

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Modification of the Mail)
Classification Schedule) Docket No. MC2009-19
Product Lists)

SUPPLEMENTAL COMMENTS OF THE PUBLIC REPRESENTATIVE
IN RESPONSE TO COMMISSION ORDER NO. 215

(May 19, 2009)

On May 8, 2009, the Postal Service filed a notice of amendment to its March 10, 2009 request to add Address Management Services to the Mail Classification Schedule.¹ Since the comment period for this docket had already passed, the Commission issued Order No. 215 to provide interested parties with the opportunity to file supplemental comments in response to the changes proposed in the Amendment.²

The Public Representative provides the following comments in response to the Postal Service's Amendment.³

¹ Notice of the United States Postal Service of Amendment to Its Request to Add Postal Products to the Mail Classification Schedule in Response to Order No. 154, May 8, 2009 (Amendment).

² Notice and Order Concerning Amendment to Request to Add Seven Postal Services to the Mail Classification Schedule Product Lists, May 12, 2009 (Order No. 215).

³ The Public Representative previously filed extensive comments on the Postal Service's March 10, 2009 filings in this docket. See Comments of the Public Representative, April 30, 2009. For purposes of these supplemental comments, familiarity with those prior comments is assumed.

I. INTRODUCTION AND SUMMARY

The Postal Service's Amendment to its March 10, 2009 request proposes to remove the add-on service FASTforward® Move Update Notification (FFMUN) from the proposed MCS language and instead bundle that FFMUN service with its host service, FASTforward® Multi-line Optical Character Reader (MLOCR). Amendment at 1-2. The Postal Service's proposal does not increase the charge for the newly bundled MLOCR service. Rather, it only seeks to remove the \$100 charge for FFMUN from its rate tables.⁴

The Postal Service's Amendment to its March 10, 2009 request suffers from the same problems as its earlier filings. The Postal Service has provided very little data and supporting justification for its proposed Amendment. The Amendment could also be considered a violation 39 U.S.C. 3622(d)(1)(C) and 39 CFR 3010.10(a)(2). Below, the Public Representative's comments discuss the details of these shortfalls.

In consideration of the issues raised by these comments and the Public Representative's prior comments, the Commission should institute further proceedings pursuant to 39 CFR 3020.24(b) to explore these concerns.

II. COMMENTS

A. Notice Requirements for Rate Changes

This case presents a peculiar set of facts giving rise to several difficult legal issues. As a general matter, the Postal Service is seeking to add several postal products to the product lists that it already offers to the general public.⁵ Thus, for

⁴ Thus, the charge for MLOCR will remain at \$5,000 per year for the bundled product. Previously, FFMUN customers were charged \$100 per year and MLOCR licensees were charged \$5,000 per year.

⁵ Congress attempted to stop this situation from happening. See 39 U.S.C. § 3642(e) ("Except as provided in section 3641, no product that involves the physical delivery of letters, printed matter, or

purposes of this Amendment, it is unclear if this proposal is a market dominant rate change which triggers the requirements of 39 U.S.C. 3622(d)(1)(C) and 39 CFR 3010.10(a)(2). These statutory and regulatory provisions require the Postal Service to provide the Commission with 45 days notice prior to changing rates of general applicability. Here, the Postal Service is attempting to change a rate actively paid by mailers. The mailers currently pay \$100 a year for FFMUN and the rate will be changed to \$0.⁶ Ordinarily, this market dominant rate change would trigger the requirements of 39 CFR part 3010 subpart B. For FFMUN, the Postal Service would be in violation of these notice requirements since it only provided the Commission with 24 days notice of the change.⁷

However, this Amendment could also be construed as a proposal to add new postal products to the market dominant product list. These products are not currently on the product lists so there are technically no approved rates that need to be changed. Rather, rates need to be established for the first time.

Therefore, under these unique set of facts, the Postal Service may not be in violation of the requirements of 39 U.S.C. 3622(d)(1)(C) and 39 CFR 3010.10(a)(2) since it is merely changing proposed Mail Classification Schedule Language and proposed rates that have not yet been accepted by the Commission proposal.

packages may be offered by the Postal Service unless it has been assigned to the market dominant or competitive category of mail...”).

⁶ The establishment or deletion of a rate previously on the Mail Classification Schedule is a “rate adjustment” for purposes of the statutory and regulatory scheme. For example, the Postal Service would have to notify the Commission under 39 CFR 3010.10(a)(2) if it one day decided to provide Certified Mail for all First-Class Mailpieces free of charge. A bright line test should be employed. Any change, addition or deletion of a rate listed on the Mail Classification Schedule triggers the filing requirements under either 39 CFR part 3010 subpart B or 39 CFR part 3015.

⁷ The Amendment was filed with the Commission on May 8, 2009, and the Postal Service’s proposed effective date is June 1, 2009. Amendment at 1.

B. Lack of Sufficient Data and Supporting Justification

As in its prior filings in this case, the Postal Service's Amendment to its March 10, 2009 request provides very little data and supporting justification for its proposed Amendment. It does not include any financial information or spreadsheets to allow the Commission, the Public Representative, or other interested parties to determine whether the proposed new product complies with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), and takes into account the factors of 39 U.S.C. 3622(c). See 39 CFR 3020.32(b).

With respect to FASTforward®, it is especially important to have supporting justification and data since the Postal Service's Amendment is counterintuitive. The Amendment suggests that the Postal Service will be providing, for free, a service that previously generated additional revenue. As best as the Public Representative can understand from the limited supporting detail provided by the Postal Service and from independent research, customers previously paid \$100 per year to the Postal Service for FFMUN service. Under the Amendment, the Postal Service will no longer be collecting the \$100 per customer per year fee. The host service price will also not be increasing under the Amendment. See Amendment at 1-2 & Attachment A. Since the Postal Service just reported a \$1.9 billion loss for the second quarter of FY 2008,⁸ it seems counterintuitive for the Postal Service to provide this service for free. The Postal Service should be required to explain its rationale and provide appropriate financial data to support the Amendment.

⁸ Postal Service Press Release No. 09-047 -- Postal Service Ends Second Quarter with \$1.9 Billion Loss, May 6, 2009.

III. CONCLUSION

The Public Representative respectfully submits the foregoing comments for the Commission's consideration. For those items identified above or in the Public Representative's prior comments as problematic or areas of concern, the Public Representative respectfully requests that the Commission institute further proceedings on this matter in accordance with 39 CFR 3020.34(b).

Respectfully Submitted,

/s/ Robert Sidman

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May 19, 2009