the “Presidential Memorandum”) on August 23, 2018, which called for reforms to the Universal Postal Union (UPU).³ These reforms were to include (a) efforts to ensure that “rates charged for delivery of foreign-origin mail containing goods do not favor foreign mailers over domestic mailers,”⁴ (b) a system of fair and nondiscriminatory rates for goods that permit “unrestricted and undistorted competition,”⁵ and (c) setting terminal dues in a manner that would avoid a preference for inbound foreign small packages containing

¹ 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, Dkt. No. CP2019-155 (May 20, 2019) (“Notice”), at 1-2.

² Order Conditionally Approving Transfer, Dkt. No. MC2019-17 (Jan. 9, 2019) (“Order No. 4980”), at 23.

³ Presidential Memorandum, *Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail* (“Presidential Memorandum”), 83 Fed. Reg. 47791, 47793 (2018).

⁴ *Id.* at 47792.

⁵ *Id.* at 47793.

goods that “favors foreign mailers over domestic mailers,” or which would favor “postal operators over private-sector entities providing transportation services.”⁶

UPS has previously supported several Postal Service proposals on how to treat inbound international products, including the conditionally-approved transfer of Inbound Letter Post Small Packets and Bulky Letters (Dkt. No. MC2019-17). UPS has concerns that the Postal Service’s proposal, however, may not be fully consistent with PAEA or the policies outlined in the Presidential Memorandum. Specifically, UPS has concerns over the Postal Service (1) filing its proposed rates under seal, (2) using a range of rates rather than specific rates, and (3) seeking rates of non-general applicability.

ARGUMENT

I. PUBLIC DISCLOSURE OF PROPOSED RATES WOULD HAVE ALLOWED FOR MORE APPROPRIATE COMMENTS

UPS believes that the public has a strong interest in maintaining financial transparency at the Postal Service, a government entity that competes with private companies. But the Postal Service filed its proposed rates and underlying papers under seal,⁷ which has made it harder for UPS and other relevant stakeholders to meaningfully comment (as contemplated by Order No. 5102)⁸ on whether the Postal Service’s request satisfies all statutory requirements and are consistent with the policies outlined in the Presidential Memorandum.⁹

For instance, the lack of rate disclosure makes it difficult to comment on the claim of the Postal Service (in accordance with 39 U.S.C. § 3633) that “the prices

⁶ *Id.*

⁷ Notice at 2.

⁸ Order No. 5102 at 5.

⁹ Notice at 12-19.

demonstrate that [inbound E-format mail and registered service] should cover their attributable costs and preclude the subsidization of competitive products by market-dominant products.”¹⁰ Similarly, when the Postal Service claims that the minimum rate in the range “generally corresponds” to the Postal Service’s rates for First-Class Package Service and Priority Mail, the lack of disclosure makes it hard to comment on the potential exceptions.¹¹

The claim of the Postal Service is opaque because it has filed under seal a range of rates purportedly set between the retail and commercial contract rates of First-Class Package Service and Priority Mail.¹² The Postal Service states that this rate range incorporates a “line of best fit” using a “per item rate and per kilogram rate that are based on the most equivalent domestic products.”¹³ But this methodology is “based on averages and the use of sampling, and is distinct from the per piece, zoned rate design used for FCPS and PM.”¹⁴ The Commission should require final rates to be publicly filed. Transparency is needed to ensure that the Postal Service’s actions are consistent with PAEA and the administration’s goals.

II. THE POSTAL SERVICE COULD HAVE FILED SPECIFIC RATES RATHER THAN A RANGE OF RATES

UPS is concerned that the Postal Service, in lieu of providing specific rates, has instead proposed a range of rates for both the piece and weight components of the proposed pricing approach.¹⁵ The Postal Service’s decision to propose a range of rates

¹⁰ *Id.* at Attachment 3.

¹¹ *Id.* at 9.

¹² *Id.* at 9.

¹³ *Id.* at 6.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 1.

and to “use this approach periodically to update the E-format rates” is concerning for several reasons.¹⁶

First, it is unclear whether the proposed rate range would favor postal operators over private carriers. The Postal Service asserts that there is “no basis on which to view these rates as . . . preferential towards postal operators,” because the new prices for E-format letter post are “relatively high . . . even at the low end of the range.”¹⁷ But the Postal Service does not disclose what this “relatively high” level is, making it difficult for interested parties to conclude if the range is in fact consistent with the directive of the Presidential Memorandum that rates do not “favor postal operators over non-postal operators.”¹⁸

Similarly, it is unclear that the proposed rate range would not favor foreign mailers over domestic ones. This is because the Postal Service states that for inbound E-format mail, the “proposed rate range would *not* be identical to the domestic retail and commercial rates,” but would only be based on comparisons to non-identical, but “similar” domestic products.¹⁹ The Postal Service claims “these differences are justified because of differences in cost structures and characteristics, practical concerns, and the need for simplicity,”²⁰ but such a directive is inconsistent with the aim of the Presidential Memorandum to promote a “system of fair and nondiscriminatory rates” that “do not favor foreign mailers over domestic mailers” in any way.²¹ Indeed, the

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 19.

¹⁸ Presidential Memorandum at 47792.

¹⁹ Notice at 19.

²⁰ *Id.*

²¹ Presidential Memorandum at 47792-93.

Commission has stated that by definition, rates for foreign mailers that are “not equivalent to domestic postage rates in the destination country” are “discriminatory.”²²

This concern is especially acute given that the proposal of the Postal Service for inbound E-format mail rates is based on a “settlement process based on averages and the use of sampling.”²³ The use of averages to set a range of inbound E-format mail rates is an inexact process that could potentially create winners and losers. In contrast, rates for domestic mailers are not based on averages, because the Postal Service implicitly recognizes that averaging does not cover all the costs associated with the shipping packages to be covered. Rather, domestic mailers pay per-piece, zoned rates for both First-Class Mail parcels and Priority Mail.²⁴

III. THE POSTAL SERVICE’S RATES COULD HAVE BEEN FILED AS BEING OF GENERAL APPLICABILITY

In addition, UPS has concerns over the Postal Service categorizing its proposed rates as “not of general applicability.”²⁵ Per 39 U.S.C. § 3632(b)(3), the Postal Service’s categorization excludes domestic mailers from being able to take advantage of the Postal Service rates, which are only available to foreign postal operators.²⁶ This is a concern given the aims of the Presidential Memorandum of promoting a “system of fair

²² Annual Compliance Determination Report, Dkt. No. ACR2018 (Apr. 12, 2019), at 85.

²³ Notice at 7.

²⁴ In principle, the Postal Service should be able to adopt zone-based pricing for international mail, which are delivered within the United States from the Postal Service’s International Service Centers (“ISCs”) throughout the country. In addition, most foreign postal operators (outside Group IV countries) likely have the operational sophistication to facilitate zone-based rates that mirror the same rates as domestic mailers (per the presidential memorandum’s mandate).

²⁵ Notice at 13 (“The new rates are non-published rates ‘not of general applicability’ that are offered to foreign postal operators. Specifically, the scope of the new rates is limited to E-format items tendered by foreign postal operators”).

²⁶ *Id.* at 13-14.

and nondiscriminatory rates” that (1) “do not favor foreign mailers over domestic mailers,”²⁷ and (2) do not “favor postal operators over non-postal operators.”²⁸

UPS believes that the Commission should ensure that uniform rates are available to any domestic mailer, and that the Postal Service should publically submit specific, final rates that are accessible to domestic mailers. In other words, rates for inbound E-format mail should simply mirror those available to domestic mailers, and that list prices should mirror the Postal Service’s Notice 123, which sets out its price list.²⁹ This would help to ameliorate the tendency of the current terminal dues system to favor foreign small packages and postal operators over domestic ones.

Further, the Postal Service has invested significant resources to accurately account for domestic packages and assesses penalties on packages that do not conform to postal regulations. The President explicitly called for “rates charged for delivery of foreign-origin mail containing goods do not favor foreign mailers over domestic mailers.”³⁰ The Postal Service should create pricing parity between international and domestic packages because it treats inbound international packages the same as domestic packages as they pass through its network. There is no reason why inbound international packages not be held to the same standards and prices over the long term.

²⁷ Presidential Memorandum at 47792-93.

²⁸ *Id.* at 47792.

²⁹ United States Postal Service, Price List Notice 123 (Jan. 27, 2019), available at <https://pe.usps.com/text/dmm300/notice123.htm>.

³⁰ Presidential Memorandum at 47792.

CONCLUSION

For the reasons discussed above, UPS has concerns about the Postal Service rate proposal for inbound E-format mail and the registered service associated with such items. Transparency is key in ensuring that the Postal Service's request satisfies both postal law and the Presidential Memorandum. Publically disclosed, specific rates for inbound E-format mail should be filed by the Postal Service to finalize the conditionally-approved transfer of these products from market dominant to competitive products.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By /s/ Steig D. Olson

Steig D. Olson
Quinn Emanuel Urquhart &
Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

Attorney for UPS