

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

MARKET DOMINANT PRODUCT PRICES
INBOUND MARKET DOMINANT MULTI-SERVICE AGREEMENTS
WITH FOREIGN POSTAL OPERATORS
CANADA POST CORPORATION - UNITED STATES POSTAL
SERVICE BILATERAL AGREEMENT (MC2010-35)
NEGOTIATED SERVICE AGREEMENT

Docket No.
R2012-5

**NOTICE OF UNITED STATES POSTAL SERVICE OF AMENDMENT TO
AGREEMENT**

(November 29, 2012)

This notice concerns an amendment to the bilateral agreement with Canada Post Corporation (“Canada Post” or “CPC”), which was determined by the Commission to be functionally equivalent to the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 contracts on the market dominant product list.¹ The amended agreement was previously filed with both the Commission and the Department of State in accordance with 39 U.S.C. § 407(d) (the “Transparency Filing”), but at the time the amendment was executed, Canada Post had not yet determined when it would launch the inbound product. Canada Post later notified the Postal Service that it anticipates a product launch date of January 14, 2013. Thus, the Postal Service now provides updated financial models demonstrating that the agreement continues to comport with 39 U.S.C. § 3622(c)(10).

Attachment 1 to this Notice is the Postal Service’s application for non-public treatment of these materials. A redacted copy of the amendment is included in the

¹ PRC Order No. 1078, Order Concerning Rate Adjustment For Bilateral Agreement With Canada Post Negotiated Service Agreement, Docket No. R2012-5, December 27, 2011.

public version of this filing as Attachment 2. The full text of the amendment and supporting financial documentation are being filed separately under seal with the Commission. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

I. Background

When the Postal Service and Canada Post negotiated the agreement presented in this docket, they committed to certain marketing and product development initiatives. Those initiatives were outlined in Annex 7 to the agreement. This amendment represents the result of one of those initiatives to which the parties committed. The product is similar to an offering that is found in the bilateral agreements with other foreign postal operators, to which this agreement is a functional equivalent.

The U.S. Postal Service was prepared to launch its version of the product to its customers in the fall of 2012. Canada Post is now preparing to launch the product, which, in turn, prompts the Postal Service to file the amendment and updated financial models with the Commission for its consideration.

II. Application for Non-Public Treatment

The Postal Service maintains that certain portions of the amendment and related financial information should remain confidential. In accordance with 39 C.F.R. § 3007.21, the Postal Service files as Attachment 1 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 1.

III. Conclusion

The Postal Service asks that the Commission take note of the amendment to the agreement previously filed in this docket and the financial models indicating that the agreement continues to comport with the requirements of 39 U.S.C. § 3622(c)(10).

Respectfully submitted,

UNITED STATES POSTAL SERVICE
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November 29, 2012

ATTACHMENT 1

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

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed Amendment To The Canada Post — USPS Contractual Bilateral Agreement 2012-2013 (Amendment). The Postal Service previously provided the Amendment to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). At that time, only the outbound portion of the Amendment was being implemented. As the parties intend to implement the inbound portion of the Amendment beginning January 14, 2013, the Postal Service is now providing financial models to demonstrate that the bilateral agreement continues to comport with the requirements of 39 U.S.C. § 3622(c)(10). The unredacted Amendment and supporting financial workpapers are being filed under seal, while a redacted copy is included as Attachment 2 to this Notice. The redacted financial workpapers are included 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);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (4). 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 establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).¹ Because the portions of materials filed non-publicly 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 e-mail 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 agreements such as the one transmitted here, the Postal Service believes that the postal operator that has signed the document is the only third party with a proprietary interest in the materials. The Postal Service identifies Terry Dunn, General Manager, International Relations, Canada Post Corporation (CPC), as the appropriate contact on behalf of Canada Post. Mr. Dunn's telephone number is (613) 734-8894, and his email address is terry.dunn@canadapost.ca. Canada Post has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Ewa Kowalski, Manager, International Mail Settlement, Canada

¹ 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.

Post Corporation. Ms. Kowalski's telephone number is (613) 734-6201, and her email address is ewa.kowalski@canadapost.ca.²

The Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

(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;

The Postal Service is transmitting an amendment to its bilateral contractual agreement with Canada Post concerning inbound market dominant products. The Amendment defines the terms by which the Postal Service and Canada Post will exchange certain items, including rate information each of them will receive for delivery of the items in their respective territories and accounting information, including the product streams the parties intend to use.

The financial models provide the underlying costs and assumptions made to develop the Postal Service's cost and revenue projections, negotiated pricing, and the cost coverage projections. The Postal Service maintains that the redacted portions of the document should remain confidential. Some of the

² 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-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>.

material redacted from the Amendment is marked because disclosure of it would enable a competitor to deduce the nature of redacted commercially sensitive information. To the extent practicable, the Postal Service limited its redactions in the work papers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b).

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

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Foreign postal operators could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service or with Canada Post. Competitors, including Canada Post, could use the information to assess the costs of the Postal Service of providing a similar service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

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

Harm: Public disclosure of the contract provisions that are being modified by the parties to this Amendment would enable other postal operators to identify the product that is the subject of this commercial contract and the specifically

negotiated terms that Canada Post and the Postal Service have agreed upon to enhance their financial positions with regard to it.

Hypothetical: A foreign postal operator that is a party to the underlying agreement upon which this Amendment is based compares a partially redacted version of this Amendment to the underlying contract to which it is a party. By comparison of the article names and numbers, it is able to determine definitively what contract underlies this one and what competitive product is involved, even if the product name and contract identifying information are redacted. The operator is then able to use the information to determine what terms of the agreement it could expect to negotiate in future business dealings with both Canada Post and the Postal Service, which is information that would otherwise be unavailable to a negotiator.

Harm: Public disclosure of price information in the enclosed contract would provide foreign postal operators or other potential customers extraordinary negotiating power to extract more advantageous rates from the Postal Service and the foreign postal operator that is a party to this contract.

Hypothetical: A foreign postal operator's negotiated pricing information is disclosed publicly on the Commission's website. Another postal operator sees the information and uses the publicly available rate information to the Postal Service's or foreign postal operator's detriment in pricing negotiations, in an effort to extract the payment of comparable rates for delivery of similar items.

Harm: Public disclosure of information in the contract would be used by the Postal Service's competitors, as well as competitors of the foreign postal operator with which the items are exchanged.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the contract from the Postal Regulatory Commission's website. The competitor analyzes the contract to assess the foreign postal operator's prices and/or the Postal Service's underlying foreign delivery costs. The competitor uses that information as a baseline to develop lower-cost alternatives or negotiate its own rates with either CPC or the Postal Service.

The competitor could also use the unredacted version of the contract to refine its market research efforts because it would have evidence from the existence of the contract and its scope in terms of specific products exchanged that the USPS and Canada Post have identified a commercially viable market for such items.

A competing operator that is a party to the general agreement which serves as the framework for this Amendment could use the information contained in the unredacted agreement to demand similar or more favorable terms in its own negotiations with either Canada Post or the Postal Service.

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

Hypothetical: A competing delivery service in the United States obtains unredacted versions of the financial workpapers from the Postal Regulatory Commission's website. It analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to comply with business or legal considerations regarding cost coverage and contribution to institutional costs. It then sets its own rates for a product similar to what the Postal Service is offering Canada Post below that threshold and markets its purported ability to

beat the Postal Service on price for delivery services to only the most profitable markets. By sustaining this strategy, the competitor cherry-picks the most profitable markets, leaving the Postal Service without them to finance provision of universal service of this market dominant product to the more remote delivery areas, where the competitor does not have a cost-efficient delivery network.

(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, as well as their consultants and attorneys, except for the foreign postal operator that is a party to the agreement and that therefore already has access to this information. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for similar products should not be provided access to the non-public materials.

(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.

(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.

**AMENDMENT TO THE "CANADA POST – USPS CONTRACTUAL
BILATERAL AGREEMENT 2012-2013"**

This Amendment modifies the Agreement between the United States Postal Service (USPS) and Canada Post Corporation (the "CPC-USPS bilateral"), signed by the USPS on December 20, 2011, and by Canada Post Corporation on December 21, 2011 pursuant to article 30 of the CPC-USPS bilateral.

This Amendment modifies the Agreement between the United States Postal Service (USPS) and Canada Post Corporation in the following ways:

1. Creation of new Attachment 8 "Agreement on the International Exchange of [REDACTED] between the U.S. Postal Service and Canada Post" and Appendices A and B "Northbound Rates" and "Southbound Rates" respectively to Attachment 8 (the "Agreement" or "Attachment 8"). The parties thereafter agree to incorporate in the Bilateral Agreement this new Attachment 8 which establishes mutually agreed terms and conditions for the exchange of [REDACTED] between the USPS and CPC and which will govern the exchange of [REDACTED] thereafter.
2. Amend Article 29 to add "Attachment 8--Agreement on the International [REDACTED] Items between the U.S. Postal Service and Canada Post" to the list of attachments appearing there.
3. This Amendment shall come into force on the later of the two dates on which it is signed by the Parties' representatives below, and it shall remain in effect for the same term as the CPC-USPS bilateral.
4. Notwithstanding the date on which the Agreement comes into force, its effective date remains subject to the Conditions Precedent of article 18 and the limitations of article 30(b) in that the USPS requires approval of the Postal Regulatory Commission prior to implementation of the southbound portion of the Agreement. The Parties warrant that all other necessary approvals have been obtained; thus, all other aspects of the Agreement and this Amendment shall become effective as of the date of the later of the Parties' representatives' signatures below.
5. The Parties may execute this Amendment in one or more counterparts (including by facsimile or by electronic means such as .pdf format). Not all Parties need be signatories to the same document. All counterpart signed documents shall be deemed an original and one instrument.

All other terms and conditions of the Agreement shall remain in force.

IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Amendment.

CANADA POST CORPORATION

U.S. POSTAL SERVICE



Mr. Jacques Côté
Group President Physical Delivery Network



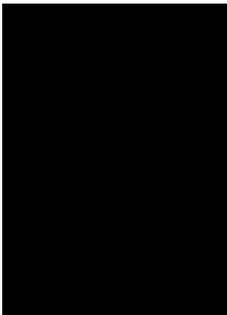
Ms. Giselle Valera
Managing Director, Global Business and
Vice President

Sept. 11/12

(Date)

8/29/2012

(Date)



ATTACHMENT 8

Agreement on the International Exchange of [REDACTED] between the U.S. Postal Service and Canada Post

Article 1: Purpose of the Agreement

The purpose of the Agreement shall be to establish mutually agreed terms and conditions for the exchange of [REDACTED] between the United States Postal Service (USPS) and Canada Post Corporation (CPC) within the framework of the Canada Post-United States Postal Service Contractual Bilateral Agreement 2012-2013.

Article 2: Precedence of Agreements

Terms of agreements shall be applied in the following order of precedence when interpreting this Agreement in the case of doubt, ambiguity, conflict or dispute:

1. Specific changes noted in the Table of Differences below.
2. Terms of the Canada Post Corporation—United States Postal Service Contractual Bilateral Agreement effective January 1, 2012 through December 31, 2013.
3. Terms of the [REDACTED].

Article 3: Operation of the [REDACTED]

The exchange of [REDACTED] between the United States Postal Service and Canada Post shall take place in accordance with the terms of the [REDACTED] and amended from time to time by the Parties to the agreement or in accordance with its terms and as modified by the changes noted in the Table of Differences below. The rates and the enhanced payment set out in Attachment 8 Annex A and B for [REDACTED] will remain in effect for the duration of the Canada Post – United States Postal Service Contractual Bilateral Agreement 2012-2013 and will not be affected by amendments to the [REDACTED] and may be modified only by written agreement between the United States Postal Service and Canada Post.

Any operational routing, distribution, or sortation changes by either Party require concurrence from the other with regard to both the change and the date of its implementation. This concurrence shall not be unreasonably withheld nor shall implementation be unreasonably delayed.

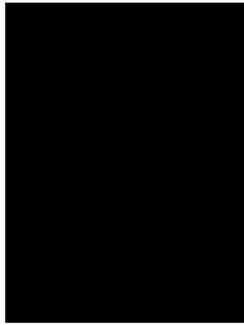
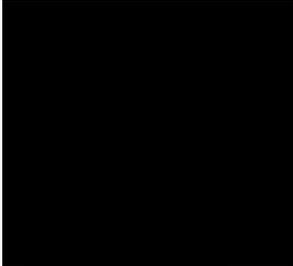


Table – Differences applied and article references

Article reference in the [REDACTED]	Description of the agreed change related to the [REDACTED] to be applied on a bilateral basis between the United States Postal Service and Canada Post Corporation.
List of the Parties	Replace with United States Postal Service (USPS) and Canada Post Corporation (CPC)
Witnesseth:	<p>Replace with the following:</p> <p>WHEREAS the Parties engage in joint marketing and development to develop products to capture growth opportunities in the North American Market, and</p> <p>WHEREAS the Parties have developed product features and requirements for the exchange of [REDACTED] and [REDACTED]</p> <p>WHEREAS the Parties are both parties to the [REDACTED] which provides a basic legal framework for the exchange of such items, and</p> <p>WHEREAS the Parties wish to modify the terms of the [REDACTED] to suit their particular needs better within the context of their own Contractual Bilateral Agreement in accordance with [REDACTED],</p> <p>Now therefore, the Parties hereby Agree as follows:</p>
[REDACTED]	<p>Delete the following paragraph [REDACTED]</p> <p>Replace with Article 15 Temporary Suspension of Service from the Contractual Bilateral Agreement between CPC and USPS</p>
[REDACTED]	<p>Amend [REDACTED] and replace with the following:</p> <p>For greater certainty, the Terminal Dues payable by the Sending Party to the Receiving Party are determined by the Canada Post Corporation-United States Postal Service Contractual Bilateral Agreement 2012-2013, as amended. This agreement shall not affect these Terminal Dues or any penalty provisions applicable to them. [REDACTED]</p>
[REDACTED]	<p>Delete title and text of the article.</p> <p>Replace with "Points of Contact"</p> <p>The points of contact for purposes of correspondence concerning this Agreement shall be the same as those identified in Article 20 of the CPC-USPS Contractual Bilateral Agreement currently in effect.</p>



Replace with the following:

The procedure for settlement of accounts shall be as follows:

The procedure for monthly PREDES based settlement of accounts shall be as follows:

(a) an invoice shall be prepared monthly by the delivery operator showing:



III. the charge payable for receptacles and items received in excess

northbound commercial – mail class/subclass [redacted]

northbound retail – mail class/subclass [redacted]

southbound commercial – mail class/subclass [redacted]

southbound retail – mail class/subclass [redacted]

IV. the total charge payable

(b) consistent with the USPS/CPC settlement agreement, the invoice will be an electronic upload to the appropriate GXS mail box and will occur the Sunday following the second Saturday of the month and consist of an overall summary level (of all products), as well as Origin-Destination summary level,

(c) after verifying the invoice, within 30 days, the origin operator returns a copy with payment to the delivery operator. Should the origin operator wish to dispute the invoice, a copy of the invoice duly amended is to be returned to the delivery operator within those same 30 days. If the delivery operator disputes the amendments, it will confirm the actual data by sending data from the PREDESv2 records to the origin operator. If the delivery operator has not received notice of amendment or acceptance within 30 days from the date of invoicing, the account is regarded as fully accepted.

(d) Payment terms will be consistent with the USPS/CPC settlement process and shall be made 30 days after receipt or next business day if the 30 days after receipt falls on a weekend or a holiday.





	<p>Delete existing text and replace with the following:</p> <p>This Agreement shall bind the Parties for a period beginning on the date upon which the removal of any conditions precedent identified by the Parties for the full approval of the terms of this Agreement has been accomplished, including establishment of the agreed upon rates. This Agreement shall remain in effect so long as the CPC-USPS Contractual Bilateral Agreement for the 2012-2013 period remains in effect.</p>
	<p>Delete title and text and replace title with "Deleted"</p>
	<p>Replace text with the following: The Annexes referred to in the and Appendix 1 to this Agreement are integral parts of this Agreement. Together, they constitute the entire agreement and understanding between the Parties within the context of the CPC-USPS Contractual Bilateral Agreement.</p>
	<p>Delete title and text and replace title with "Deleted"</p>
	<p>Delete title and text and replace title with "Deleted"</p>
	<p>Delete 2nd paragraph, </p>
	<p>Delete title and text and replace title with "Deleted"</p>
	<p>Replace the definition of Agreement with the following: The Agreement on the International Exchange of between the U.S. Postal Service and Canada Post, included as Attachment 8 to the 2012-2013 Canada Post Corporation – United States Postal Service Contractual Bilateral Agreement, as amended.</p> <p></p> <p></p>
	<p></p>

Appendix A to Attachment 8

Northbound Rates

The following rates and stream identifiers are established for the [REDACTED] as described in Attachment 8.

	Service Description (Northbound)	Stream ID = Category + Subclass + Receptacle Type	2012 Rates (SDRs)		2013 Rates (SDRs)	
			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4.1	[REDACTED] *	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4.2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4.3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

Appendix B to Attachment 8

Southbound Rates

The following rates and stream identifiers are established for the [REDACTED] as described in Attachment 8.

	Service Description (Southbound)	Stream ID = Category + Subclass + Receptacle Type	2012 Rates (SDRs)		2013 Rates (SDRs)	
			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3.1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3.2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3.3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3.4	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]