

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

MODIFICATION OF MAIL CLASSIFICATION
SCHEDULE PRODUCT LISTS IN RESPONSE
TO ORDER No. 154

Docket No. MC2009-19

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO INTERVENOR AND PUBLIC REPRESENTATIVE COMMENTS
(June 11, 2009)

On April 30, 2009, the Public Representative (PR) filed comments in response to the Postal Service's proposal to add several postal services to the Mail Classification Schedule (MCS). The Postal Service addressed certain issues raised by these comments in its response to Chairman's Information Request No. 1, filed May 29, 2009. The Postal Service responds below to several other issues raised by the Public Representative, and by the National Association of Retail Ship Centers (NARSC) and Associated Mail and Parcel Centers (AMPC).

In addition, On June 9, 2009, the PR filed its comments on the Postal Service's response to Chairman's Information Request No. 1. The Postal Service responds to those comments below, following its other responses.

Greeting Cards

While the Greeting Card Association supports the addition of greeting cards to the MCS product lists, two other parties express varying levels of opposition. One, the

National Association of Retail Ship Centers (NARSC), argues against the sale of all greeting card and stationery items by the Postal Service, because it believes that the Postal Service will have an unfair competitive advantage with respect to the sale of such items, and because it would “distract employees from essential functions of the core objective of selling postal services.” Comments of National Association of Retail Ship Centers in Response to Order No. 198, at 1 (April 30, 2009). The latter argument fails to come to grips with the fact that the Commission has already (and appropriately) found greeting cards and stationery to constitute “postal services” (Order No. 154 at 34-35); it is simply incorrect to characterize a “postal service” as being a “non-core” activity.

Furthermore, NARSC’s comments largely reflect past concerns, when these products were not subject to regulation (for instance, it appends testimony from April 2003 to its comments). However, as regulated competitive products, the Commission will ensure that these products cover their costs and do not unfairly compete in the marketplace.¹ NARSC seems to believe that simply because the market for greeting cards is competitive, it is inappropriate for the Postal Service to provide such a product. However, the PAEA clearly indicates that the Postal Service is allowed to provide “postal services,” and the fact that the market for some “postal services” may be competitive is not a sufficient basis for denying the Postal Service the opportunity to acquire revenue from such services. This is self-evident from the fact that the statute

¹ Indeed, the testimony appended to NARSC’s comments discussed opposition to the Postal Service offering products “absent the discipline that comes with classification and rate review.” NARSC Comments at 3. These concerns are not present with respect to the sale of greeting cards, which the Postal Service is proposing to place on the product lists.

allows the Postal Service to provide competitive products. In addition, as discussed by GCA, the Postal Service will be a valuable addition to the greeting card market.

The Associated Mail and Parcel Centers (AMPC), meanwhile, argue that “greeting cards” should only be considered a “postal service” if they relate to specific stamps or to OLRP programs, and that any other types of greeting cards should be considered a “nonpostal service.” AMPC Comments at 1 (filed May 1, 2009). However, this distinction does not seem to flow from any logical relationship between greeting cards and the mail, such that it is appropriate to consider postal-themed cards, but not other cards, as being “postal services” within the meaning of section 102(5). As the Commission found in Order No. 154, greeting cards are appropriately considered “postal services” because, among other things, they foster the use of the mails, and serve to bind the nation together through personal correspondence. Order No. 154 at 34-35. All greeting cards have such a relationship with the mail, not simply cards that have a stamp theme.² Thus, it is inappropriate to base the legal determination of whether greeting cards are “postal services” on such a distinction.

Shipping and Mailing Supplies

The Public Representative argues in his Comments that the sale of Shipping and Mailing Supplies in non-postal retail locations “clearly does not foster the use of the mails,” and would thus not be a “postal service” within the meaning of section 102(5).

² While AMPC suggests that its reading flows from the Commission’s treatment of this issue in Order No. 154, the sentence it cites seems to be related to the sale of CDs, not greeting cards, as it discusses the Commission’s belief that CDs were not mentioned by the Postal Service in its Response to Order No. 74.

Comments of the Public Representative (PR Comments) at 10-11 (April 30, 2009). However, the Public Representative fails to articulate why such a statement is “clearly” true. Certainly, there is nothing in the language of section 102(5) that indicates that a retail item can *per se* be a “postal service” only if it is offered at Postal Service retail locations, or on USPS.com. Furthermore, it seems evident that the sale of ReadyPost packaging materials in non-postal locations can foster the use of the mails, by allowing persons to acquire such mailing and shipping materials without having to make a separate trip to the post office (for instance, when a customer desires to send a package through Carrier Pickup). In other words, the wide availability of such materials, which are intended for, and likely to be, mailed, makes access to the mailstream easier, and provides additional convenience for mailers. The Postal Service thus rejects the Public Representative’s interpretation. At the same time, however, this issue need not be definitively decided in this proceeding, because the Postal Service’s current plans with regard to the Shipping and Mailing Supplies product (as well as, incidentally, the Greeting Cards product), is to sell such materials through Postal Service retail channels.

Address Enhancement Services

After claiming that “it appears that the AMS API service is a bundling of six market dominant Address Management Services,” the Public Representative states that the Commission “needs to ensure that the price of the bundled competitive product is not less than the sum of the prices for each market dominant service in the bundle” because “otherwise, there would be no meaningful competition since a competitor could not purchase the individual unbundled market dominant products at a price that would

allow it to repackage those services and compete with the Postal Service's competitive bundled service on price." The Public Representative notes that "the functions of the bundled AMS API service can be replicated by a competitor since the competitor can simply purchase the six market dominant services from the Postal Service and bundle those services itself." PR Comments at 13.

However, AMS API includes more than six market dominant database services integrated into AMS API. It also provides a core set of compiled address-matching software instructions (computer code), developed by the Postal Service.³ These address-matching instructions enable users to update address lists with data from the six market dominant service databases.

A reselling software vendor can license AMS API from the Postal Service for incorporation into its own software, which would compete with the Postal Service's AMS API. In order for the vendor to resell or distribute its own address-matching software with the integrated AMS API, the vendor must obtain from the Postal Service a Resell License as well as licenses for additional databases for distribution to its customers. The reselling software vendor thus must pay the Postal Service both: (1) an annual AMS API Resell License fee of \$16,700.00, and (2) separate annual license fees for additional database licenses for distributing data to its customers.⁴ This results in

³ See Docket No. MC2009-19, Request of the United States Postal Service to Add Postal Products to the Mail Classification Schedule in Response to Order No. 154 (March 10, 2009), (*hereinafter* "March 10, 2009 Request"), Attachment A, Mail Classification Schedule, Part B – Competitive Products, Section 2XXX, "Address Enhancement Service", Description, *Address Matching System Application Program Interface (AMS API)*, p. 15.

⁴ The AMS API Resell License fee, and fees for additional databases are set forth in the March 10, 2009 Request, at Attachment A, Mail Classification Schedule, Part B—

competing reselling software vendors paying greater fees for incorporating AMS API into their products than they do for separately licensing the six market dominant database services (City State, ZIP + 4, Five Digit ZIP, eLOT, DPV and LACSLink) from the Postal Service, and then re-selling those databases without the AMS-API computer code.

Based on the PR Comments, the Postal Service is concerned that its proposed MCS price schedule may not clearly present the prices that a competing reselling software vendor must pay for the required AMS API Resell License, as well as for the licenses for the additional databases that the vendor distributes with its address-matching software. For clarity, the Postal Service is attaching revised pages 16 and 17 of the proposed MCS language as Attachment A to this pleading. This Attachment re-orders the available components of AMS API to make it clear that a Resell License is necessary before competing reselling software vendors can incorporate AMS API into their products for distribution to their customers. The Postal Service proposes that the existing pages 16 and 17 of Attachment A to the March 10, 2009 Request (proposed Mail Classification Schedule, Part B—Competitive Products, Section 2XXX “Address Enhancement Service”, 2XXX.2 Prices be deleted, and that the attached pages 16 and 17 be substituted.

Stamp Fulfillment Services

The Public Representative also commented on the Postal Service’s decision to not propose MCS language for Stamp Fulfillment Services. The PR agrees that the

Competitive Products, Section 2XXX “Address Enhancement Service”, 2XXX.2 Prices, pages 16-17.

Postal Service can charge actual postage for shipping stamp fulfillment orders without creating a separate product or classification. However, the PR is concerned that in some instances the Postal Service would apply one established postage rate to a variety of different weight or zone shipments. PR Comments at 14-15. In its March 10 Request, the Postal Service explained that for mail and fax orders, it is impractical to charge actual postage for each prepaid order, because that would require the customer to determine the weight (perhaps for many items) and zone of the order. Request at 12.

About 25 percent of the revenue from SFS orders is derived from orders placed by mail or fax. Especially for large, complicated orders, mail and fax is more practical than phone; moreover, online ordering is not an option for many customers. For mail and fax orders, customers need to determine and pay all charges, including shipping charges, without feedback from the Postal Service. Simplified rates are necessary to make the ordering process work. For example, few consumers would know how many zones to apply for shipments from Kansas City. Computing actual postage would require the customer to total up the weights of items purchased and determine the zone of the shipment. The Postal Service believes that such a complex process could well discourage some customers from completing their purchase.

To avoid this result, the Postal Service would apply existing rates to a range of order types, as described in its Request, at 12, so that customers could readily determine the shipping charge in advance. The Postal Service's proposal moreover matches the way that many catalogs and Internet vendors charge for shipping (including maximum charges for large orders).

The PR's response, unfortunately, is to argue that Stamp Fulfillment Services (SFS) needs to be established and regulated as a market dominant product, to the extent that SFS applies an existing postage charge to a variety of different weight and zones (for ease of exposition, call this the "reference price").⁵ The PR's goal seems to be to force the Postal Service to create a new product where none really exists. If the PR's plan is implemented, the reference postage rates used for SFS shipments would be regulated twice – once for the competitive and market dominant mail products used for shipments, and again for an SFS shipping product. As discussed below, the PR's proposal is impractical, and would impose undue administrative burdens on the Postal Service.

The PR's position ignores the Postal Service's concern that the shipping charges would be based to a large extent on existing postage for competitive products. In fact, about 40 percent of orders are expected to be shipped using Priority Mail or Express Mail. As noted in its March 10 Request, the updating of these prices would play havoc with the imposition of a CPI limit on the SFS prices. The reference competitive prices used for SFS shipments would change in January when the competitive price tariffs change. Depending on the size of the increase, it might create a violation of the CPI limit when that price is applied to SFS shipments. Request at 13. That is, whenever the relevant competitive prices go up by more than the CPI, an adjustment in the price used for SFS shipments could be required if SFS were established as a market dominant product. For example, the Postal Service may have to change the zone used for the

⁵ The SFS product theoretically could be limited to charges for mail and fax orders (if the Postal Service decided to charge actual postage for phone and online orders), and the largest Stamped Envelope Orders (for which the proposed capped shipping charge benefits customers and meets Postal Service business needs).

reference price, not because the average zone characteristics of the SFS shipments have changed, but solely to keep the SFS shipment charges from exceeding the cap. This would place unnecessary restrictions on either the pricing of the competitive products, or on maintaining rational SFS charges. Furthermore, incurring the burden of software changes and notice for such changes outside of the regular May schedule for market dominant prices just does not make business sense.

Tracking costs for an SFS product also would be impractical, as the SFS shipments flow in the ordinary mailstream for First-Class Mail, Priority Mail, or Express Mail. Isolating costs for SFS shipments would require expenditures that do not make budgetary sense for the Postal Service. The Postal Service's plan to track revenues and costs for shipments with the underlying classes of mail makes far more sense.

Request at 13.

The fact remains that the Postal Service proposes to charge existing postage rates for SFS shipments that are already subject to Commission regulation. The Postal Service moreover has explained how these rates would apply to the variety of SFS shipments. In addition to providing public notice of the SFS shipping charges, and publishing the charges in its Philatelic catalog, the Postal Service is prepared to provide the Commission with its price schedule for SFS shipments, notice of any subsequent changes to the reference prices, and explanation of the basis for any such changes before they are made. While the Postal Service thus will be transparent in the existing postage rates that it uses for SFS shipments, it strongly opposes creating a separate SFS product.

Chairman's Information Request No. 1

In its Response to Question 2 of Chairman's Information Request (CHIR) No. 1 (May 29, 2009) (Response), the Postal Service discussed why certain postal services should not be treated as "products" under chapter 36, due to the characteristics of the services. On June 9, 2009, the Public Representative filed a pleading purporting to rebut the Postal Service's Response. Comments of the Public Representative on the Postal Service's Legal Authority to Set Fees for Postal Services Without Commission Approval (June 9, 2009) (hereinafter June 9 PR Comments). In doing so, however, the Public Representative mischaracterizes the arguments made in the Postal Service's Response, as will be shown below.

Most fundamentally, the Public Representative's claim that the Postal Service is seeking to place these activities in a "no-man's land" that is "not subject to Commission oversight" (June 9 PR Comments at 2-3) disregards what the Postal Service actually proposed in its Response. The Postal Service has not suggested that the Commission has no "authority" to regulate these services, or their fees (June 9 PR Comments at 4); nor can its Response legitimately be read as making such an argument. Rather, the Postal Service is suggesting that the Commission "forbear" (in the words of its Response)⁶ from characterizing these activities as being "products," subject to regulation under chapter 36, based on a determination that the characteristics of these services makes regulation under chapter 36 unnecessary at this time. Furthermore, the Postal Service has proposed a means by which the Commission, and other

⁶ The word "forbear" clearly denotes the Postal Service's position that the Commission should determine, in its discretion, not to regulate, rather than a position that it has no authority to regulate. See BLACK'S LAW DICTIONARY 656 (7th ed. 1999).

stakeholders, can, over time, ensure that such forbearance remains appropriate (or, in the words of the Postal Service's Response, to "determine each year whether it remains appropriate to treat these [activities] as not being "products"). Response at 7.

The Postal Service is of the opinion that the PAEA allows the Commission to make this choice. The language of the statutory definition of "product" lends itself to principled administrative discretion as to its proper application to the vast range of activities that can be characterized as "postal services." In particular, not everything that is a "postal service" need be regulated by the Commission as a "product" under chapter 36. This is particularly true when the reasons for regulating that activity as a "product" (e.g., protecting customers from monopolistic behavior) are not an issue with respect to that service, such that any benefits from regulation as a "product" would be outweighed by its costs. Furthermore, transparency will be ensured because the Postal Service will provide fee and revenue information for these services, which will allow the Commission to determine whether its exercise of forbearance remains appropriate. As such, these services would firmly remain "subject to Commission oversight," while also allowing the many administrative burdens applicable to "products" to be avoided for these services, which are designed to produce no, or *de minimis*, revenue.⁷

⁷ The Public Representative also ignores other aspects of the Postal Service's Response. For instance, he suggests that the Postal Service simply offer these services for free. Yet, as the Postal Service discussed in its Response, the existence of these fees make business sense, even if they are not primarily designed to generate revenue. For instance, it would be counterproductive to eliminate the possibility that fees may be imposed under the PAVE™ and MAC™ certification systems, since doing so would eliminate the incentives that fees provide to product developers to ensure that their products will not require repeated, or off-cycle, testing by the Postal Service. The Public Representative does not address this basic point. Nor does he address the practical problems making such services a "product" under chapter 36 raises: for instance, in a year where no revenue is derived by PAVE™ and MAC™ certification systems, would that "product" be deemed not to have covered its costs?

The Public Representative also mischaracterizes the Postal Service's position when he claims that the Postal Service is "attempt[ing] to use the Commission's definition of 'service' [in Order No. 154] to define the limits of the statutory term 'postal service.'" June 9 PR Comments at 4.⁸ However, nothing in the Postal Service's Response said that these activities are not "postal services"; indeed, part (c) of the Postal Service's Response specifically stated that these activities are "postal services." Rather, the Postal Service simply made the point that these activities are "comparable" to other activities that the Commission has determined not to regulate as "products" under chapter 36, due to the fact that they are not commercial activities primarily designed for commercial gain. In the same way, it is also appropriate for the Commission to decide not to regulate these services as "products" at this time.⁹

Finally, the Public Representative asserts that the Postal Service is "offering 'postal services' not approved by the Commission or listed in the Mail Classification Schedule." June 9 PR Comments at 2. He therefore urges the Commission to "order the Postal Service to provide a full accounting of all 'postal services' not listed on the draft Mail Classification Schedule." However, the scope of the revenue-producing activities of the Postal Service has been addressed in Docket No. MC2008-1, which led

⁸ Also typical of the misstatements in the Public Representative's pleading is the claim that the Postal Service "analogizes its fees for these 'postal services' as simply charging for the test and study materials as with commercial SAT preparation companies such as Kaplan and The Princeton Review." June 9 PR Comments at 3. However, the Postal Service's Response expressly *distinguished* its offering of the MQC Training Program materials from commercial test preparation companies such as Bar-Bri, since, unlike those companies, it does not see that program as a means of generating maximum revenue from those materials. The Postal Service thus in no way "assume[ed]" (June 9 PR Comments at 3 n.6) that these commercial test preparation companies do not "markup" their products in order to make a profit—indeed, they are in the business of making money through the sale of such products. Rather than acting in a similar manner, however, the Postal Service simply charges small fees for the MQC Training materials.

⁹ The Public Representative also argues that the Postal Service "misinterpret[ed]" Order No. 154's discussion of the fee charged for maintaining a list of persons who do not wish to receive sexually oriented advertising through the mail. June 9 PR Comments at 4 n.9. However, if an activity is not a "service," it cannot be a "product," either pursuant to section 102(6), or by operation of section 404(e)(5).

to this proceeding. The Public Representative provides no showing to demonstrate that yet another information request from the Commission is warranted in this regard.

Conclusion

Therefore, the Postal Service believes that its March 10, 2009 Request to add postal products to the Mail Classification Schedule should be granted, without any need for prior hearings.¹⁰

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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¹⁰ The request should be granted as amended in this pleading (see Attachment A) and the Postal Service's May 8, 2009, 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.

For an additional fee, a developer may install the AMS-API on multiple computers for its own use. Additional fees are charged if the developer wants to resell its address-matching software.

Developers, for an additional fee, may obtain computer software instructions that permit the API to access the RDI data when licensed separately¹. Additional fees are charged if the developer wants to resell RDI-API.

Topological Integrated Geographic Encoding and Referencing (TIGER/ZIP + 4[®])

The Topological Integrated Geographic Encoding and Referencing (TIGER/ZIP + 4) service is a bridge file that allows mailers to access other information using the ZIP + 4 codes they already have associated with their addresses. This file offers demographers and market researchers a method to relate ZIP + 4 coded address lists to Census Bureau demographic data.

XXXX.2 Prices

	(\$)
Address Element Correction (AEC)	
(per record processed)	0.015
Minimum charge per list	15.00
Address Matching System Application Program Interface (AMS API) (per year, per platform)	
Developer's Kit, one platform	3,800.00
Each Additional, per platform	1,350.00
Resell License, one platform	16,700.00
Each Additional, per platform	8,350.00
Additional Database License	
Number of Additional Licenses	
1 – 100	2,040.00
101-200	4,080.00
201-300	6,120.00
301-400	8,160.00
401-500	10,200.00
501-600	12,240.00
601-700	14,280.00
701-800	16,320.00
801-900	18,360.00
901-1,000	20,400.00
1,001-10,000	26,520.00
10,001-20,000	32,640.00
20,001-30,000	38,760.00
30,001-40,000	44,880.00
RDI API Developer's Kit	
Each, per platform	300.00
Resell License, one platform	1,200.00

Each Additional, per platform	600.00
Above API License Fees prorated during the first year based on the date of the license agreement	
Additional Database Discs, DVD	
AMS API: DPV, LACS ^{Link} and/or eLOT	10.00
IBIP version of above (DVD Only)	10.00
Additional database, e.g., City-State, ZIP+4, Five-Digit	10.00
Additional Database Discs, CD ROM	
AMS-API: DPV and LACS ^{Link} API	22.50
eLOT	7.50
Additional database, e.g., City-State, ZIP+4, Five Digit	7.50
TIGER/ZIP+4[®] (per year)	
CD-ROM Per State	50.00
CD-ROM All States	700.00

2XXX Shipping and Mailing Supplies

2XXX.1 Description

The Shipping and Mailing Supplies product includes packaging materials that are used to package, seal, protect, and label items for mailing.

Mailers—Mailers include envelopes of various sizes that may or may not have added cushioning.

Cartons—Cartons are boxes of various sizes.

Supplies—Supplies includes tape, bubble wrap, labels, and related material.

2XXX.2 Prices

	(\$)
Mailers	0.39 to 6.78