

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

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL
PRIORITY MAIL CONTRACTS 6 THROUGH 10

Docket No. MC2009-25

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL CONTRACTS 6 (MC2009-25)
THROUGH 10 (MC2009-25)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2009-30
Docket No. CP2009-31
Docket No. CP2009-32
Docket No. CP2009-33
Docket No. CP2009-34

**COMMENTS OF THE UNITED STATES POSTAL SERVICE
IN RESPONSE TO ORDER NO. 217**
(June 8, 2009)

The Postal Service hereby provides comments on the issues raised by the Commission in Order No. 217, concerning the appropriate classification of the contracts filed in Dockets No. CP2009-30 through CP2009-34.

Fundamentally, all five contracts share the cost and market characteristics of large, commercial Priority Mail customers. As such, they involve electronic postage payment for bulk entry of large volumes of Priority Mail pieces with specified, projected volume and zone distributions, and provide discounted negotiated prices reflecting each customer's mailing profile within the commercial context of Priority Mail service. The multi-year contracts provide annual price adjustment mechanisms that are linked to overall Priority Mail prices.

With respect to the concern in the Order of a lack of evidence to show that the five contracts are "functionally equivalent," the Postal Service respectfully directs the

Commission's attention to the following statements in each of its Notices in the CP dockets, which identify the minor differences between Priority Mail Contract 6, the first contract filed as part of this contract group, and each subsequent contract. With respect to Priority Mail contract 7, the Postal Service stated:

This contract differs from the contract filed as Priority Mail Contract 6 only in regards to the negotiated prices, the postage payment method, and the provision of Priority Mail packaging.¹

With respect to Priority Mail contract 8, the Postal Service stated:

This contract differs from the contract filed as Priority Mail Contract 6 only in regards to the negotiated prices.²

With respect to Priority Mail contract 9, the Postal Service stated:

This contract differs from the contract filed as Priority Mail Contract 6 only in regards to the negotiated prices and the term of the contract.³

With respect to Priority Mail contract 10, the Postal Service stated:

This contract differs from the contract filed as Priority Mail Contract 6 in regards to the postage payment method, negotiated prices, term of the contract, and limitations regarding packaging and mail entry.⁴

These minor differences, as identified in the notices, and as evidenced by the terms of the contracts and the financial analysis for each one that were filed with the Commission under seal, do not rise to the level of differences in cost or market characteristics that would be expected at the product level.

¹ Docket No. CP2009–31, Notice of Establishment of Rates and Class Not of General Applicability (Contract 7) at 1.

² Docket No. CP2009–32, Notice of Establishment of Rates and Class Not of General Applicability (Contract 8) at 1.

³ Docket No. CP2009–33, Notice of Establishment of Rates and Class Not of General Applicability (Contract 9) at 1.

⁴ Docket No. CP2009–34, Notice of Establishment of Rates and Class Not of General Applicability (Contract 10) at 1.

Moreover, the financial analysis provided under seal to the Commission for each contract demonstrates the lack of any significant risk that any of these contracts would not cover their costs, either individually, or as a group; that they would be cross-subsidized by market-dominant products; or that they would impede competitive products' contributing their appropriate collective share to the institutional costs of the Postal Service.

The Postal Service does not believe that the scope of the classification established by the Governors is problematic. It is certainly less broad than Priority Mail service as a whole, which is one product. Moreover, "functional equivalency" concerns should not encumber the addition of the Priority Mail Contract Group to the list of competitive products. The concept of "functional equivalency" was originally applied to negotiated service agreements to ensure that similarly situated customers would be entitled to negotiate similar agreements with the Postal Service in the context of what are now classified as market-dominant products.⁵ In that context, this was an important concern, as the Commission recognizes in citing the recently-withdrawn complaint in Docket No. C2008-3.⁶ In the context of competitive products, however, this concern is reduced significantly. As the many individual domestic competitive product contracts that have come before the Commission in the last year have demonstrated, the cost characteristics of each partner are carefully analyzed by both the Postal Service and the Commission to ensure the likelihood that each contract will cover its costs. Contracts are negotiated with mailers whose volumes are expected to be above those entitling

⁵ See *generally* Docket No. MC2002-2. Even in that context, the focus was on "material, rather than minor dissimilarities in terms and conditions." *Id.*, Opinion and Recommended Decision at 140 ¶ 7017.

⁶ Order No. 217, at 4.

them to published commercial prices. Potential contract partners are offered, and may negotiate and agree to, prices and terms that reflect their particular situations within the market for the overall product, in this case Priority Mail, and that reflect their particular mailing practices, which may vary somewhat one from to the other, but all of which fall within the spectrum of Priority Mail customers generally.

Treating minor differences among contracts (such as provisions regarding postage payment method, term of contract, zones or weights covered, provision of packaging, or any of the other differences among mailers within the Priority Mail market) as a product distinction would not serve a purpose in the context of competitive contracts. It could also restrict the ability of the Postal Service and customers to respond to changes in the market for Priority Mail service and competing services. In any event, grouping contracts is certainly not viewed by Postal Service management, the Governors, or the Commission as a way to avoid an appropriate initial financial analysis to ensure that each contract meets the applicable criteria of the Act. The Postal Service therefore believes that the classification established by the Governors is an appropriate addition to the competitive product list.

In some instances, the Postal Service has encountered difficulties in implementing contracts and maintaining customers, in light of various uncertainties, including the lack of a statutory or regulatory time limit for proceedings under section 3642. Thus, even after negotiation, signature, and filing, the implementation date is not known when a section 3642 proceeding is required. By contrast, once a product group such as the one requested in Docket No. MC2009-25 is added, customers will be able to expect their contract's effective date to be 15 days after the Postal Service's notice to

the Commission, barring the discovery of some unexpected flaw. This will improve the ability of the Postal Service to plan with the customer for smooth initiation and implementation of the contract terms on a known date.

For these reasons, the Postal Service looks forward to a prompt and favorable resolution of the instant dockets.

Respectfully submitted,

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June 8, 2009