

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

Competitive Product Prices
Inbound E-format Letter Post

Docket No. CP2019-155

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF RATES NOT OF GENERAL APPLICABILITY FOR
INBOUND E-FORMAT LETTER POST
(June 21, 2019)

The Public Representative hereby provides comments pursuant to Order No. 5102.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service notice of a proposed range of prices for Inbound Letter Post Small Packets and Bulky Letters (E format), and for associated Inbound Registered Service.²

Included as Attachment 1 to the Notice is an application for non-public treatment of materials filed under seal. Attachment 2 consists of a Statement of Explanation and Justification for the proposed rate range. A certification of prices is included as Attachment 3. The Postal Service also filed under seal a supporting financial model estimating the cost coverage under the minimum and maximum rates in the proposed range. The Postal Service also responded to a Chairman's Information Request with additional clarifying information.³

In Order No. 4980, the Commission granted the transfer of Inbound Letter Post Small Packets and Bulky Letters (E format), and Inbound Registered Service to the

¹ Order No. 5102, Notice and Order Concerning Changes in Rates for Inbound E-Format Letter Post, May 22, 2019.

² 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, May 20, 2019 (Notice).

³ Responses of the United States Postal Service to Questions 1-10 of Chairman's Information Request No. 1, June 7, 2019 (CHIR 1 Response).

competitive product list, conditioned on the approval of a set of rates that satisfy 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015.

In its Notice, the Postal Service seeks Commission approval of a range of rates, with the Commission allowing the Postal Service to communicate the effective date and the specific rates chosen from within the approved range when the outcome of Universal Postal Union (UPU) negotiations is known. Notice at 2.

The Postal Service asserts that the proposed range of prices would satisfy the requirements for competitive products under 39 U.S.C. 3633. Notice at 12. The Postal Service contends that the “supporting documentation demonstrates that the new rates cover their attributable costs, avoid cross-subsidization of competitive products by market dominant products, and do not impede competitive products’ collective ability to cover their “appropriate share” of institutional costs.” *Id.* Additionally, the Postal Service addresses concerns raised by the Presidential Memorandum.⁴ *Id.* at 17-21.

COMMENTS

While both the Presidential Memorandum and 39 U.S.C. 407(a) articulate United States policy with regard to international mail, the Commission’s role in ensuring that the Postal Service adheres to the policy objectives involved is rather limited. As the Commission has conditionally approved the transfer of Inbound E-format items from the market dominant product list to the competitive product list, the Commission’s review of proposed rates is limited to compliance with 39 U.S.C. 3632 and 3633 and 39 CFR part

⁴ The Presidential Memorandum declares the executive branch’s support for efforts that further “unrestricted and undistorted competition between United States and foreign merchants. Such efforts include: (i) ensuring that rates charged for delivery of foreign-origin mail containing goods do not favor foreign mailers over domestic mailers; (ii) setting rates charged for delivery of foreign-origin mail in a manner that does not favor postal operators over non-postal operators; and (iii) ensuring the collection of advance electronic customs data.” The Presidential Memorandum also advocates seeking reforms to the UPU that “provide for: (i) a system of fair and nondiscriminatory rates for goods that promotes unrestricted and undistorted competition; and (ii) terminal dues rates that: (A) fully reimburse the USPS for costs to the same extent as domestic rates for comparable services; (B) avoid a preference for inbound foreign small packages containing goods that favors foreign mailers over domestic mailers; and (C) avoid a preference for inbound foreign small packages containing goods that favors postal operators over private-sector entities providing transportation services.” Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018 (Presidential Memorandum).

3015. In fact, by permitting the transfer of Inbound Letter Post Small Packets and Bulky Letters (E format) to the competitive product list, UPU proposals for rates for small packets are no longer subject to review by the Commission for its submission of its views to the Department of State under § 407(c)(1) because the § 407(c)(1) only pertains to market dominant products.

Pursuant to 39 USC 3633(a), competitive prices must ensure that each competitive product (1) do not result in market dominant products subsidizing competitive products, (2) ensure that each competitive product covers its attributable costs; and (3) enable competitive products as a whole to cover an appropriate share of the institutional costs of the Postal Service.

The Public Representative has reviewed the Postal Service's Notice, the attachments thereto, the supporting financial model filed under seal that accompanied the Notice and other relevant information. Based upon that review, the Public Representative concludes that the range of rates proposed for Inbound Letter Post Small Packets and Bulky Letters (E format), and Inbound Registered Service satisfy the requirements of 39 USC 3633(a). The Public Representative recommends approval of the proposed ranges of rates.

In addition to satisfying the statutory requirements, the proposed price ranges are consistent with policy objectives in the Presidential Memorandum and in 39 U.S.C. 407(a). Nonetheless, further improvements are possible.

The Postal Service's rationale for retaining the current rate structure, with a per-item and per-kilogram rate applied to inbound flows is convincing. The Postal Service's cautious approach is needed to maintain consistent international mail service. Additionally, the Public Representative agrees with the Postal Service that using the line of best fit method to develop per-piece and per-kilogram rates from domestic rates is a reasonable way to create rate equity between domestic and foreign mailers.

The Postal Service also makes reasonable arguments as to why the rates for Inbound Letter Post Small Packets and Bulky Letters (E format), and Inbound Registered Service should not be considered rates of general applicability. The flows

tendered by private carriers or consolidators could be significantly different than that of postal operators. Because private carriers and consolidators are not obliged to tender all their inbound small packets to the Postal Service, they could strategically tender items that are more expensive to deliver while using private networks for delivery of their more profitable pieces. There is considerable risk that applying a per-piece and per-kilogram rate to flows from private operators would give private carriers an undue advantage.

Nonetheless, to ensure that prices do not favor postal operators over private companies, private operators should have access to equitable rates for delivery of their inbound packets by the Postal Service. The Postal Service intends to address this issue through NSAs. Notice at 14. The Public Representative considers the Postal Service negotiating NSAs with private companies for the delivery of inbound packets a viable way forward for addressing equity in rates between postal operators and private companies. While it would be preferable if the domestic rate structure could be adopted for the remuneration of inbound packets, moving forward with such a rate structure at this time could disrupt international mail exchanges.

The proposed price range for Group IV countries fails to eliminate the incentive for remail. The Postal Services intends to rely on remedies for remail provided under the UPU Convention Article 12 for relief. CHIR 1 Response, Question 4. However, as long as the incentive for remail exists, the Postal Service will have to expend valuable resources monitoring flows.

The Public Representative recognizes the need to ensure affordable rates for some of the world's least developed countries. However, it is possible to address affordability without continuing to incentivize remail. The Postal Service could set Group IV rates in the same manner as other Inbound Letter Post Small Packets and Bulky Letters (E format) rates and provide Group IV countries with a fixed credit to offset some or all of the increase in prices. In developing the appropriate offsetting credits, the Postal Service can develop a maximum credit per capita, a cap on credits to ensure those countries that are currently participating in remail are not rewarded for bad behavior. If the United States leaves the UPU, the Postal Service can implement higher

rates for Group IV countries on its own. Otherwise, the United States could work towards such a solution with UPU member countries or put forth its own proposal.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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