

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Inbound International Expedited Services 2
(MC2009-10)

Docket No. CP2009-57

PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO
UNITED STATES POSTAL SERVICE NOTICE OF FILING CHANGES FOR INBOUND
INTERNATIONAL EXPEDITED SERVICES 2

(August 13, 2009)

In response to Order No. 271,¹ the Public Representative hereby comments on the July 28 Notice of the United States Postal Service that prices and classifications not of general applicability for Inbound International Expedited Services 2 will be changing January 1, 2010 (Notice).

The Notice comports with title 39 stipulations and the relevant Commission Rules of Practice and Procedure. It would appear therefore to be beneficial to the general public.

The Public Representative has accessed and reviewed all materials the United States Postal Service submitted under seal in this matter, documentation in its original (not redacted) version, including the Postal Service's August 10 Response to the

¹ Notice and Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 4, 2009.

Commission Request for Supplemental Information in Order 271. The Notice (and its accompanying documentation) is persuasive.

For a competitive products pricing schedule *not of general applicability*,² the Postal Service must demonstrate that the contract will comply with 39 USC 3633(a): It will not allow market dominant products to subsidize competitive products, it will ensure that each competitive product covers its attributable costs; and enable competitive products as a whole to cover their costs (contributing a minimum of 5.5 percent to the Postal Service's total institutional costs). Each element of 39 USC 3633(a) appears to be met by this Inbound International Expedited Services 2 pricing and classification notice. In the prior approved competitive pricing schedule (Docket No. MC2009-10), Governors' Decision 08-20 (at 1), the Governors asserted that these conditions are met.

Accountability and Confidentiality

The Postal Service Notice contains a rationale for maintaining confidentiality concerning pricing, processes which enable discounted pricing, the attendant formulae and other contractual terms which are matters of commercial sensitivity.³ Here, it would appear that the Postal Service has concisely justified the extent of confidentiality appropriate in this matter, referencing the Commission's previous acceptance (Order 162, Docket Nos. MC2009-10 and CP2009-12) for maintaining the confidentiality of

² See 39 C.F.R. 3015.5-7.

³ Postal Service Notice, at 4.

each aspect of the matters remaining under seal. It appears that the Postal Service has made a good faith effort to supply enough pertinent details to demonstrate the need for material under seal to be protected.

Rate Tier Consolidation

In Order No. 162 (Docket Nos. MC2009-10 AND CP2009-12), the Commission added Inbound International Expedited Services 2 to the Competitive Product List. That pricing schedule contained three “tiers” of rates:

- 1) Pay-for-performance: Members of the Kahala Post Group and EMS (Express Mail Service; in this case, Inbound Express Mail International Service) Cooperative members who elect to comply with pay-for-performance provisions;
- 2) EMS Cooperative: EMS Cooperative members who elect not to comply with pay-for performance provisions; and
- 3) All Others: Foreign postal administrations who choose not to be members of the EMS Cooperative.

As requested, the Postal Service has provided a quarterly listing of member the Kahala post Group, postal administrations of the EMS Cooperative, a voluntary group of Universal Postal Union (UPU) participants, and other postal administrations. See United States Postal Service Quarterly update in response to Order 162 (June 24, 2009 – available from the Commission website in Dockets No. MC2009-10 and CP2009-12, or under “Daily Listings” for June 24, 2009).

The Postal Service notes that the three-tier rate structure is anticipated to fold into a two-tier price structure, since EMS Cooperative members are expected to comply with the pay-for-performance plan. Accordingly, the former Tiers 1 and 2 should

comprise Tier 1, and the postal administrations listed under the former Tier 3 would comprise a new Tier 2.

Compliance with 39 U.S.C. 3632, 3622, and 3642

The original pricing structure comports with the formulae the Governors (Decision 08-05), and ultimately, the Commission (CP-2008-7), approved for the bilateral agreement with the China Post Group. That Governors' Decision unanimously established prices and classifications not of general applicability for EMS originating from a number of foreign posts. The Governors' action in this matter is appropriate under section 3632, and the Notice (and its predecessor[s]) generously fulfills the timeliness requirement of 3632(b)(3) – "in no case less than 15 days" before the effective date of any proposed changes in rates and/or classifications not of general applicability. The Postal Service notes that it anticipates China Post will participate in the Tier 1 pay-for-performance roster once the bilateral agreement approved in Docket Nos. CP2008-6 and CP2008-7 expires.

EMS prices for international agreements must comply with Universal Postal Union (UPU) policy, which authorizes each participating destination postal administration to set its prices for inbound Express Mail with notification to partners directly or through the UPU's International Bureau by August 31 of the year prior to the effective date. The instant Notice complies with UPU directives, and is filed in a timely manner for Commission review before the UPU deadline. Accordingly, the Postal Service notes that the instant Notice is a current projection, based upon the most recent information available (Notice, at 3). Clearly, the participation of other postal

administrations in the pricing structure may be subject to change. Nevertheless, the Postal Service has taken the proper steps to facilitate its participation in inbound international expedited shipping, complying with all necessary legal requirements.

The Notice indicates an appreciation of section 3622 objectives [3622(b)] and factors [3622(c)]. Section 3622(b)(8) provides for a “just and reasonable schedule for rates and classifications” while recognizing the autonomy of the Postal Service to set rates for greatest efficiency. The fairness factors of 3622(c) ensure that mail continues to be a valued commodity and that reliable postal services are available to the general public. Indeed, as noted *supra*, because the Postal Service prepared this Notice months in advance of the pricing change, all notice requirements of 39 U.S.C. 3642 are met.

Conclusion

The Public Representative submits that the present Inbound International Expedited Services 2 agreement complies with title 39, and fulfills all relevant requirements for Commission Rules of Practice and Procedure.

The Public Representative respectfully offers the preceding Comments for the Commission’s consideration.

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