

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

COMPETITIVE PRODUCT PRICES  
INBOUND E-FORMAT LETTER POST

Docket No. CP2019-155

**REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE**  
(July 1, 2019)

The United States Postal Service (Postal Service) respectfully submits these comments in reply to the comments filed by other interested persons concerning the Postal Service's Notice<sup>1</sup> of Rates Not of General Applicability for Inbound E-Format Letter Post. Contrary to the contentions of some of those comments, the Postal Service's proposal of a range of rates at this stage is entirely consistent with, and supportive of, the Administration's policies. In addition, the proposal also accommodates the Administration's negotiating position before the Universal Postal Union (UPU) by providing the State Department with sufficient negotiating flexibility to achieve the President's stated goal to remain within the UPU following elimination of the economic distortions caused by the current terminal dues system. Further, public disclosure of the Postal Service's rates and underlying financial data would undermine both the Administration's position and the Postal Service's commercial position for a competitive product, and could hamper the interest of the United States and the Postal Service to remain in the UPU if the economic distortions of the current rate system can be fixed.

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<sup>1</sup> 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, Docket No. CP2019-155, May 20, 2019.

***I. The Rates Satisfy the Commission's Limited Statutory Standards Under Section 3633(a) and Part 3015.***

As a threshold legal matter, the statutory standards for approval in this docketed case (No. CP2019-155) are limited in scope, and the Postal Service has satisfied those standards. The Postal Service, through its Governors as authorized by its governing statutes, 39 U.S.C. § 3632(a), (b)(3), has established certain rates for a product which (as soon as those rates are in effect) the Commission has conditionally classified as competitive.<sup>2</sup> As required by Section 3632(b)(3), the Postal Service filed those rates with the Postal Regulatory Commission (Commission) on May 20, together with supporting data. As required by Section 3632(a), those rates must comply “with the requirements of this subchapter [39 U.S.C. Chapter 36, Subchapter II] and regulations promulgated under section 3633.”<sup>3</sup> Pursuant to Section 3633, the Commission has promulgated regulations in 39 C.F.R. Part 3015. The regulations in Part 3015 require the Postal Service to file certain types of information to enable the Commission to determine if the new rates would satisfy the standards of 39 U.S.C. § 3633(a).

The Public Representative, in her comments, expressly recognized that “the Commission’s review of proposed rates is limited to compliance with 39 U.S.C. [§§] 3632 and 3633 and 39 CFR part 3015.”<sup>4</sup> Moreover, the Public Representative scrutinized the Postal Service’s submissions, including the supporting financial data under seal, and concluded “that the range of rates proposed for Inbound Letter Post Small Packets and Bulky Letters (E format), and Inbound Registered Service satisfy the

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<sup>2</sup> Order No. 4980, Order Conditionally Approving Transfer, Docket No. MC2019-17, January 9, 2019.

<sup>3</sup> 39 U.S.C. § 3632(a).

<sup>4</sup> Public Representative Comments on Postal Service Notice of Rates Not of General Applicability for Inbound E-format Letter Post, Docket No. CP2019-155, June 21, 2019 (PR Comments), at 2-3.

requirements of 39 USC [§] 3633(a).”<sup>5</sup> For those reasons, the Public Representative recommended that the Commission approve the proposed range of rates.<sup>6</sup> That is all that the Commission needs to determine to resolve this docketed case and, indeed, all that Sections 3632 and 3633 authorize.

Even others that oppose aspects of the Postal Service’s filing grudgingly acknowledge the limited scope of this proceeding. The Chamber of Commerce lamented, “As far as competitive products are concerned, the Commission’s rules mandate little more than a check to verify that proposed rates cover attributable costs.”<sup>7</sup> The International Mailers Advisory Group understood the Commission’s limited review, explaining that “the Postal Regulatory Commission’s role is to regulate based on the [Postal Accountability and Enhancement Act], and thus its review of this filing should be to determine if the rates are within the law....”<sup>8</sup> In a similar vein, the Association for Postal Commerce observed that, while the Commission may request comment on whether the proposal is consistent with the Presidential Memorandum, “its ultimate decision is governed by the criteria in 39 U.S.C. § 3633.”<sup>9</sup> Since the proposed range of rates fully satisfies all of the requirements of the statute, they should be approved.

## ***II. The Range of Rates Supports the Administration’s Policies.***

The Postal Service’s proposed range of rates for E-format Inbound Letter Post is entirely consistent with the Administration’s position and policies. Although

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<sup>5</sup> PR Comments at 3.

<sup>6</sup> Id.

<sup>7</sup> Comments of the U.S. Chamber of Commerce, Docket No. CP2019-155, June 21, 2019 (Chamber Comments), at 5.

<sup>8</sup> Comments of the International Mailers Advisory Group, Docket No. CP2019-155, June 21, 2019 (IMAG Comments), at 6.

<sup>9</sup> Comments of the Association for Postal Commerce, Docket No. CP2019-155, June 21, 2019 (PostCom Comments), at 4.

acknowledging the limited scope of review over the proposed rates, the Public Representative also analyzed and observed that the Postal Service's range of rates is "consistent with policy objectives in the Presidential Memorandum" issued on August 23, 2018.<sup>10</sup> The Postal Service has been continuously collaborating with the Administration and other Executive Branch stakeholders both in support of the UPU reform efforts and as it has developed the new self-declared rates for Inbound E-format Letter Post. As an independent establishment within the Executive Branch, the Postal Service has independently developed its rate proposal, while also ensuring that the Administration has been aware of, and could voice any concerns over, the Postal Service's approach. The Administration has acknowledged that the rate proposal fully addresses the concerns expressed in the Presidential Memorandum.

Other parties, however, have criticized the proposal based on mischaracterizations of the Postal Service's submission and even of the Commission's own order. First, as a threshold matter, the Chamber of Commerce's attempt to recast even which services are at issue in this case is absurd. This case was initiated to give notice to the Commission under Section 3632 and Rule 3015.5(a) of a change in rates for certain services, as specified in Attachment 2 of the Postal Service's Notice filed on May 20. Those services already have detailed and specific descriptions for the Mail Classification Schedule (MCS), Sections 2340 and 2615.2, that the Commission already conditionally approved in January.<sup>11</sup> This case does not require revisiting those MCS descriptions, just as it also does not require consideration of the rates for any other services. The Chamber (at 2) asserts that the Notice "implies" two other services

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<sup>10</sup> PR Comments at 3.

<sup>11</sup> Order No. 4980, at 24-31.

(customs clearance and transit), but that is a red herring – this case requires review only of the rates of which the Postal Service has actually given the Commission notice, and does not require expansion to review any other rates.

Second, although the Chamber of Commerce acknowledged the reasonableness of how the Postal Service structured the range of rates,<sup>12</sup> the Chamber (at 6-7) then mischaracterized the Postal Service’s explanation that its range of rates provides the State Department maximum negotiating flexibility as a supposed assertion that the President’s goal is for the United States “to remain within the UPU under any circumstance.” The Postal Service’s Notice did not assert or even suggest that, and that is clearly not the Administration’s goal.

The Postal Service has developed its range of rates such that it will be able to establish particular per-item and per-kilogram rates later in the year within that range, but the range itself is designed to accommodate UPU reform proposals that would satisfy the Administration’s policy needs.<sup>13</sup> Rather than “undercutting” the U.S. negotiators seeking UPU reforms consistent with the Administration’s policies, as the Lexington Institute has baselessly alleged,<sup>14</sup> the range of rates proposed was developed in coordination with the Administration to accommodate acceptable outcomes of the negotiations consistently with its policies. Lexington’s view is exactly backwards – the range of rates facilitates implementation of the Administration’s policies under multiple potential outcomes. Likewise, it is far from “specious,” as described in

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<sup>12</sup> The Chamber acknowledged, “[i]n principle, USPS’s proposal to set rates for the ISC-to-addressee portion of the proposed services at a level somewhere between the retail and commercial rates for FCPS and PM services appears reasonable.” Chamber Comments at 5.

<sup>13</sup> See Notice of Posting of Proposals, Docket No. IM2019-1, June 27, 2019.

<sup>14</sup> Comments of the Lexington Institute, Docket No. CP2019-155, June 19, 2019 (Lexington Institute Comments), at 2.

the Chamber's rhetoric,<sup>15</sup> for the Postal Service to explain that a range of rates at this stage provides flexibility both for the State Department in negotiating UPU reforms and for the Postal Service in negotiating commercial agreements with foreign postal operators. The former relies on such flexibility to accommodate UPU negotiations that, if successful, would permit self-declared rates for E-format items. The latter recognizes that the Postal Service does not yet know whether the UPU reforms will be achieved in September, and accordingly whether the United States might rescind its notice of withdrawal before the mid-October withdrawal takes effect.

But in both contexts, time is of the essence. While it would be premature for the Postal Service to set the specific rates within the proposed range now, at the same time we cannot delay Commission review of the E-format rates until autumn, and the range of rates is consistent with the applicable law and the Presidential Memorandum whether evaluated at the minimum or the maximum levels within the range. By establishing, and giving the Commission notice of, the range of rates now, the Postal Service can prepare for any of the likely contingencies. Accordingly, the comments of the Small Business & Entrepreneurship Council and Frontiers of Freedom are both correct to recognize the variety of outcomes that may result from the UPU negotiations, yet they are too cautious in suggesting that the Commission take no action on the rate proposal at this juncture.<sup>16</sup> The Commission should not hesitate to review the proposed rates, to facilitate both the Administration's UPU efforts and the Postal Service's efforts to ensure that there is no

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<sup>15</sup> Chamber Comments at 7.

<sup>16</sup> Comments of Small Business & Entrepreneurship Council, Docket No. CP2019-155, June 21, 2019 (SBE Council Comments), at 1 ("Thus we encourage the Commission to withhold any actions and directives in this case until after the UPU's decisions on remuneration have taken place ...."); Comments of Frontiers of Freedom, Docket No. CP2019-155, June 21, 2019, at 2 ("It is incumbent upon the Commission to reserve any action within this docket until after the outcomes of the UPU Congress are known.").

disruption in international mail exchanges with operators around the world whether the UPU reforms succeed or not.

United Parcel Service suggests that the Postal Service “could have filed specific rates rather than a range of rates,”<sup>17</sup> yet the Postal Service has in fact already filed specific maximum and minimum boundaries of its range, which fully enables the Commission now to perform its Section 3633 and Part 3015 review and also consider the domestic equivalency issues implicated by the Presidential Memorandum.<sup>18</sup>

Moreover, the Lexington Institute facetiously mischaracterizes the Postal Service’s proposal as a request to the Commission just to “[t]rust us ... [to] get it right.”<sup>19</sup> First, as the Postal Service made clear in its initial Notice (at 8-9), it subsequently will set, and provide the Commission notice of, the specific per-item and per-kilogram rates to be charged within the range, as well as the rates’ effective date on at least 15 days’ advance notice. Second, the Commission does not need to “trust” anything about where the specific rates may fall within that future filing, because it can fully perform its review now based on the specific minimum and maximum rates of the range, and because the range of rates complies with the law and the Presidential Memorandum whether evaluated at the maximum or the minimum levels within the range.

The fact that the Postal Service’s proposal is for rates not of general applicability does not conflict with the Administration’s policies. The principal concern of the Administration that led to its giving notice of withdrawal from the UPU was over

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<sup>17</sup> Comments of United Parcel Service, Inc. on Notice and Order Concerning Rates Not of General Applicability for Inbound E-format Letter Post, Docket No. CP2019-155, June 21, 2019 (UPS Comments), at 3.

<sup>18</sup> If there is adequate cost coverage at the bottom of the range, then there necessarily should be adequate coverage for the full range. See, e.g., Order Approving Changes in Prices Not of General Applicability for Inbound EMS 2, Order No. 4081, Docket No. CP2017-271 (Aug. 30, 2017), at 4-5.

<sup>19</sup> Lexington Institute Comments at 2.

economic distortions caused by artificially low UPU terminal dues rates for small packets relative to comparable domestic postage rates. To address the concern, the Administration has sought reforms in the UPU providing 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.”<sup>20</sup>

These policies do not require the Postal Service to offer the Inbound E-format Letter Post product to non-postal operators or domestic mailers; they require rates that are compensatory, do not distort competition, and avoid creating preferences relative to the rates charged for non-postal operators and domestic mailers. In its order conditionally approving the transfer of Inbound E-format Letter Post to the competitive product list, the Commission carefully signaled its intent to consider whether the Postal Service plans to offer the Inbound E-format Letter Post product to non-designated postal operators in addition to designated postal operators.<sup>21</sup> The Commission correctly refrained from suggesting that the Presidential Memorandum had required offering the product to non-designated postal operators, since the Presidential Memorandum did not do so. Responding to the Commission’s recommendation<sup>22</sup> to address the Postal Service’s plans with respect to non-designated operators, in its initial Notice the Postal

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<sup>20</sup> Presidential Memorandum § 3.

<sup>21</sup> Order No. 4980 at 20 n.29.

<sup>22</sup> See *id.*

Service explicitly expressed its willingness to negotiate rates at comparable levels for similar services. See Notice at 14-15, 18. The Public Representative called this approach “a viable way forward.”<sup>23</sup>

At the same time, the Commission never suggested that it would even consider whether the Postal Service planned to offer the product to domestic mailers, let alone that the Administration’s policies compelled it. Notwithstanding what the Presidential Memorandum and the Commission’s own prior orders<sup>24</sup> did – and did not – actually say, some of the comments have leapt beyond the Presidential Memorandum and contended that the rates for Inbound E-format Letter Post must “mirror” rates available to domestic mailers.<sup>25</sup> But that simply ignores the reality that Inbound E-format Letter Post differs from domestic mail. The rates do not need to “mirror” each other because they are not identical services. Rather, to avoid undue or unreasonable preferences, the rates should be reasonably comparable to their domestic equivalents. The Postal Service’s submissions with its initial Notice have amply demonstrated such reasonable domestic equivalency, and therefore the rates are consistent with the Administration’s policies.

Finally, contrary to another of the Chamber’s mischaracterizations, the Postal Service has not offered any “pernicious ... justification for discrimination” based on alleged “reciprocal preferences” between itself and foreign postal operators.<sup>26</sup> What the Postal Service explained was that its acceptance and delivery of inbound international mail is a reciprocal service, and is one that non-postal operators (or, for that matter,

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<sup>23</sup> PR Comments at 4.

<sup>24</sup> Order Nos. 4980 & 5102.

<sup>25</sup> See, e.g., Lexington Institute Comments at 3; UPS Comments at 6.

<sup>26</sup> Chamber Comments at 12-13.

domestic mailers) do not offer to the Postal Service. But there is nothing inherently wrong, let alone “pernicious,” about such an arrangement; it is, after all, the fundamental basis for the exchange of international mail between the countries of the world. Article 1.1 of the UPU Constitution establishes “a single postal territory for the reciprocal exchange of postal items.” Even if the United States withdraws from the UPU, the principle of reciprocity will still guide its exchange of mail with other countries. The absence of any similar commitment or obligation to offer reciprocal services with the Postal Service is among the differences that can justify why services or rates that do not “mirror” each other do not constitute undue or unreasonable preferences. In considering claims of unreasonable discrimination in this context, the Commission needs to take into account the broader interests of American consumers and exporters, too – the reciprocal exchanges of international mail provide a universal service benefit that should not be myopically ignored in addressing certain narrow supplier-side aspects of the international postal network. The Administration rightfully seeks to eliminate unfair economic distortions caused by artificially low UPU terminal dues for small packets. But, in doing so, we do not understand the Administration to be seeking to introduce new, and perhaps broader, disruptions in communications and commerce between the United States and the rest of the world.

### ***III. Unsealing the Confidential Information Would Be Inappropriate.***

In various comments (but in no motions to unseal), various entities have raised transparency concerns about the Postal Service’s request to seal, among other things, the rates, revenues, and costs related to its Notice in this case. The Postal Service filed

an Application for Non-public Treatment as Attachment 1 to its Notice, and, for the reasons stated in the Application, the materials filed under seal should remain non-public. Although certain parties commented that they needed access to the sealed information to analyze meaningfully whether the Postal Service's Notice satisfies all statutory requirements and is consistent with the policies outlined in the Presidential Memorandum,<sup>27</sup> not a single one of them bothered to avail itself of the Commission's procedures for gaining access to those materials. In particular, they could have moved for access pursuant to 39 C.F.R. § 3007.301, but did not do so. They cannot complain now about any lack of access in order to have analyzed and commented meaningfully on the Notice and the proposed rates.

The Chamber of Commerce has suggested that foreign postal operators do not have a "proprietary interest" in the materials for which the Postal Service requests non-public treatment because the proposed rates are general default rates that have not been negotiated with any foreign postal operator.<sup>28</sup> This misses a key point; the information under seal also constitutes, in the first instance, the Postal Service's own proprietary and sensitive business information under 39 U.S.C. § 410(c)(2) that would not be publicly disclosed under good business practice. The Chamber has further argued that competitors and domestic mailers would not enjoy an unfair advantage with public access to the information about the prices and costs of the proposed services in the Notice because the proposed rates are only default rates and nothing prevents the Postal Service from pursuing individual contracts on a more confidential basis.<sup>29</sup>

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<sup>27</sup> Chamber Comments at 2; PostCom Comments at 4; UPS Comments at 2; SBE Council Comments at 2; Lexington Institute Comments at 1.

<sup>28</sup> Chamber Comments at 4.

<sup>29</sup> *Id.*

Lexington Institute similarly has contended that failing to disclose specific rates publicly adds “needless complexity and secrecy to the U.S. rate structure” and is inconsistent with the classification of packets as competitive.<sup>30</sup> Both arguments should be rejected. Such specific rates would not be voluntarily disclosed under good business practice in a competitive market, and the Chamber and Lexington fail to provide any examples to the contrary.

The Postal Service has routinely filed default rates for similar competitive products in the past under seal because they represented such sensitive business information,<sup>31</sup> and the Commission has consistently treated such rates and supporting financial data as sensitive and non-public. There is no reason now for the Commission to depart arbitrarily from its longstanding practices. These rates and supporting data are proprietary to the Postal Service, and, in some cases, may also be proprietary to foreign postal operators. Indeed, the Commission’s consistent treatment of rates not of general applicability for competitive products is directly contrary to the Lexington Institute’s suggestion that, as a competitive product, the rates should be made public. While the Commission has been more willing to disclose certain market dominant product data publicly, it has accorded broader non-public treatment to competitive products in recognition of the commercial and competitive value of the information in the marketplace.

The Commission’s longstanding non-public treatment of such competitive Postal Service data is supported by 39 U.S.C. § 410(c)(2), which protects confidential

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<sup>30</sup> Lexington Institute Comments at 4.

<sup>31</sup> See, e.g., Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound Parcel Post (at UPU Rates), and Application for Non-public Treatment, Docket No. CP2019-43, Dec. 10, 2018.

information that, under good business practice, would not be disclosed publicly and would cause commercial harm if disclosed. The Commission's practice is further bolstered by recent precedent of the Supreme Court in a persuasive decision on similar issues arising under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. In interpreting FOIA's Exemption 4,<sup>32</sup> the Supreme Court clarified that it encompasses commercial or financial information that "is customarily kept private, or at least closely held, by the person imparting it." *Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2019 WL 2570624, at \*4 (June 24, 2019). In *Food Marketing*, the U.S. Department of Agriculture resisted attempts by a newspaper to gain access to each participating grocery store's annual redemption data for an assistance program. The Supreme Court held that Exemption 4 applied because the grocery stores customarily did not disclose the redemption data publicly.<sup>33</sup>

Here, the Postal Service filed rate charts and related financial information (e.g., underlying costs and assumptions, pricing formulas, cost coverage projections, etc.) under seal for a product now conditionally classified as competitive. Consistent with the retailers in *Food Marketing*, the Postal Service customarily does not disclose this type of information for competitive products publicly. Further, the Postal Service's treatment of this information is consistent with industry practice; its competitors also customarily keep this type of information private and do not publicly disseminate it. There is no question that the information contained within the Postal Service's filing is confidential. Moreover, public disclosure would likely result in commercial harm to the Postal

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<sup>32</sup> 5 U.S.C. § 552(b)(4).

<sup>33</sup> 2019 WL 2570624, at \*7.

Service, but, as the Supreme Court's opinion instructs, the information should remain sealed even if that harm were not likely.

**IV. Conclusion.**

As demonstrated in its initial Notice and supporting documentation, the Postal Service's proposal for new rates for Inbound E-format Letter Post is in compliance with the requirements of 39 U.S.C. § 3633(a). Accordingly, the Postal Service respectfully requests favorable review of its rates. The Postal Service further urges prompt action to conclude this docket, as its efforts to move forward expeditiously with contingency planning and rate negotiation with counterparty postal operators will be stymied by delay in this proceeding.

Respectfully submitted,

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