

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

MAIL CLASSIFICATION SCHEDULE LANGUAGE
FOR NONPOSTAL ACTIVITIES REQUIRED TO BE
FILED BY ORDER NO. 154

Docket No. MC2009-20

UNITED STATES POSTAL SERVICE NOTICE OF FILING OF PROPOSED
MAIL CLASSIFICATION SCHEDULE LANGUAGE FOR NONPOSTAL
ACTIVITIES IN RESPONSE TO ORDER NO. 154.
(March 10, 2009)

In Order No. 154, the Commission determined that certain activities are properly characterized as “nonpostal services” pursuant to section 404(e) of title 39, for which the Postal Service had not sought to be grandfathered pursuant to that provision. For those activities, the Commission required the Postal Service to provide proposed Mail Classification Schedule (MCS) language. Order No. 154 at 89.¹ In response to Order No. 154, the Postal Service files its proposed MCS language for the nonpostal services for which it has not previously submitted language.² The proposed language is attached as Appendix A.

¹ As the Commission noted, the Postal Service has already filed proposed MCS language for the nonpostal services that it requested be grandfathered. Order No. 154 at 89. The Commission accepted that language, pending the conclusion of a future rulemaking concerning the form and content of nonpostal product listings in the MCS. *Id.*

² On January 16, 2008, the Postal Service filed a notice of appeal of Order No. 154 with the D.C. Circuit Court of Appeals, pursuant to section 3663 of title 39. This appeal will address certain jurisdictional and definitional determinations made by the Commission in that Order. Nothing in this document should be construed as affecting, implicating, or prejudicing in any way the positions that the Postal Service may take during the course of that appeal. Rather, for the purposes of the Postal Service’s participation in this proceeding only, the validity of Order No. 154 is presumed.

I. OVERVIEW

In Docket No. MC2008-1, the Commission determined that 14 activities are “nonpostal services” that could be continued as either market dominant or competitive in accordance with 39 U.S.C. § 404(e). Order No. 154, Appendix 1. The Commission agreed with the Postal Service’s request to continue four of the activities as “nonpostal services.”³ On its own initiative, the Commission determined that the remaining ten activities were “nonpostal services.”⁴ The Commission also indicated that it would initiate a rulemaking to determine the form and content for the nonpostal services product listings, as well as the regulations that will govern nonpostal products. *Id.* at 89. The Commission stated that such regulations should be minimally intrusive. *Id.* at 88.

During Docket No. MC2008-1, the Postal Service filed proposed MCS language concerning the four “nonpostal services” that it requested be continued, and which were identified as “nonpostal services” by the Commission, and authorized to continue. See United States Postal Service Notice of Filing Proposed Mail Classification Schedule Language for Six Nonpostal Services

³ At the Postal Service’s request, the Commission added the following nonpostal services as competitive services: Officially Licensed Retail Products (OLRP), Passport Photos, Photocopying, and Electronic Postmark (EPM).

⁴ On its own initiative, the Commission determined that ten activities were nonpostal services. It found that Philatelic Sales and MoverSource were market dominant. It found that Affiliates for Website, Affiliates—Other (Linking Only), FedEx Drop Box, Licensing Programs Other Than Officially Licensed Retail Products (OLRP), Meter Manufacturers Marketing Program, Non-Sale Lease Agreements (Non-Government), Training Facilities, and Warranty Repair Program were competitive. See Order No. 154, Appendix I, as amended by Errata Notice filed January 9, 2009.

Pursuant to Order No. 120 (November 7, 2008).⁵ The Commission found that the proposed language for these services contained sufficient information to identify the nonpostal services. Order No. 154 at 89. It indicated that the proposed language will be inserted provisionally into the MCS pending the conclusion of the rulemaking that establishes the form and content for nonpostal services product listings. *Id.*

In Order No. 154, the Commission requested the Postal Service to propose MCS language for the ten activities it had determined on its own initiative were “nonpostal services.” The Commission often identified these activities using the names of a current vendor or program, or the location of the activity (e.g. the web). This approach is understandable since many of these activities were first identified in the Postal Service’s response to Order No. 74, which provided the revenues for these activities as represented in the Postal Service’s accounting systems. See Initial Response to Order No. 74 (June 9, 2008).

In this filing, the Postal Service proposes to rename some of these “nonpostal services” to more accurately reflect the activities within each service. For example, the Commission designated one “nonpostal service” as Warranty Repair Program, reflecting earlier Postal Service discussions of this activity, when, in reality, the Postal Service repairs equipment whether or not it is under

⁵ As the title of this document indicates, the Postal Service filed MCS language for six nonpostal activities. One activity for which MCS language was proposed, Notary Services, was found not to be a “nonpostal service” by the Commission, and another activity, Stored Value Cards, was not authorized by the Commission to continue.

warranty. The Postal Service proposes to name this activity the “Equipment Repair Program.”

The Postal Service also proposes to realign some of the activities in a logical fashion so that they are independent of the names of current vendors or programs, or the location of the activity. The realignment groups together similar activities in a manner consistent with the Commission’s definition of “nonpostal services” as (1) an ongoing activity (2) of a commercial nature (3) offered to the public (4) for purposes of financial gain. *Id.* at 2. The regrouping reduces the potential confusion as to the scope of the activity that was grandfathered. For example, the Meter Manufacturers Marketing Program is a non-exclusive agreement that, in essence, generates revenue from advertising placed in retail lobbies on behalf of Pitney Bowes. A description that limits the “nonpostal service” to either this particular program, or to the advertising of meters in retail lobbies, could possibly raise an issue about whether the Postal Service could in the future enter into a similar agreement with another meter manufacturer, or whether it could accept advertising for other products in other venues.

Instead, the Postal Service’s proposed descriptions identify the essential activity independent of the name of the current vendor or program or the location of the activity. It also groups similar activities together. For example, the Postal Service receives payment under several web-based agreements for providing a link to a merchant’s website. The Postal Service is proposing that this particular activity fall within the broader category of “Advertising,” which would apply to advertising in postal venues generally, including the Postal Service’s retail

lobbies (e.g. the Meter Manufacturers Marketing Program), and on the web (e.g., some web-based linking agreements). This is more appropriate than creating separate MCS language for advertising activities based on where the advertising appears, or who is paying for the advertising. In the next section, the Postal Service provides a roadmap between the original designations in Order No. 154 and the descriptions that the Postal Service is proposing in this filing.

Before addressing the specific MCS language, the Postal Service notes that the Commission's discussion of web-based linking agreements determined that each such agreement represents a separate product, unless otherwise demonstrated. Order No. 154 at 79. The Postal Service respectfully requests that the issue of whether each such agreement is a separate product be addressed in the future rulemaking on the form and content for the nonpostal services product listings, as well as how changes are made to the lists. *See Id.* at 87-89. Making each agreement a product may require the filing of a proceeding under 39 U.S.C. §3642 for every new website linking agreement. If so, the Postal Service opposes that result. However, a fuller discussion of this issue would appear to be more appropriate in the rulemaking rather than in this proceeding. For the time being, the Postal Service's proposed language presents the web-based linking agreements as price categories rather than products. This approach removes the uncertainty of whether a section 3642 proceeding would be required for any new agreements pending the conclusion of the nonpostal rulemaking.

II. ROADMAP TO THE POSTAL SERVICE'S PROPOSED MCS DESCRIPTIONS

Appendix A contains the Postal Service's proposed MCS language. As discussed above, the Postal Service proposes to regroup several activities that share common core elements. The proposed MCS language is intended to cover all the activities that the Commission determined to be within its jurisdiction in Order No. 154 and for which the Postal Service has not previously submitted language. Here the Postal Service presents each nonpostal activity as identified in Order No. 154 and where that activity is covered in the proposed MCS language. They are presented in the order in which they appear in Order No. 154, Appendix I.

Philatelic Sales, Training Facility, Warranty Repair, Licensing of Intellectual Property other than OLRP

There is no realignment of the activities within these descriptions. The title of Warranty Repair has been changed to "Equipment Repair Service" since the Postal Service also repairs equipment not under warranty.

MoverSource

The list of nonpostal services in Appendix I of Order No. 154 includes "MoverSource," which is an alliance with a private sector company to provide the change-of-address function. It shares similar essential features with WhitePages, a web affiliate agreement which is part of a separate "nonpostal service" listing in Order No. 154. The WhitePages alliance provides the locations, hours, phone numbers, and operations of and services available at

post offices nationwide.⁶ The Postal Service recommends combining these two activities into one description because both involve an alliance or arrangement between the Postal Service and a private sector entity to provide either a core postal function or the funding for the function. The costs are defrayed through advertising that is solicited by the private sector entity. Any revenues in excess of the costs of the alliance are shared between the entity and the Postal Service. The proposed “nonpostal service” category that encompasses these activities is entitled “Alliances with the Private Sector to Defray Cost of Key Postal Functions.” In the future, if the Postal Service has an opportunity for a similar alliance with the private sector, its description would be added to the MCS under this category pursuant to the Commission’s yet-to-be-established nonpostal rules.

Web-based linking agreements

The Commission described each web-based linking agreement as part of a program that generates revenue from merchants who compensate the Postal Service for providing links to their websites.⁷ The Postal Service proposes to

⁶ This type of information was previously provided through an agreement with Idearc Media Corporation. See Order No. 154 at 77.

⁷ While the body of Order No. 154 discussed “Web-based linking agreements (see pages 76-79), the list of nonpostal services which was presented in Appendix I, as amended by Errata Notice issued January 9, 2009, identified two separate nonpostal activities: Affiliates for Website and Affiliates-Other (Linking Only). It is not clear from the body of the Order how these activities should be distinguished since it collectively discussed all website affiliates as “linking.” For purposes of this notice, the Postal Service will address website-related agreements as one group.

categorize the web-based linking agreements into three separate categories depending on the nature of the services or contractual relationship involved.

One set of agreements provides compensation to the Postal Service for a providing a link on its website to the merchant's website. The current agreements within this category are the Maponics, Label Universe, and Mail Service Provider agreements. See Order No. 154 at 77-78. The proposed "nonpostal service" category that encompasses this activity is entitled "Advertising." This category would also include advertising in the retail lobbies, such as the Meter Manufacturers Marketing Program, as discussed below. If the Postal Service enters into new agreements for the payment of advertising on the web, in retail lobbies, or in other postal venues, it would be covered in the MCS under the proposed "Advertising" category.

A second set of agreements involves not only advertising on usps.com, but also may involve the Postal Service actively promoting the vendor's mailing services or products. The agreements within this category are the Click2Mail, Premium Postcard, and CardStore agreements. *Id.* The proposed "nonpostal service" category that encompasses this activity is entitled "Mail Services Promotion." If the Postal Service enters into new agreements that involve advertising and the possible active promotion of mail services and products, whether on the web or in other venues, it would be covered in the MCS under this category.

The final web affiliate agreement is the WhitePages alliance, which has been discussed above. The Postal Service proposes to include this alliance,

along with the MoverSource alliance, in the category of “Alliances with the Private Sector to Defray Cost of Key Postal Functions.”

FedEx Drop Box

Please see the discussion of “Non-sale Lease Agreements (Non-Government)” below.

Meter Manufacturers Marketing Program

The Meter Manufacturers Marketing Program has one non-exclusive agreement that, in essence, generates revenue from advertising placed in retail lobbies on behalf of Pitney Bowes. The proposed “nonpostal service” category that encompasses this activity is “Advertising.” This category would also include advertising on the web, as discussed in the web-based linking agreements section above. If the Postal Service enters into new agreements for the payment of advertising on the web, in retail lobbies, or in other postal venues, it would be covered in the MCS under the proposed “Advertising” category.

Non-Sale Lease Agreements

Order No. 154 included in the nonpostal category, *Non-Sale Lease Agreements (Non-Government)*, encompassing such items as parking facilities, office space, antenna towers, advertising, storage, and retail lobby space. Order No. 154 at 66. It should be noted that not all non-sale disposition of real property is technically a “lease.” Sometimes the agreement is structured as a license of

real property. The proposed description is not limited by the form of the agreement.

The Order also identified the FedEx Drop Box arrangement as a separate “nonpostal service” even though that activity involves the licensing or rental of real property space. *Id.* at Appendix 1, part B. It is appropriate to group together in one description activities that involve a party being given the right to use Postal Service real property in exchange for monetary consideration.

Furthermore, the Commission did not specifically address the rental of personal property as a “nonpostal service.” There is no indication, however, that the Commission would oppose the rental of equipment (e.g. fork lifts) or other personal property, and such rental of personal property would appear to fit within the Commission’s definition of “nonpostal services.” The Postal Service’s proposed MCS language would encompass such activity.⁸

The proposed “nonpostal service” category that encompasses all of these activities is entitled “Leasing, Licensing and Other Non-Sale Disposal of Tangible Property.” The licensing of intangible property, i.e. intellectual property, is

⁸ The Postal Service notes that it has rented personal property for years at its training facilities (exercise and audio-visual equipment). However, because those charges are accounted for as part of the training facilities operations, the Postal Service does not recommend specifically including them in this description.

covered in the MCS description for “Licensing of Intellectual Property Other than OLRP.”

Respectfully submitted,

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MARKET DOMINANT PRODUCTS

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XXX Alliances with the Private Sector to Defray Cost of Key Postal Functions

XXXXX .1 Description

The Alliances with the Private Sector to Defray Cost of Key Postal Functions service covers alliances or agreements with private sector entities for the provision of a core postal function or the funding of the function. The costs of the alliance or agreement are defrayed through activity of the private sector entity. Any revenues in excess of costs of the alliance or agreement are shared between the entity and the Postal Service. The Postal Service does not charge its customers for the core postal function. The existing alliances are:

MoverSource is an alliance that supports the system whereby the Postal Service processes and confirms change-of-address information it receives from customers who wish to have their mail forwarded. Customers receive move-related advertising and general information about moving. Customers do not pay for the change-of-address function. The Postal Service shares in the net revenue of the agreement.

WhitePages is an agreement that allows users of usps.com to access information about the locations, hours, phone numbers, and operations of and services available at post offices nationwide. The users of usps.com connect with WhitePages website which has been customized to provide the post office information. WhitePages solicits advertising that is shown on its website. Customers do not pay for the post office information. The Postal Service shares in any net revenue from the agreement.

XXXXXX.2 Price:

The Postal Service receives a negotiated share of net revenue after costs.

XXXX Philatelic Sales

XXXX.1 Description

Philatelic items are stamp-related items that support the hobby of stamp collecting. They are intended to be collected by serious, casual and topical collectors and typically include a postage stamp or stamps. Examples of philatelic items include first day covers, ceremony programs, uncut press sheets, framed stamps, binders for storing stamps, stamp yearbooks, and philatelic guides.

XXXX.2 Price

All items	Not less than face value of included postage, and not more than face value of included postage plus \$300.
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COMPETITIVE PRODUCTS

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XXXX Rental, Leasing, Licensing or Other Non-Sale Disposition of Tangible Property

XXXX.1 Description:

The Rental, Leasing, Licensing or Other Non-Sale Disposition of Property includes agreements that allow a person or entity to occupy space within or on real property of the Postal Service, or to use personal tangible property, in exchange for rent, fee or other monetary consideration. The agreement may be a lease, license or other form of agreement. It does not include agreements with federal government agencies or the sale of property.

XXXXX.2 Price:

Negotiated between the parties

XXXX Advertising

XXXX.1 Description:

The Advertising service involves arrangements where the Postal Service agrees to post, display, or otherwise convey or provide a party's advertising in exchange for consideration. The advertising may be placed or provided on the Postal Service's website, in retail locations, or other postal venues. Payment may be in the form of fees, a percentage of the revenue if the advertised product is sold or other forms. This category does not include advertising for the products that the Postal Service sells.

XXXX.2 Price:

Negotiated between the parties

XXXX Mail Services Promotion**XXXX.1 Description**

The Mail Services Promotion category includes the Postal Service's agreements with merchants who offer customers mail-related products or services. In exchange for compensation, the Postal Service advertises the merchant's products or services and may actively promote them. The Postal Service does not produce or provide the product or service.

Currently, there are three Mail Services Promotion merchant agreements. The merchants offer its customers the ability to create mail pieces through an online service. In exchange for compensation, the Postal Service provides a link on its website to the merchant's website and may, in addition, promote the merchant's product. One merchant specializes in producing mailings using a variety of formats such as letters, postcards, fliers and booklets; one merchant specializes in producing mailings of postcards; and one merchant specializes in producing mailings of greeting cards.

XXXX Price

The merchant payments are negotiated.

XXXX Training Facilities and Related Services

XXXX.1 Description:

The Training Facility and Related Services category includes the rental of excess space in or on the grounds of the Postal Service’s training facilities to outside parties for a fee. The facilities include meeting rooms, housing, and exercise areas. Available services include conference-related services such as food service and the rental of audio-visual equipment, and hospitality-related services such as lodging, fitness-related services, banquet services, and on-site sale of sundries. One of the training facilities also has a health clinic on site that charges for services. At one facility, the Postal Service also makes its training classes available to non-governmental organizations. Currently, the Postal Service has two training facilities.

The Postal Service sets the price for the training classes. For each facility, the Postal Service contracts with a company to manage the facility. The management company is responsible for setting the prices for all other services and the Postal Service receives a negotiated percentage of net profits.

This description does not include rental of space or provision of services to federal agencies or postal employees.

XXXX Price:

Training courses, including management, leadership, technical, and computer technology courses	\$35 - \$9775
All other services (Price set by contractor)	Percentage of net profits

XXXX Licensing of Intellectual Property Other than OLRP

XXXX.1 Description:

This category covers the licensing of the Postal Service's intellectual property including patents, trademarks, and copyrights. The Postal Service receives payment for the use of its intellectual property. The Postal Services charges a nominal fee for use of trademarks or copyrighted material for noncommercial or limited commercial purposes. The price for the other uses of intellectual property is negotiated with the licensee.

XXXX.2 Price:

Use of Patents	Negotiated
Use of Trademarks	
Noncommercial or limited commercial purposes	\$25
Commercial purposes	Negotiated
Use of Copyright	
Noncommercial or limited commercial purposes	\$25
Commercial purposes	Negotiated

XXXX Equipment Repair Service

XXXX.1 Description

Equipment Repair Service is offered to allow entities seeking to repair non-Postal Service equipment (i.e., equipment not owned by the Postal Service) the opportunity to utilize the resources maintained by the Postal Service to meet its own needs for postal equipment repair service.

XXXX.2 Price

	Charge
Per Repair	Total charge is the amount of the estimated or actual costs of the repair, plus a markup of approximately 10 percent to 60 percent of the repair costs.