COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE
(August 1, 2019)

Pursuant to Order No. 5127, the Association for Postal Commerce (“PostCom”) submits these comments to assist the Commission in developing its section 407(c)(1) views on the proposals that will be subject to vote at a planned Extraordinary Congress of the Universal Postal Union in September 2019. The structure and format of those proposals has been made available, albeit with limited information about specific rates or costs.

I. THE COMMISSION SHOULD CLARIFY THAT THE PROPOSALS DO NOT ESTABLISH MARKET DOMINANT RATES OR CLASSIFICATIONS

As the Commission recognizes in Order No. 5127, 39 U.S.C. § 407(c)(1) requires the Secretary of State to request the Commission’s views with respect to any treaty, convention, or amendment that establishes a market dominant classification. Order No. 5127 at 1-2. The Commission will then provide its views on whether the proposed treaty, convention, or amendment is consistent with 39 U.S.C. § 3622, which governs market dominant rates and products.

Given that directive, it is not clear what role the Commission has to play with respect to the proposals before the Extraordinary Congress. While the Secretary of State has requested the Commission’s views, the proposals the Commission has posted relate exclusively to competitive products—bulky (E) and small packet (E) letter-post items. The Commission approved the transfer of Inbound Letter Post small packets and bulky letters to the competitive product list in Order No. 4890 in Docket No. MC2019-17. While this approval was contingent on the
establishment of prices for the product, that contingency has been removed by Order No. 5152 in Docket No. CP2019-155. There, the Commission concluded that “[t]he proposed range of prices for Inbound Letter Post Small Packets and Bulky Letters mailpieces and associated International Registered Mail services comply with 39 U.S.C. § 3633 and 39 C.F.R. part 3015,” that is, the statutory and regulatory provisions governing competitive products. Order No. 5152 at 24.

The Commission should clarify for the public and the Department of State that the proposals in question relate to competitive products. As such, their compliance with 39 U.S.C. § 3622 is not at issue, and the Department of State can approach negotiations without concern for whether the proposals are consistent with that section.

II. **39 U.S. CODE § 3633 SHOULD GOVERN COMMISSION VIEWS**

To the extent the Commission decides to submit views to the Department of State beyond clarifying that the proposals relate to competitive products, the provisions applicable to rates for competitive products codified at 39 U.S.C. § 3633 should determine the Commission’s opinion. For reasons discussed below, some unusual features of the Postal Service’s proposed rates (Docket No. CP2019-155) impede an informed determination that the instant proposals are consistent with the provisions of 39 U.S. Code § 3633.

III. **INCREASES IN TERMINAL DUES RATES ARE APPROPRIATE**

As presented in the proposals listed in Docket No. IM2019-1, Proposals B and C would result in self-declared rates for bulky (E) and small packet (E) letter-post items, while Proposal A would increase existing terminal dues rates by no more than 13 percent annually. Proposal B would require that the self-declared rates be set equal to the rates for comparable domestic product(s) for each country, while Proposal C would set self-declared rates at 70% of the same benchmark product rates.
Given that inbound International Mail has historically not covered its cost (see 2018 Annual Compliance Determination at 81), any of the three proposals would advance the objective of eliminating any existing subsidy provided by market-dominant products. Further, assuming that the higher prices that will exist under any of the three proposals will result in additional revenues accruing to the Postal Service (i.e., that they will not be offset by volume losses), the contribution to institutional costs made by competitive products as a whole would be expected to increase. Of course, the impact on cost coverage will not be known until new rates have been in effect and empirical evidence is available. PostCom urges that the Commission facilitate a timely and thorough examination of the impact on new rates irrespective of which proposal is adopted.

IV. THE POSTAL SERVICE SHOULD PUBLICLY REPORT DATA ON INTERNATIONAL MAIL VOLUME AND REVENUE

In general, PostCom supports Commission efforts to ensure that competitive products revenues are sufficient to cover attributable costs. In this particular instance, ongoing efforts by the Postal Service to withhold volume and revenue information – even in highly aggregated form – create impediments to review and comment by interested parties. The Commission has the necessary legal authority and technical expertise to determine whether the Postal Service is in compliance with statute. However, as has often been pointed out, the Postal Service is a Government agency; effective oversight of the Postal Service should not be solely the province of the Commission. Transparency in reporting is necessary to ensure that the interests of the mailing industry and the general public are adequately addressed. We are concerned that in its recent Order in Docket No. CP2019-155, the Commission is allowing the Postal Service to adhere to a standard whereby the presumption is that the Postal Service will determine which information is filed under seal. In that proceeding, PostCom – along with many others – argued
that list prices should be published. While there was no credible argument that doing so would harm the Postal Service, the Commission allowed reliance solely on ranges that remained under seal because no party explicitly requested access to the filed prices. With all due respect to Commission authority, this presumption shifts the burden unnecessarily to parties who must selectively allocate litigation resources based on the limited information that the Postal Service deigns to provide. The Commission should instead proceed from the position that, absent affirmative demonstration by the Postal Service that there is some real probability of competitive harm, any information pertaining to the Postal Service’s products and revenues should be readily available to the public.

Respectfully submitted,

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