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Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Express Mail & Priority Mail
Express Mail & Priority Mail Contract 2

Docket No. MC2009-12

Competitive Product Prices
Express Mail & Priority Mail Contract 2
(MC2009-12)
Negotiated Service Agreement

Docket No. CP2009-14

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO UNITED STATES POSTAL SERVICE REQUEST TO ADD EXPRESS MAIL & PRIORITY MAIL CONTRACT 2 TO COMPETITIVE PRODUCT LIST AND NOTICE OF ESTABLISHMENT OF RATES AND CLASS NOT OF GENERAL APPLICABILITY

(December 10, 2008)

In response to Order No. 143,[1] the Public Representative hereby comments on the November 25 Request of the United States Postal Service to add Express Mail & Priority Mail Contract 2 to the Competitive Product List (Request).

The Request comports with title 39 stipulations and the relevant Commission Rules of Practice and Procedure. It appears, therefore to be beneficial to the general public.

The Public Representative has accessed and reviewed all materials the United States Postal Service submitted under seal in this matter, documentation in its original (not redacted) version. The Request (and its accompanying documentation) is

[1] Notice and Order Concerning Inbound International Expedited Services 2 Agreement December 1, 2008.

persuasive. Each element of 39 USC 3633(a) appears to be met by this Express Mail and Priority Mail Contract 2.

For a competitive products pricing schedule *not of general applicability*,[2] the Postal Service must demonstrate that the contract will comply with 39 USC 3633(a): It will not allow market dominant products to subsidize competitive products, it will ensure that each competitive product covers its attributable costs; and enable competitive products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service's total institutional costs). In the Governors' November 25 Decision 08-22 (at 2), the Governors assert that these conditions are met.

Accountability and Confidentiality

The Postal Service Request contains a rationale for maintaining confidentiality concerning pricing, processes which enable discounted pricing, the attendant formulae and other contractual terms which are matters of commercial sensitivity.[3] Here, it would appear that the Postal Service has concisely justified the extent of confidentiality appropriate in this matter, providing a brief explanation for maintaining the confidentiality of each aspect of the matters remaining under seal. It appears that the Postal Service has made a good faith effort to supply enough pertinent details to demonstrate the need for material under seal to be protected.

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[2] *See* 39 C.F.R. 3015.5-7.

[3] Postal Service Request, at 2-3.

The Agreement

The agreement features a number of provisions that are mutually beneficial to the parties, and beneficial to the general public. It should be noted that this contract constitutes new volume for the Postal Service. The Postal Service acknowledges "some risk" (Attachment A to the Governor's Decision), and notes that actual performance under this contract could vary from estimates, but concludes that the contract will remain profitable. Components of the agreement which suggest positive results:

- An "Escalation Factor" is included to ensure the equity of the base pricing for the duration of the three-year contract.

- Elements which make the mailer's pieces less costly for the Postal Service to handle than their publicly-offered products.

- Volume incentives to earn larger discounts.

The pricing formulae unanimously approved in Governors' Decision 08-22 should assure that there is no subsidization of this EMS and Priority Mail negotiated service agreement by market dominant products.

Conclusion

The Public Representative submits that the present Express Mail & Priority Mail Contract 2 agreement complies with title 39. It will not allow market dominant products to subsidize competitive products, it will ensure that each competitive product covers its attributable costs; and enable competitive products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service's total institutional costs). The Postal Service request also fulfills all relevant requirements for Commission Rules of Practice and Procedure.

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

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