

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

COMPETITIVE PRODUCT PRICES
BILATERAL
NEGOTIATED SERVICE AGREEMENT

Docket Nos.
MC2010-14

COMPETITIVE PRODUCT PRICES
CANADA POST – UNITED STATES POSTAL SERVICE
CONTRACTUAL BILATERAL AGREEMENT FOR INBOUND
COMPETITIVE SERVICES (MC2010-14)
NEGOTIATED SERVICE AGREEMENT

CP2010-13

**REQUEST OF UNITED STATES POSTAL SERVICE TO ADD CANADA POST –
UNITED STATES POSTAL SERVICE CONTRACTUAL BILATERAL AGREEMENT
FOR INBOUND COMPETITIVE SERVICES TO THE COMPETITIVE PRODUCT LIST,
AND NOTICE OF FILING (UNDER SEAL) THE ENABLING GOVERNORS’ DECISION
AND AGREEMENT
(November 25, 2009)**

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service (Postal Service) hereby requests that the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Agreement)¹ be added to the competitive product list within the Mail Classification Schedule (MCS). The Postal Service also gives notice, pursuant to 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5, that the Governors have established prices and classifications not of general applicability for the Agreement. Accordingly, the Postal Service requests that the Postal Regulatory Commission (Commission) list this Agreement as a product on the competitive products list.²

¹ “Agreement” is used herein to denote the composite segments of the overarching agreement with Canada Post that have been filed under seal, to the extent that they bear on the rates and classifications for inbound competitive services.

Attachment 1 to this Request is a redacted copy of the Governors' Decision, which includes proposed MCS language for the Agreement and the certified statement required by 39 C.F.R. § 3015.5(c)(2). Attachment 2 is the Statement of Supporting Justification of Ms. Lea Emerson, Executive Director, International Postal Affairs, pursuant to Rule 3020.32. A redacted copy of the Agreement is included in the public version of this filing as Attachment 3. An unredacted version of the Agreement, the Governors' Decision, and other materials establishing compliance with 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. Attachment 4 to this filing is the Postal Service's application for non-public treatment of these materials. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

I. Application for Non-Public Treatment

The Postal Service maintains that certain portions of the Agreement, the Governors' Decision, and related financial information should remain confidential. In accordance with Order No. 225,³ the Postal Service files as Attachment 5 to this Notice its application for non-public treatment of materials filed under seal. A full discussion of the required elements of the application appears in Attachment 5.

² The Postal Service considers this Agreement to be functionally equivalent to the agreement considered in Docket Nos. CP2009-9 and MC2009-8, of which the instant Agreement is the immediate successor. *Cf., e.g.,* PRC Order No. 265, Order Concerning Filing a Functionally Equivalent Global Plus 1 Contract Negotiated Service Agreement, Docket No. CP2009-46, July 31, 2009, at 6 (finding the two Global Plus 1 contracts that supersede the expiring, original Global Plus 1 contracts to be functionally equivalent with the latter and eligible for inclusion in the same product listing). Although the Postal Service contends that such action is therefore unnecessary, it has determined, in the interest of clarity, to supplement the Commission's record in this proceeding by submitting the instant Agreement anew as a matter of classification and inclusion on the Competitive Products List, particularly due to the inclusion of inbound Xpresspost traffic in the competitive Agreement. This filing is not intended to preclude the Postal Service from submitting any similar agreement as functionally equivalent in the future.

³ PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

II. Identification of Existing Agreement

The existing agreement with Canada Post for inbound competitive services, which covers calendar year 2009, is described in draft MCS language submitted by the Postal Service in Docket Nos. CP2009-9 and MC2009-8.⁴ The competitive rates and classifications in the existing agreement were established by the Governors of the Postal Service pursuant to 39 U.S.C. § 3632(b) and were submitted to the Commission for review in Docket Nos. CP2009-9 and MC2009-8.⁵ This agreement is set to expire on December 31, 2009.

The terms of the new agreement fit within the new proposed MCS language in Attachment A to the Governors' Decision filed herewith.

III. Proposed Mail Classification Schedule Language

The proposed MCS language in Attachment 1 resembles the language that the Postal Service proposed in reference to the precursor agreement in Docket Nos. CP2009-9 and MC2009-8.⁶ The differences in MCS language reflect changes to certain operational details between the two agreements, as well as the Postal Service's decision to classify Canada Post's "Xpresspost-USA" (Xpresspost) service within this competitive product, rather than within a market dominant product as in Docket Nos. MC2009-7 and R2009-1. Although the proposed MCS language may tend toward terseness, the Postal Service notes the Commission's ruling that "[t]he rules require

⁴ See Request of United States Postal Service to Add Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Agreement (hereinafter "2009 Request"), Docket Nos. CP2009-9 and MC2009-8, November 13, 2008.

⁵ *Id.* A copy of the full 2009 bilateral agreement with Canada Post was also provided pursuant to 39 U.S.C. § 407(d)(2) to the Commission under cover of a letter dated January 2, 2009, to the Secretary of the Commission.

⁶ *Id.*

only minimal descriptive information to be included in the Mail Classification Schedule.”⁷ With respect to the Postal Service’s earlier proposed MCS text, which included a description of the competitive aspects of the previous Canada Post bilateral agreement that closely resemble the MCS description attached hereto, the Commission acknowledged that “[t]he level of detail that the Postal Service provided in its [initially] proposed Mail Classification Schedule . . . appears adequate.”⁸

IV. Treatment of Inbound Xpresspost-USA

As under the precursor agreement, the Postal Service and Canada Post have agreed upon negotiated rates for Xpresspost, which covers both documents and merchandise. In Docket Nos. MC2009-7 and R2009-1, the Postal Service included this service within the bilateral agreement with Canada Post that was added to the market dominant products list. The Commission accepted this proposal, but it raised questions about its appropriateness, given the lack of cost data specific to Xpresspost traffic.⁹ Upon further study and deliberation, and due to the course of negotiations with Canada Post, the Postal Service has determined that it is more appropriate at this time to include Xpresspost within the bilateral agreement to be added to the competitive products list. Attachment 2 to this filing explains further the factors that support Xpresspost’s inclusion in the competitive bilateral agreement with Canada Post.

⁷ PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. MC2007-1, October 29, 2007, at ¶ 4010.

⁸ *Id.*

⁹ PRC Order No. 163, Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, Docket Nos. MC2009-7 and R2009-1, December 31, 2008, at 7, 8-9.

IV. Filing under Part 3020, Subpart B of the Rules of Practice and Procedure

The Statement of Supporting Justification of Lea Emerson, Executive Director, International Postal Affairs, is included as Attachment 2 in accordance with Part 3020, Subpart B of the Commission's Rules of Practice and Procedure. This Statement provides support for the addition of the Agreement to the competitive products list and addresses the criteria of 39 U.S.C. § 3642(b). Insofar as the Agreement concerns inbound Surface Parcel Post provided under the Agreement, the Postal Service notes that the Commission has already assigned all inbound shipments of Surface Parcel Post at negotiated rates to the competitive category.¹⁰ Because all of section 3642's criteria for classification have been met, the Postal Service respectfully urges the Commission to act promptly by adding this product to the competitive products list as requested.¹¹

V. Inbound vs. Outbound Service

In this docket, the Postal Service is presenting only an agreement to deliver Surface Parcel Post and Xpresspost in the United States for Canada Post. The rates paid by the Postal Service to Canada Post for outbound delivery of the Postal Service's competitive products in Canada have not been presented to the Commission. Those

¹⁰ Order No. 43 at ¶ 3031; PRC Order No. 147, Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, Docket Nos. CP2009-9 and MC2009-8, December 12, 2008, at 5.

¹¹ The Agreement materials filed under seal in this docket constitute a subset of the overarching agreement between the Postal Service and Canada Post. Although certain aspects of the overarching agreement, including some provisions in the materials submitted here, await finalization between the parties, the current agreement's impending expiration and the regulatory time-frame demand that the Postal Service submit these materials in their present state. The parties expect to finalize the overarching agreement shortly, but any lingering details or revisions will not affect the inbound rates, classification, or other fundamental basis for this Request and Notice. To the extent that the overarching agreement or any portion of it constitutes a "commercial or operational contract[] related to providing international postal services and other international delivery services" with "an agency of a foreign government," the Postal Service will transmit a copy of the finalized agreement to the Commission pursuant to 39 U.S.C. § 407(d).

rates represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its shipping customers for outbound competitive products to be delivered in Canada. An agreement concerning outbound competitive services with Canada Post would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers.

VI. Conclusion

For the reasons discussed, the Postal Service believes that the Agreement should be added to the competitive products list. The Postal Service asks that the Commission approve this Request.

As required by 39 U.S.C. § 3642(d)(1), a notice concerning this Request will be sent for publication in the *Federal Register*.

Respectfully submitted,

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November 25, 2009

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR CANADA POST – UNITED STATES POSTAL SERVICE CONTRACTUAL BILATERAL AGREEMENT FOR INBOUND COMPETITIVE SERVICES (GOVERNORS’ DECISION NO. 09-16)

November 18, 2009

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (“PAEA”), we establish new prices not of general applicability for certain of the Postal Service’s competitive service offerings, and such changes in classification as are necessary to implement the new prices. This decision establishes prices for the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services. The type of Contractual Bilateral Agreement negotiated with Canada Post Corporation (CPC) is described in Attachment A and covers Inbound Surface Parcel Post and Xpresspost. Surface parcels consist of any parcels arriving in the United States by surface transportation, as opposed to by air. Xpresspost is a Canadian service for documents, packets, and light-weight packages. Under the Contractual Bilateral Agreement, CPC may tender surface parcels and Xpresspost at negotiated prices rather than at the default prices set by the Universal Postal Union. Management’s analysis of these prices and the financial data supporting them are summarized in Attachment B.

We have reviewed management’s analysis and have evaluated the new prices for this Contractual Bilateral Agreement and the classification changes in this context are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. We approve the Contractual Bilateral Agreement prices and classification changes, finding that they are appropriate and consistent with the regulatory criteria, as indicated by management.

The PAEA provides that prices for competitive products must cover each product’s attributable costs, not result in subsidization by market dominant products, and enable all

competitive products to contribute an appropriate share to the Postal Service's institutional costs. We accept and rely upon the certification in Attachment C that the costs have been correctly identified. We have determined that prices established for the Contractual Bilateral Agreement should cover the costs attributable to it. The prices established should thus prevent a cross-subsidy from market dominant products. As noted in the certification in Attachment C, entry into this agreement should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

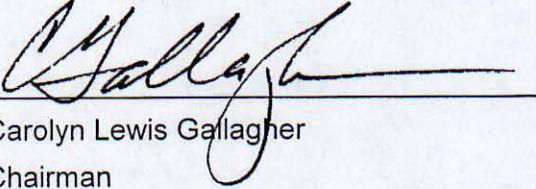
[REDACTED]

ORDER

In accordance with the foregoing Decision of the Governors, the prices for the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services and the changes in classification necessary to implement those prices are hereby approved and ordered into effect. We direct management to file appropriate notice of these changes with the Postal Regulatory Commission.

Prices and classification changes established pursuant to this Decision will take effect on January 1, 2010, or after filing with and review by the Postal Regulatory Commission, whichever is later.

By The Governors:


Carolyn Lewis Gallagher
Chairman

Attachment A

Description of Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services

2613 Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services

This agreement governs the exchange of inbound surface parcel post and Xpresspost from Canada to the U.S. Xpresspost is a Canadian service for documents, packets, and light-weight packages. In particular, the agreement provides standards, targets, performance incentives, and charges for delivery of inbound surface parcel post and Xpresspost.

Attachment B

Management Analysis of Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services

This analysis concerns the inbound competitive prices and classifications in the Contractual Bilateral Agreement between Canada Post and the United States Postal Service. The bilateral prices are negotiated with Canada for better cost coverage and higher overall contribution. The current contractual bilateral agreement is a one-year extension of the previous agreement and expires at the end of this year. Under the new two-year agreement, Canada Post will pay the Postal Service a [REDACTED] increase on inbound competitive products.

The bilateral agreement will allow the Postal Service to cover its costs more uniformly than under alternative options. In addition to better prices, we have improved service performance as we measure on-time delivery for virtually all products, and the Pay-for-Performance terms in the bilateral agreement have led to better service for the Postal Service's customers.

The alternative to the contractual bilateral agreement, which will cover the Postal Service's costs and provide substantial contribution, is to use the rates set by the Universal Postal Union (UPU) Treaty. The UPU rates do not benefit the Postal Service's bottom line in terms of contribution or cost coverage. The following highlights demonstrate the financial benefits of this agreement for inbound competitive services during the two-year term:

- The inbound competitive portion of the agreement covers Parcel Post arriving in the United States by surface and Xpresspost USA, a Canada Post service for documents and packages that is similar the Postal Service's Priority Mail product.
- The bilaterally negotiated prices are more in line with competitive market considerations. In addition, the negotiated prices for inbound surface parcels reflect Canada Post's particular weight profile: [REDACTED] pounds per parcel, on average, as opposed to the [REDACTED] worldwide average that underlies the UPU rates.
- Over the course of the past agreements (2005, 2006-08, 2009), we have improved the cost coverage of inbound Surface Parcel Post from [REDACTED] to [REDACTED] with this agreement. In addition, Xpresspost USA will provide a cost coverage of [REDACTED].
- Under this agreement, inbound competitive services from Canada to the U.S. cover their costs by [REDACTED].

Attachment C

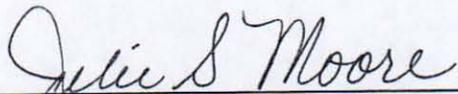
**Certification of Prices for the Canada Post – United States Postal Service
Contractual Bilateral Agreement for Inbound Competitive Services**

I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services. I hereby certify that these prices are in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The prices demonstrate that the agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2008, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from this agreement should be much smaller. The Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.


Joseph Moeller

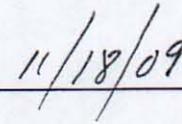
**CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 09-16**

I hereby certify that the Governors voted on adopting Governors' Decision No. 09-16, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.



Julie S. Moore
Secretary of the Board of Governors

Date: _____



Statement of Supporting Justification

I, Lea Emerson, Executive Director, International Postal Affairs, am sponsoring the Request that the Commission add the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Agreement) filed in Docket No. MC2010-14 to the competitive products list for prices not of general applicability. The proposed Mail Classification Schedule (MCS) language for the Agreement describes the requirements for this agreement. My statement supports the Postal Service's Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Not applicable. The Postal Service is proposing that the Agreement be added to the competitive products list.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Adding the Agreement to the competitive product list is consistent with the Commission's determination in Order Nos. 43 and 147 that Inbound Surface Parcel Post at Non-UPU Rates, as well as the precursor to this Agreement that implemented Inbound Surface Parcel Post at Non-UPU Rates, is a competitive product. With respect to the inclusion of Xpresspost-USA (Xpresspost), a Canada Post service for documents and merchandise, it is consistent with the Postal Service's study and deliberations on the appropriate classification of this service in light of the Commission's Order No. 163. The addition of the Agreement as a competitive product will enable the Commission to verify that the agreement covers its attributable costs and enables competitive products, as a whole, to make a positive contribution to coverage of institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

When negotiating the Agreement, the Postal Service's bargaining position is constrained by the existence of other providers of similar services. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. The Agreement concerns the terms of exchange between the Postal Service and Canada Post for inbound Surface Parcel Post at negotiated prices, which has been classified as competitive by virtue of its

exclusion from the letter monopoly and the level of competition in the relevant market. The Agreement also includes Xpresspost, which the Postal Service has determined to be appropriately classified as competitive for the same reasons. The Postal Service may not decrease quality or output without risking the loss of business to large competitors that offer similar international parcel delivery services. The relevant market also does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the agreement is premised on prices that provide sufficient incentive for Canada Post and its shipping customers to tender Surface Parcel Post and Xpresspost volume to the Postal Service rather than a competitor. If the Postal Service were to raise these prices, it risks losing inbound Canada-origin volume to a private competitor in the international shipping industry.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

The underlying parcel services fall outside the Private Express Statutes' prohibition on the private carriage of letters over post routes, so the Agreement also falls outside that prohibition. The Xpresspost service provided under the Agreement is not subject to the Private Express Statutes: the rates payable to the Postal Service under the agreement are higher than six times the current price of a one-ounce, single-piece First-Class letter, and so it may be assumed that alternative delivery could also be obtained from a private carrier at a price exceeding this test.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Private consolidators, freight forwarders, and integrators also offer international shipping arrangements whereby they provide inbound parcel delivery services under similar conditions.

- (g) *Provide any information available on the views of those who use the product on the appropriateness of the proposed modification.*

The Canada Post Corporation, the counter-party to the agreement presented in Docket No. MC2010-14, is a foreign postal operator that desires to tender surface parcel volume to the Postal Service under the terms and conditions it has negotiated with the Postal Service. The Postal Service has concluded bilateral agreements with Canada Post since 1888. This indicates that Canada Post, as well as its end users, finds this type of product to be satisfactory, since Canada Post and its shipping customers are aware of the availability of competitive services from private enterprises. However, no specific data are available to the Postal Service on Canada Post's or its shipping customers' views regarding the regulatory classification of this agreement.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for international parcel delivery services comparable to inbound Surface Parcel Post and Xpresspost is highly competitive. Therefore, addition of the Agreement will likely have little, if any, negative impact upon small business concerns. By virtue of this agreement, the Postal Service is giving Canada Post's small business customers an additional option for shipping

articles to the United States. Small businesses in the United States also benefit from the ability to receive shipments that they have ordered from Canadian businesses. Thus, the net impact on small businesses is positive, because of the absence of negative impact on small business competitors and the positive impact on small businesses served by Canada Post and the Postal Service.

(i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

In its 2007 and 2008 Annual Compliance Determinations, the Commission observed that “revenues for inbound Surface Parcel Post at non-UPU rates did not cover costs.” In its 2007 report, the Commission encouraged the Postal Service to “direct its efforts in upcoming negotiations to conclude an agreement that ensures all inward land charges for competitive inbound Surface Parcel Post at non-UPU rates are compensatory.” In the 2008 report, the Commission further urged the Postal Service to “carefully monitor and take corrective action to control costs and, if necessary, negotiate additional rate increases, to ensure positive cost coverage[.]” It should be emphasized that effective in calendar year 2009, the Postal Service implemented rates for inbound surface parcels from Canada that it estimated to be compensatory, as explained in Docket Nos. CP2009-9 and MC2009-8. The rates for inbound surface parcels in the instant agreement represent a further improvement over the 2009 rates, and they include an adjustment in the second year in order to maintain cost coverage.

In the context of the 2009 agreements with Canada Post, the Postal Service included Xpresspost within the agreement for inbound market dominant

services filed in Docket Nos. MC2009-7 and R2009-1. The Commission added that agreement to the market dominant products list for 2009, but it noted certain features of Xpresspost that appear to resemble those for a competitive service. The Commission also took note of the Postal Service's lack of cost and market data specific to Xpresspost, which can be attributed to the relatively low volume of this traffic compared with other types of inbound mail. Upon further study and deliberation, and based on the course of negotiations with Canada Post, the Postal Service has determined that it is more appropriate at this time to include Xpresspost within the agreement for inbound competitive services. This is due, in part, to the determination that domestic Priority Mail appears to provide a better cost proxy than inbound Air Letter Post for Xpresspost. Hence, the Governors of the Postal Service have established the rates and classification for the competitive Agreement as including inbound Surface Parcel Post and Xpresspost from Canada.

CANADA POST – UNITED STATES POSTAL SERVICE CONTRACTUAL BILATERAL AGREEMENT

BETWEEN

CANADA POST CORPORATION,
a corporation incorporated under the
Canada Post Corporation Act, R.S.C. 1985,
c. C-10 as amended, and having its head
office in the City of Ottawa in the Province
of Ontario
("Canada Post")

AND

THE UNITED STATES POSTAL SERVICE,
an independent establishment of the Executive
Branch of the United States Government
having its headquarters in the City of
Washington, District of Columbia

(the "United States Postal Service")

This Agreement governs the exchange, between Canada Post and the United States Postal Service, of the international products and services addressed in this Agreement (the "International Products and Services") and sets out quality objectives and standards as well as "Pay-for-Performance" incentives for meeting the prescribed quality standards.

NOW THEREFORE in consideration of the mutual covenants set out in this Agreement, Canada Post and the United States Postal Service agree as follows:

1. Definitions

In this Agreement, the following terms shall have the meanings set out below:

"Parties" means Canada Post Corporation (CPC) and the United States Postal Service (USPS).

2. Purposes of this Agreement

The purposes of this Agreement are the following:

- (a) to foster the maintenance and further development of a mutually beneficial relationship on behalf of the Parties' respective customers;
- (b) to set out the principles and general terms and conditions that shall apply to the exchange of International Products and Services between the Parties; and
- (c) to set out the rates that will apply to the exchange of International Products and Services between the Parties.

3. Guiding Principles of the Agreement

The Parties agree to work together to improve the quality of postal services between Canada and the United States in order to better serve the North American market. In particular, the Parties agree to provide access to each other's operating networks and services in such a way that for each service provided, to the extent practicable:

- (i) excellence in quality of service performance will be attained and maintained;
- (ii) the flexibility required to meet changing market and logistical conditions will be supported;
- (iii) the costs to each Party of providing services will be minimized; and
- (iv) settlement and payment processes will be electronically-based to the extent practicable, with the objective being to make such processes efficient, timely, and specific to each particular service or type of service.

4. Quality of Service

[RESERVED]

5. Rates

(a) The Parties agree that each of the *Standard EMS Agreement on the International Exchange of EMS Items between Postal EMS Operators*, and the *Multi-Services Agreement*, and any other services for which a specific agreement with its own terms and conditions is added to this Agreement as an attachment, any adjustments to the rates for the services shall be subject to the terms and conditions of the applicable attached specific agreement.

(b) Each Party agrees that for the services, other than those that are the subject of clause (a), that the other Party provides to it during each of the periods specified in Attachment 1, the first-mentioned Party shall pay the other Party the applicable rates specified in Attachment 1. If the rates are to be amended during the Term, the amendment must be made as an amendment to this Agreement.

(c) If the Parties agree to extend the Term of this Agreement for any subsequent year, then the rates for each such year of extension shall, by amendment to this Agreement made in accordance with Article 31, be added to Attachment 1, and as such shall be the rates that the Parties will pay to each other for services provided during the time period specified in the addition to Attachment 1.

(d) [RESERVED]

6. Terms for the *Delivery of EMS Items*

The terms and conditions for the delivery of EMS items shall be governed by the *Standard EMS Agreement on the International Exchange of EMS Items between Postal EMS Operators*, which is Attachment 3 to this Agreement.

7. Terms for *Multi-Services Agreement*

The terms and conditions of the *Multi-Services Agreement*, which includes International Direct Entry Services, Domestic Entry Services and Ancillary Services, are set out in Attachment 4.

8. Settlement Principles

The Parties are committed to the settlement of accounts according to the following principles:

- (a) use of monthly billing, settlement and payment for streams of mail exchanged between the parties using agreed-upon interim values where applicable;
- (b) generation of independent bills of account for northbound and southbound mail based on the use of PREDES data;
- (c) quarterly exchange of monthly sampling and preliminary weight data; and
- (d) annual settlement of accounts using agreed-upon final values where applicable.

9. Shared Surface Transportation Costs

The terms and conditions for the sharing of transborder transportation costs shall be governed by Attachment 5.

10. Network Improvements

[RESERVED]

General Provisions

11. Audit

The Parties reserve the right to review, in accordance with a mutually agreed to schedule, the account settlement processes and practices used by each in association with the acceptance, dispatching, recording, and accounting for the volumes exchanged under this Agreement. Notwithstanding the foregoing, each Party reserves the right to restrict access to information it deems to be commercially-sensitive.

12. Meetings

(a) The Parties shall hold an annual meeting during each calendar year of the Term. At each annual meeting, the Parties will discuss and review the following:

- (i) the services being provided and any adjustments required;
- (ii) the addition or deletion of any services;
- (iii) implementation of terms outlined in the Agreement;
- (iv) general compliance with this Agreement; and
- (v) any rate adjustments proposed by either Party.

(b) In addition, the Parties may hold *ad hoc* meetings as required to deal with specific issues.

(c) The Parties agree to hold further meetings on Pay-for-Performance, network optimization and operational issues. The objectives of the Parties are set out in Attachment 2.

13. Confidentiality

(a) Confidential information shared in connection with this Agreement is subject to the confidentiality provisions that are set out in Attachment 6 of this Agreement.

(b) The Parties, through the USPS Chief Privacy Officer and Canada Post's Director, Privacy, respectively (each being the Party in question's "Privacy Representative") shall keep each other apprised of significant changes in the administration of records pertaining to individual customers of international mail and the content of those records. In particular, each Party's Privacy Representative shall advise the other of any significant changes in connection with the following:

- (i) the purposes for which the other Party may use records about individual customers of international mail,
- (ii) the implementation of adequate measures to safeguard those records,
- (iii) measures to segregate those records,
- (iv) the time period for which those records may be kept, and
- (v) the manner in which that information is to be destroyed when the relevant time period has expired.

(c) If after having received information of a change under clause (b) the receiving Privacy Representative has a concern, the other Privacy Representative shall give due consideration to the receiving Privacy Representative's concerns with the objective, to the extent possible, of resolving the concern to the mutual satisfaction of both Parties.

DRAFT

14. Procedure Respecting USPS Filings with the PRC

(a) The USPS represents that as part of its legislated requirement to secure U.S. Postal Regulatory Commission ("PRC") approval of this Agreement and in other subsequent regulatory filings, the USPS is required to file this Agreement and supporting documentation with the PRC in a docketed proceeding. Given that this Agreement contains confidential information of CPC, the disclosure of which could cause harm to CPC, the USPS shall, prior to filing any part of this Agreement with the PRC or any redacted version of any part of this Agreement, consult with CPC with the objective of achieving consensus between the parties with respect to the scope of what the USPS will file, particularly

(i) the parts of the Agreement that are to be identified as non-public and claimed as exempt from disclosure,

(ii) the wording of any redactions that are to appear in place of the parts identified as non-public, and

(iii) the wording of any submissions that the USPS proposes to make in conjunction with the filing.

(b) CPC further understands that any unredacted portion of the Agreement and any redactions and supporting information will be available on the PRC's public website, www.prc.gov. In addition, the Postal Service is required to file other information in connection with this Agreement (including the USPS's revenue, the USPS's cost, or the USPS's volume data) in other PRC dockets. For such filings, the parties agree that the provisions of clause (a) shall be read with the necessary changes with the objective of the parties always reaching a consensus with respect to the parts of the material to be filed that are to be identified as non-public and the wording of any redactions and submissions.

(c) The USPS agrees that CPC at all times maintains the right, in accordance with the PRC's rules, to address CPC's confidentiality concerns directly with the PRC. The USPS will provide CPC with timely notice of the docket numbers of all PRC proceedings in which the USPS has a filing requirement that may involve disclosure to the PRC of matters related to this Agreement or other confidential information of CPC.

(d) Without limiting the generality of the other clauses of this Article, the USPS represents that one aspect of its filing requirements is to give notice to the PRC as to which parts of the Agreement are to be added to the competitive products list and which are to be added to the market dominant products list. In this regard, both parties acknowledge that what may be identified as competitive products and what may be identified as market dominant products in any filing with the PRC are so identified with respect to the U.S.A. market only and would not necessarily have the same classification in the Canadian Market.

15. Dispute Resolution Process

[RESERVED]

16. Temporary Suspension of Service

Except for payment obligations, neither Party shall be liable for temporary suspension of services, delays, or inability to perform due to causes outside of its reasonable control including, but not limited to, acts of God, or labour disruptions. On-Time and Scanning Pay-for-Performance objectives and penalties shall, however, be adjusted to take account of the temporary service suspensions, delays or inability to perform due to causes outside a Party's reasonable control.

17. Assignment

Neither Party may assign this Agreement without the prior written consent of the other Party.

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18. Waiver

(a) No delay or omission by either Party to exercise any right or power accruing upon any non-compliance or default by the other Party with respect to any of the terms of this Agreement shall be construed as a waiver of such non-compliance or default.

(b) A waiver by either of the Parties of any breach of the terms of this Agreement shall not be construed to be a waiver of any preceding or succeeding breach.

(c) A Party shall not be deemed to have waived any matter under this Agreement unless that Party has given the other Party a written notice that the first-mentioned Party has waived the matter in question.

19. Conditions Precedent

The Parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by (hereinafter "Conditions Precedent") one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include but are not limited to: approvals or, if applicable, non-objection, from USPS management's executive committee, the USPS executive committee, the Governors of the USPS, and the U.S. Postal Regulatory Commission. The Parties acknowledge that the Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS or CPC and no benefit or rights granted through this Agreement shall inure to either Party unless and until the Effective Date occurs and upon such occurrence the Condition Precedent shall have been fulfilled.

20. Effect of Partial Invalidity

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

21. Notices

(a) For each of the *Standard EMS Agreement on the International Exchange of EMS Items between Postal EMS Operators*, the *Multi-Services Agreement*, and any other services for which a specific agreement setting out its own terms and conditions is added to this Agreement as an attachment, notices, requests, or other communications with respect to the specific agreement and the services provided under it shall be given in accordance with the terms and conditions of the relevant attachment without reference to any aspect of the notice provisions that are set out here in the body of this Agreement. All other notices, requests, or other communications required or permitted to be given under this Agreement ("Notices") shall, unless otherwise specifically provided for in this Agreement, be given in writing in accordance with clause (b).

(b) Notices may be:

(i) personally delivered,

(ii) sent by registered mail, or

(iii) sent by facsimile to a number provided in each Party's entry in the UPU List of Addresses

to each of the Parties at its respective address as follows:

to United States Postal Service,

EXECUTIVE DIRECTOR
INTERNATIONAL POSTAL AFFAIRS
1735 NORTH LYNN STREET ROOM 6043
ARLINGTON VA 22209-6111
USA

and to Canada Post,

GENERAL MANAGER
INTERNATIONAL RELATIONS
2701 RIVERSIDE DRIVE SUITE N0220
OTTAWA ON K1A 0B1
CANADA

and to such other individuals or addresses as the Parties may advise the other of from time to time.

(c) Any Notice sent by registered mail shall be deemed to have been received by the Party to whom it was addressed on the 5th mail delivery day following the day on which it was posted. Any Notice sent by facsimile shall be deemed to have been received by the Party to whom it was addressed on the day following the day on which it was sent.

(d) Either Party may change its address for Notice to another address by Notice to the other Party given in accordance with clause (b). All addresses for Notice must be addresses to which Notices can be personally delivered.

22. Term

Subject to Article 19, this Agreement and its Attachments shall bind the Parties beginning on January 1, 2010 (the "Effective Date") and that ends on December 31, 2011, (the "Term"), unless terminated earlier in accordance with Article 23. Notwithstanding the Effective Date set forth in the previous sentence, Articles 11 through 31 of this Agreement and Attachment 6 (Confidentiality Provisions) shall be effective immediately upon the later of the Parties' signatures below. This Agreement and all Attachments shall remain in effect from the Effective Date until the Agreement end date or until terminated, except where an Attachment provides otherwise.

23. Termination

(a) Subject to clause (b), either Party may terminate this Agreement without cause upon at least 90 days' written notice to the other Party. However, if this Agreement is terminated under the preceding sentence, each of the specific agreements that are attached to this Agreement shall be deemed to be unaffected by such termination, to the extent that those agreements contain an express method of termination. Each of the specific agreements that are attached to this Agreement may only be terminated in accordance with the terms and conditions of that specific agreement.

(b) If a Party exercises the right to terminate this Agreement in accordance with clause (a), the only liability that the Parties shall have to each other is to make final settlement of all amounts owing as of the effective date of termination. Each Party shall bear its own costs in the event of termination. In the event of termination, and unless otherwise provided, the Parties shall maintain the rates under this Agreement effective at the time of such termination until such time as they can reach a renewed agreement, and neither Party shall be liable to the others for any damages including, without limitation, actual, special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason.

24. Negotiated Commercial Arrangement

Each of the Parties acknowledges that this Agreement sets out the terms and conditions of a negotiated commercial arrangement between the Parties and is not an agreement entered into or subject to international law. This Agreement is only binding on the United States Postal Service and Canada Post Corporation as a crown corporation.

25. Compliance with Applicable Laws when Operating in the Other Party's Country

Nothing in this Agreement shall relieve a Party of its obligation to comply with the laws in force in the other Party's country with respect to any operations that the first-mentioned Party carries out in the other Party's country.

26. Application of the *Universal Postal Convention*

For the period during which both Parties are signatories to the *Universal Postal Convention*, the obligations of the Parties under the *Universal Postal Convention* remain in effect except to the extent that this Agreement defines other terms and conditions or arrangements between the Parties, in which case this Agreement shall take precedence. Charges billed under Universal Postal Convention include but are not limited to missent mail and transit mail.

27. Customer Inquiry Support and Acceptance of Liability for Claims Respecting the Loss, Rifling, or Damage of Parcels

(a) The Parties agree to continue the practice between them as of the signing date of this Agreement, which is that the administration of origin is responsible for, and undertakes the payment of indemnity for, the loss, rifling, and damage of parcels in accordance with its postal laws and regulations.

(b) The Parties agree to continue to receive and respond to inquiries relating to parcels received by each other's administration consistent with the mutually agreed practices and procedures developed and implemented between the parties as of July 1, 2009 using the CSS Parcels module within the IPC Customer Service System. The process and procedures to support an automated customer inquiry system are outlined here.

(i) Provision of Inquiry, Customer Service and Support Services for Northbound Priority Mail International Parcels and Northbound Surface Parcels:

Procedures are as follows, no charges are applied by either party.

For Inquiries:

US Sender (American or Canadian) initiates inquiry with USPS no earlier than 10 Days after Date of Mailing. (No later than 6 months after Date of Mailing.)

USPS verifies scan events. If status of article is unknown, USPS submits Full Investigation via the CSS Parcels module within the IPC Customer Service System (CSS). CPC confirms delivery of parcel via CSS. CPC investigates status of parcel and provides status via CSS. CPC sends CN18 to Canadian addressee to ascertain delivery status. If addressee is contacted via letter, a pre-paid Business Reply envelope addressed to the USPS is included with letter. CPC responds to USPS via CSS: "Letter sent to customer to confirm delivery" and closes Full Investigation request within 20 days. USPS receives confirmation of delivery from CPC or Canadian customer, OR in the event of Loss: if article is deemed lost after 20 days from start of Full Investigation, US Sender (American or Canadian) is sent a claim form. USPS assumes full liability.

For Damaged or Missing Contents:

Canadian Addressee contacts CPC for article received damaged or missing contents. Canadian Addressee is informed that the US Sender (American or Canadian) must initiate the inquiry with the USPS. US Sender initiates inquiry with USPS. USPS submits Full Investigation with Canada via CSS.

CPC sends addressee a questionnaire to confirm damage or missing contents. A pre-paid Business Reply envelope addressed to the USPS is included with letter.
CPC responds to USPS via CSS: "Letter sent to customer to confirm damage (or Missing Contents)" and closes Full Investigation request within 20 days.
USPS receives confirmation of damage (or missing contents) from addressee. USPS sends the US Sender a claim form. USPS assumes full liability.

(ii) Provision of Inquiry, Customer Service and Support services for Southbound Xpresspost-USA (exclusion applies to LE articles) Parcels and Expedited Parcel-USA
Procedures are as follows, no charges are applied by either party.

For Inquiries:

Canadian Sender (Canadian or American) initiates inquiry with CPC no earlier than 10 Days after Date of Mailing. (No later than 6 months after Date of Mailing.)
CPC verifies scan events. If status of article is unknown, CPC submits Full Investigation via the CSS Parcels module within the IPC Customer Service System (CSS).
USPS confirms delivery of parcel via CSS. USPS investigates status of parcel and provides status via CSS. USPS sends CN18 to American addressee to ascertain delivery status. If addressee is contacted via letter, a pre-paid Business Reply envelope addressed to CPC is included with letter. USPS responds to CPC via CSS: "Letter sent to customer to confirm delivery" and closes Full Investigation request within 20 days. CPC receives confirmation of delivery from USPS or American customer OR in the event of Loss: if article is deemed lost after 20 days from start of Full Investigation, Canadian Sender (Canadian or American) is sent a claim form.
CPC assumes full liability.

For Damaged or Missing Contents:

American Addressee contacts USPS for article received damaged or missing contents. American Addressee is informed that the Canadian Sender (whether Canadian or American) must initiate the inquiry with CPC. Canadian Sender initiates inquiry with CPC. CPC submits Full Investigation with USPS via CSS. USPS sends addressee a questionnaire to confirm damage or missing contents. A pre-paid Business Reply envelope addressed to CPC is included with letter. USPS responds to CPC via CSS: "Letter sent to customer to confirm damage (or Missing Contents)" and closes Full Investigation request within 20 days. CPC receives confirmation of damage (or missing contents) from addressee. CPC sends the Canadian Sender a claim form. CPC assumes full liability.

28. Survival of Various Articles of the 1981 Postal Convention

With respect to the "Postal Convention between Canada and the United States of America" that was signed on September 14, 1981, by the Postmasters General of Canada and the United States (the "1981 Postal Convention"), the Parties agree to apply Article 7 and Article 23 of the 1981 Postal Convention and, shall consider taking such steps as necessary to suspend the outdated provisions of the 1981 Postal Convention and in any event, between the Parties, the Parties shall consider those outdated provisions to be suspended.

29. Previous Bilateral Agreement Superseded

The Canada Post – United States Postal Service Bilateral Agreement that was signed on December 31, 2008, by the United States Postal Service as represented by its Managing Director, Global Business and Senior Vice President, Paul Vogel and signed on December 23, 2008 by Canada Post as represented by its Chief Operating Officer, Jacques Cote, is superseded by this Agreement.

30. Entire Agreement

(a) This Agreement, including the Attachments listed in clause (b), and any other document or portion of a document that is expressly incorporated into this Agreement by reference constitutes the entire umbrella agreement between the Parties for the exchange of International Products and

Services and no representations, negotiations, or conditions either oral or written shall bind the Parties except as expressly set out in this Agreement. However, where an attachment to this Agreement is itself set up with a signature block at the end of the attachment, it is a specific agreement in itself and the services to be provided under that specific agreement shall be provided in accordance with the terms and conditions of that specific agreement.

- (b) The Attachments to this Agreement as of the signing date are as follows:
- Attachment 1 - Rates
 - Attachment 2 - Scanning and On-Time Quality of Service Pay for Performance
 - Attachment 3 - Standard EMS Agreement on the International Exchange of EMS Items
between Postal EMS Operators
 - Attachment 4 - Multi-Services Agreement
 - Attachment 5 - Terms for Shared Surface Transportation Costs
 - Attachment 6 - Confidentiality Provisions
- (c) Subject to Article 14, the entire Agreement, or portions thereof, will be filed with the U.S. Postal Regulatory Commission with a notice to add it to the competitive and/or market dominant products list.

31. Amendments to this Agreement

- (a) This Agreement may only be amended, or extended, by mutual written agreement signed by authorized representatives of Canada Post and the United States Postal Service.
- (b) Any amendments may be contingent upon any and all necessary approvals by USPS management's executive committee, the Board of Governors of the USPS, the Governors of the USPS, the U.S. Postal Regulatory Commission, the Antitrust Division of the Department of Justice, the Federal Trade Commission and/or any other governmental body with oversight responsibility for the USPS. If such approvals are required, the amendments will not become effective until such time as all necessary approvals are obtained. The USPS will notify CPC of the date the amendments become effective within thirty (30) days after receiving the approval of the entities that have oversight responsibility for the USPS.

This Agreement is made in duplicate between:

United States Postal Service

Canada Post Corporation

Signature

Signature

**Pranab Shah
Vice President and Managing
Director, Global Business**

**Jacques Côté
Chief Operating Officer**

Date

Date

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ATTACHMENT 1 RATES

Rates for the Contractual Bilateral Agreement between Canada Post Corporation and the United States Postal Service

Terminal dues rates listed in the tables included below are product steam rates per item and per kilogram stated in Special Drawing Rights (SDRs) unless noted otherwise. The rates are set on the conditions that current work sharing arrangements are substantially maintained. Any changes to current work sharing (i.e. sortation and preparation) arrangements will be subject to negotiation and mutual agreement first being reached including, but not limited to, agreement as to any impact on pricing.

Southbound Stream Rates

	Service Description (Southbound)	Stream ID = Category + Subclass + Receptacle Type	2010 Rates (SDR's)		2011 Rates (SDR's)	
			Per item	Per kg	Per item	Per kg
	XPRESSPOST USA					
4.1	Xpresspost (Document)					
4.2	Xpresspost (Document)					
4.3	Xpresspost (Document)					
6.1	Xpresspost (Merchandise)					
6.2	Xpresspost (Merchandise)					
	NON-PRIORITY PARCEL POST					
7.1	** Expedited parcels Bag					
7.2	** Expedited parcels Large Container					
7.3	** Expedited parcels Outside Parcel					

** 7.1 - 7.3 Includes Delivery Confirmation surcharge

Specifications of Mail Product Categories and Formats

The rates for the stream categories above shall be based upon the following format and product definitions:

- Parcels Any piece corresponding to size limits as set forth in the Universal Postal Union Parcel Post regulations Article RC 115 and which has a weight of less than or equal to 30 kilograms
- M-Bags Printed matter in a direct sack to a single foreign address, subject to the Reservations of Canada and the United States of America in Universal Postal Union Prot Article RE II, which has a weight less than or equal to 30 kilograms
- Xpresspost-USA
Any Document or Package which bears Xpresspost-USA identification, and which bears a Priority Mail logo and a Delivery Confirmation barcode, and which has the following dimensions:
XpressPost-USA Documents are pieces which meet the same size and weight dimensions of Letters or Flats; and,
XpressPost-USA Packages are pieces which meet the same size and weight dimensions of Packets or Parcels
- Expedited Parcel – USA
Any surface parcel corresponding to size limits as set forth in the Universal Postal Union Parcel Post regulations Article RC 115 and which has a weight of less than or equal to 30 kilograms

**Scanning and On-Time Quality of Service
 Pay for Performance**

		EMS	Air Parcels & Xpresspost USA	Surface Parcels	Letter Post				
Scanning Elements									
	Included Scans								
	Performance Target Threshold								
	Measurement								
	Payment for items w/ missing scans and below threshold ("failures")								
On-Time Delivery Elements									
	Categories Included								
	Delivery Standards used								
	Performance Target Threshold								
	Payment for items late and below threshold ("failures")								
Reporting Elements									
	Diagnostic Reporting Frequency								
	PFP Calculation Frequency								
	Invoicing Frequency								

ATTACHMENT 4

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Agreement). The Agreement, enabling Governors' Decision, and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. Redacted copies of the Governors' Decision and the Agreement are filed with the Request as Attachments 1 and 3, respectively. In addition, a redacted version of the supporting financial documentation is included with this public filing as a separate Excel file.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that under good business practice would not be publicly disclosed. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).² Because the portions of the

¹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

² In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government

materials that the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of the instant Agreement, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the contract is made. The Postal Service has already informed Canada Post Corporation (Canada Post), in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service identifies Dave Eagles, Director, International Relations, Canada Post Corporation, as the appropriate contact on behalf of Canada Post. Mr. Eagles' telephone number is (613) 734-6043, and his email address is dave.eagles@canadapost.ca. Canada Post has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Dennis Jarvis, General Manager, International Product Management, Canada Post Corporation. Mr. Jarvis's telephone number is (613) 734-8149, and his email address is dennis.jarvis@canadapost.ca.³

establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

³ In the event of a request for early termination of non-public treatment under 39 C.F.R. § 3007.31, a preliminary determination of non-public status under 39 C.F.R. § 3007.32, or a request for access to non-

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In connection with its Request filed in this proceeding, the Postal Service included an Agreement, the enabling Governors' Decision, and financial work papers. These materials were filed under seal, with redacted copies filed publicly, after notice to Canada Post. The Postal Service maintains that the redacted portions of the Agreement, Governors' Decision, and related financial information should remain confidential.

With regard to the Agreement filed in this proceeding, the redactions in Attachment 1 withhold the actual prices being offered between the parties under the Agreement. The redactions made to Attachment 2 contain details about certain delivery performance thresholds, product tracking levels, and the connection of delivery performance and certain anomalies with payment between operators, all of which is commercially sensitive. The redactions in the Governors' Decision withhold commercially sensitive information about cost coverage projections and directives to postal management as to negotiation strategy. The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the work papers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b).

public materials under 39 C.F.R. § 3007.40, the Postal Service notes, on Canada Post's behalf, that differences in the official observation of national holidays might adversely and unduly affect Canada Post's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, Canada Post has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect Canada Post's interests. A listing of Canada's official holidays can be found at <http://www.pch.gc.ca/pgm/ceem-cced/jfa-ha/index-eng.cfm>.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the contract that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, foreign postal operators or other potential customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingency rates included to account for market fluctuations and exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required to demonstrate that each negotiated agreement covers its attributable costs. Furthermore, the Postal Service's Governors have required that the Agreement be submitted to the Commission with a

notice that complies with 39 C.F.R. § 3015.5.⁴ Thus, competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant inbound delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the Agreement or from the information in the work papers and Governors' Decision whether additional margin for net profit exists between the contract being filed and the contribution that Agreements must make. From this information, each foreign postal operator or customer could attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator involved in this Agreement could use the information in the work papers in an attempt to renegotiate its own rates by threatening to terminate its current agreement.

Price information in the Agreement and financial spreadsheets also consists of sensitive commercial information of a foreign postal operator. Disclosure of such information could be used by competitors of the postal operator to assess the operators' underlying costs, and thereby develop a benchmark for the development of a competitive alternative.

⁴ Decision of the Governors of the United States Postal Service On The Establishment of Prices and Classifications for Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Governors' Decision No. 09-X), November XX, 2009, at 2.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the price charts in Attachment 1 of the Agreement would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: Canada Post's negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional profit margin between the rates provided to Canada Post and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. The other postal operator, which was offered rates identical to those published in Canada Post's agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered it, or it will not use the Postal Service for its inbound delivery needs.

Harm: Competitors could use performance information to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's and Canada Post's detriment.

Hypothetical: The delivery standards information in Attachment 2 of the Agreement is released to the public. Another delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the Postal Service's and/or Canada Post's performance targets as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's and/or Canada Post's.

Harm: Public disclosure of information in the financial work papers and cost coverage information in the Governors' Decision would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of one or more relevant international delivery markets.

Harm: Public disclosure of information in the financial work papers would be used by Canada Post's competitors to its detriment.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. The competitor analyzes the work papers to assess Canada Post's underlying costs for the corresponding Canada Post products. The competitor uses that information as a baseline to negotiate with U.S. customs brokers and freight companies to develop lower-cost alternatives.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in

the relevant market for international expedited and parcels products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-public materials. This includes Canada Post with respect to all materials filed under seal except for the Agreement, to which Canada Post already has access.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.