The United States Postal Service (“Postal Service”) respectfully submits these Comments in response to Order No. 5127 of the Postal Regulatory Commission (“Commission”). In Order No. 5127, the Commission solicited public comment in anticipation of the Commission’s submission of its views to the United States Department of State under 39 U.S.C. § 407(c)(1). As explained in detail below, the Commission’s submission should refrain from opining on issues that are beyond the scope of 39 U.S.C. § 407(c)(1).

I. THE LIMITED SCOPE OF THE COMMISSION’S JURISDICTION UNDER SECTION 407(c)(1) AND THE SECRETARY OF STATE’S REQUEST.

On April 10, 2019, the Council of Administration of the Universal Postal Union (“UPU”) determined to hold a ballot on whether to convene an Extraordinary Congress to consider reforms to the UPU terminal dues system, especially with respect to Inbound Letter Post small packets and bulky letters (also referred to as UPU “E-format items”).¹ UPU members voted in favor of holding an Extraordinary Congress, scheduled for September 24-25, 2019, in Geneva, Switzerland.² Section 407(c)(1) of Title 39

¹ Order No. 5127 at 1.
² Id.
provides, “[b]efore concluding any treaty, convention, or amendment that establishes a rate or classification for a [market dominant postal product], the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under Section 3622.”

On June 20, 2019, the Commission issued Order No. 5127 establishing Docket No. IM2019-1 for the purpose of developing its views on whether proposals for the Third Extraordinary Universal Postal Union Congress (“Third Extraordinary UPU Congress”) are consistent with the standards and criteria for modern rate regulation established by the Commission under 39 U.S.C. § 3622. Although at that time the Secretary of State had not made a request to the Commission under Section 407(c)(1), the Commission, pursuant to Rule 3017.3(a), established Docket No. IM2019-1 to “solicit comments on the general principles that should guide the Commission’s development of views on relevant proposals, in a general way, and on specific relevant proposals, if the Commission is able to make these available.” The Commission set a deadline of August 1, 2019 for any comments. On June 27, 2019, the Commission posted ten UPU proposals numbered 20.28.1, 20.28.2, 20.28.91, 20.28.92, 20.29.1, 20.29.2, 20.29.3, 20.30.1, 20.30.2, and 20.30.3 (“Proposals”) in this matter. On July 31, 2019, the Commission posted two revised proposals numbered 20.28.1.Rev 1 and 20.28.2.Rev.

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3 Id. at 2.
5 Id. at 2; 39 C.F.R. § 3017.3(a).
which replace proposals 20.28.1 and 20.28.2 that the Commission posted on June 27, 2019. These various Proposals, which correspond to three alternatives known as Options A, B, and C, are expected to be considered at the Third Extraordinary UPU Congress and would amend the Universal Postal Convention if adopted. On July 31, 2019, the Commission posted an additional proposal identified as Proposal 20.28.3.

On June 28, 2019, the Secretary of State issued a letter asking the Commission to “provide its views on the consistency of proposals to amend rates or classifications for market dominant products or services within the Universal Postal Convention that will be considered at the upcoming Third Extraordinary Universal Postal Union (UPU) Congress with the standards and criteria established by the Commission under 39 U.S.C. § 3622.”

Pursuant to 39 U.S.C. § 407(c)(1) and the Secretary of State’s Request, the Commission has jurisdiction to review only a proposal that: (1) is to be considered at the upcoming Third Extraordinary UPU Congress; (2) would create or amend an international law agreement (e.g., amend the UPU Convention); and (3) would establish “a rate or classification for” a market dominant postal product. Anything else is beyond the scope of the Commission’s authority under 39 U.S.C. § 407(c)(1).

The Commission’s own rules recognize its limited authority under Section 407(c)(1). Rule 3017.1 defines “views” to mean “the opinion the Commission provides

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7 Notice of Posting of Proposals, Docket No. IM2019-1, July 31, 2019 (Filing ID 109912).
9 Notice of Posting of Proposals, Docket No. IM2019-1, July 31, 2019 (Filing ID 109915).
10 Letter from Nerissa J. Cook, Deputy Assistant Secretary, Bureau of International Organization Affairs, U.S. Dep’t of State, to Robert G. Taub, Chairman, Postal Regulatory Comm’n, June 28, 2019, at 1 (hereinafter “Secretary of State’s Request”).
to the Secretary of State pursuant to 39 U.S.C. § 407(c)(1) on the consistency with modern rate regulation of a proposed treaty, convention, or amendment that establishes a market dominant rate or classification.” Under Rule 3017.3(b) (emphasis added), the Commission more broadly does permit comments in the docket to encompass “matters related to development of the Commission's views, such as the availability of relevant proposals, Commission views, other documents, or related actions.” Nevertheless, the resulting “views” are limited to the Commission’s opinions “on the consistency with modern rate regulation of a proposed treaty, convention, or amendment that establishes a market dominant rate or classification,” not the Commission’s opinions on the broader matters that may have helped inform it in the “development” of those views.

Further, in expressing its views in this docket, the Commission does not supplant the role of the State Department, which retains the “primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions[.]”\(^1\) For purposes of this docket, the statute authorizes the Commission to express its views only on whether proposed market dominant rates or classifications are “consistent with the standards and criteria established by the Commission under Section 3622.”\(^2\) Section 3622 expressly authorizes the Commission “by regulation [to] establish … a modern system for regulating rates and classes for market-dominant products.”\(^3\)

\(^2\) Id. at (c)(1).
\(^3\) Id. § 3622.
II. TERMINAL DUES IN THE CURRENT UPU CONVENTION CYCLE FOR “E-FORMAT ITEMS” ARE BEYOND THE SCOPE OF SECTION 407(c) AND THE SECRETARY OF STATE’S REQUEST.

On January 9, 2019, the Commission conditionally approved the Postal Service’s request to transfer Inbound Letter Post small packets and bulky letters (or E-format items) from the market dominant list to the competitive list.14 In doing so, the Commission correctly determined that the Postal Service lacked market power over the product, due in part to the level of competition in the relevant delivery-services market.15 The Commission’s approval was conditioned on approval of new prices.16 The Postal Service thereafter submitted a rate range, with a minimum and maximum rate, for E-format items. The Commission subsequently favorably reviewed the Postal Service’s proposed price ranges for Inbound Letter Post small packets and bulky letters as compliant with statutory and regulatory standards.17 The transfer will take effect once a final set of per-item and per-kilogram rates are implemented, which will occur sometime after the upcoming Third Extraordinary Congress. Those new prices, and therefore the transfer, may be implemented through the UPU’s adoption of proposals within the subset of Option B; alternatively, the new prices and the transfer may also occur through UPU adoption of amended versions of the proposals under Option C. Inbound Letter Post letters and flats will remain market dominant products.

The Third Extraordinary Congress is being convened to consider certain reforms

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14 Order Conditionally Approving Transfer, Order No. 4980 (Docket No. MC2019-17, January 9, 2019).
15 Id. at 11-14, 16.
16 Id. at 18-20.
to the terminal dues system, especially with respect to remuneration for E-format letter post items.\textsuperscript{18} The three options under review, Options A, B, and C, and the respective proposals corresponding to each, specifically propose changes to the terminal dues for E-format letter post items. As noted above, the Commission conditionally approved the Postal Service’s request to transfer Inbound Letter Post small packets and bulky letters from the market dominant list to the competitive list. To the extent that Options A, B, and C, and their respective proposals, apply to E-format items, they are not within the scope of this docket.\textsuperscript{19}

III. PROPOSAL 20.28.3 WOULD, IN PART, AFFECT RATES FOR MARKET DOMINANT LETTERS AND FLATS, AND IT IS CONSISTENT WITH THE COMMISSION’S STATUTORY STANDARDS.

In contrast to the UPU proposals under Options A, B, and C which relate to rates for competitively classified E-format items, the new UPU proposal no. 20.28.3 that the Commission posted on July 31, 2019, would affect rates for certain market dominant products, at least in part. That proposal no. 20.28.3 would eliminate the requirement that “bulk mail” as defined in UPU Convention Article 28.10 be sent by the same sender. That change, in turn, would affect the terminal dues rates that apply to such mail under


\textsuperscript{19} There is one de minimis aspect of the proposals that would affect certain P/G revenues. Proposal nos. 20.30.2 & 20.30.3 would amend Convention Article 30. In both proposals, the rates under the amended article would increase for blended format streams, thereby adding more revenue for the Postal Service for the affected streams. At the same time under proposal 20.30.3, the amended article would also raise the threshold to 100 tonnes, below which new rates would apply to certain blended letter post streams. These streams represent very little of the overall letter post volume in the first place, as the Commission is aware from its review of Docket No. CP2019-155, and there would be even less impact on the revenue for P/G streams. Moreover, the impact of the higher threshold on those small volumes would also be mitigated in part by the proposal’s simultaneous increase in rates applicable to those streams already below the existing threshold. In any event, if the Commission were inclined to express any view on this narrow aspect, it should also acknowledge the benefit of the rate increases on the Postal Service’s revenues as being consistent with its statutory standards.
Articles 29 and 30. Although the proposal’s “Reasons” explain that the purpose of the proposal is principally to address E-format items, the change in the definition of bulk mail would also affect the rates for any letters or flats that otherwise may satisfy the definition. In other words, though not as likely to occur as with E-format items, the same types of problems of remail and arbitrage could occur with respect to letters or flats. In that respect, the proposal would impact the rates for market dominant products, and therefore the Commission has jurisdiction to express its views under Section 407(c)(1). Moreover, because this proposal no. 20.28.3 would help the Postal Service combat the problems of remail and arbitrage that deprive it of full remuneration, the proposal is fully consistent with the Commission’s standards and criteria for market dominant products under 39 U.S.C. § 3622.20 Accordingly, the Postal Service respectfully suggests that Commission should express that view to the Department of State.

**Conclusion**

For the foregoing reasons, the Commission should refrain from opining on issues that are beyond the scope of 39 U.S.C. § 407(c)(1), and the request of the Secretary of State dated June 28, 2019 pursuant to 39 U.S.C. § 407(c)(1). In particular, the Commission should refrain from expressing views on proposals that would affect the rates for E-format letter post items, given that those items will be competitively classified once the Postal Service were to implement such proposals for the United States. On the other hand, one proposal that the Commission has posted in this docket (proposal no. 20.28.3) would, in part, affect the rates for market dominant letters and flats (P and G format letter post items). The Postal Service recommends that the Commission

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20 See, e.g., 39 U.S.C. § 3622(b)(5) (seeking to assure the Postal Service of adequate revenue to maintain financial stability).
should opine that that proposal is fully consistent with the Commission’s standards and criteria under section 3622.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Anthony F. Alverno
Chief Counsel, Global Business & Service Development

Jeffrey A. Rackow
Mikhail Raykher
Attorneys

475 L'Enfant Plaza, SW
Washington, DC 20260-1101
(202) 268-4277; Fax -5418
Mikhail.Raykher@usps.gov
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