BEFORE THE
POSTAL RATE COMMISSION

INTERNATIONAL MAIL REPORT Docket No. RM2000-1

COMMENTS OF FEDERAL EXPRESS
IN RESPONSE TO ORDER NO. 1270
DECEMBER 27, 1999

By Order No. 1270 (Nov. 18, 1999), the Commission requested comment on a proposal to add new Rule 103 to its rules of practice. 64 FR 66436 (Nov. 26, 1999). Rule 103 would set out the elements of international mail data which the Postal Service is required to submit to the Commission annually in compliance with 39 USC 3663(b). The Commission has also requested comment on the Commission's own report to Congress on International Mail Volumes, Costs and Revenue (hereafter, "International Mail Report" or "IMR"), which it prepares pursuant to 39 USC 3663(a).[1]

In response, Federal Express (FedEx) is pleased to submit the following comment. At the outset, FedEx would like to commend the Commission on its 1998 International Mail Report. This first attempt to analyze volumes, costs, and revenues of international mail represents a major improvement over the previous regime of Postal Service secrecy and

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[1]Section 3663 reads in full: "(a) Not later than July 1 of each year, the Postal Rate Commission shall transmit to each House of Congress a comprehensive report of the costs, revenues, and volumes accrued by the Postal Service in connection with mail matter conveyed between the United States and other countries for the previous fiscal year.

"(b) Not later than March 15 of each year, the Postal Service shall provide to the Postal Rate Commission such data as the Commission may require to prepare the report required under subsection (a) of this section. Data shall be provided in sufficient detail to enable the Commission to analyze the costs, revenues, and volumes for each international mail product or service, under the methods determined appropriate by the Commission for the analysis of rates for domestic mail."

unreviewed discretion. At the same time, as noted below, we suggest that the IMR can be improved in several respects.

1. Implications of the advisory nature of the IMR

Proposed Rule 103 would define the content of the Postal Service's annual submission of international mail data. The purpose of this submission is to provide information needed by the Commission in order to prepare the IMR. The purpose of the IMR, in turn, is to provide guidance for Congress on policy issues. The IMR is advisory, rather than regulatory, in nature. The IMR that has no regulatory consequences, and the sole audience of the IMR is Congress itself since there is no provision for public disclosure of the IMR by the Commission. Congress has provided that the IMR shall be "comprehensive" in scope and shall set out the "costs, revenues, and volumes" of international mail.

In light of the advisory and comprehensive nature of the IMR, the Postal Service's annual submission of international mail data should be detailed enough to allow the Commission to address all policy issues which might reasonably concern Congress. Moreover, since the sole purpose of the IMR is to advise Congress, in preparing the IMR, the Commission should be guided not only by its own surmise as to Congress's policy concerns, but also by concerns actually expressed by the Congressional committees of jurisdiction.

2. The central issue of the IMR: accounting for the discount on domestic mail services which the Postal Service sells to foreign post offices

In its notice of proposed rulemaking, the Commission notes that the House Postal Service Subcommittee requested the Commission to supplement the 1998 IMR with an estimate of "the difference between terminal dues revenue received by the Postal Service and the revenues that the Postal Service would have collected from comparable domestic mail, calculated separately for mail received from Canada, the European bilateral group, and other Universal Postal Union industrialized countries." Page 7. FedEx agrees with the Subcommittee the relation between inbound mail revenues and the revenues that would otherwise have been earned from U.S. mailers should be a major concern of the IMR.

In delivery of inbound international mail, the Postal Service provides foreign post offices the same domestic services that it provides domestic mailers. Based on limited information available in the redacted 1998 IMR, a rough estimate of the size of the discount provided foreign post offices may be derived by comparing the cost coverage for inbound international mail and with the cost coverage for domestic mail. Although it is difficult to determine from the 1998 IMR, there seems to be no reason to suppose that the composition of inbound international mail is substantially different from domestic mail in terms of the mix of services offered and types of mail handled.[2] Yet in 1998 the cost coverage for inbound international mail was 113.5% while the cost coverage for domestic mail was 159.5%. If the Postal Service had charged foreign post offices rates similar to those charged domestic mailers, it would have collected approximately $458 million in revenues instead of $282 million. In essence, <u>in 1998 the Postal Service appears to sold domestic postal services to foreign post offices at a discount of approximately $176 million off of normal postage rates or 38% compared to the rates charged domestic mailers</u>.

[2]If anything, the ratio of first class mail to standard A mail in inbound international mail seems to be higher than for domestic mail. If so, this difference may imply that the calculation in the text of the discount provided foreign post offices is understated.

This discounting of domestic postal services sold to foreign post offices appears to be highly questionable under the principles of the Postal Reorganization Act. Under 39 USC 403(c), the Postal Service is forbidden from making "any undue or unreasonable discrimination among users of the mails" or granting any "undue or unreasonable preferences." The discount afforded foreign post offices does not seem justified by considerations the Commission normally applies in its review of domestic postage rates. For example, foreign post offices do not seem to provide a high level of mail preparation or worksharing.[3] Nor is the discount justified by the foreign origin of the mail; the Postal Service will not give the same discount to foreign origin mail tendered by private operators. Domestic delivery services sold to foreign post offices do not even exhibit extraordinary competitiveness; the bulk of the discount applies to non-competitive services which the Postal Service provides as a public trust.[4]

Because of the questionable nature of the discount afforded foreign post offices in their purchase of domestic postal services -- and because of the influence of this discount on rates for outbound international mail services (see next section of this comment) -- the IMR should estimate and account for this discount in detail. Indeed, accounting for this

[3]Indeed, the level of mail preparation is irrelevant to the calculation in the text since this calculation is based on the assumption that, if inbound international mail services were priced in the same manner as domestic postal services, then the cost coverage for inbound international mail would be approximately the same as for domestic mail. An alternative approach -- which is based on an assumed level of mail preparation -- would be is to assume that the per piece cost of inbound international mail is a given percentage (say, 80 percent) of the per piece cost of domestic mail and to apply that percentage to the domestic postage that would have been collected if inbound international mail had been posted as domestic mail. To the extent underlying assumptions are correct, these two approaches will lead to the similar conclusions.

[4]If the Postal Service provided domestic postal services to a large U.S. company at terminal dues rates instead of domestic postage, it seems likely that such a practice would be considered illegal. Under the Postal Reorganization Act, it is unclear why rates afforded foreign post offices should be considered differently from rates afforded U.S. companies when foreign post offices purchase domestic postal services.

discount appears to be the central analytical issue presented by preparation of the IMR. The Commission's approach of this discount will determine the appropriate level of disaggregation of data in the Postal Service's submission and give Congress the tools necessary to assess a range of policy issues presented by international mail and U.S. dealings with the Universal Postal Union. Why does the Postal Service provide this discount for foreign post offices? How do different terminal dues regimes affect the discount for inbound international mail? Who pays for the discount for inbound international mail? To what extent does the discount for inbound international mail provide an economic incentive for the migration of domestic mail to international mail? To what extent does the Postal Service provide "foreign aid" to post offices in developing countries?

In order to prepare a more refined analysis of the extent of the discount for foreign post offices and to allocate this discount among domestic mail classes, it is apparent that the Postal Service needs to provide an analysis of the pieces, weights, costs, and revenues of inbound mail according to the class of domestic postal service provided inbound international mail. The Commission is in the best position to determine how to modify existing data sources to provide the necessary information.[5] It is clear, however, that the revenues associated with inbound mail are complicated by the Postal Service's use of three different discount schemes, or terminal dues regimes, for inbound international mail (applicable to mail from Canada, certain European countries, and the UPU terminal

[5]In the 1998 IMR at 13-14, the Commission notes that the Postal Service collects only weight information on inbound LC/AO mail and then "estimates the average number of pieces per kilogram by transportation mode or country groups. This estimate is obtained from the SIRV/I." It appears, then, that one possible implication of the remarks in the text is that the Commission needs to ensure that the SIRV/I sampling in the future is adequate identify the characteristics of inbound mail by domestic mail class in sufficient detail to develop estimates of associated costs and revenues.

dues countries). Since the characteristics of mail from the three terminal dues regimes may differ in ways that affect costs and revenues, it may be necessary to require the Postal Service to account for inbound mail by domestic mail class and by terminal dues regime. For the foregoing reasons, we suggest that the addition of the following paragraph in the proposed Rule 103.

> (n) For each inbound mail service and each terminal dues regime, the Postal Service shall provide (i) an analysis, by pieces and weight, of the distribution of such mail among classes of domestic mail, (ii) an estimate of the costs and revenues associated with each such domestic mail class; and (iii) an estimate of the revenue that would have been received if such mail had been posted at domestic postage rates; the Postal Service shall also provide all associated documentation and workpapers.

3. Taking into account the discount for inbound mail in analyzing the costs and revenues of outbound mail

The notice of proposed rulemaking observes that the House Postal Service Subcommittee requested the Commission to supplement the 1998 IMR by revising data tables to show "the combined data for outbound and inbound mail flows by international service." Page 7. FedEx agrees with the Subcommittee that the IMR should match the costs and revenues of inbound international mail with the costs and revenues of outbound international mail, by class of outbound service, because the discount for inbound international mail appears to have a substantial influence on outbound postage rates. After matching, FedEx submits that the Commission should make use of two analytical approaches to express the relationship between inbound and outbound rates.

As the Postal Service has itself highlighted, the discount given foreign post offices has a major influence not only on outbound international mail rates but also on other key issues of international postal policy. Early in 1999, in preparations for the Beijing Congress of the Universal Postal Union, FedEx urged the U.S. government to adopt a competitively neutral position towards competition in the carriage of mail exchanged among industrialized countries by advocating (i) terminal dues aligned [6] with domestic postage rates and (ii) a prohibition against postal interception of remail (i.e., limitation of UPU Article 40). The Postal Service objected to this position. The Postal Service opposed elimination of Article 40 in respect to mail imported from industrialized countries, a blatantly anticompetitive position, which it justified by arguing, in effect, that inbound terminal dues must be analyzed jointly with outbound terminal dues rates. If inbound terminal dues rates are aligned with U.S. domestic postage, reasoned the Postal Service, then outbound terminal dues rates will likewise have to be aligned with domestic postage in foreign countries and U.S. mailers will have to pay higher international postage rates.[7] The Postal Service

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[6]Terminal dues are aligned with domestic postage when they apply same charge for the same service at the same quality level and under the same conditions as provided for equivalent domestic mail. Generally, for single piece letters, aligning terminal dues with domestic postage implies a terminal dues charge less than the normal stamp price since the domestic stamp price includes, inter alia, a charge for the stamp itself and for collection of letters from post offices and mailboxes (many post offices consider that terminal dues should be 20 to 40 percent less than domestic postage). If a foreign mailer -- whether foreign post office or foreign company -- prepares mail by, for example, sorting the mail, the appropriate terminal dues rate would be lower still, just as domestic postage includes discounts for "presorted" mail. Similarly, if, for some reason, a post office provides foreign mail worse, or better, service than provided domestic letters, then the concept of aligning terminal dues with domestic rates would imply appropriate adjustments in terminal dues rates. Aligning terminal dues with domestic postage does not preclude surcharging a tender of international mail that differs from a typical tender of domestic mail in a significant, cost-related manner. For example, a post office might legitimately apply a cost-related surcharge to a tender of international mail that is all destined for rural areas since the domestic postage rate is based on an average tender of domestic mail that is predominately destined for urban areas where delivery costs are lower than to rural areas.

[7]After insisting that adverse effects on outbound rates must considered when discussing the case for aligning inbound terminal dues with domestic rates, the Postal Service insisted that the positive effects on inbound terminal dues revenue should be disregarded when considering the adverse effects of higher outbound terminal dues rates on outbound international mail rates. That is, Postal Service estimated the negative effects that higher inbound terminal dues would imply for outbound international postage rates without taking into account the increase in inbound mail revenues that would result from higher terminal dues rates. On January 26, 1999, the Postal Service distributed to mailers and government officials estimates of massive increases in international postage rates that would result from a practice of aligning terminal dues

conducted non-public briefings for international mailers to reinforce this point and stimulate support for the Postal Service's position with the Department of State. Such unsubstantiated threats of large increases in outbound postage rates were apparently decisive in dissuading the Department of State from endorsing the pro-competitive position on Article 40 and terminal dues among industrialized countries advocated by FedEx and other private operators.

Given the influence of inbound discounts on outbound postage rates, it is necessary to match inbound and outbound services in order to allocate the inbound discount among outbound services. Once inbound and outbound costs and revenues are matched, there are two obvious analytical approaches that could be used. First, costs and revenues for inbound and outbound international mail may be combined, as suggested by the Subcommittee. This approach implies that inbound and outbound costs are so intertwined that they cannot be separated reliably. Second, the entire discount provided an inbound mail service can be considered as a cost of the associated outbound mail service. Presumably the Commission would make use of this second approach if it were asked to provide a comprehensive report on the Postal Service's air transportation costs and discovered that the Postal Service had an agreement with a major airline company whereby it obtained a discounted rate for domestic air transportation in return for giving the airline a 40 percent discount off of first class postage rates. The discount-for-discount nature of outbound international mail service seems no different.

To date, the Commission has expressed some doubt about the appropriateness of

with domestic postage.

combining inbound and outbound costs and revenues. In preparing the 1998 IMR, the Commission, in Order No. 1226, tentatively concluded that outbound and inbound mail flows should analyzed separately, not jointly, for the following reasons:

> The parcel companies' argue that the costs, volumes, and revenues of outbound international services should be consolidated with their inbound analogues. The Commission recognizes that net revenues generated by inbound categories of international mail might be relevant to an analysis of the comparative underlying economic value of flows of analogous products between country pairs. Nevertheless, <u>the actual costs to the Postal Service of having its outbound international mail delivered in the destinating country are determined by the terminal dues actually charged for various outbound services, rather than the relative economic value of delivery provided by the destinating country</u>. The Commission's initial attempt to analyze cost coverages for specific subclasses of outbound international service must start with an analysis based on <u>actual delivery charges, that is, the terminal dues that the Postal Service actually pays the destinating country for internal delivery of that subclass</u>.
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> . . . .FedEx and UPS argue that data for outbound and inbound subclasses should be consolidated before their cost coverages are analyzed. FedEx cautions that viewing the data for subclasses of inbound mail separately might not provide a balanced picture. It correctly observes that total revenues received for delivering a subclass of inbound mail may not be proportional to the economic cost of delivering that mail, due, for example, to too little or too much inbound volume, or terminal dues levels that are not aligned with actual unit delivery costs. <u>Consolidating the cost, volume, and revenue data of outbound subclasses with that for analogous inbound services in order to analyze their cost coverages, however, would imply that a particular subclass of outbound international mail is the cause of the costs, volumes, or revenues that result from delivering analogous subclasses of inbound mail. It seems somewhat arbitrary to imply that domestic mailers that use a particular outbound service in some way cause the level of inbound volumes of an analogous service, or in some way cause the level of UPU terminal dues that are charged for delivering those volumes</u>. <u>For this reason, the Commission tentatively concludes that cost coverages for outbound and for</u>

> <u>analogous inbound services should be analyzed and reported separately</u> [At 7-8]

In its 1998 IMR, the Commission took a more tentative position that there were arguments for either approach and the proper approach was to present the international mail data so that it could be analyzed from both perspectives:

> The outbound and inbound flows of the broad, UPU-defined subclasses of international mail are related in the sense that country pairs exchange mail service that is similar in content and service features. In the case of LWAO mail, the same terminal dues rates are applied to both directions of the exchange. All things being equal, an increase in terminal dues will increase the markup on inbound mail and decrease the markup on outbound mail. <u>It can be argued, therefore, that the outbound and inbound costs, revenues, and volumes of like services should be combined to determine the financial posture of a given service</u>. Counter-arguments are that many outbound mail services do not have direct inbound analogues, and that outbound flows are not the primary cause of inbound mail flows. Furthermore, the costs and service features of outbound mail are largely within the control of the originating postal administration, while the charges and service features that apply to inbound mail are largely determined by the UPU. <u>It can be argued that because of this bifurcation of responsibility, the financial posture of a given outbound international service should be analyzed separately from its corresponding inbound service.“</u> <u>The Commission has concluded that both points of view can be accommodated by presenting the costs, revenues, and volumes of outbound and inbound mail flows separately for the services included in Table II-l</u>. The separated data can be readily combined by those who view. particular outbound and inbound services as sufficiently related to warrant combined analysis. [At 10-11 (emphasis added)]

FedEx respectfully submits that the considerations against joint analysis of inbound and outbound mail flows (either by combining inbound and outbound costs and revenues or by allocating the inbound discount to outbound costs) identified by the Commission are not persuasive <u>in cases where outbound and inbound terminal dues costs do not reflect rates available in the open market or are not negotiated at arm's length</u>. In brief, the

Commission identifies four considerations which appear to support separate, rather than joint, analysis of outbound and inbound mail flows:

- the actual costs to the Postal Service of having its outbound international mail delivered in the destination country are determined by terminal dues alone;
- domestic mailers that use a particular outbound service do not cause the inbound mail of an analogous inbound service;
- some outbound mail services do not have direct inbound analogs; and
- a bifurcation of responsibility -- costs and service features of outbound mail are largely within the control of the Postal Service while charges and service features of inbound mail are largely determined by the UPU -- implies that the financial posture of a given outbound international service should be analyzed separately from its corresponding inbound service.

These considerations are addressed in turn.

i. *The "actual cost" of delivery of outbound mail is the cost of outbound terminal dues plus the discount which the Postal Service extends foreign post offices for delivery of inbound mail.*

The Commission makes the commonsense point that terminal dues the Postal Service pays for outbound mail represent the "actual cost" of foreign postal delivery. FedEx submits that in this case, however, commonsense is insufficient. The Postal Service's rates to foreign post offices for inward delivery services reflect the fact that it gets a reciprocal discount for foreign postal delivery of outward mail. The Postal Service does not extend this discount to all inbound international mail. It will not deliver inbound international mail tendered by a private operator for the same terminal dues rates. It is impossible to believe that the Postal Service would charge foreign post offices less than comparable domestic rates if foreign post offices, in turn, charged the Postal Service foreign domestic rates for delivery of outbound U.S. mail.[8] Nor is it possible to believe that foreign post offices would deliver the Postal Service's mail at rates below foreign domestic postage if the Postal Service did not in turn deliver their mail at rates below U.S. domestic postage. In short, what the Postal Service actually "pays" for foreign postal delivery is (i) the terminal dues charge and (ii) the discount which the Postal Service extends to inbound international mail received from foreign post offices.

ii. *Outbound mail does not cause inbound mail, but this does not undercut the need for joint analysis of outbound and inbound mail flows in appropriate circumstances.*

Of course, outbound mailers are not responsible for inbound mail. Indeed, because neither outbound mailers nor inbound mailers can recoup excessive charges levied on the other, this observation argues strongly for requiring that both outbound and inbound mailers pay fair market value for postal delivery. In industrialized countries, at least, it may be assumed that fair market value is represented by rates appropriately aligned with domestic postage rates.

The fact that outbound mailers are not responsible for inbound mail does not imply that the Postal Service's nominal costs and revenues for outbound mail, standing alone, correctly report the cost coverage of outbound mail. As explained above, where the Postal Service has, in effect, given a foreign post office something of value in addition to cash as part of the outward mail transaction, calculation of cost coverages must take into account

[8] If this were not a tit-for-tat situation -- if the Postal Service offered a similar discount to all inbound mailers and otherwise gave no additional consideration to foreign post offices -- then FedEx would agree that outbound terminal dues represented the "actual cost" of foreign postal delivery.

that something of value. Joint analysis of outbound and inbound mail flows does so.[9]

iii. *The fact that many outbound mail services do not have direct inbound analogs does not undercut the need for joint analysis of outbound and inbound mail flows in appropriate circumstances.*

While several outbound mail services do not have direct inbound analogs, this observation does undercut the need for joint analysis of outbound and inbound mail flows in appropriate circumstances. It remains correct that outbound cost and revenue figures, even for services without direct inbound analogs, are distorted by additional consideration given foreign post offices in the form of discount rates for delivery of inbound international mail.

Consider an example. According to the 1998 IMR, two of the most important competitive international services, International Priority Airmail (IPA) and International Surface Airlift (ISAL), do not have inbound analogs. IPA is a bulk LC mail (letters and cards) service. ISAL is a bulk AO mail (printed matter and small packets) service. The Postal Service seemingly pays the same terminal dues rate for foreign postal delivery for IPA/ISAL as it does for foreign postal delivery of LC/AO.[10] Hence, just as with LC/AO mail,

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[9]In the air transportation services example above, the fact that an airline's use of domestic postal services does not, in any meaningful way, affect the Postal Service's use of domestic air transportation does not imply that an analysis the Postal Service's air transportation costs should ignore the discount-for-discount arrangement posited in the example.

[10]ISAL is a service provided for in Article 43.3 of the 1994 Universal Postal Convention and is offered by foreign post offices as well as the Postal Service. Although foreign post offices presumably offer ISAL service to the United States, the Postal Service apparently makes no distinction in its inward mail accounts because the service and terminal dues rates accorded inbound ISAL are identical to that provided inbound AO. The same observation seems to apply to outbound ISAL. However, there is an additional issue that may require further investigation. While IPA and ISAL service, on the one hand, and "bulk mail" as defined by the UPU Postal Operations Council in RE 804.8, on the other hand, are not necessarily coterminous, it should be noted that "bulk mail" (in the UPU sense) may be subject to <u>higher</u> terminal dues than non-bulk mail. Article 49.4 and RE 4903. Thus, <u>the terminal dues costs of IPA and ISAL may be higher than for other LC and AO mail</u>. This possibility should be considered carefully in reviewing the accounts of both IPA and ISAL services. If the Postal Service in fact pays higher terminal dues rates for outbound IPA and ISAL, this could undercut (to an unknown degree) the argument for matching IPA and ISAL services with inbound services set out in

what the Postal Service "pays" for foreign postal delivery of IPA and ISAL is the outbound terminal dues rates plus an appropriate share of the discounts which the Postal Service extends to inbound LC and AO mail. While differences in average weight per piece, etc., between outbound IPA/ISAL and outbound LC/AO mail may render it difficult to match up IPA/ISAL outbound services with inbound discounts, such an analysis is as necessary to understand the true costs and revenues of IPA and ISAL as it is for to understand the true costs and revenues of LC and AO mail.

iv. *While there is bifurcation of responsibility in some cases, this does not undercut the need for joint analysis of outbound and inbound mail flows in appropriate circumstances.*

The fact that the Postal Service is solely responsible for outbound mail rates but not solely responsible for misalignment between letter-post terminal dues and fair market value does not does not undercut the need for joint analysis of outbound and inbound mail flows in appropriate circumstances. For reasons explained above, joint analysis of outbound and inbound mail flows is necessary to calculate cost coverages that are not fundamentally distorted by post offices' failure to charge each other fair market value for inward delivery services. Responsibility for this practice is not the primary issue. It is clear that the Postal Service and foreign post offices have a common commercial interest in understating outbound costs in order to justify suspiciously low rates for outbound services. In preparing a comprehensive report on the costs and revenues of international mail, the Commission should look behind the unreliable aspects of nominal non-market pricing between reciprocal agents.

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the text; on the other hand, this could also substantially reduce the cost coverages of IPA and ISAL.

Moreover, several considerations suggest that the Commission's observation of a bifurcation of responsibility understates the Postal Service's role. First, as noted, the Postal Service vigorously and successfully opposed efforts of private operators to persuade the U.S. government to seek better alignment of terminal dues and postage rates at the Beijing Congress of the UPU. Second, about two thirds of the Postal Service's international mail is exchanged with countries in the Organisation for Economic Co-operation and Development. The majority of these countries are rapidly moving to align terminal dues with domestic postage. For years European post offices have sought Postal Service participation in this system, but the Postal Service has resisted. Third, under the UPU Convention since 1989, the Postal Service has had the legal option to seek bilateral terminal agreements outside the UPU framework. There is no evidence that the Postal Service has done so, except in the case of relations with Canada Post. Fourth, at least some of the Postal Service's bilateral agreements with foreign post offices are believed to exhibit the same distortions found in multilateral terminal dues agreements. Bilateral agreements establishing services like Global Package Link are believed to reference UPU terminal dues. Similarly, express mail agreements may include terminal dues provisions which understate costs and thus allocate (in nominal terms) a disproportionate share of profits to outbound express mail and a disproportionate share of costs to inbound express mail.[11]

For the foregoing reasons, FedEx submits that a joint analysis of outbound and inbound mail flows is necessary to give a comprehensive picture of the costs and revenues

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[11] A prime facie indication would be accounts that suggest inbound express mail achieves a substantially lower cost coverage than domestic express mail.

of outbound international mail. The IMR should present costs and revenues of outbound and inbound international mail services both individually and on a combined basis. Moreover, costs for outbound international mail should be stated both without and with an allocation of the cost of the discount afforded the associated inbound international mail service. To facilitate these improvements in the IMR, FedEx suggests that addition of the following new paragraph to the proposed rule:

> (o) For each outbound mail service for which (i) foreign delivery is not purchased at a market rate available to competitors of the Postal Service and (ii) the Postal Service provides significant services to the foreign entity providing delivery, the Postal Service shall provide a method of associating with that outbound mail service the costs and revenues of one or more inbound mail services provided the foreign entity; the Postal Service shall also provide all associated documentation and workpapers.

4. The need for the IMR to reflect two standards for public disclosure of information

In its notice of proposed rulemaking, the Commission invited comment on "the procedures that should be employed to determine which portions of the report or supporting documents should not be publically disclosed." Page 14.

As the Commission has explained in Order 1245 at 3-4, there are two standards for public disclosure of information in the hands of the Commission. The most restrictive standard is that derived from the Freedom of Information Act (FOIA), according to which public disclosure is denied information which the Postal Service would not disclose "under good business practice." A less restrictive standard is implied by the standard which the Commission applies to information sought by litigants in a rate proceeding guided by the Administrative Procedure Act (APA). In essence, the Commission has determined that it should apply the FOIA standard, not the APA standard, to its public disclosure of IMR information.

FedEx submits that the Commission's analysis of public disclosure issues in the IMR should extend beyond the FOIA standard. It is obvious that Congress added the requirement for an IMR because it was concerned about the effect of the Postal Service's international mail practices on mailers and competitors and that one of the most commonly used remedies available to Congress is public disclosure. Congress is not constrained by the standards of public disclosure imposed by law on the Commission. Indeed the House Postal Service Subcommittee has already ordered public disclosure of the entire 1998 IMR (although it is not yet available). On the other hand, it also seems likely that Congress would not wish to inflict genuine commercial injury on the Postal Service by disclosing information in excess of that permitted under the APA standard.

Therefore, the FedEx submits that the Commission, in its report to Congress, should explicitly identifies information which is commercially sensitive under each standard of public disclosure. That is, the Commission might include one or more appendices containing information which would normally be disclosed in a rate case but which would not normally be disclosed under the FOIA's "good business practice" standard. Second, the Commission might include one or more appendices including information which would not normally be disclosed in a rate case. FedEx submits such distinctions would materially assist Congressional consideration of the IMR.

To facilitate the Commission's analysis of the appropriate standard of public disclosure to applied to information in the IMR, the proposed rule should be amended to require to the Postal Service to identify information which, in its judgement, qualifies for non-disclosure under either standard. Thus, the second sentence of the introductory text in the proposed rule could be amended as follows:

> Information contained in these reports that is considered to be commercially sensitive under (i) the standard set out in 39 USC 410(c) of the Postal Reorganization Act or (ii) the standard for public disclosure applied by the Commission in public hearings conducted under the Administrative Procedure Act should be identified as such, and will not be publicly disclosed except as required by applicable law.

5. The desirability of extending the IMR to include understandable unit analysis

For Congress, and for the general public to the extent public disclosure is permitted, analysis of the IMR would be greatly facilitated by extending the analysis to unit terms that can be compared to other known unit quantities. For example, the unit cost of delivery of inbound letters and cards could be compared to the unit cost of domestic first class mail. Such a comparison could help to explain the extent to which the services are the same and the extent to which they differ. Similarly, it could be helpful to compare the unit cost of delivering inbound printed matter other than publications with the cost of delivering Standard A mail. Likewise, the unit cost of collecting and transporting outbound letters and cards, excluding cost segment 14.2 (international transportation and terminal dues) should bear a reasonable relation to the unit costs for corresponding services for domestic first class mail. The unit cost of international air transportation for LC and AO mail (other than ISAL), by world region, should be reasonably close to air transportation rates established by the Department of Transportation. The unit cost of foreign post delivery, by terminal dues regime, should approximate the terminal dues set the UPU.

Unit analysis in units that can be related to other information -- and historical comparisons of such analysis -- will permit all parties to assess the plausibility of the Postal

Service's data and identify instances where costs are out of line. The possibility of such review is, surely, implied by the addition of section 3663 to the Postal Reorganization Act. FedEx therefore encourages the Commission to include such a unit analysis in the IMR and to present the data in the IMR in a sufficiently disaggregated manner that readers can understand the Commission's calculations.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have this day served the foregoing document on all participants of record in this proceeding in accordance with section 12 of the rules of practice.

James I. Campbell Jr.

December 27, 1999