

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

COMPETITIVE PRODUCT PRICES  
BILATERAL  
NEGOTIATED SERVICE AGREEMENT

Docket Nos.  
MC2009-8

COMPETITIVE PRODUCT PRICES  
CANADA POST – UNITED STATES POSTAL SERVICE  
CONTRACTUAL BILATERAL AGREEMENT FOR INBOUND  
COMPETITIVE SERVICES (MC2009-8)  
NEGOTIATED SERVICE AGREEMENT

CP2009-9

**REQUEST OF UNITED STATES POSTAL SERVICE TO ADD CANADA POST –  
UNITED STATES POSTAL SERVICE CONTRACTUAL BILATERAL AGREEMENT  
FOR INBOUND COMPETITIVE SERVICES TO THE COMPETITIVE PRODUCT LIST,  
AND NOTICE OF FILING (UNDER SEAL) THE ENABLING GOVERNORS’ DECISION  
AND AGREEMENT  
(November 13, 2008)**

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service (Postal Service) hereby requests that the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Agreement), as expressed through a one-year extension to applicable segments of a precursor agreement,<sup>1</sup> be added to the competitive product list within the Mail Classification Schedule (MCS). The Postal Service also gives notice, pursuant to 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5, that the Governors have established prices and classifications not of general applicability for the Agreement. Accordingly, the

<sup>1</sup> “Agreement” is used herein to denote the composite segments of the overarching agreement with Canada Post that have been filed under seal, to the extent that they bear on the rates and classifications for inbound competitive services.

Postal Service requests that the Postal Regulatory Commission (Commission) list this Agreement as a product on the competitive products list.

Attachment 1 to this Request is a redacted copy of the Governors' Decision, which includes proposed MCS language for the Agreement. Attachment 2 is the Statement of Supporting Justification of Lea Emerson, Executive Director, International Postal Affairs, pursuant to Rule 3020.32.<sup>2</sup>

***I. Confidentiality***

While the Commission intends to address broader confidentiality issues in the future,<sup>3</sup> the Postal Service maintains that the Agreement, related financial information, and certain portions of the Governors' Decision should remain confidential. The Agreement contains pricing and other information related to Canada Post and Postal Service processes and procedures for handling the mail tendered under the Agreement. Related financial information contains cost and pricing information showing how prices are developed. Prices and other terms relating to the parties' processes and procedures are highly confidential in the business world, and the Postal Service protects them in accordance with industry standards. Public disclosure would compromise the ability of both the Postal Service and Canada Post to negotiate favorable bilateral agreements in the future, both with each other and with other postal operators.

The Governors' Decision establishes prices consistent with 39 U.S.C. § 3633(a)(1)-(3). Although it does so by reference to the Agreement, rather than by explicit enumeration, the Decision also contains information about ongoing negotiations

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<sup>2</sup> An unredacted copy of the Governors' Decision, the Agreement, and other supporting documents establishing compliance with 39 C.F.R. § 3015.5 are being filed separately with the Commission under seal.

<sup>3</sup> See PRC Order No. 96, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, August 13, 2008.

with Canada Post that might relate to the Agreement. Public disclosure of this information would seriously undermine postal management's negotiations with Canada Post and, by extension, with other foreign postal operators. This information is clearly of a commercial nature, and the Postal Service is aware of no competitor or private company of comparable size and scope that releases such information to the public. Specific information about ongoing negotiations in the Governors' Decision thus continues to merit confidential treatment.

## ***II. Identification of Existing Agreement***

At present, the only agreement with the Canada Post Corporation (Canada Post) for inbound competitive services is described in draft MCS language previously proposed by the Postal Service.<sup>4</sup> The current agreement was executed under the authority of former 39 U.S.C. § 407,<sup>5</sup> which was preserved by the transition rules of 39 U.S.C. §§ 3622(f) and 3631(c). This agreement is set to expire on December 31, 2008. The terms of the agreement's extension fit within the proposed MCS language included as Attachment 1 to this filing. On its own terms, the Agreement is a one-year extension of the current agreement, with some modifications. Because the Commission has not yet finalized the MCS or adopted the proposed language that pertains to the current agreement, however, the Postal Service recognizes that the extension filed in this proceeding effectively represents the arrangement's procedural debut before the Commission.

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<sup>4</sup> See United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007. A copy of the agreement was also provided pursuant to 39 U.S.C. § 407(d)(2) to the Commission under cover of letter dated February 9, 2007, to the Secretary of the Commission.

<sup>5</sup> Prior to its revision in the Postal Accountability and Enhancement Act, P.L. 109-435, § 405, 120 Stat. 3198, 3229 (2006), 39 U.S.C. § 407 authorized the Postal Service, with the consent of the President, to establish rates of postage or other charges on international mail matter.

### **III. Proposed Mail Classification Schedule Language**

The proposed MCS language for the Agreement, included as Attachment A to the Governors' Decision, contains much of the same language that was included in the Postal Service's original proposed MCS language for Inbound Surface Parcel Post at Non-UPU Rates.<sup>6</sup> In its previous MCS submission, the Postal Service proposed to place the distinct services offered under the precursor agreement with Canada Post under separate product rubrics.<sup>7</sup> For practical reasons and to reflect the Commission's ruling that each agreement or group of functionally equivalent agreements consists of a separately identifiable product,<sup>8</sup> the Postal Service now proposes that the Agreement with Canada Post for inbound competitive services be classified as such.

Although the proposed MCS language may tend toward terseness, the Postal Service notes the Commission's ruling that "[t]he rules require only minimal descriptive information to be included in the Mail Classification Schedule."<sup>9</sup> With respect to the Postal Service's earlier proposed MCS, which included a description of the competitive aspects of the previous Canada Post bilateral agreement that closely resemble the MCS description attached hereto, the Commission acknowledged that "[t]he level of detail that the Postal Service provided in its [initially] proposed Mail Classification Schedule . . . appears adequate."<sup>10</sup>

### **IV. Filing under Part 3020, Subpart B of the Rules of Practice and Procedure**

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<sup>6</sup> See United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007.

<sup>7</sup> Canada Post does not tender Air Parcel Post to the Postal Service at this time.

<sup>8</sup> PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. MC2007-1, October 29, 2007, at ¶¶ 1003, 2177, 2198, 3001.

<sup>9</sup> *Id.* at ¶ 4010.

<sup>10</sup> *Id.*

The Statement of Supporting Justification of Lea Emerson, Executive Director, International Postal Affairs, is included as Attachment 2 in accordance with Part 3020, Subpart B of the Commission's Rules of Practice and Procedure. This Statement provides support for the addition of the Agreement to the competitive products list.

Under 39 U.S.C. § 3642(b), the only criteria for such review are whether the product qualifies as market-dominant, whether it is excluded from the postal monopoly, and whether the proposed classification reflects certain market considerations. Each of these criteria has been addressed in this case. With Order No. 43, the Commission has already assigned all inbound shipments of Surface Parcel Post at negotiated rates to the competitive category,<sup>11</sup> and the Agreement is the instrument that implements negotiated rates for inbound Surface Parcel Post from Canada. Therefore, there is no need to ponder further whether the Agreement is market-dominant or, by dint thereof, covered within the postal monopoly. The additional considerations listed in 39 U.S.C. § 3642(b)(3) are addressed by Ms. Emerson's statement. Because all of section 3642's criteria for classification have been met, the Postal Service respectfully urges the Commission to act promptly by adding this product to the competitive products list as requested.<sup>12</sup>

## **V. *Inbound vs. Outbound Service***

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<sup>11</sup> Order No. 43 at ¶ 3031.

<sup>12</sup> The materials filed under seal in this docket constitute a subset of the overarching agreement between the Postal Service and Canada Post. This subset represents the parties' agreement with respect to inbound competitive services. Although certain aspects of the overarching agreement, including some of the materials filed under seal in this proceeding, await finalization between the parties, the current agreement's impending expiration and the regulatory time-frame demand that the Postal Service submit these materials in their present state. The parties expect to finalize this and related agreements by mid-December, and any lingering details will not affect the rates, classification, or other fundamental basis for this Request and Notice. To the extent that the overarching agreement or any portion of it constitutes a "commercial or operational contract[ ] related to providing international postal services and other international delivery services" with "an agency of a foreign government," the Postal Service will transmit a copy of the finalized agreement to the Commission pursuant to 39 U.S.C. § 407(d).

In this docket, the Postal Service is presenting only an agreement to deliver Surface Parcel Post in the United States for Canada Post. The rates paid by the Postal Service to Canada Post for outbound delivery of the Postal Service's competitive products in Canada have not been presented to the Commission. Those rates represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its shipping customers for outbound competitive products to be delivered in Canada. An agreement concerning outbound competitive services with Canada Post would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers. The Commission has the opportunity to review outbound rates, and the cost inputs that underlie them, each year through Annual Compliance Determination proceedings.

## **VI. Conclusion**

For the reasons discussed, the Postal Service believes that the Agreement should be added to the competitive products list. The Postal Service asks that the Commission approve this Request.

As required by 39 U.S.C. § 3642(d)(1), a notice concerning this Request has been sent for publication in the *Federal Register*.

Respectfully submitted,

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November 13, 2008

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR CANADA POST – UNITED STATES POSTAL SERVICE CONTRACTUAL BILATERAL AGREEMENT FOR INBOUND COMPETITIVE SERVICES (GOVERNORS’ DECISION No. 08-18)**

November 12, 2008

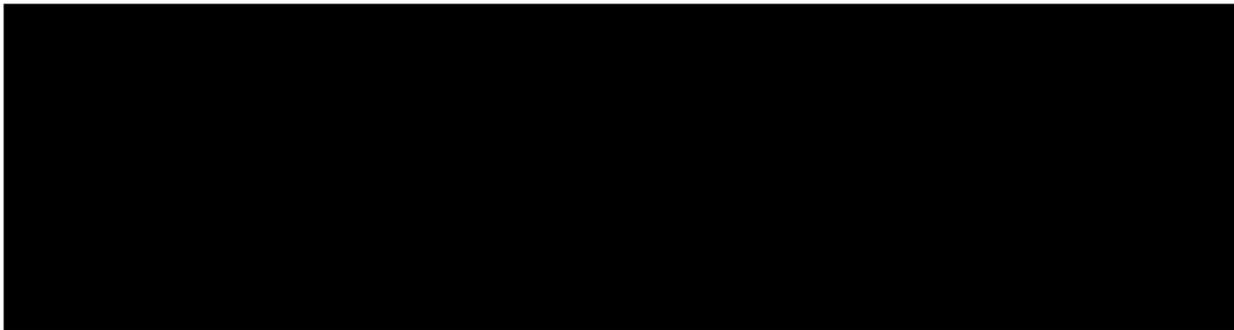
**STATEMENT OF EXPLANATION AND JUSTIFICATION**

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (“PAEA”), we establish new prices not of general applicability for certain of the Postal Service’s competitive service offerings, and such changes in classification as are necessary to implement the new prices. This decision establishes prices for the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services. The type of Contractual Bilateral Agreement negotiated with Canada Post Corporation (CPC) is described in Attachment A and covers Inbound Surface Parcel Post. Surface parcels consist of any parcels arriving in the United States by surface transportation, as opposed to by air. Under the Contractual Bilateral Agreement, CPC may tender surface parcels at negotiated prices rather than at the default prices set by the Universal Postal Union. Management’s analysis of these prices and the financial data supporting them are summarized in Attachment B.

We have reviewed management’s analysis and have evaluated the new prices for this Contractual Bilateral Agreement and the classification changes in this context are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. We approve the Contractual Bilateral Agreement prices and classification changes, finding that they are appropriate and consistent with the regulatory criteria, as indicated by management.

The PAEA provides that prices for competitive products must cover each product’s attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service’s institutional

costs. We accept and rely upon the certification in Attachment C that the costs have been correctly identified. We have determined that prices established for the Contractual Bilateral Agreement should cover the costs attributable to it. The prices established should thus prevent a cross-subsidy from market dominant products. As noted in the certification in Attachment C, entry into this agreement should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.



**ORDER**

In accordance with the foregoing Decision of the Governors, the prices for the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services and the changes in classification necessary to implement those prices are hereby approved and ordered into effect. We direct management to file appropriate notice of these changes with the Postal Regulatory Commission.

Prices and classification changes established pursuant to this Decision will take effect on January 1, 2009, or after filing with and review by the Postal Regulatory Commission, whichever is later.

By The Governors:

Alan C. Kessler  
Chairman

**Attachment A**

**Description of Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services**

**2613 Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services**

This agreement governs the exchange of inbound surface parcel post from Canada to the U.S. In particular, the agreement provides standards, targets, performance incentives, and charges for delivery of inbound surface parcel post.

**Attachment B**

**Management Analysis of Canada Post – United States Postal Service Contractual  
Bilateral Agreement for Inbound Competitive Services**

This analysis concerns the inbound competitive prices and classifications in the Contractual Bilateral Agreement between Canada Post and the United States Postal Service.

[REDACTED]

[REDACTED]

The alternative to the contractual bilateral agreement [REDACTED] is to use the rates set by the Universal Postal Union (UPU) Treaty. The UPU rates do not benefit the Postal Service's bottom line in terms of contribution or cost coverage. The following highlights demonstrate the financial benefits of this agreement for inbound competitive services during the one-year extension:

- The inbound competitive portion of the agreement covers Parcel Post arriving in the United States by surface.

[REDACTED]

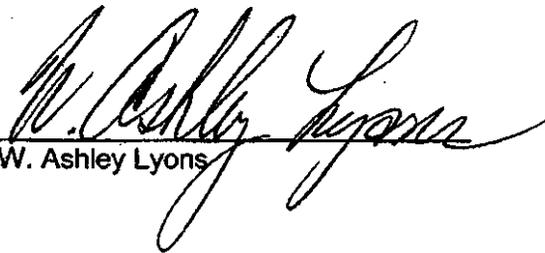
- We anticipate that this agreement will satisfy the Postal Regulatory Commission's concern about the cost coverage of inbound surface Parcel Post, as expressed in the Commission's Annual Compliance Determination for FY 2007.

[REDACTED]

**Attachment C**

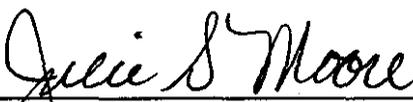
**Certification of Prices for the Canada Post – United States Postal Service  
Contractual Bilateral Agreement for Inbound Competitive Services**

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, United States Postal Service, am familiar with the prices for the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services. I hereby certify that these prices, which result in a cost coverage of [REDACTED] for the agreement, are in compliance with 39 U.S.C § 3633(a)(1), (2), and (3). The prices demonstrate that the agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from this agreement should be much smaller. The Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

  
W. Ashley Lyons

**CERTIFICATION OF GOVERNORS' VOTE  
IN THE  
GOVERNORS' DECISION NO. 08-18**

I hereby certify that the Governors voted on adopting Governors' Decision No. 08-18, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision. The vote was 9 to 0 in favor.

  
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Julie S. Moore  
Secretary of the Board of Governors

Date: 11/13/08

### Statement of Supporting Justification

I, Lea Emerson, Executive Director, International Postal Affairs, am sponsoring the Request that the Commission add the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Agreement) filed in Docket No. MC2009-8 to the competitive products list for prices not of general applicability. The proposed Mail Classification Schedule (MCS) language for the Agreement describes the requirements for this agreement, which is currently expressed through a one-year extension to applicable segments of a precursor agreement. My statement supports the Postal Service's Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Not applicable. The Postal Service is proposing that the Agreement be added to the competitive products list.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Adding the Agreement to the competitive product list is consistent with the Commission's determination in Order No. 43 that Inbound Surface Parcel Post at Non-UPU Rates is a competitive product. The addition of the Agreement as a competitive product will enable the Commission to verify that the agreement covers its attributable costs and enables competitive products, as a whole, to make a positive contribution to coverage of institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

When negotiating the Agreement, the Postal Service's bargaining position is constrained by the existence of other providers of similar services. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. The Agreement concerns the terms of exchange between the Postal Service and Canada Post for inbound Surface Parcel Post at negotiated prices, which has been classified as competitive by virtue of its exclusion from the letter monopoly and the level of competition in the relevant market. The Postal Service may not decrease quality or output without risking the loss of business to large competitors that offer similar international parcel delivery services. The relevant market also does not allow the Postal Service to

raise prices or offer prices substantially above costs; rather, the agreement is premised on prices that provide sufficient incentive for Canada Post and its shipping customers to tender Surface Parcel Post volume to the Postal Service rather than a competitor. If the Postal Service were to raise these prices, it risks losing inbound Canada-origin volume to a private competitor in the international shipping industry.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

The underlying parcel services fall outside the Private Express Statutes' prohibition on the private carriage of letters over post routes, so the Agreement also falls outside that prohibition. See part (d) above.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Private consolidators, freight forwarders, and integrators also offer international shipping arrangements whereby they provide inbound parcel delivery services under similar conditions.

- (g) *Provide any available information on the views of those who use the product on the appropriateness of the proposed modification.*

The Canada Post Corporation, the counter-party to the agreement presented in Docket No. MC2009-8, is a foreign postal administration that desires to tender surface parcel volume to the Postal Service under the terms and conditions it has negotiated with the Postal Service. The Postal Service has concluded bilateral agreements with Canada Post since 1888. This indicates

that Canada Post, as well as its end users, finds this type of product to be satisfactory, since Canada Post and its shipping customers are aware that competitive services are provided by private enterprises. However, no specific data are available to the Postal Service on Canada Post's or its shipping customers' views regarding the regulatory classification of this agreement.

(h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for international parcel delivery services comparable to inbound Surface Parcel Post is highly competitive. Therefore, addition of the Agreement will likely have little, if any, negative impact upon small business concerns. By virtue of this agreement, the Postal Service is giving Canada Post's small business customers an additional option for shipping articles to the United States. Small businesses in the United States also benefit from the ability to receive shipments that they have ordered from Canadian businesses. Thus, the net impact on small businesses is positive, because of the absence of negative impact on small business competitors and the positive impact on small businesses served by Canada Post and the Postal Service.

(i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

In its 2007 Annual Compliance Determination, the Commission observed that "revenues for inbound Surface Parcel Post at non-UPU rates did not cover costs." The Commission encouraged the Postal Service to "direct its efforts in upcoming negotiations to conclude an agreement that ensures all inward land

charges for competitive inbound Surface Parcel Post at non-UPU rates are compensatory.” It should be emphasized that the Postal Service has now negotiated compensatory rates for inbound surface parcels from Canada.