Postal Regulatory Commission
Submitted 5/7/2010 4:16:40 PM
Filing ID: 67984
Accepted 5/7/2010
ORDER NO. 457

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Tony L. Hammond, Vice Chairman;
Mark Acton;
Dan Blair; and
Nanci E. Langley

Mail Classification Schedule Language for Nonpostal Services

Docket No. MC2010-24

NOTICE AND ORDER CONCERNING MAIL CLASSIFICATION SCHEDULE LANGUAGE FOR NONPOSTAL SERVICES

(May 7, 2010)

I. INTRODUCTION

Pursuant to section 404(e) of title 39, the Commission in Order No. 154 authorized 14 activities of the Postal Service to continue as "nonpostal services."[1] By this notice, the Commission initiates Docket No. MC2010-24 to consider the Postal Service's proposed Mail Classification Schedule (MCS) language for its authorized nonpostal services.

---

[1] Docket No. MC2008-1, Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, December 19, 2008 (Order No. 154); *see also* Errata Notice, January 9, 2009 (Errata), petition denied, *United States Postal Service v. Postal Regulatory Commission*, 2010 WL 1189617 No. 09-1032 (CADC, March 30, 2010).

II. POSTAL SERVICE FILINGS

While the proceedings resulting in Order No. 154 were ongoing, the Postal Service filed proposed MCS language for six activities which the Postal Service identified as nonpostal services.[2] Of the six activities, Order No. 154 provisionally accepted language for four nonpostal services for insertion into the MCS.[3]

Further, Order No. 154 required the Postal Service to file proposed MCS language for the 10 other nonpostal services that it authorized. *Id.* at 90.[4] In response to Order No. 154, the Postal Service filed a notice of proposed MCS language for those nonpostal services.[5] One service, the Warranty Repair Program, had been temporarily allowed subject to review in Phase II of that proceeding. At the conclusion of Phase II, the Warranty Repair Program was ordered terminated. Therefore, consideration of the proposed language for that product is moot.[6] The Postal Service's Notice proposes to realign and combine these authorized nonpostal services into eight products.

---

[2] The proposed language included the following six activities: Officially Licensed Retail Products (OLRP), Passport Photo Service, Photocopying Service, Electronic Postmark (EPM), Notary Public Services, and Stored Value Cards. Docket No. MC2008-1, United States Postal Service Notice of Filing of Proposed Mail Classification Schedule Language for Six Nonpostal Services Pursuant to Order No. 120, November 7, 2008. For the convenience of interested persons, the Mail Classification Schedule language proposed by the Postal Service in this filing and two other filings, dated March 10, 2009 and April 26, 2010 and discussed further below, is attached to this Order.

[3] Notary Public Services and Stored Value Cards were not authorized as nonpostal services. Order No. 154 at 40, 89.

[4] Of the 10 authorized nonpostal services, Philatelic Sales and MoverSource were classified as market dominant. The remaining eight authorized nonpostal services classified as competitive were Affiliates for Website, Affiliates—Other (Linking Only), FedEx Drop Boxes, Licensing Programs Other Than Officially Licensed Retail Products, Meter Manufacturers Marketing Program, Non-Sale Lease Agreements (Non-Government), Training Facilities, and Warranty Repair Program (in part, subject to review in Phase II). *See* Errata at Appendix I, Part B.

[5] United States Postal Service Notice of Filing of Proposed Mail Classification Schedule Language for Nonpostal Activities in Response to Order No. 154, March 10, 2009 (Notice).

[6] The Warranty Repair Program failed to meet the grandfather requirement for a nonpostal service under section 404(e) of title 39 insofar as it relates to the provision of service to others. Docket No. MC2008-1(Phase II), Phase II Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, January 14, 2010, at 31, 39 (Order No. 392); appeals docketed, *Le Page's 2000 Inc. and Le Page's Products, Inc. v. Postal Regulatory Commission*, No. 10-1031 (CADC, February 12, 2010)

The eight renamed nonpostal services are classified as follows: Market Dominant—Alliances with the Private Sector to Defray Cost of Key Postal Functions, and Philatelic Sales; Competitive—Rental, Leasing, Licensing or Other Non-Sale Disposition of Tangible Property; Advertising; Mail Services Promotion; Training Facilities and Related Services; Licensing of Intellectual Property Other than OLRP; and Equipment Repair Service.

For the two market dominant nonpostal products, the Postal Service does not propose to realign Philatelic Sales. The Postal Service proposes to align the other market dominant service, MoverSource, an alliance with a private sector company to provide change-of-address assistance, with another alliance, WhitePages. For each of these latter activities, costs are defrayed through advertising solicited by the private sector entity. The Postal Service proposes to entitle this product "Alliances with the Private Sector to Defray Cost of Key Postal Functions." *Id.* at 7.

With respect to Philatelic Sales, the Postal Service filed a notice of amendment to its proposed MCS language to incorporate into the nonpostal Philatelic Sales product its current shipping charges for philatelic order fulfillment.[7] The amendment reflects the Postal Service's proposed method for reflecting shipping fees in the MCS pursuant to Commission Order No. 391.[8]

Web-based linking agreements are divided into three separate categories. Agreements providing links to merchants' websites are styled "Advertising."[9] Agreements to list a vendor on *usps.com* and to promote a vendor's mailing services or

---

consolidated with *United States Postal Service v. Postal Regulatory Commission*, No. 10-1033 (CADC filed February 12, 2010). The decision in Phase II regarding the Warranty Repair Program was not appealed and is final.

[7] Notice of the United States Postal Service of Amendment to Mail Classification Schedule Language for Nonpostal Activities Required to be Filed by Order No. 154, April 26, 2010.

[8] Docket No. MC2009-19, Order Approving Addition of Postal Service to the Mail Classification Schedule Product Lists, January 13, 2010, at 12-15 (Order No. 391).

[9] The Postal Service cites as current agreements Maponics, Label Universe, and Mail Service Provider agreements. *Id.* at 8.

product are entitled "Mail Services Promotion." *Id.* at 8. The third category of web-based alliances is the aforementioned market dominant MoverSource-WhitePages alignment.

The Postal Service proposes to maintain the alignment of services described in Order No. 154 for Training Facility and Licensing of Intellectual Property Other Than OLRP.[10] *Id.* at 6. The Postal Service restyles "Training Facility" as "Training Facilities and Related Services." *Id.* at Appendix A.

The Postal Service proposes to rename some competitive nonpostal services to reflect more accurately the nature of the activities within each service. *Id.* at 3. The Postal Service asserts that to reduce potential confusion, some nonpostal activities are realigned to be independent of the names of current vendors or programs, or the location of the activity. This permits the Postal Service to enter into a similar agreement with others, or to accept advertising for other products in other venues. *Id.* at 4. Some similar services are grouped together such as certain web-based agreements within the broader category of Advertising. *Id.* at 4-5. Additionally, the Postal Service requests that web-based linking agreements providing links to merchant websites be treated as price categories rather than separate products pending review in a rulemaking on the form and content of rules for nonpostal services. *Id.* at 5. The Postal Service asserts that designating the linking agreements as price categories pending further review removes uncertainty as to whether a section 3642 proceeding to add new products to the MCS would be required for any new web-based linking agreements. *Id.*

The nonpostal service described in Order No. 154 as Non-Sale Lease Agreements (Non-Government) includes leasing of parking facilities, office space, antenna towers, advertising, storage, and retail lobby space. Order No. 154 at 66.

---

[10] In Order No. 392, the Commission limited the scope of its licensing authorization by denying authorization for Postal Service branding of mailing and shipping products related to Postal Service operations for general retail distribution. Order No. 392 at 39; appeals docketed, *see* note 6, *infra*. The Postal Service has not filed to amend its proposed language for "Licensing of Intellectual Property Other Than OLRP" to conform to Order No. 392.

Non-sale dispositions of real property are sometimes structured as a "license" of real property. Notice at 9-10. The FedEx Drop Boxes arrangement identified in Order No. 154 as a separate nonpostal service also involves the licensing or rental of real property. *Id.* at 10.

The Postal Service notes that the Commission did not specifically address the rental of personal property in Order No. 154 and proposes to include the rental of equipment such as forklifts within this group. The Postal Service further notes that for years it has rented personal property such as exercise and audio visual equipment as part of its training facilities operations, but charges are accounted for as part of the training operations, and the Postal Service does not recommend including them in this description. *Id.* The Postal Service proposes to retitle this group of activities "Leasing, Licensing and Other Non-Sale Disposal of Tangible Property." *Id.*

III. NOTICE OF FILINGS

The Commission establishes Docket No. MC2010-24 for consideration of the Postal Service's proposed language for nonpostal products attached to this Order to be included in the MCS.

As noted above, the MCS language recognized by the Postal Service is attached to this Order. Part 3020 of the Commission's rules provides for establishing product lists. Subpart A of the current MCS rules includes provisions for nonpostal products. 39 CFR 3020.13(a)(6) and (b)(5). Subpart B provides for changes to the product lists initiated by the Postal Service. The Commission will treat the Postal Service's filings as a unified request to modify the product lists.[11]

Under section 3020.34 of the rules, upon review of these Postal Service filings together with comments of interested parties, the Commission may approve the

[11] Because the Postal Service's filings are pursuant to Commission orders, the filing requirements of subpart B shall, to the extent necessary, be waived.

requests, institute further proceedings, permit the Postal Service an opportunity to modify its request, or take other appropriate action. Pursuant to 39 U.S.C. 404(e)(5) and 39 CFR 3020.33, the Commission provides interested persons an opportunity to express views and offer comments on the planned modifications and whether they are consistent with the policies of 39 U.S.C. 3642.

Comments on the proposed nonpostal services MCS language filed by the Postal Service are due no later than June 4, 2010. Reply comments, if any, are due June 18, 2010.

Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

IV. ORDERING PARAGRAPHS

It is Ordered:

1. Docket No. MC2010-24 is established to consider the Postal Service's proposed nonpostal product Mail Classification Schedule language filed with its notices of March 10, 2009 and April 26, 2010, together with the nonpostal service Mail Classification Schedule language for four nonpostal services filed November 7, 2008 referred to in the body of this Order.

2. Docket No. MC2009-20 is closed.

3. Comments are due no later than June 4, 2010.

4. Reply comments are due no later than June 18, 2010.

5. The Commission appoints Emmett Rand Costich as Public Representative to represent the interests of the general public in this proceeding.

6. The Secretary shall arrange for publication of this Order in the *Federal Register.*

By the Commission.

Shoshana M. Grove
Secretary

Docket No. MC2010-24

ATTACHMENT

MARKET DOMINANT

* * * * * *

SPECIAL SERVICES

* * * * * *

XXXX Notarial Service

XXXX.1 Description

Notarial services are offered in limited locations based on local needs, and in Alaska.

XXXX.2 Prices

There is no charge for this service.

COMPETITIVE

* * * *

XXXX Photo Service

XXXX.1 Description

Photo Service is offered to support customers who apply for passports at designated postal facilities pursuant to U.S. Department of State regulations.

XXXX.2 Price

	($)
Per Photo	15

XXXX Photocopying Service

XXXX.1 Description

Photocopying services may be offered to retail customers who need to make copies of documents.

XXXX.2 Prices

	($)
Per Copy	0.10 to 0.50

XXXX Stored Value Cards

XXXX.1 Description

Stored Value Cards provide customers with payment alternatives that support their mailing, shipping, and purchase needs. They may include phone cards, gift cards, and prepaid debit cards.

XXXX.2 Prices

	($)
Per card	Face value

XXXX USPS Electronic Postmark Service (EPM) Program

XXXX.1 Description

The Electronic Postmark (EPM) program authorizes vendors to provide their customers with Postal Service-authorized timestamps for the purpose of substantiating at a later time that the original form of the electronic information presented for timestamping has not been altered. The vendor is required to meet certified standards for creating a secured environment for the auditable timestamps, digital signatures, and hash codes. Once certified, the provider is authorized to use Postal Service licensed technology, intellectual property and patents. The authorized vendor generates the timestamp, called an Electronic Postmark, on a secure server that it owns and maintains. The vendor fee is paid quarterly and includes 1,500,000 Electronic Postmarks per quarter. If, in any quarter, the number of postmarks exceeds 1,500,000, an additional fee is charged

XXXX.2 Prices

	($)
Per quarter, per license, up to 1,500,000 Electronic Postmarks,	75,000
Over 1,500,000 Electronic Postmarks in a quarter, each additional postmark	0.02

XXXX Officially Licensed Retail Products (OLRP)

XXXX.1 Description

OLRP are merchandise sold through the Postal Service's retail channels. The merchandise relates to mail, governmental services provided at the Post Office, or stamp images, or contains the postal brand.

Mail-related merchandise —Mail-related merchandise includes items that facilitate the use of the Postal Service's mailing and shipping services. It includes scales, stamp dispensers, rubber stamps, and other mail-related items offered for sale by the Postal Service.

Government Services-related merchandise —Government services-related merchandise include items associated with the Postal Service's provision of government related services. An example is the passport holder.

Stamp-related or Postal-branded merchandise —Stamp or Postal Brand related merchandise include items that have, or are associated with, a Postal Service issued stamp, or that have a postal brand. It includes ornaments, tote bags, CDs, framed artwork, and other types of merchandise.

XXXX.2 Prices

	($)
Mail-related merchandise	1.00 to 125.00
Government Service-related merchandise	1.00 to 20.00
Stamp-related or Postal-branded merchandise	1.00 to 150.00

MARKET DOMINANT PRODUCTS

****

XXX Alliances with the Private Sector to Defray Cost of Key Postal Functions

XXXXX .1 Description

The Alliances with the Private Sector to Defray Cost of Key Postal Functions service covers alliances or agreements with private sector entities for the provision of a core postal function or the funding of the function. The costs of the alliance or agreement are defrayed through activity of the private sector entity. Any revenues in excess of costs of the alliance or agreement are shared between the entity and the Postal Service. The Postal Service does not charge its customers for the core postal function. The existing alliances are:

MoverSource is an alliance that supports the system whereby the Postal Service processes and confirms change-of-address information it receives from customers who wish to have their mail forwarded. Customers receive move-related advertising and general information about moving. Customers do not pay for the change-of-address function. The Postal Service shares in the net revenue of the agreement.

WhitePages is an agreement that allows users of usps.com to access information about the locations, hours, phone numbers, and operations of and services available at post offices nationwide. The users of usps.com connect with WhitePages website which has been customized to provide the post office information. WhitePages solicits advertising that is shown on its website. Customers do not pay for the post office information. The Postal Service shares in any net revenue from the agreement.

XXXXXX.2 Price:

The Postal Service receives a negotiated share of net revenue after costs.

XXXX Philatelic Sales

XXXX.1 Description

Philatelic items are stamp-related items that support the hobby of stamp collecting. They are intended to be collected by serious, casual and topical collectors and typically include a postage stamp or stamps. Examples of philatelic items include first day covers, ceremony programs, uncut press sheets, framed stamps, binders for storing stamps, stamp yearbooks, and philatelic guides.

XXXX.2 Price

All items	Not less than face value of included postage, and not more than face value of included postage plus $300.

COMPETITIVE PRODUCTS

* * * * * * * * *

XXXX Rental, Leasing, Licensing or Other Non-Sale Disposition of Tangible Property

XXXX.1 Description:

The Rental, Leasing, Licensing or Other Non-Sale Disposition of Property includes agreements that allow a person or entity to occupy space within or on real property of the Postal Service, or to use personal tangible property, in exchange for rent, fee or other monetary consideration. The agreement may be a lease, license or other form of agreement. It does not include agreements with federal government agencies or the sale of property.

XXXXX.2 Price:

Negotiated between the parties

XXXX Advertising

XXXX.1 Description:

The Advertising service involves arrangements where the Postal Service agrees to post, display, or otherwise convey or provide a party's advertising in exchange for consideration. The advertising may be placed or provided on the Postal Service's website, in retail locations, or other postal venues. Payment may be in the form of fees, a percentage of the revenue if the advertised product is sold or other forms. This category does not include advertising for the products that the Postal Service sells.

XXXX.2 Price:

Negotiated between the parties

XXXX Mail Services Promotion

XXXX.1 Description

The Mail Services Promotion category includes the Postal Service's agreements with merchants who offer customers mail-related products or services. In exchange for compensation, the Postal Service advertises the merchant's products or services and may actively promote them. The Postal Service does not produce or provide the product or service.

Currently, there are three Mail Services Promotion merchant agreements. The merchants offer its customers the ability to create mail pieces through an online service. In exchange for compensation, the Postal Service provides a link on its website to the merchant's website and may, in addition, promote the merchant's product. One merchant specializes in producing mailings using a variety of formats such as letters, postcards, fliers and booklets; one merchant specializes in producing mailings of postcards; and one merchant specializes in producing mailings of greeting cards.

XXXX Price

The merchant payments are negotiated.

XXXX Training Facilities and Related Services

XXXX.1 Description:

The Training Facility and Related Services category includes the rental of excess space in or on the grounds of the Postal Service's training facilities to outside parties for a fee. The facilities include meeting rooms, housing, and exercise areas. Available services include conference-related services such as food service and the rental of audio-visual equipment, and hospitality-related services such as lodging, fitness-related services, banquet services, and on-site sale of sundries. One of the training facilities also has a health clinic on site that charges for services. At one facility, the Postal Service also makes its training classes available to non-governmental organizations. Currently, the Postal Service has two training facilities.

The Postal Service sets the price for the training classes. For each facility, the Postal Service contracts with a company to manage the facility. The management company is responsible for setting the prices for all other services and the Postal Service receives a negotiated percentage of net profits.

This description does not include rental of space or provision of services to federal agencies or postal employees.

XXXX Price:

Training courses, including management, leadership, technical, and computer technology courses	$35 - $9775

All other services (Price set by contractor)	Percentage of net profits

XXXX Licensing of Intellectual Property Other than OLRP

XXXX.1 Description:

This category covers the licensing of the Postal Service's intellectual property including patents, trademarks, and copyrights. The Postal Service receives payment for the use of its intellectual property. The Postal Services charges a nominal fee for use of trademarks or copyrighted material for noncommercial or limited commercial purposes. The price for the other uses of intellectual property is negotiated with the licensee.

XXXX.2 Price:

Use of Patents	Negotiated
Use of Trademarks	
Noncommercial or limited commercial purposes	$25
Commercial purposes	Negotiated
Use of Copyright	
Noncommercial or limited commercial purposes	$25
Commercial purposes	Negotiated

XXXX Equipment Repair Service

XXXX.1 Description

Equipment Repair Service is offered to allow entities seeking to repair non-Postal Service equipment (i.e., equipment not owned by the Postal Service) the opportunity to utilize the resources maintained by the Postal Service to meet its own needs for postal equipment repair service.

XXXX.2 Price

	Charge
Per Repair	Total charge is the amount of the estimated or actual costs of the repair, plus a markup of approximately 10 percent to 60 percent of the repair costs.

XXXX Philatelic Sales

XXXX.1 Description

Philatelic items are stamp-related items that support the hobby of stamp collecting. They are intended to be collected by serious, casual and topical collectors and typically include a postage stamp or stamps. Examples of philatelic items include first day covers, ceremony programs, uncut press sheets, framed stamps, binders for storing stamps, stamp yearbooks, and philatelic guides.

XXXX.2 Price

All items	Not less than face value of included postage, and not more than face value of included postage plus $300.
Fulfillment – Orders mailed to domestic United States destinations	$1.00*
Fulfillment – Orders mailed to destinations outside of domestic United States	$6.00*

* Fee does not apply for philatelic items sent as part of a subscription, in which the customer agrees to purchase a series of philatelic items of a specified type, and establishes a means of payment in advance. Additional charge for custom orders of stamps is shown in Stamp Fulfillment Services MCS section. If a customer requests expedited shipping, then the order will be shipped using Express Mail, with actual postage charged instead of the listed fees.