

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Proposed Amendments to the
Commission's Rules

Docket No. RM2004-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO ORDER NO. 1449
(June 1, 2006)

On January 4, 2006, the Postal Rate Commission issued Order No. 1449, amending its rules and directing the Postal Service to take certain other specified actions. One such action was the submission of a status report on what were enumerated as 14 services in the original 2002 OCA/Consumer Action petition that triggered the long sequence of succeeding events. Order No. 1449 at 29. Without prejudice to its rights and authorities with respect to any other portions of Order No. 1449, the Postal Service provided such updates regarding the status of those services on February 17, 2006. The Postal Service hereby responds with respect to the other actions specified in Order No. 1449.

As a preliminary matter, we note that Order No. 1449 is somewhat unusual as a final order in a rulemaking docket (Docket No. RM2004-1) established to add clarifying language to the Commission's rules of practice and procedure. In Order No. 1449, the Commission amended Rule 5 of its rules, which provides definitions of terms. Admittedly, the definition the Commission adds, namely, "postal services," has been a

subject of contention in several rate and service complaints filed pursuant to 39 U.S.C. § 3662, and in other contexts. Order No. 1449, however, also appears to “apply” the definition to existing postal operations and policy by directing the Postal Service to provide information concerning its activities and to submit requests pursuant to 39 U.S.C. §§ 3622 and 3623, a prerogative reserved for the Postal Service’s Board of Governors. While, in the spirit of cooperation under the statutory scheme, the Postal Service has no objection to providing clarifying information having an important bearing on the issues raised by the rulemaking, the Commission’s authority in Docket No. RM2004-1 to direct the Postal Service in this regard is unclear.

As the Postal Service has repeatedly emphasized in Docket No. RM2004-1 and other proceedings, it has the authority to initiate new programs, which may or may not include the provision of new postal services. In those instances in which management concludes that the new program does encompass a new (domestic) postal service, in accordance with the existing rate and classification procedures, it requests a recommended decision from the Commission regarding the establishment of such a postal service. Its determination in that regard is guided by the definition of postal service adopted by the controlling judicial decisions. Interested parties of the opinion that a new program constitutes a new postal service, under circumstances in which postal management has concluded otherwise and proceeded without Commission review, can (and have) challenged the Postal Service in court regarding compliance with the statutory scheme. The Commission has no intended role in that process under the statutory scheme. Consequently, for all the reasons previously explained by the Postal

Service at great length in this and other dockets, the Postal Service does not consider itself bound by the Commission's adoption of a definition of postal services that extends beyond that previously adopted by the courts.

Nevertheless, the fundamental intent of the Commission's Order appears to be to solicit from the Postal Service an indication of whether, in the Postal Service's view, application of the Commission's new definition of postal service would alter the Postal Service's conclusions regarding the postal or non-postal status of any current service. As qualified above, the Postal Service can provide the requested feedback.

Before reaching that point, however, there is one clarification that needs to be noted. Throughout Docket No. RM2004-1, a proceeding intended to define "postal services," the focus has been on "postal" versus "nonpostal." Consequently, there has been relatively little discussion of the other portion of the term being defined, "services." Left largely unaddressed is the question of what, for purposes of this exercise, constitutes a "service"? One reason why the issues evolved in this manner is that, broadly speaking, those activities that are most clearly postal tend to be what most reviewers would unambiguously consider to be within common usage of the term "services." Conversely, to a certain extent, when the nature of an activity was manifestly nonpostal, lumping it in with the category of "nonpostal services" (e.g, for purposes of reporting nonpostal revenue and expenses) was an expedient measure that tended not to trigger critical examination.

Thus, for example, the OCA relatively early in the exercise injected the subject of the Unisite Antenna project. This project involved the lease of postal property to

companies needing sites to locate antennae supporting new types of communication devices. From the view of the Postal Service, this program was not only not postal, but it also fell well outside the common understanding of the types of services contemplated to be under consideration. Specifically, services under consideration include those services (and, in some instances, products) offered for a fee directly to private or commercial members of the public, in the same fashion that traditional postal services are offered to private or commercial mailers. Thus, a counter example from history of a program that clearly did constitute a service, regardless of how debatable its postal versus nonpostal character might have been, was Pack-and-Send. Customers came into a retail unit with their item, the appropriate charge was determined from an established price schedule, and retail employees provided the service (packaging the item).

The importance of this issue arises from the Commission's request that the Postal Service identify and describe "unreviewed services" that, in its view, fall outside of the new definition of postal services. While Order No. 1449 (at page 29, note 86) went to the trouble of defining the term "unreviewed," it provided no comparable definition of "service." The Postal Service is concerned that, merely by including a program on its list, it might appear to be conceding that the program constitutes a service, but merely, in the Postal Service's view, a nonpostal one. One way to avoid this concern might be to provide a list from which, depending on exactly what approach to the concept of "service" were adopted, could be omitted various programs that, in the past, have loosely been included as "nonpostal services" only for reporting purposes,

but which the Postal Service does not consider to be “services” of the type contemplated to be encompassed by the rule. This course of action, however, could provoke inquiries regarding why programs expected to be found on the list were omitted. The Postal Service has decided to employ a different approach.

The Postal Service has resolved its concern by including on its list programs that, in its view, are not “postal services.” Specifically, a program falls into this set if it is not postal, or is not a service, or it is neither postal nor a service. Thus, no conclusion can be drawn regarding whether or not a program constitutes a “service,” merely because it has been identified as not meeting the new definition of a “postal service.” With that clarification, the Postal Service can proceed to its response to Order No. 1449.

It appears to the Postal Service that the Commission’s adoption of the new definition does not cause any of the current programs for which it has previously not sought Commission review to shift into the set of “postal services” for which Commission review would now be required (if, contrary to the consistent views of the Postal Service, the new definition were binding). Order No. 1449 (page 2) makes clear that the thrust of the new rule is to broaden the definition of “postal services” to encompass any purely electronic services that otherwise fall within the scope of the definition. Therefore, the approach embodied in the new rule contrasts sharply with an approach under which the cornerstone of a “postal service” is similarity to traditional postal services, and from which purely electronic services are thereby excluded.

The Postal Service has two programs that lack a hard-copy component, but otherwise have some similarity to activities that have been considered postal services.

One of these is USPS Electronic Postmark. In Docket No. C2004-1, however, the Postal Service has already explained why, even if a purely electronic correspondence service could constitute a “postal service,” that program would still fall outside of the new definition because it lacks any necessary “correspondence” component. The matter, of course, is pending before the Commission in that docket, and the Postal Service perceives no benefit to be gained from attempting to rehash the same issue after the conclusion of Docket No. RM2004-1. The second program that meets the above criteria is Dinero Seguro. That program, however, is purely international, and on that basis is not subject to review by the Commission under sections 3622 and 3623, regardless of the definition of postal service applied.

As far as the Postal Service can discern, evaluation of none of the other programs identified in the attached list would be affected by a definition of “postal service” that is expanded to include purely electronic services. Therefore, even if the Postal Service were to consider itself bound by the Commission’s new definition, which it does not, adoption of that definition would not alter the Postal Service’s previous

conclusion that programs in the attached list are not subject to review by the Commission.

Respectfully submitted,

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June 1, 2006

PROGRAM DESCRIPTIONS

The following list of programs corresponds to the programs for which the Postal Service has reported FY 2005 revenues and expenses as part of its filing in Docket No. R2006-1, in response to Commission Rule 54(h)(1). As indicated below, not all of these programs are necessarily active in FY 2006. Also included is information about two programs which have been terminated, but for which there was reported activity in FY 2005. In the opinion of the Postal Service, all of these programs fall outside the scope of the definition adopted by Order No. 1449. It is worth noting that while these programs fall outside that definition, they do either support the basic mail delivery function of the Postal Service, utilize assets developed by the Postal Service used for providing mail services, or support its role in providing fundamental governmental services.

Inter-Agency Agreement Programs:

These programs support the Postal Service's role as a provider of government services.

MIGRATORY BIRD STAMPS

An agreement with the United States Fish and Wildlife service provides for the distribution and sale of the Migratory Bird Hunting and Conservation (Duck) Stamp to the general public through Postal Service retail outlets.

PASSPORTS

The Postal Service receives a fee for processing Passport Applications. Currently, the Postal Service handles about two-thirds of all passport applications. A passport application is completed by a postal customer, the form is reviewed for completeness, an ID is verified, and then the completed application is sent to the State Department. In some retail locations, the Postal Service also offers customers the ability to obtain passport photos for an additional fee.

PROGRAM DESCRIPTIONS

SELECTIVE SERVICE

The Postal Service has agreed with the Selective Service to make its brochures available in postal retail lobbies. Brochures are completed by the individual registering and presented to the retail associate for verification of identification. The brochure is then mailed to the Selective Service agency. There is no fee associated with this program.

Use of the Mails:

These programs support the use of the mails.

PHOTOCOPY SERVICE

The Postal Service permits the installation of coin-operated photocopying machines in the lobbies of offices for customer use in many areas. These machines facilitate the copying of written documents that may need to be mailed, and are maintained by commercial firms. A portion of the proceeds from these copiers is paid to the Postal Service, with its share based on the local agreement.

READYPOST®

ReadyPost® is a USPS-branded line of shipping supplies designed for sale in postal retail locations to support mailing needs of our customers. The program is based on a contract with Hallmark Custom Marketing, Inc.

IMAGITAS (MoverSource)

In 1995, the Postal Service and Imagitas formed a strategic alliance to improve the accessibility and convenience of change of address service, and to help defray the Postal Service's costs of annually processing 44 million change of address orders. The following programs are provided under the strategic alliance:

The Mover's Guide – A package that includes PS Form 3575, Change of Address Order, and PS Form 3576, Change of Address Request for Correspondents, Publishers, and Businesses; move-related tips; and advertisements for move-related products and services.

PROGRAM DESCRIPTIONS

Welcome Kit – An envelope sent to movers that contains the official USPS Confirmation Notification Letter (CNL) sent to the new address of COA filers, along with information about the mover's new community and move-related advertising.

MoversGuide Online (MGO) - This site, located on www.usps.com, allows a mover to file an electronic COA order online. Similar to the hardcopy Mover's Guide, the online version provides move-related savings, tips and information.

HYBRID MAIL PROGRAMS

Hybrid mail programs offer alternate channels for the entry of mail that starts as an electronic file or an electronic order, but is converted to a hard-copy version for postal delivery. Service is not provided by the Postal Service, but is accessed through www.usps.com. Currently, there are three entities that provide hybrid mail programs. The services include:

NetPost Mailing Online is an electronic-to-hardcopy printing and mailing service. Services are provided by PosteDigital. Customers are able to create, print and access First-Class, Standard, Non-profit, and G-10 mailings.

NetPost Card Store allows customers to create personalized greeting cards that are printed and mailed the next business day. Customers may also choose to insert a retail gift card inside their greeting card and schedule the date and time they would like it to be printed and mailed. Services are provided by Touchpoint Inc.

Premium Post Cards are full-color glossy cards that can feature images selected from an available gallery of images, or digital images provided by the customer. Both sides of the card can be personalized with digital images. The service is provided by Amazing Mail.

Utilization of Postal Assets

These programs more fully utilize assets developed for providing mail services.

OFFICIALLY LICENSED RETAIL PRODUCTS (OLRP)

This program provides for the sale of licensed retail merchandise in post offices. Licensees utilize postal trademarks and stamp images to develop products that can be sold in post offices. Postmasters/station managers select OLRP products

PROGRAM DESCRIPTIONS

for resale in their offices. They are usually gift items that represent convenience purchases.

DINERO SEGURO®/SURE MONEY™

Sure Money™ or Dinero Seguro® is the Postal Service's international funds transfer program offered through 2,800 postal retail units with high concentration of Hispanic immigrants. The program, which provides service to 10 countries in Latin America and the Caribbean, operates through a strategic alliance with Bancomer Transfer Service. The Postal Service collects the name of the recipient and sender, the amount of funds to be sent; the funds and service fee (shared between the Postal Service and Bancomer); and provides the data to Bancomer to complete the transaction.

FEDEX DROPBOXES

As part of a non-exclusive contract between FedEx and the Postal Service, FedEx pays fees to the Postal Service to allow it to locate its express drop boxes outside or in proximity to post offices. The Postal Service provides no services in connection with these drop boxes, currently installed at about 5,000 post offices. All responsibilities related to installation, maintenance, collection, and removal are FedEx's.

METER MANUFACTURERS MARKETING PROGRAM

Pitney Bowes and the Postal Service entered into a non-exclusive test-marketing relationship whereby the Postal Service would make space available in selected retail lobbies for exhibits promoting the use of PB postage meters and scales. The purpose of the test is to determine the economic and practical feasibility of a longer term marketing relationship for the marketing of PB products in Post Office retail lobbies.

AFFILIATES

Affiliate relationships are generally established for the purposes of generating visitor traffic, making purchases, or completing transactions between two websites. The revenue-generating agreements are usually based on a pay-for-performance model, which is measured by number of clicks, registrations, sales or any combination of the above. Affiliates that do not generate revenue are referred to as linking agreements. The Postal Service has numerous linking agreements with companies, such as the PC Postage Vendors and other government agencies.

PROGRAM DESCRIPTIONS

PHONE CARDS

Pre-paid phone cards bearing philatelic images are sold at post office retail counters. They enable users to place domestic and international phone calls up to the value of the card. The Postal Service and its long-distance telephone service alliance partner (AT&T) share revenue.

COLLOBORATIVE LOGISTICS

Under a program called Collaborative Logistics, the Postal Service has sold underutilized longhaul space on purchased highway transportation to shippers desiring to move non-mail items (i.e., items which will not subsequently enter the mailstream) on specific lanes in direct trips over 4 hours. There are currently no lanes being sold, no active agreements, and no strategic alliances.

ELECTRONIC POSTMARK (EPM)

The USPS Electronic Postmark (EPM) is currently an out-sourced all-electronic service giving customers a way to time-stamp electronic files. The EPM provides evidence that a document or file existed at a specific time and date and detects changes made to the postmarked document. Since January of 2003, the service has been performed as a strategic alliance with an outside vendor, Authentidate, under postal direction, policies, and branding. The Postal Service shares a portion of the EPM fees collected. The service is sold over the internet via online sales, or via a hardcopy sales agreement.

LICENSING PROGRAMS

This program licenses use of intellectual property either wholly or jointly owned by the Postal Service, including stamp images, copyrighted material, the Postal Service corporate signature, other trademarks, service marks and trade dress. Licensees can pay specific fees for usage, but in most cases pay a royalty for each item that contains Postal Service intellectual property. The licensed items are sold in various marketplaces and territories, including post offices and through the Postal Store on www.usps.com. In most cases, the Postal Service receives a royalty payment regardless of where or how the product is sold, and separately receives compensation for products sold through the OLRP program at Postal Service retail locations.

PROGRAM DESCRIPTIONS

Programs Terminated (After Activity in FY05):

AOL CD PROGRAM

Until March, 2006, the Postal Service allowed America Online (AOL) to place one take-one CD display in up to 13,842 lobbies. In exchange for marketing through postal retail outlets, AOL paid the Postal Service a fixed fee for retail space, and provided the Postal Service with up to 100MB of space on the registration CDs distributed through post offices. The AOL agreement expired under its own terms on February 28, 2006.

MAGAZINE SUBSCRIPTIONS

This was a program provided by Affiliate Agreement with Magazine Mall. Through it, consumers and small to medium sized businesses are able to access and order magazine subscriptions at a discount. Service were sold and accessed through www.usps.com. The program was terminated in early FY05.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice.

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June 1, 2006