

**BEFORE THE
POSTAL REGULATORY COMMISSION**

Competitive Product Prices	:	
Global Expedited Package Services Contracts	:	Docket Nos. MC2010-29
Non-Published Rates	:	CP2010-72

**COMMENTS OF UNITED PARCEL SERVICE IN RESPONSE
TO NOTICE AND ORDER CONCERNING REQUEST TO
ADD NEW PRODUCT TO THE COMPETITIVE PRODUCT LIST
(August 11, 2010)**

Pursuant to Commission Order No. 494 (July 21, 2010), United Parcel Service comments on the Notice and Request of the United States Postal Service Concerning Global Expedited Package Services -- Non-Published Rates (July 16, 2010) ("Request").

In reviewing the Request, the Commission is potentially faced with two issues:

1. Do the proposed contracts meet PAEA's definition of a single "product"?
2. If so, does that product involve "rates or classes of general applicability" subject to 39 U.S.C. § 3632(b)(2)?

UPS opposes the Request because the offering is too broad and therefore does not meet PAEA's definition of a "product."¹ We do so because the proposal raises

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1. UPS approaches these issues as a competitor. UPS is also a substantial user of the Postal Service's Parcel Select, Parcel Return Service, and Standard Mail products, as well as other services such as First Class Mail, both directly and through The UPS Store franchise locations, and is a substantial supplier of transportation and related services to the Postal Service.

substantial concerns not only for UPS but also for the general public interest protected by PAEA.

Were the Commission to grant the Request, the rates for the service should be treated as “rates or classes of general applicability” under 39 U.S.C. § 3632(b)(2).

The proposed contracts do not meet PAEA’s definition of a “product” because they would not be limited to contracts that share distinct cost and market characteristics.

Under PAEA, a “product” is a “postal service with a **distinct cost or market characteristic** for which a rate or rates are, or may reasonably be, applied.” 39 U.S.C. § 102(6) (emphasis added). Two or more contracts may be grouped together as a single product **only** “if it can be shown that they have similar cost and market characteristics.” Docket No. RM2007-1, Order No. 43 at ¶ 2177 (October 29, 2007).

The Commission has rejected a proposal to classify all Priority Mail contracts with cost coverages within a predefined range as a single “Priority Mail Group” product because the contracts would have had different cost or market characteristics. Docket No. MC2009-25, Order No. 226 at pp. 7-10 (June 19, 2009). The Commission held that such a broad “product” would undermine PAEA’s most important safeguards. *Id.* at 8, citing Docket No. RM2007-1, Order No. 26 at ¶ 3070 (August 15, 2007) (“Aggregating postal services into only a few products . . . forfeits transparency and serves no legitimate business or regulatory need. Stated differently, it will not provide for accountability, a bedrock principle underlying the PAEA.”).

Based on the Postal Service’s public description of the current proposal, cost and market characteristics both could vary significantly from one GEPS contract to another

even more than for the rejected Priority Mail Group. Different contracts would contain different combinations of the following factors:

- A revenue commitment -- apparently not a cost-sensitive volume commitment -- anywhere within 8 different (undisclosed) revenue tiers;
- Entry at an International Service Center, at designated locations within 200 miles of an ISC, or at any of a large number Business Mail Acceptance Units located across the country; and
- A mix of Express Mail International and Priority Mail International pieces of different shapes that could range from 100% EMI pieces to 100% PMI pieces, or anywhere in between.

Request at 4-5. In addition, there would be ten different country categories, with volume mixes that would differ by shape, weight, and type of service (EMI or PMI) by country under each contract, and different mailers could use different postage payment methods. Id. Each of these factors by itself, let alone in combination, could greatly affect the costs of a specific contract.

The Postal Service also states that it will make “[n]o distinction between mailers based on industry or other individual criteria . . .” Id. at 9. Thus, it will offer the non-published rates to mailers with any number of different market characteristics.

PAEA prohibits such a broad product grouping. See Order No. 226 at 9-10 (noting that volume minimums, postage payment methods, shape, weight, and dropshipping are all criteria that may have distinct cost or market characteristics and concluding that “[t]he Commission does not view mailings with significantly different costs or mailings sent by mailers with different market characteristics as functionally equivalent . . .”). Defining a product so broadly “would diminish the effectiveness of the Commission’s review of the Postal Service’s annual compliance report since the Commission’s annual compliance determination focuses on compliance at the product

level.” Id. at 8. It would also undermine substantive ratemaking requirements, such as the requirement that each competitive offering must cover its attributable costs. See 39 U.S.C. § 3633(a)(2). If all these contracts were lumped together as one product, arguably all of them together need only cover their total attributable costs, rather than each contract covering its own costs. See Request at 7.

As the Commission has already recognized,

“[a]bsent the discipline that such accountability imposes, both the Postal Service and the Commission roles under the PAEA may be compromised. For example, the Postal Service may lack agreement-specific details on profitability of the agreement, while the Commission would be unable to assess whether the agreement complied with the statute.”

Order No. 26 at ¶ 3079.

If approved, the proposal should be subject to the requirements for “rates or classes of general applicability.”

A “rate (or class) of general applicability is one that is available nationwide to all mailers equally, i.e., on the same terms.” Order No. 26 at ¶ 3026. Rates of general applicability must meet certain statutory requirements. See 39 U.S.C. § 3632(b)(2).

The rates under this proposal would be available nationwide on the same terms to a wide spectrum of mailers. There would be “[n]o distinction between mailers based on . . . individual criteria . . .” Request at 9.² The proposed offering will be available only at “specific approved prices” that “are set in advance.” Request at 6, 9. They are “not so much the subject of negotiation as they are the product of a complex

2. The Postal Service states that the proposed rates will be available to “[a]ny small- or medium-sized businesses” that can meet the minimum revenue and entry requirements. Id. Presumably, large businesses that can satisfy those same requirements could also take advantage of the rates. In any event, rates restricted to “any” small or medium-size business but not large mailers are nevertheless “of general applicability in the Nation as a whole or in any substantial region of the Nation . . .” 39 U.S.C. § 3632(b)(2).

combination of cost factors . . .” Id. at 7; see also Response of the United States Postal Service to Chairman’s Information Request No. 1 (August 4, 2010), Response 8 (“[T]he prices are given to customers” and the contracts “are not truly ‘negotiated’ . . .”). Thus, any mailer who meets the various requirements -- as in the case of Parcel Select, for example -- would pay the rates determined by the rate matrix.

That these rates are based on different tiered revenue commitments and differ by entry point does not make them “rates not of general applicability.” See Order No. 26 at ¶ 3026 (“That some mailers may not be able to qualify for the rate, e.g., for failure to satisfy the preparation requirements . . . does not alter the nature of the rate as one of general applicability.”).

The public interest in applying the rules for rates of general applicability strongly outweighs any commercial harm that the Postal Service could arguably suffer. See 39 U.S.C. § 504(g)(3)(A). The Postal Service offers a number of worksharing and volume discounts on competitive products through “commercial” rates that, by definition, are available only to those mailers who can satisfy the preparation, volume, and destination entry requirements. It has never taken the position that those rates are “not of general applicability.” There is no more commercial harm here than there is in making the Postal Service’s Parcel Select rates public. On the other hand, treating these rates as if they were not generally applicable presents a risk of unfairness and discrimination for eligible mailers who may not be aware of the offering’s availability.

Conclusion

The Commission should not add the proposed GEPS at Non-Published Rates offering to the Competitive Product List because the potential contracts involved do not meet PAEA's definition of a "product." Should the Commission approve the proposed offering, it should require the Postal Service to satisfy the terms of 39 U.S.C. § 3632(b)(2).

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