

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

REVIEW OF NONPOSTAL SERVICES

Docket No. MC2008-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO PUBLIC REPRESENTATIVE MOTION TO COMPEL
UNITED STATES POSTAL SERVICE TO FILE PROPOSED
MAIL CLASSIFICATION SCHEDULE LANGUAGE
(October 8, 2008)

On October 1, 2008, the Public Representative filed a motion requesting that the Commission order the Postal Service to provide Mail Classification Schedule (MCS) language for “all postal and nonpostal services identified in its filings in this case that fall within the purview of Commission Order [No.] 74.”¹ Presumably, therefore, the Public Representative is seeking MCS language for all of the revenue-generating activities of the Postal Service.²

As an initial matter, the Postal Service wishes to make clear that it has been working on proposed MCS language for those services it wishes to classify as “postal services” for the past few weeks.³ The Postal Service hopes to file such language with the Commission by the end of next week. The Postal Service objects, however, to having to promulgate MCS language for any other

¹ Public Representative Motion to Compel United States Postal Service to File Proposed Mail Classification Schedule Language at 1, 5 (*hereinafter* “Motion to Compel”).

² See Order No. 74 at 7.

³ See Postal Service Initial Brief at 91 n.181. The exception is MCS language for International Money Transfer Service (IMTS), which the Postal Service has already filed with the Commission. See United States Postal Service Submission of Initial Mail Classification Schedule in Response to Order No. 26 (September 24, 2007).

activities at this time, particularly those activities whose relevance to this proceeding is in dispute.

The foundation of the Public Representative's argument rests on his belief that "unless those [nonpostal] activities are classified with MCS language prior to December 20, 2008, they will terminate as of that date."⁴ He claims that this dramatic result is "implied" by the language of section 404(e)(3) and (5).⁵ The Postal Service disagrees. Section 404(e) does not suggest that there must be finalized MCS "product description" language by December 20th for the "nonpostal services" that are authorized to continue by the Commission. Rather, the Commission must, at the very most, take two actions by December 20th for the Postal Service to continue offering such services pursuant to section 404(e)(2): first, determine whether those services should continue, and second, "designate" whether those services are market-dominant, competitive, or experimental. This does not require that the Commission either specify the precise "products" that will be added to the MCS "product lists," or promulgate the underlying MCS "product description" language for those products. Those specific decisions can instead be made after the initial determinations required by section 404(e).⁶ Indeed, the Commission and Postal Service have been

⁴ Motion to Compel at 1-2. He also claims that the lack of MCS language violates Rule 3020.31(f). That rule, however, applies to requests filed by the Postal Service pursuant to section 3642 to add a "product" to the product lists. This proceeding is being conducted under section 404(e), however, rather than section 3642, at least with respect to those activities that are not "postal services." As such, Rule 3020.31(f) does not apply here. (To the extent that the rules of section 3020 of 39 C.F.R. apply to those activities that the Postal Service is seeking to classify as "postal services," as noted above the Postal Service has filed proposed MCS language for IMTS, and is preparing MCS language that will be filed soon for the other services.)

⁵ *Id.* at 1.

⁶ The Postal Service has urged the Commission to consider how the provisions of chapter 36 could logically be applied to the activities whose relevance to this proceeding is in dispute, because such an exercise helps to shed light on the proper scope of section 404(e), and because

operating for nearly a year under the new pricing regime without finalized MCS “product description” language for the existing “postal services,” due to the need to refine that language. There is no reason why the same approach cannot be taken here. Thus, the Public Representative’s motion is built on a false premise.⁷

The question to be decided therefore comes down to the following: is MCS language for all Postal Service revenue-generating activities necessary for the Commission to complete the tasks required of it by December 20th? The answer to this question is “No.” The Postal Service has, in its response to Order No. 74, provided all the information the Commission needs in order to make its determinations. This includes a listing of the other-than-postal sources of revenue earned by the Postal Service in FY06 and FY07, and descriptions of those sources of revenues. The Postal Service has also filed sworn statements discussing the public need for all of the various “not-postal” activities and programs that fell within the scope of Order No. 74. Finally, the Postal Service has offered to seek any available additional information with respect to those activities if it is deemed necessary.

In addition to his mistaken premise that the law demands MCS language by December 20th, the Public Representative claims that MCS language is

the Postal Service would need immediate guidance on how it should manage those activities on a day-to-day basis in a manner consistent with chapter 36. See Postal Service Reply Brief at 65-66. However, this does not require finalized MCS language.

⁷ The Postal Service is therefore not requiring the Commission to “issue an Order deciding discrete legal issues in this case well in advance of the December 20, 2008 deadline” (Motion to Compel at 2), because the derivation of specific MCS language is not necessary before that deadline. Furthermore, this fact belies the Public Representative’s hyperbolic statements that the Postal Service is deliberately seeking to “roll the dice” in this proceeding. *Id.* The Postal Service has also not sought to “unilaterally...bifurcate the Commission’s decision making in this proceeding,” considering that neither the language of section 404(e) nor the statements of the Commission so far in this proceeding have indicated an intent to definitively amend the MCS by December 20th.

needed so that the Commission can “determine the scope and outer limits of the service that the Postal Service is allowed to continue offering.”⁸ The Postal Service has already provided comprehensive information with regard to the activities encompassed by Order No. 74. Furthermore, MCS language would not identify the public need for an activity, or the existence of private sector alternatives. It would merely summarize the essential features of a particular service offering. As such, it would add nothing material to aid the Commission in the decisions it must make by December 20th, beyond the information already provided.⁹

Granting the Public Representative’s motion also would be completely premature. It is not clear whether this proceeding even applies to a large number of activities for which the Public Representative is seeking MCS language.¹⁰ It would be a waste of time and resources for the Postal Service to promulgate proposed MCS language for activities that ultimately may not be included in the MCS. This is especially true because the derivation of sound and well-crafted MCS language takes time (as is evident from the time taken to produce the initial MCS for the existing “postal services”).¹¹ There is simply no

⁸ Motion to Compel at 4. Similarly, he claims that MCS language will help the Commission “identify[] the limits and characteristics” of those activities whose relevance to this proceeding is disputed. *Id.* at 3.

⁹ For instance, the Public Representative cites to EPM as an example of where MCS language would be helpful. *Id.* at 4. Surely, however, the description of that service provided in the Postal Service filings to date (not to mention the numerous documents filed by other parties in this proceeding) provide an adequate description of the service for purposes of determining whether it should be continued. This inquiry would not be aided in any material fashion by the addition of formalistic MCS language, which would necessarily be a summary of the broader information already provided.

¹⁰ See Order No. 77 (noting that “The Commission has not reached definitive conclusions regarding the jurisdictional nature of any of the activities undertaken by the Postal Service.”).

¹¹ Even if the Commission were inclined to adopt this motion, the Public Representative’s suggestion that the Postal Service be given seven days to respond is a wholly unrealistic timeline

need to rush into promulgating such language when there is no pressing need, legal or practical, to do so at this time. In addition, before the Postal Service could respond completely to this motion, which asks the Postal Service to file language “classifying” all of its revenue-generating activities, it would need further guidance on how to apply the standard of section 3642(b)(1) to many of those activities. The Public Representative’s motion therefore should be denied.

Respectfully submitted,

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to expect the formulation of sound, useful proposed MCS language, and indicates a complete lack of understanding on the part of the Public Representative of the task he is seeking to compel the Postal Service to engage in.