

Before the  
Postal Regulatory Commission  
Washington, D.C. 20268–0001

Competitive Product Prices  
Inbound E-format Letter Post

Docket No. CP2019-155

Comments of the U.S. Chamber of Commerce  
(November 6, 2019)

On October 29, 2019, the United States Postal Service (USPS) requested the Postal Regulatory Commission (Commission) to approve specific per-item and per-kilogram “self-declared rates” for delivery of certain Inbound Letter Post Small Packets and Bulky Letters (E-format items) and a range of rates and fees for delivery of other E-format items and related supplementary services (collectively, the Proposed Rates).<sup>1</sup> If approved by the Commission, the Proposed Rates will take effect on July 1, 2020. The Commission has invited comments from interested parties by November 6, 2019. Order No. 5288 (Oct. 30, 2019). The Chamber is pleased that the United States will remain within the Universal Postal Union (UPU) and that the USPS is proposing self-declared rates to deal with distortions caused by terminal dues. The Chamber respectfully submits the following comments in response.

**1 The Commission should require USPS to make public the proposed self-declared rates and describe the methodology used to construct them.**

In the Postal Accountability and Enhancement Act of 2006, Congress sought to guarantee “a higher degree of transparency to ensure fair treatment of customers of the Postal Service’s and those companies competing with the Postal Service’s competitive products.”<sup>2</sup> Instead of exceeding pre-PAEA levels of transparency for competitive products, USPS’s proposal in this docket is shrouded in secrecy. Interested parties are severely handicapped in their ability to provide informed comment on whether the proposed self-declared rates comply with applicable laws. The Chamber urges the Commission to

---

<sup>1</sup> Notice of the United States Postal Service of Effective Date and Specific Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, October 29, 2019 (USPS Notice).

<sup>2</sup> S. Rept. No. 108-318, 108th Cong., 2d Sess., at 1 (emphasis added).

make public the proposed self-declared rates and a general description of the methodology used to construct these rates.<sup>3</sup> The Commission in its Order No. 5152 that approved a range of rates declined “to preemptively attempt to ameliorate discriminatory effects based on speculation. Moreover, section 403(c) is one of the provisions of law subject to a section 3662 complaint proceeding, which any interested person may lodge with the Commission.”<sup>4</sup> However, if the Commission fails now to make public the proposed self-declared rates, they create untenable situation under section 403(c). Any interested person who is a domestic mailer can’t lodge a complaint about price discrimination if they do not know what the corresponding self-declared rate is for a foreign mailer.

In Attachment 1 USPS advances several arguments in support of its request for non-public treatment of proposed rates. These assertions are unpersuasive and should be rejected by the Commission. USPS says, for example, “The Postal Service does not believe that any commercial enterprise would voluntarily publish, for example, non-public settlement rates or information pertaining to country-specific volumes, costs, and revenues.”<sup>5</sup> While this may be a true as general statement, standard delivery rates available to 96 percent of USPS’s potential customers (i.e., every person in the world not living in the United States) obviously do not involve the same level of commercial sensitivity.

USPS claims that “Competitors could use the information to assess the rates charged by the Postal Service to foreign postal operators for any possible comparative vulnerabilities.”<sup>6</sup> This argument overlooks the fact that the UPU’s International Bureau (IB) publishes terminal dues rates six months in advance of implementation without apparent benefit to competitors. The IB will publish the self-declared terminal dues rates proposed in this docket three months before implementation. Keeping proposed rates secret at this stage may thwart informed comment by interested U.S. parties, but it will not hinder the ability of competitors to respond to the rates by July 1, 2020.<sup>7</sup>

USPS also argues that if the proposed self-declared rates are made public, “Foreign

---

<sup>3</sup> USPS Notice Attach 1 at 4. The Chamber does not suggest that it is necessary to make public the “supporting documentation in the form of financial workpapers” at this time.

<sup>4</sup> Postal Regulatory Commission Order Number 5152 at 23.

<sup>5</sup> USPS Notice Attach 1 at 1-2.

<sup>6</sup> USPS Notice Attach 1 at 4.

<sup>7</sup> UPU Convention, art. 28bis.1, Convention Regulation (2019), arts. 30-108.9, 109.7.

postal operators could also use the Postal Service’s self-declared rates in setting their own self-declared rates to charge the Postal Service, thus placing the Postal Service at an unfair competitive disadvantage.<sup>8</sup> Yet this is not possible under the amended UPU Convention. Self-declared rates must be in the form of per kg and per item formula (i.e., a linear regression) “based on 70% . . . of the domestic single-piece charge for items equivalent to [E-format items].”<sup>9</sup> The ratio between self-declared rates and domestic rates for E-format items is fixed. Self-declared rates cannot be adjusted in response to another country’s self-declared rates. Nor is there any reason why they should be. USPS and foreign postal operators do not compete in domestic delivery services because they deliver in different countries. The prospect of a foreign postal operator placing USPS in an “unfair competitive disadvantage” by adjusting delivery rates in its own country is absurd.

The proposed self-declared rates are list-price rates for delivery services offered to all members of the general public living outside the U.S. Publication of the rates and a general explanation of how they were constructed are no more commercially sensitive than publication and explanation of the First Class Package Service and Priority Mail rates on which they are based.

**2 Pursuant to §§ 403(c) and 407(a), the proposed self-declared rates should be available to domestic mailers and private transportation companies tendering objectively similar shipments of packages.**

While Part 3015 of the Commission’s rules mandates no more than a review of competitive product rates under the criteria of 39 USC § 3633, nothing in Part 3015 precludes the Commission from considering other statutory criteria. Under title 39, all postal rates and classifications must conform to several public policy criteria in addition to the accounting rules of § 3633. For example:

- “Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis” (§ 101(d)).

---

<sup>8</sup> USPS Notice Attach 1 at 5.

<sup>9</sup> UPU Convention, art. 28bis.1.1.2. The rules for self-declared rates are so strict that such rates can be easily and closely estimated from domestic postage rates. Indeed, in May 2019, the IB published an “impact tool” showing estimated Option B ceiling rates — self-declared rates based on 100 percent of the domestic tariff — for the U.S. and most other countries. It appears that foreign postal operators and potential competitors can calculate a near approximation of the proposed self-declared rates in this docket by simply taking 70 percent of the published Option B ceiling rates.

- USPS rules and regulations must consistent with title 39 (§ 401(2)).
- Postal rates and classifications must not “make any undue or unreasonable discrimination among users of the mails” (§ 403(c)).
- USPS must not establish any rule which would “preclude competition or establish the terms of competition” (§ 404a(a)(1)).
- Rates and classes affecting international postal services should be consistent with the national policies set out in § 407(a).

The Commission may, in its discretion, consider these additional public policy criteria its review of competitive product rates and classes. Indeed, with respect to many of these issues, any interested party, including the Public Representative of the Commission, can compel the Commission to do so under § 3662. This does not imply that such issues should be or need to be considered in every proposal for changes in competitive product rates and classes. But in the interest of justice and economy of proceedings, the Commission should not — and in our view, cannot — approve competitive product rates which flagrantly transgress public policies mandated by Congress.

In the present proceeding the self-declared rates at issue are applicable to purely domestic postal services —transportation and delivery of packages weighing up to 4.4 pounds within the U.S. Inbound E-format items and similar domestic packages are at every stage (after leaving the International Service Center) sorted, transported, and delivered together using the same personnel and equipment. When sold to domestic mailers, the services are called “First Class Package Service” and “Priority Mail” service. When sold to foreign mailers, these services remain the same regardless of what they are called.

Section 407(a)(2) of title 39 directs the federal government — including the Commission — to pursue policies that “promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services.” The services at issue in these proceedings are commercial services, essentially e-commerce delivery services. The rates at issue will vitally affect the competition between U.S. merchants and foreign merchants and the competition between private carriers and foreign postal operators (including ETOEs). It is impossible to charge mailers and operators in competition with each other significantly different rates for identical services without affecting,

and thus restricting and distorting, competition.

Section 403(c) prohibits USPS from making “any undue or unreasonable discrimination among users of the mails” or granting “any undue or unreasonable preferences to any such user.” U.S. merchants are competing ever more fiercely against foreign merchants in the booming e-commerce market. To treat American merchants differently from foreign merchants merely because they are American is per se undue and unreasonable. Similarly, private carriers are major players — indeed, the primary innovators — in the international delivery services market. But for the special privileges conferred by the UPU Convention, American transportation companies would be strong competitors in the market for transportation of international e-commerce goods (as they are in the domestic market). In this potentially highly competitive market, it is per se undue and unreasonable for USPS to treat private carriers differently from foreign postal operators (many of whom are private, commercial corporations).

In an earlier filing in this docket, USPS advanced numerous and repetitive arguments why it should be allowed to charge different rates for delivery of shipments of packages tendered by foreign mailers as opposed to domestic mailers or tendered by foreign postal operators as opposed to private transportation companies. The Chamber comprehensively refuted these unfounded assertions. There is no need to repeat these comments here; we incorporate them by reference.<sup>10</sup>

Obviously, USPS’s costs of handling different tenders of packages will differ from tender to tender. No doubt different groups of mailers tender different assortments of shipments on average. Booksellers likely differ from clothing outlets and toy stores in this respect. But USPS cannot, consistent with §§ 403(c), and 407(a), charge different rates for substantially similar tenders of packages merely because one tender is from a foreign mailer and another tender is from a domestic mailer. Or because one tender is from a postal operator and another tender is from a private transportation company. The Chamber urges the Commission to require USPS to define relevant, objectively cost-based criteria for access to self-declared rates suited to the requirements of inbound E-format items and to require that the rates be made available to substantially similar tenders of packages

---

<sup>10</sup> Comments of the U.S. Chamber of Commerce (Jun. 21, 2019) at 8-13.

regardless of the nationality or legal status of the mailer.<sup>11</sup>

### 3 Conclusions

The proposed self-declared rates will not take effect for eight months. This gives the Commission ample time to ensure the proposed rates conform to the requirements of title 39. The Chamber urges the Commission to require USPS to make public the proposed rates and the underlying methodology together with a statement of objective, cost-based criteria that will allow nondiscriminatory access for all mailers making similar tenders of packages without diminishing the suitability of the proposed rate schedule for inbound E-format items tendered by foreign postal operators.

Respectfully submitted,



Sean Heather  
Senior Vice President  
International Regulatory Affairs  
Center for Global Regulatory Cooperation  
U.S. Chamber of Commerce

U.S. Chamber of Commerce  
1615 H Street, NW  
Washington, D.C. 20062-2000  
202 659 6000  
SHeather@USChamber.com

---

<sup>11</sup> It may be noted that in 2003, in a somewhat different legal context, the European Commission came to similar solution. The Commission decided that the REIMS 2 terminal dues agreement among European postal operators could be countenanced under EU competition rules only if third parties — i.e., private companies not party of the terminal dues agreement — were allowed access on the same terms as the postal operators. See Commission Decision 2004/139/EC, [2004] OJ L 56/76. Case COMP/C/38.170, paras. 127-30, 169-72.