

**BEFORE THE
POSTAL REGULATORY COMMISSION**

**COMPETITIVE PRODUCT PRICES --
GLOBAL EXPEDITED PACKAGE SERVICES
NEGOTIATED SERVICE AGREEMENTS**

Docket No. CP2008-5

**COMMENTS OF UNITED PARCEL SERVICE
IN RESPONSE TO ORDER CONCERNING PRICES
UNDER GLOBAL EXPEDITED PACKAGE SERVICES
NEGOTIATED SERVICE AGREEMENTS
(June 16, 2008)**

Pursuant to Commission Order No. 78 (June 3, 2008), United Parcel Service comments on the United States Postal Service's notice of the Governors' decision establishing Global Expedited Package Services ("GEPS") contracts, and the Postal Service's notice that it has entered into a GEPS contract. The Commission has asked interested parties to comment on whether the planned GEPS contracts are consistent with the policies of PAEA, including section 3633(a)'s requirements that (1) market-dominant products do not subsidize competitive products, (2) each competitive product cover its attributable costs, and (3) competitive products as a whole cover at least 5.5% of the Postal Service's institutional costs.

Almost all of the information required by the Commission's regulations, 39 C.F.R. §§ 3015.5 and 3020.31, including the Governors' decision and proceedings and the supporting data, has been filed under seal. As a result, interested parties cannot

possibly make any meaningful comment on whether the initial contract or the planned contracts are consistent with section 3633(a) or any of the other requirements of PAEA.

Under appropriate safeguards discussed below, the Commission should require the public disclosure of all information required by its regulations, including the supporting data and the Governors' decisions and proceedings. 39 C.F.R. §§ 3015.5 and 3020.31. Otherwise, interested parties will be unable to provide any input on the legality of the agreements or their effect on competitive products as a whole. The Commission will lose all benefit of the public's contribution, which it has previously recognized as being highly valuable to its work.

Congress did not intend that PAEA reduce public access to information. See H. Rep. No. 108-672, pt. 1, at 20 (2004) (“[I]t is the Committee’s expectation that [subsection 504(g)] will not be used to withhold information currently available to the public.”).¹

The lack of public access to information regarding negotiated service agreements affects both customers and competitors of the Postal Service: customers must have access to the supporting information in order to evaluate whether the contract rates are discriminatory, see 39 U.S.C. § 403(c), and competitors need that information to judge whether attributable costs will be covered so as to avoid unfair competition. Without

1 While international rates were not previously subject to the Commission’s jurisdiction and therefore international contract rates were not publicly disclosed, PAEA has placed international and domestic rates on the same footing as far as the statute’s requirements are concerned.

access to this information, how would any interested party know whether a complaint under section 3662 may be justified?²

Should the Commission decide that any of the filed information warrants protection against unrestricted public disclosure, there are ways of balancing the commercial sensitivity of the information with the public's need for access. See H. Rep. No. 108-672, pt. 1, at 20 (2004) ("The Committee recognizes that, in the past, specifically identified commercially sensitive information has been made available to parties -- including the Postal Service's competitors -- during litigation by using protective conditions. Such conditions would protect the sensitive commercial nature of the information while allowing the competitors' agents full access to the information to make their case.")

* * *

We commend the Commission for classifying the Postal Service's first GEPS contract as a new product. As the Commission has already decided, each negotiated service agreement that is not functionally equivalent to any other Commission-approved negotiated service agreement is a separate "product" under PAEA. Docket No. RM2007-1, Order No. 43 (October 29, 2007), at ¶ 2177. The Commission should not

2 The Commission should resist any suggestion that a competitive postal market is a sufficient substitute for public disclosure and review. Some markets are more competitive than others. For example, private carriers face more onerous customs and brokerage requirements in both the United States and abroad than postal administrations do, making international markets less competitive than is often assumed.

undercut its prior conclusion by allowing confidentiality to insulate international contracts from public disclosure and input.

Respectfully submitted,

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