

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Products Price Changes  
Rates of General Applicability

Docket No. CP2010-8

COMMENTS OF THE PUBLIC REPRESENTATIVES

(November 23, 2009)

On November 4, 2009, the Postal Service filed a notice of proposed changes in rates of general applicability for competitive products and related draft Mail Classification Schedule changes.<sup>1</sup> The Notice was filed pursuant to 39 U.S.C. 3632, 3633, and 3642 and 39 CFR part 3015 and part 3020, subpart B. Included in the Notice is a Governors' Decision that establishes the changes, provides a statement of explanation and justification, and orders the changes into effect on January 4, 2010.<sup>2</sup>

On November 6, 2009, the Commission issued Order No. 333 designating the undersigned as Public Representatives and establishing November 23, 2009, as the deadline for filing initial comments. Pursuant to that Order, the Public Representatives hereby provide the following comments.

I. BACKGROUND

This is the third generally applicable competitive product rate change filed by the Postal Service since enactment of the Postal Accountability and Enhancement Act (PAEA). The first filing was made in Docket No. CP2008-3 on March 12, 2008.<sup>3</sup> Following Commission review, the rates proposed in that filing were permitted to go into

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<sup>1</sup> Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 09-13, November 4, 2009 (Notice).

<sup>2</sup> Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Competitive Products (Governors' Decision No. 09-13), September 22, 2009. (Governors' Decision, No. 09-13).

<sup>3</sup> Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Competitive Products, Governors' Decision No. 08-3, March 4, 2008.

effect on May 12, 2008.<sup>4</sup> The second generally applicable rate change was filed in Docket CP2009-8 on November 13, 2008.<sup>5</sup> Upon completion of the Commission's review, those latter rates went into effect on January 18, 2009.<sup>6</sup>

## II. THE CURRENT PROPOSAL

The Postal Service proposes to increase prices for only 7 competitive products: Express Mail; Priority Mail; Parcel Select; Parcel Return; Global Express Guaranteed; Express Mail International; and Priority Mail International. Notice at 2-3. The overall increase for each of these products ranges from 2.9 to 4.7 percent.<sup>7</sup>

In addition to these rate changes, the Postal Service makes various product description changes incorporated into a revised, complete draft of the competitive products of general applicability section of the Mail Classification Schedule. Product description changes are proposed for: Express Mail; Priority Mail; Parcel Select; Priority Mail International; Inbound Air Parcel Post; Global Expedited Package Services contracts; Global Plus contracts; and Country Group assignments. *Id.*

## III. COMMENTS

The legal standards for competitive product rate changes like the one filed in this proceeding are set forth in 39 U.S.C. § 3633:

- There shall be no subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)) ;
- Each competitive product must cover its competitive costs (39 U.S.C. § 3633(a)(2)); and
- All competitive products must collectively cover a Commission-determined appropriate share of Postal Service institutional costs (39 U.S.C. § 3633(a)(3)).

The legal requirements for changes to the competitive product list are set forth in 39 U.S.C. § 3642.

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<sup>4</sup> See PRC Order No. 70, April 10, 2008 (Order 70), at 25.

<sup>5</sup> Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 08-19, November 13, 2008;

<sup>6</sup> See PRC Order No. 146, December 11, 2008 (Order 146), at 20.

<sup>7</sup> The overall increase for each product is: Express Mail – 4.5 percent; Priority Mail – 3.3 percent; Parcel Select – 4.7 percent; Parcel Return – 3.0 percent; Global Express Guaranteed – 4.1 percent; Express Mail International – 2.9 percent; and Priority Mail International – 3.0 percent. *Id.*

### A. Competitive Rate Change Filings Require More Complete Supporting Information

In both of the two prior generally applicable competitive product rate change proceedings, the initial filings lacked data and information needed to properly evaluate the proposed rates. In both cases, the Commission found it necessary to issue information requests.<sup>8</sup> In both cases, the Commission directed the Postal Service to provide better information to support its future price change filings.<sup>9</sup>

Notwithstanding these earlier admonitions, the filing submitted in this proceeding lacks necessary information. In Order No. 333, the Commission addressed this deficiency by directing the Postal Service to submit additional information. Thereafter, on November 19, 2009, further information was sought by Chairman Information Request No. 1 (CHIR No.1).

The tardy submission of basic information needed properly to analyze the Postal Service's filing<sup>10</sup> and the use by the Postal Service of a "roll-forward" methodology has hampered the ability of the Public Representatives to do a more thorough review of the filing.<sup>11</sup> To avoid these limitations in the future, the Public Representatives submit that the Commission should consider amending its formal filing requirements to insure that basic supporting information is provided as part of the initial filing.

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<sup>8</sup> See Commission Information Request No.1, Docket No. CP2008-3, March 19, 2008; Commission Information Request No. 1, Docket No. CP2009-8, November 26, 2008; and Commission Information Request No. 2, Docket No. CP2009-8, December 3, 2008.

<sup>9</sup> Order 70 at 1 ("...the Postal Service should strive to provide more complete and unambiguous information in subsequent competitive products price change filings."); and Order 146 at 2, note 3 ("The Commission expects that the next Postal Service filing with respect to competitive price adjustments for rates of general applicability will provide the necessary information and data so that the Commission promptly can fulfill its statutory mandate.").

<sup>10</sup> The response to the Commission's request in Order No. 333 for additional information was originally due by November 13, 2009, but was not provided until November 19, 2009. See Motion of the United States Postal Service for Late Acceptance of Supplemental Information in Response to Commission Order No. 333, November 19, 2009. In addition, the information requested by CHIR No. 1 will not be due until November 25, 2009, which is two days after today's deadline for filing comments.

<sup>11</sup> In this latter connection, the Public Representatives would direct the Commission's attention to comments made by the Public Representative in the last competitive products rate change filing in Docket No. CP2009-8. Public Representative Comments, December 1, 2008. In those comments, the Public Representative made several points apropos of the filing in the instant docket. For example, the Postal Service's application of two years of inflationary factors to adjust two year old cost data presents a significant risk of inaccurate cost coverage. *Id.* at 2-3. Similarly, the use of year old volume data may over time lead to significant inaccuracies and unlawful cost coverage. *Id.*

B. Competitive Products Not Covered by the Proposed Price Increases Do Not Appear to Cover Their Attributable Costs

In its filing, the Postal Service states that “the changes we establish should enable each competitive product to cover its attributable costs (39 U.S.C. § 3633(a)(2)), and should result in competitive products as a whole complying with 39 U.S.C. § 3633(a)(3), which as implemented by 39 C.F.R. § 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service’s institutional costs.” Governors’ Decision at 1. For the reasons set forth below, the Public Representatives submit that the information available at this time appears to show that the Governors’ statement is correct only insofar as it applies to competitive products for which price increases have been proposed. By contrast, it appears that at least some of the competitive products whose prices remain unchanged will not cover their attributable costs.<sup>12</sup>

As part of the Notice filed in this proceeding, the Postal Service filed a non-public annex showing volumes, revenues, and cost coverages for the competitive products whose prices were being increased. Nonpublic Annex to Govs Dec 09-13.xls. A comparison of the information provided for the products whose prices were being increased with totals for all competitive products demonstrated that at least some of the remaining products would not cover attributable costs, either before or after implementation of the proposed price changes on January 4, 2010. This conclusion is confirmed by the workpapers subsequently filed by the Postal Service on November 19, 2009, in response to Order No. 333. See Comp Reports Worksheet.xls.

Since the November 19, 2009 supplemental data did not contain detail for competitive products whose prices remain unchanged, it is not possible for the Public Representative to identify exactly which products will not cover their attributable costs.<sup>13</sup>

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<sup>12</sup> By definition, these latter products will also fail to make any contribution to institutional costs. The Public Representatives recognize, of course, that the requirement of institutional cost coverage in 39 U.S.C. § 3633(a)(3) applies to competitive products as a whole and not to individual competitive products.

<sup>13</sup> It would appear to the Public Representatives that at the time the Postal Service filed supplemental information on November 19, 2009, it could have provided information not only for the competitive products whose prices were being increased, but for most, if not all, of the remaining competitive products. Indeed, all of the backup information should have been available to the Postal Service on November 4, 2009, when it filed the Notice in this proceeding.

An important and disturbing conclusion is that the Postal Service has not proposed any rate increases that would correct or mitigate the deficiencies in competitive product cost coverages discussed in the FY 2009 Annual Compliance Determination (ACD). ACD at 86-87. In the ACD, the Commission identified five international mail products with rates of general applicability having revenues that fell short of their attributable costs.<sup>14</sup> At several places, the Commission urged the Postal Service to “take corrective action” or to “move quickly to resolve the problem [of inadequate cost coverage].” See *id.* at 89. This failure to take corrective action insures that inadequate cost will coverage continue to haunt at least some competitive products. As a result, the cost coverage problem will have to be addressed in the Postal Service’s FY 2010 Annual Compliance Report.

#### IV. CONCLUSION

For the reasons stated above, the Public Representatives submit that: (1) the requirements of 39 U.S.C. § 3633(a)(1) will be satisfied in that the revenues from competitive products as a whole will cover attributable costs and group specific costs and will not be subsidized by market dominant products; (2) the requirements of 39 U.S.C. § 3633(a)(3) will be satisfied because the contribution of competitive products to the recovery of institutional costs will be greater than 5.5 percent; (3) the requirements of 39 U.S.C. § 3633(a)(2) will be satisfied for those products for which the Postal Service proposes price increases will cover their attributable costs; and (4) the draft Mail Classification Schedule product description changes should be accepted.

Notwithstanding the foregoing, at least some of the competitive products for which no price increases have been proposed will not cover their attributable costs as required by 39 U.S.C. § 3633(a)(2). This failure to cover attributable costs will have to be addressed in the Postal Service’s 2010 ACR. The Public Representatives expect that the Postal Service will be forthcoming with any and all information, including all

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<sup>14</sup> Those five products were: International Priority Airmail; International Money Transfer Service; Inbound International Expedited Services; Inbound Air Parcel Post; and Inbound Surface Parcel Post (at Non-UPU rates). *Id.* at 86. Two International Customized Mail agreements also failed to cover their attributable costs.

backup workpapers, needed to evaluate these products by providing such information as part of the initial FY 2010 ACR.

Finally, the Public Representatives submit that the Commission should consider amending the filing requirements for competitive product price increases to require all information needed properly to analyze the proposed increases be included as part of the initial filing.

Respectfully submitted,

*Richard A. Oliver*

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Richard A. Oliver

*John P. Klingenberg*

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John P. Klingenberg

Public Representatives for  
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901 New York Avenue, N.W.  
Suite 200  
Washington, DC 20268-0001  
Phone: (202) 789-6878  
Fax: (202) 789-6891  
E-Mail: [richard.oliver@prc.gov](mailto:richard.oliver@prc.gov)  
[john.klingenberg@prc.gov](mailto:john.klingenberg@prc.gov)

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