

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail International
International Mail Rate Categories

Docket No. MC2009-16

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO
UNITED STATES POSTAL SERVICE NOTICE OF CLASSIFICATION CHANGE

(February 27, 2009)

In response to Order No. 183,¹ the Public Representative hereby comments on the February 13 Notice of the United States Postal Service of Classification Change (Notice) and the Postal Service's subsequent filings in this Priority Mail International (PMI) matter. The Notice heralded availability and rates to three destination countries (Ascension Island, Falkland Islands, and Democratic People's Republic of (North) Korea).

The Notice² and subsequent filings *in toto* comply with title 39 stipulations and the relevant Commission Rules of Practice and Procedure. The increased availability of Priority Mail International can therefor be shown 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.

¹ Notice and Order Concerning Priority Mail international Classification Change, February 19, 2009.

² "Notice" hereafter shall incorporate all Postal Service filings in this Docket: Notice, Errata, Response, and Motion for Reconsideration.

Sometimes “less is more.” Not here. The sparsely worded February 13 filing could be interpreted two ways – as noted by the Commission’s Order on page 2. Regrettably, that filing included data for pricing in another Competitive Products pricing request -- suggesting that the filing was more than a proposal to extend availability of an existing service (at established rates) to three additional countries.

Ultimately, the Postal Service provided adequate, correct data and the supporting rationale to act more expeditiously on their Notice. The Public Representative concedes that the Notice now merits consideration under 39 C.F.R. Part 3020, rather than 3015.

A Case of First Impression

When a matter is first brought before the Commission (court, or any other arbiter of law and equity) with no governing precedent, this novel question of law may be called a “case of first impression.” The general public might consider precedent to be analogies – prior holdings where facts or principles were closely related to the facts or principles currently examined. A case of first impression might therefore be seen as one where no analogies quite fit. Without such guidance (and guidelines) advocates may “write upon a clean slate,” and employ their knowledge and skills as passionately as they choose to demonstrate the appropriateness of their position to the Commission.

While the Order’s procedural question in this matter appears to have been settled by the Postal Service’s Notice, the PMI classification changes therein

remain a case of first impression. The public interest here, as in all matters before the Commission (no matter how minor), includes transparency and accountability. After all, the authorizing statute for this system of classification and ratemaking is titled The Postal Accountability and Enhancement Act.

Although some matters before the Commission will receive little notice (and may warrant scant commentary) from observers, there is one party to every action the Postal Service and/or the Commission undertakes. As public servants, we must do the business of the people. This Docket serves to illustrate a point – that the best interests of the public must trump all other considerations. Expediency has its place, but it may only be achieved after a requisite showing that the public has an unobstructed view of the regulatory issues and process. Congress made this explicit when it provided the role of Public Representative (39 U.S.C. 505) in the PAEA.

This principle is not new. In a seminal Supreme Court case of first impression, Chief Justice John Marshall reasoned,

That the people have an original right to establish for their future government such principles as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental. And as the authority from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) at 176.

The Postal Service, to its credit, provided the necessary information to enable consideration of what turns out to be a minor change to the Mail Classification Schedule (MCS). Likewise, since enactment of PAEA, in matters of negotiated service agreements (NSAs), the Postal Service soon endeavored

to include a rational basis for submitting materials under seal once the Commission had established that a justification must be made to rightly afford privacy to aspects of those contracts. In this initial request to extend PMI service to additional countries at already established rates, the Postal Service cogently makes the case in its Motion for Reconsideration that 39 C.F.R. Part 3020, with its less onerous and speedier review, is the proper context for this matter.

The Public Representative is confident that the precedential value of this Docket will be to encourage parties to include a concise rationale for every proposition they make before the Commission, particularly in matters that are still new in post-PAEA procedure. The burden of a proponent need not be troublesome; Postal Service counsel has timely met the request for additional information in this Docket (and numerous others) with directness and aplomb. However, a succinct statement -- why review under Part 3020 or Part 3015 is appropriate -- would be helpful to the public.

It could also alert reviewers to possible erroneous data. In light of the February 24 Response, Motion for Reconsideration, and additional information under seal, it might keep simple the Postal Service's task of filing classification changes.

The Changes

As noted in the February 24 Motion for Reconsideration (See 2-6), the classification change involves PMI flat rate envelope and small flat rate box service, not previously available to three destination countries. The prices for these products are already set (and for these destinations, by default), because PMI pricing for all countries except Canada and Mexico is the same. Here the Postal Service is merely extending the service, adding three destinations for which the public can select Priority Mail International Service. The Public Representative would respectfully suggest that an analogy used by the Postal

Service to illustrate the impact of these changes do not quite fit. Restoring a service to a ZIP Code in the wake of an emergency is purely an operational decision made by management. Commission oversight is regulatory, both nominally and in practice. The Commission cannot micromanage postal operations, nor was it designed to. There *is* a relationship, however, between operational decisions and communication. The Postal Service's response to Hurricane Katrina was laudable not simply in the restoration of service, but in its communication to the public (including first which ZIP Codes were affected, then how mail could be forwarded at customers' requests and ultimately when service was restored to particular ZIP Codes). Any seasoned customer service manager will agree that operational changes – such as collection box efficiency efforts or route adjustments – are much smoother when Postal officials provide customers with adequate notice, explaining the rationale prior to implementing changes. Communication is an indispensable ingredient for good service. Likewise, it is essential to the regulatory process, and is the most efficient way to achieve transparency in the business of the people.

Any awkwardness of this Docket should tend to allay doubts – if they exist – that the Mail Classification schedule is rightly maintained by the Commission, rather than the Postal service.

Conclusion

The Public Representative submits that the present classification changes for Priority Mail International, extending that service to Ascension Island, Falkland Islands, and Democratic People's Republic of (North) Korea, are

relatively minor, and are properly reviewed under 39 C.F.R. 3020. Furthermore, the additional data supplied under seal regarding cost data, while now moot, appears to comport with the relevant provisions of title 39.

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

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