

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Direct Contracts (CP2009-9)
Negotiated Service Agreement

Docket No. CP2009-29

PUBLIC REPRESENTATIVE COMMENTS
IN RESPONSE TO ORDER NO. 210

(May 8, 2009)

The Public Representative hereby offers comments on the United States Postal Service's request to add a Negotiated Service Agreement (NSA) to the Global Direct Product on the Competitive Product List¹ in response to the Commission's notice and request for comment.²

Overview

The Public Representative believes that this NSA furthers the public interest of a vibrant, financially healthy postal service that can effectively serve the nation. The agreement is sufficiently transparent. The agreement is appropriately categorized as a competitive product and comports with the PAEA statutory requirements in covering its costs. The contract also appears to be functionally equivalent to the existing product agreements.

¹ Notice of the United States Postal Service Filing of Functionally Equivalent Global Direct Contracts Negotiated Service Agreement, May 1, 2009 (Notice). The Postal Service filed an unredacted copy of the contract and supporting materials under seal.

² See PRC Order 210, Notice and Order Concerning Filing of Additional Global Direct Contracts Negotiated Service Agreement, May 6, 2009, at 3.

The Public Representative also believes that this docket offers another example to the Commission of concerns over equal customs treatment and equal access to international postal rates, concerns that could be evaluated by the Commission at the proper time.

Nature of the Agreement

A Global Direct agreement is a direct entry bulk international mail service that provides business customers with a less expensive and more effective way to enter bulk mail into another country so that it resembles mail originating in the destination (receiving) country. It is a useful alternative to setting up separate operations in the receiving country. The Postal Service accepts such mail within the United States, transports it to another country (in this instance, Canada) and enters it into the mail stream of the receiving country. The Global Direct mail bears the postage/indicia of the receiving country and also has a return address within that receiving country. Such direct entry mail offers many business advantages for business mailers.

Public Interest in a Healthy Postal Service

At this pivotal time, the Public Representative believes that the most important public interest is the continuing efficacy and viability of a vibrant, innovative Postal Service that can provide a suitable level of service to everyone.

The Postal laws provide the Service increased flexibility to experiment with pricing and new product offerings. This contract appears to further that purpose.

Public Interest in Transparency

The public interest is served when the Postal Service and the Commission make available to the public the maximum amount of information about negotiated service agreements taking into consideration the important need for preserving the confidentiality of sensitive or proprietary business information.

The Postal Service appears to have done so in this docket.

Public Interest in Satisfaction of the Statutory Criteria

Upon review of the contract and financial analysis documents, the Public Representative is satisfied that this Negotiated Service Agreement meets the core statutory criteria, including the provisions of 39 U.S.C. 3632, 3633 and 3642.

Adequate Cost Coverage and Prevention of Cross-Subsidization

An essential public interest is to ensure that a Competitive Product contract adequately covers its costs to help prevent cross-subsidization by market dominant products.³ There is a public interest in ensuring that these products pay their own way and are not supported by mailing prices paid by the

³ See 39 U.S.C. § 3633 (a)(1) & (2).

general public or other mailers of market dominant products.⁴ The product offerings are obliged by law to enable competitive products as a whole to cover their costs, and by regulation to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.⁵

The Public Representative, after reviewing the materials under seal in this proceeding and appropriate consultation with technical staff, believes that the provisions of the CP2009-29 contract⁶, including the pricing structure, meet those requirements. These factors should assure that there is no subsidization of this NSA by market dominant products.

Appropriate Categorization

After assessing the data as filed under seal, the Public Representative believes that the proposed contract in this docket is appropriately categorized as a Competitive Product. The sealed agreement reveals minor differences in contractual formulation from the existing Global Direct agreements, but nothing that seems to preclude a showing that the contracts are functionally equivalent for this purpose.

⁴ *Id.*

⁵ See 39 U.S.C. § 3633 (b) and 39 CFR 3015.7(c).

⁶ Within the context of the MC2009-9 Global Direct product.

Broader Review of Intractable International Mail Issues

Two areas of concern where current practices purportedly conflict with statutory obligations⁷ were identified in comments produced during certain international mail dockets.⁸ The Commission has observed that such matters are beyond the scope of a Competitive Product proceeding.⁹ Earlier this year, the Commission noted it will take the matter “under advisement until the need for such a proceeding becomes more apparent.”¹⁰

Two points are worth noting here. First, a Federal Advisory Committee under the auspices of the State Department is tasked with evaluating and addressing concerns involving international postal arrangements of this type that implicate longstanding interagency and international relationships.

Second, it is significant that no party has felt the need to register a formal complaint with the Commission on this topic, and that the market participants who would be most likely to register a complaint are, in general, participating within the Federal Advisory Committee framework or else reportedly engaging in *ad hoc* discussions.

⁷ The first concern, which applies primarily to outbound international mail, is the special availability to the Postal Service of other-nation delivery rates in some cases negotiated under bilateral agreements between national postal operators, or under the UPU international arrangement. The second concern involves customs handling advantages available to the Postal Service, and applies primarily to inbound international mail (although outbound is also affected.)

⁸ See, e.g., Public Representative Comments in Response to Order No. 159, PRC Docket. CP2009-18, Jan. 5, 2009.

⁹ See, e.g., Order No. 153, at 7.

¹⁰ Order No. 166, at 6.

The Public Representative suggests that this case presents another example of concerns over the legality of unequal customs treatment and unequal access to special negotiated destination nation postal rates that could be evaluated by the Commission at the proper time.

Summary

In conclusion, the agreement satisfies the statutory requirements for a Competitive Product, comports with applicable public interests and should be approved by the Commission. This case presents an example for the Commission of potentially inequitable treatment if and when the matter arises in a proceeding.

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

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