

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Products Prices
Global Expedited Package Services
Negotiated Service Agreements

Docket No. CP2008-5

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO UNITED STATES POSTAL SERVICE
NOTICE OF GLOBAL EXPEDITED PAKAGES SERVICES CONTRACT
(June 16, 2008)

The Public Representative hereby comments on the United States Postal Service's Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services (GEPS) Contracts and Notice of Filing a GEPS Contract. The Commission's Order No. 78 consolidated these two related matters (formerly Docket Nos. CP2008-4 and CP2008-5) for consideration under one proceeding, Docket No. CP2008-5.¹

In response to that Order, the Postal Service filed materials in accordance with 39 CFR § 3020, under the Rules of Practice and Procedure regarding requests to modify the product lists within the Mail Classification Schedule (MCS).²

¹ See Order 78, Notice And Order Concerning Prices Under Global Expedited Package Services Negotiated Service Agreements, at p. 2.

² United States Postal Service Response to Order No. 78 and Notice of Filing Information Responsive to Part 3020 of the Commission's Rules of Practice and Procedure, June 10, 2008.

Confidentiality

In the Postal Service's Response, the Postal Service acknowledged having "no objection"³ to making publicly available the expiration dates of the GEPS contracts proposed for review by the Commission. The Postal Service acknowledged that such information, "considered in isolation," would not be "commercially sensitive."⁴ The Public Representative can appreciate the need for aspects of commercially sensitive business agreements to be proposed and reviewed under seal. Nevertheless, the Commission rightfully questioned the extent to which details of Negotiated Service Agreements should be under seal. This comports with the spirit of Federal Rules of Civil Procedure Rule 26(c).⁵ The Postal Service, as proponent, should justify the specific limits of all such confidentiality requests, if simply to permit identification of, and distinction between, confidential agreements. Ultimately, the Commission shall be the arbiter of what information, in matters before it, shall be under seal or made public.⁶

Pricing, Cost Coverage and Contribution

First, the Public Representative notes that the Postal Service proposed a revision to the MCS, appended to the Governors' Decision approving a shell

³ *Op. cit.*, at p. 3.

⁴ *Ibid.*

⁵ See Postal Accountability and Enhancement Act (PAEA), Pub. Law 109-435, §602(g)(3)(B), 120 Stat 3240: 39 U.S.C. §504 (g)(3)(B).

⁶ *Op. cit.*, §602(g)(3)(A), 120 Stat 3240.

pricing classification.⁷ The revised Section 2610.2 (GEPS Contracts) includes a threshold for mailers to qualify for such a contract: those who are able to tender at least 5,000 pierces of qualifying mail per annum, or those paying at least \$100,000 in international postage.⁸ This public record establishes a benchmark which assures a reasonable incentive for GEPS contracts to provide value to both parties.

The Public Representative, after reviewing the materials under seal in this proceeding, acknowledges that the price floor and ceiling formulae proposed in the Governors' Decision No. 08-7 (CP2008-4) comport with provisions of Title 39. The pricing shell provides that these contracts generate sufficient revenue to cover attributable costs for the GEPS contract services, enable competitive products as a whole to cover their costs, and contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.⁹ These formulae should assure that there is no subsidization of GEPS negotiated service agreements by market dominant products.

The first individual GEPS negotiated service agreement (CP2008-5), whose provisions fall within the pricing shell parameters, likewise complies with the legal requirements for cost coverage and contribution to the Postal Service's institutional costs. The Public Representative would caution that in the case of outbound service agreements, settlement costs (what the Postal Service pays to

⁷ Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008, Attachment.

⁸ *Op. cit.*, p.1.

⁹ See 39 C.F.R. §3015.7(c).

a foreign postal administration for delivery of mailpieces in destination countries) might negatively impact NSAs. For this reason, the Public Representative encourages the Commission to use its authority and influence to promote equitable settlement cost arrangements among members of the Universal Postal Union.

The Public Representative respectfully submits the preceding Comments for the Commission's consideration.

Paul L. Harrington
Public Representative

901 New York Ave., NW Suite 200
Washington, D.C. 20268-0001
(202) 789-6867; Fax (202) 789-6883
e-mail: paul.harrington@prc.gov