

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

Competitive Product Prices
Inbound E-format Letter Post

Docket No. CP2019-155

COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE
(November 6, 2019)

Pursuant to Order No. 5288, the Association for Postal Commerce (“PostCom”) submits these comments on the Postal Service’s notice of specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters (E-format) as well as a notice of price adjustment for certain Inbound Letter Post Small Packets and Bulky Letters pieces and associated Inbound Competitive International Registered Mail Service.¹ Previously, the Postal Service had proposed a range of rates pending the outcome of an Extraordinary Congress of the Universal Postal Union (“UPU”).² That Congress having ended with a revised agreement that ensures continued participation in the UPU by the United States, the Postal Service is now able to present specific rates.

The Postal Service’s Failure to File A Public Default Rate for Inbound Letter Post Has Limited Opportunity for Public Comment

PostCom is not providing any comments on the noticed rates themselves for a simple reason: the Postal Service has not filed any rates publicly. While the Commission “strongly encourage[d]” the Postal Service to support its specific prices for Inbound E-format Letter Post with “greater information” than it provided when proposing its initial price range and to

¹ 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 (Oct. 29, 2019) (“Notice”).

² See Docket No. CP2019-155, 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).

“consider publishing a default price as suggested by PostCom,”³ the Postal Service has declined to do so.

Instead, the Postal Service’s Notice places speculative considerations of competitive harm above all other considerations and would create a precedent that the Commission should avoid. The Notice argues that making rates public would impair its ability to achieve successful negotiation outcomes with trading partners by disclosing pricing information earlier than necessary. This argument suggests that list prices would provide contextual information to other posts that will provide an advantage in negotiations. This seems highly unlikely. Other posts with which the Postal Service would be negotiating have access to volume and revenue histories, the Postal Service’s current and proposed domestic rates, and the comparable rates offered by the Postal Service’s direct competition. The notion that publishing list prices would somehow tip the scales is not sufficient rationale for the Postal Service to evade any and all public scrutiny.

Additionally, whatever merit there may be in the Postal Service’s contention that publicly disclosing its self-declared rates prior to learning what rates other posts will self-declare and charge the Postal Service is “unfair” to the Postal Service,⁴ there is no justification for keeping these rates non-public after March 1, 2020, the date on which all posts will report their self-declared rates to the UPU.

Furthermore, Option V, adopted by the Extraordinary Congress, sets out a very specific formula according to which posts may self-declare inbound international rates. Presumably, the posts who ratified the new UPU remuneration system did so with informed expectations regarding US prices. Public notification of list prices several months before will have at most a

³ Order No. 5152 at 21.

⁴ Notice at 5, 7.

trivial impact on pricing negotiations that does not justify the nonpublic treatment of prices sought by the Postal Service.

PostCom appreciates the need for negotiated prices to remain non-public; we have not sought access to the price ranges filed as non-public library references in this proceeding. But the proposed rates in this docket are not country-specific rates, nor are they NSA rates associated with a single entity. Users of the Postal Service's market dominant products have been subsidizing inbound international mail for years and have a clear interest in the specific prices that the Postal Service is proposing. The hundreds of domestic NSAs that the Postal Service has executed for Priority Express and First-Class Mail Parcels are ample evidence that having published rates that are generally available is not an impediment to effectively using pricing as a competitive tool. The Commission should require the Postal Service to publish tariffs that would obtain in the absence of a contract between the Postal Service and a private entity, or bilateral agreement between the Postal Service and a foreign postal operator.

In general, the Commission should be wary of efforts by the Postal Service to limit participation in its proceedings. Limiting public access to materials supporting proposed Postal Service actions inhibits the mailing community's ability to meaningfully participate in Commission proceedings, potentially depriving the Commission of valuable information. Even when associations such as PostCom obtain access to these materials, they cannot share the materials with their members to obtain feedback on the proposals and develop fully informed comments. Moreover, every effort by the Postal Service to avoid public treatment of its filings imposes costs on would-be participants by requiring investment of time and resources to obtain access to sealed materials and comply with the protective conditions governing those materials.

Prosecuting motions to unseal materials requires individual parties to expend additional resources to achieve what is primarily a public benefit.

It is not sufficient, therefore, for the Commission to simply rely on the mailing public to police the Postal Service's decisions to make non-public filings.⁵ While the Postal Service has a legitimate interest in protecting the confidentiality of some information associated with competitive products, the power to designate materials as non-public should be exercised judiciously, and the Commission should assert strong oversight of such designations regardless of whether it believes there is a public demand for the information in question. The Commission has acknowledged that it has the authority to preliminarily determine that filing materials under seal is inappropriate;⁶ it should exercise this authority more assertively to allow the mailing industry to focus on the substance of Postal Service filings.

In the present case, the Commission should reject the Postal Service's request for nonpublic treatment of tariff rates and allow public review. Doing so would improve transparency in postal pricing and regulation without impairing the Postal Service's ability to compete. Whatever the outcome on this matter, the Commission must make it clear that non-public rates of broad applicability are impermissible for domestic categories of mail. The Postal Service is for domestic purposes a common carrier, and the essence of common carriage is that, except for special contract-like exceptions (under NSAs), the rates of the carrier are subject to public inspection.

⁵ See Order No. 5152 at 20-21 (relying in part on mailing industry's failure to seek access to non-public material or move to unseal material in declining to order the Postal Service to publicly file its range of proposed prices or a default rate for Inbound Letter Post).

⁶ *Id.* at 20 (citing 39 C.F.R. § 3007.104).

Respectfully submitted,

/s/ Matthew D. Field

Matthew D. Field

Ian D. Volner

VENABLE LLP

600 Massachusetts Ave., NW

Washington, DC 20001

(202) 344-8281

mfield@venable.com

idvolner@venable.com

Counsel for Association for Postal Commerce