

ORDER NO. 79

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

Before Commissioners:

Dan G. Blair, Chairman;  
Mark Acton, Vice Chairman;  
Ruth Y. Goldway; and  
Tony L. Hammond

Competitive Product Prices  
Express Mail International  
Bilateral/Multilateral Agreements

Docket No. CP2008-6  
Docket No. CP2008-7

NOTICE AND ORDER CONCERNING PRICES  
UNDER EXPRESS MAIL INTERNATIONAL  
BILATERAL/MULTILATERAL AGREEMENTS

(Issued June 3, 2008)

On May 20, 2008, the Postal Service filed notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, of the Governors' decision establishing prices for competitive products not of general applicability for Inbound Express Mail International (EMS).<sup>1</sup> The Postal Service's filing, docketed as Docket No. CP2008-6, includes supporting material, including the Governors' Decision, filed under seal. In support of this treatment, the Postal Service asserts that prices negotiated under bilateral/multilateral agreements are highly confidential among postal administrations

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<sup>1</sup> Notice of United States Postal Service of Governors' Decision on Inbound Prices Under Express Mail International (EMS) Bilateral/Multilateral Agreements, May 20, 2008 (Notice).

and that their public disclosure would compromise the Postal Service's ability to negotiate agreements with other posts. *Id.* at 1.

Concurrently, the Postal Service filed notice, pursuant to 39 CFR 3015.5, of a specific negotiated service agreement covering Inbound EMS prices.<sup>2</sup> This filing, docketed as Docket No. CP2008-7, includes the contract and supporting materials filed under seal. In support, the Postal Service asserts that its ability to negotiate bilateral or multilateral EMS agreements would be compromised if the underlying prices are publicly disclosed. It also states that public disclosure would compromise foreign posts' ability to negotiate with other posts. *Id.* at 1.

The Postal Service filings in these dockets are related. Docket No. CP2008-6 establishes, in essence, a shell classification, while Docket No. CP2008-7 is a specific agreement negotiated pursuant to the conditions of the shell classification.<sup>3</sup> Given this interrelationship, the Commission will consolidate these proceedings for purposes of review.<sup>4</sup>

In Order No. 43, the Commission issued regulations establishing a modern system of rate regulation, including identifying a list of competitive products. PRC Order No. 43, October 29, 2007, ¶¶ 3061, 4013. Among other things, the Commission determined that each negotiated service agreement would initially be classified as a separate product. The Commission also acknowledged, however, the possibility of grouping functionally equivalent agreements as a single product if they exhibit similar cost and market characteristics. *Id.* ¶¶ 2177 and 3001. Thus, the EMS agreement filed

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<sup>2</sup> Notice of United States Postal Service of Filing an Agreement for Inbound Express Mail International (EMS) Prices, May 20, 2008 (Pricing Notice).

<sup>3</sup> The Postal Service notes that it previously suggested proposed language for inclusion in the draft Mail Classification Schedule (MCS) applicable to Inbound EMS. United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007 (November 20 Filing). Its filings entail no changes to the previously proposed language. The draft MCS remains under review. The Commission anticipates providing interested persons an opportunity to comment on the draft MCS in the near future.

<sup>4</sup> All future filings in the consolidated docket shall be made under Docket No. CP-2008-7.

in Docket No. CP2008-7, representing the first bilateral/multilateral agreement presented to the Commission, will be classified as a new product.

As noted above, the Postal Service filed both dockets pursuant to rule 3015.5. Recognizing that the Postal Service's filings in this consolidated proceeding (along with the concomitantly filed notices in Docket Nos. CP2008-4 and CP2008-5) represent the Postal Service's first filings involving competitive rates not of general applicability under section 3632(b)(3) of title 39, the Commission will proceed as if the Inbound EMS agreement also had been filed pursuant to 39 CFR part 3020, subpart B and will review the consolidated dockets pursuant to rule 3020.34.<sup>5</sup>

The Postal Service's filing in Docket No. CP2008-6 is styled as applicable to Inbound EMS. So, too, is the negotiated agreement filed in Docket No. CP2008-7. To that extent, both are consistent with language it proposed for inclusion in the draft MCS in its November 20 Filing. In Order No. 43, the Commission listed inbound and outbound international expedited services as separate products. The Commission has made no determination, however, whether the outbound portion of the agreement in Docket No. CP2008-7 is subject to its review.

Agreements with foreign posts present unique issues that have not yet been fully briefed. In its November 20 Filing, the Postal Service contended that the outbound portion of agreements with foreign posts "does not properly belong in the MCS" because the outbound portion reflects a payment by the Postal Service for processing and delivery by foreign posts and not what the Postal Service charges for its services. November 20 Filing at 10.

The Postal Service's filings also raise issues concerning the treatment of confidential information, a broad topic that may require different solutions tailored to the

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<sup>5</sup> Filings to change or add rates not of general applicability are properly made under rule 3015.5. Postal Service filings to modify the product lists are properly made under part 3020, subpart B. Filings involving negotiated service agreements implicate both sets of rules until such time that a group of negotiated service agreements are shown to be classified properly as one product. The Commission anticipates that with experience and the adoption of the MCS the review process will proceed relatively quickly.

specifics of each case. For instance, agreements with foreign posts may require different treatment than agreements with private entities (corporations, businesses, etc.). Agreements concerning competitive products may require different treatment than agreements concerning market dominant products. A common issue, however, is how individual agreements (contracts) are to be identified in the Mail Classification Schedule. For agreements with foreign posts involving competitive products, the Commission proposes, at a minimum, identifying each international mail agreement by the name(s) of the foreign post(s), the mail product(s) involved, and the agreement's expiration date.

The Commission assumes that the Postal Service has or will have agreements with many if not most foreign posts. Thus, with the potential for many agreements, some compelling justification for keeping the identity of the foreign posts confidential is warranted. To elaborate briefly in this proceeding, the Postal Service contends that the identities of the foreign posts with which it executes bilateral/multilateral agreements should not be disclosed, arguing generally that foreign posts ability to negotiate with other posts could be compromised by public disclosure. Pricing Notice at 1. Absent more, this rationale would not appear to justify concealing the identity of foreign posts in proceedings before the Commission. The Postal Service should amplify on the rationale for its position, including addressing the putative harm associated with public disclosure.

The Commission has observed that typical international mail agreements are of approximately one year duration (with possible provisions for renewal). Absent justification, there would appear to be no compelling need to keep expiration dates confidential. Thus, in its comments, the Postal Service should also address the issue of including the expiration date of each agreement in the MCS, as well as identifying the product. Comments addressing these points are due no later than June 10, 2008.

Interested persons may comment on issues in this consolidated proceeding, including whether the Postal Service filings are consistent with the policies of sections 3632, 3633, or 3642. Comments are due no later than June 16, 2008.

Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

*It is ordered:*

1. The proceedings in Docket Nos. CP2008-6 and CP2008-7 are consolidated. All future filings in the consolidated docket are to be made under Docket No. CP-2008-7.
2. As set forth in the body of this Order, the Postal Service comments on confidentiality are due no later than June 10, 2008.
3. Comments on issues in this consolidated proceeding from interested persons are due no later than June 16, 2008.
4. The Commission appoints Paul L. Harrington as Public Representative to represent the interests of the general public in this proceeding.
5. The Secretary shall arrange for publication of this Notice and Order in the *Federal Register*.

By the Commission.

Steven W. Williams  
Secretary