

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

Competitive Product Prices  
Direct Entry Parcels, Harmonization Service, and  
International Return Service  
Negotiated Service Agreements

Docket No. MC2009-26

Competitive Product Prices  
Direct Entry Parcels Contract (MC2009-26)  
Negotiated Service Agreement

Docket No. CP2009-36

COMMENTS OF PUBLIC REPRESENTATIVE  
(June 29, 2009)

Pursuant to Order No. 228, the Public Representative hereby submits comments concerning Direct Entry Parcels.

1. The Governors have effectively delegated to Postal Service management their authority under 39 U.S.C. §3632(a)(3) to create rates and classifications for competitive products not of general applicability. Specifically, Governors' Decision No. 09-7 authorizes "[c]ontracts that fall within the terms specified . . . ."<sup>1</sup> The Postal Accountability and Enhancement Act does not provide for delegation of the Governors' authority (as opposed to that of the Board of Governors).<sup>2</sup> The contract at issue in this proceeding has been explicitly authorized by the Governors. However, should the Postal Service attempt, without a separate Governors' Decision, to add further Direct Entry Parcels (DEP) contracts to the Mail Classification Schedule, it would violate section 402 of title 39.

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<sup>1</sup> Governors' Decision No. 09-7, June 10, 2009, at 1 (emphasis added). See Request, Attachment D: "Even if *all* the agreements for Direct Entry Parcel Contracts *are* signed at the price floor, . . ." (Emphasis added.)

<sup>2</sup> 39 U.S.C. §402.

2. The price formulas contained in the Governors' Decision rely on *ex ante* values. Those values will change over the life of the contract. Although the formula includes a minimum markup, this markup is applied to estimated values looking forward. The contract allows for (but does not mandate) changing prices if some (but not all) of the variables in the formula change.<sup>3</sup> There is thus some risk that actual values of some variables would be high enough to wipe out any profit on the contract.
  
3. The likelihood of anyhow volume receiving discounts under this contract appears very low. The Postal Service does not currently offer a product like DEP. It would seem to be a safe assumption that volume entered under this DEP contract will be new to the Postal Service, *i.e.*, taken from other carriers.

Respectfully submitted,

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<sup>3</sup> Global Customized Mail Agreement, Art. 9.2.