

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Direct Contracts (CP2009-9)
Negotiated Service Agreement

Docket No. CP2009-29

**PUBLIC REPRESENTATIVE COMMENTS IN RESPONSE TO
UNITED STATES POSTAL SERVICE NOTICE OF CHANGE IN PRICES
IN ACCORDANCE WITH ORDER NO. 216**

(January 7, 2010)

In response to Order 368¹, the Public Representative hereby comments on the United States Postal Service's Notice regarding pricing changes for a Global Direct Negotiated Service Agreement (NSA) (CP2009-9), filed December 18, 2009. On January 5, 2010, the Postal Service clarified its December 18 filing, noting that "[t]he instant price change essentially consists of a direct response to two factors." (at 2) Both factors, if concededly external to the four corners of the NSA, could reasonably have been foreseen by the parties. Canada Post Corporation's impending rate change (on January 11, 2010 Canada Post's published prices for domestic Lettermail™² will change) and recognition of a change in the amounts paid to Canada Post for its delivery of Global Direct items (as a result of the Postal Service's impending bilateral agreement with Canada Post) are the two "factors" compelling the instant pricing Notice.

To its credit, the Postal Service notes it intends to clarify language in future contracts. Bilateral agreements, crafted with an eye toward Universal Postal

¹ Notice and Order Concerning Change in Prices in Accordance with Order No. 216, December 24, 2009.

² Analogous to U.S. domestic First-Class Mail, "Lettermail" is a trademark of Canada Post Corporation.

Union regulations, different mail classifications and changing currency exchange rates between nations, provide special challenges. Some flexibility for the artful drafting of contract provisions which might accommodate changing conditions appears to be the very spirit the Commission embraced in Order 216, May 15, 2009.

The general public, however keen to parse terms of the contract and determine the proper regulatory framework for the Postal Service's Notice, would respectfully and simply request that the Commission hold uppermost the requirements of 39 C.F.R. 3015.5. For a competitive products pricing schedule *not of general applicability*, the Postal Service must demonstrate that the contract will comply with 39 USC 3633(a): It may not allow market dominant products to subsidize competitive products, it will ensure that each competitive product covers its attributable costs; and it will 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).

The mechanics of price-setting must not shift any party's focus from Congress' basic design for providing postal services, enabling the Postal Service to provide Market Dominant and Competitive Products in a manner efficient for the needs of the general public. Whether discretionary, cost-based or "external and objective," competitive products' pricing must comport with the three requirements of 39 USC 3633(a). In the matter of CP2009-29, the underlying agreement has been reviewed and approved by the Commission.

Procedural Matters

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. The instant Notice, concerning the CP2009-29 NSA, comports with title 39 stipulations and the relevant Commission Rules of Practice and Procedure. The underlying bilateral agreement also comports with provisions of 39 U.S.C. 3632, as evidenced by the inclusion of Governors' Decision No. 08-10 (July 16, 2008), along with the analysis for that Decision in this Docket with the Postal Service's May 1, 2009 filing. Likewise, section 3642's notice and publication requirements are met by the submission of the Notice itself. The relevant *Code of Federal Regulations* procedural requirements (Rules of Practice and Procedure) for Commission review are also fulfilled by the Postal Service's Notice in this matter.

Conclusion

The instant Notice changing pricing for the CP2009-29 NSA gives rise to interesting questions: Are the prices for the Global Direct contract at issue in this proceeding simply changing as contemplated by the contract's terms, and if so, should the changes be subject to full-scale review? The general public would respectfully suggest that these questions are secondary to the question of whether the instant contract's pricing changes would still comport with the three-fold requirements of title 39. Will this NSA not allow market dominant products to subsidize competitive products? Will it ensure that each competitive product covers its attributable costs? And

will it 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)? It would appear so, if the Postal Service proposes raising rates which were previously found in compliance with section 3633(a).

The Public Representative respectfully submits the preceding Comments for the Commission's consideration.

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