

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

Before Commissioners: Robert G. Taub, Acting Chairman;  
Tony Hammond, Vice Chairman;  
Mark Acton;  
Ruth Y. Goldway; and  
Nanci E. Langley

**Procedures Related to Commission Views**

**Docket No. RM2015-14**

**REPLY COMMENTS OF FEDERAL EXPRESS CORPORATION**

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In the above captioned docket, initial comments have been filed by the United States Postal Service (“USPS”), the Commission’s Public Representative (“PR”), and Joyce Dillard. Federal Express Corporation (“FedEx”) respectfully files the following comments in reply.

**1 FedEx agrees with USPS that the Commission’s approach to reviewing proposed Universal Postal Union (“UPU”) rates should closely parallel its review of rates and classifications for market dominant domestic products but does not agree with USPS on the implications of this observation for the proposed procedures.**

The gist of the initial comment by USPS is that the Commission should develop its “views” under section 407(c)(1) (hereafter “Views”) in a manner that closely parallels the procedures it employs for reviewing adjustments in market dominant rates and classifications established under 39 C.F.R. parts 3010 and 3020 of the Commission’s Rules. USPS argues that, in the development of the Views, commenters and the Commission itself should address *only* “the standards and criteria established by the Commission in parts 3010 and 3020” and *not* the “factors and objectives in 39 U.S.C. § 3622” which serve as the basis for parts 3010 and 3020.

According to USPS, the criteria and standards which are pertinent to Commission review under parts 3010 and 3020 are more limited than the criteria and standards set out in section 3622.

USPS therefore declares, “No examination of the factors and objectives of 39 U.S.C. § 3622 is necessary, and, in fact, *such examination is outside the scope of the Commission’s review under part 3010.*” USPS Comments at 7 (emphasis added). Hence, reasons USPS, by adopting parts 3010 and 3020, the Commission has limited the standards and criteria that may be used to evaluate the lawfulness of proposed UPU rates and classifications. Indeed, USPS asserts that the Commission erred in adopting Views in 2012 in advance of the Doha Congress because the Commission:

analyzed the UPU proposals with respect to *the factors and objectives of 39 U.S.C. § 3622 instead of the standards and criteria established by the Commission in parts 3010 and 3020.* . . . [T]he Postal Service submits that *such an approach is counter to the plain language of 39 U.S.C. § 407(c)(1)*, which provides that the Commission should express its views only on consistency with “the standards and criteria established by the Commission under 39 U.S.C. § 3622. [USPS Comments at 7 (emphasis added)]

FedEx agrees with USPS that, in principle, the Commission’s development of section 407 Views is essentially similar to its review of adjustments in rates and classifications for market dominant domestic products pursuant to 39 C.F.R. parts 3010 and 3020. In both cases, the Commission is evaluating whether fees that the Postal Service charges for acceptance, sorting, transportation, and delivery of documents and packages from one place in the United States to another place in the United States are consistent with public policies established by title 39. In both cases, the Commission should approach its analysis with a similar degree of transparency, reasoned technical and legal analysis, and respect for the rights of affected parties as required by section 503 and the Administrative Procedure Act (“APA”).

However, FedEx does not agree with USPS that parts 3010 and 3020 *prohibit* commenters and the Commission from considering whether the next round of proposed UPU rates and classifications for market dominant products are consistent with statutory requirements of title 39 other than those explicitly mentioned in parts 3010 and 3020. In the first place, it is not clear that parts 3010 and 3020 are so limiting. See, e.g., 39 C.F.R. §3010.11(c) (“Public comments may also address other relevant statutory provisions and applicable Commission orders and directives”). In the second place, USPS’s invocation of the supposedly constrained review available under parts 3010 and 3020 rests upon an assumption that UPU rates “*might be* analogized as a Type 1 rate adjustment,” yet USPS concedes that “the Commission *has not decided the issue directly.*” USPS Comments at 5 (emphasis added). In fact, given the intense reconsideration of product definitions now underway at the UPU, it is hardly self-evident that the rates and classifications that will ultimately be proposed for the next UPU Convention should be considered as entirely analogous to Type 1 rate adjustments. Moreover, FedEx would argue that the international nature of UPU rates necessarily requires the Commission to consider some elements of title 39 (e.g., the national policies of section 407(a)) that are not involved in a review of domestic rates and classifications.

While questions about the proper scope of the Commission’s review of UPU rates and classifications under section 407(c)(1)) raise significant legal issues, they are properly analyzed in the course of a proceeding to develop the Views of the Commission with respect to a specific proposal for new UPU rates and classifications. Such issues cannot and should not be addressed in a rulemaking that is establishing the *procedures* for developing the Views.

The only specific amendment to the Commission’s draft procedures proposed by USPS is

to change the definition of “modern rate regulation” in proposed section 3017.1. USPS proposes to change from “the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622” to “the standards and criteria that the Commission has established in 39 C.F.R. part 3010 with respect to rates and part 3020 with respect to classification pursuant to its authority in 39 U.S.C. § 3622.” FedEx opposes this change. The Commission’s proposal correctly echoes the text of section 407(c)(1). It is a potentially more comprehensive statement since it includes, for example, “standards and criteria established by the Commission under section 3622” (section 407(c)(1)) that may be embodied in Commission decisions or in portions of the Commission’s Rules outside of parts 3010 and 3020.

**2 FedEx strongly agrees with the PR’s call for more transparent procedures.**

The PR offers a number of suggestions that are designed to “facilitate public participation in, and increased transparency of, the Commission’s development of its section 407 views” (PR Comments at 1). FedEx strongly agrees with the objectives of the PR’s comments and submits that by amending the proposed procedures so that they comply with the notice and comment procedures of the APA — as we believe is required by law — the Commission will adequately address the very legitimate concerns raised by the PR.

**3 FedEx agrees with Ms. Dillard in part.**

FedEx agrees with the thrust of the comment by Ms. Dillard that “All public comment should be welcomed on any United States treaty, convention, amendment or any other transactions [since] the public needs a voice and representation.” FedEx suggests Ms. Dillard’s additional implication that the proposed procedures also imply an intent by the Commission to foster “privatization of the government” is, perhaps, due to a misunderstanding of the

Reply Comments of Federal Express Corporation  
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Commission's notice.

Respectfully submitted,

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