

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

Section 407 Proceeding

Docket No. IM 2016-1

MOTION OF FEDERAL EXPRESS CORPORATION

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UNITED STATES OF AMERICA
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Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman
Tony Hammond, Commissioner
Mark Acton, Commissioner

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APPROPRIATE DATA AND EXPLANATIONS

On April 20, 2016, the Commission established Docket No. IM2016-1 to solicit public comments on the general principles that should guide the Commission's development of its views on “whether certain proposals for the 26th Congress of the Universal Postal Union are consistent with the standards and criteria for modern rate regulation established by the Commission under 39 U.S.C. 3622.” Order No. 3253 (Apr. 20, 2016), 81 Fed. Reg. 24147 (Apr. 25, 2016). On May 6, 2016, the Commission posted in the docket five proposals by the Postal Operations Council (POC) of the Universal Postal Union (UPU) to amend a draft version of the 2016 Universal Postal Convention (undisclosed). The 26th Congress of the UPU will be convened in Istanbul in September 2016 to agree on a new Convention and other acts.

In this motion, Federal Express Corporation (FedEx) respectfully requests the Commission to disclose or to require disclosure of appropriate data, explanations, and documents which are necessary to allow affected parties to make informed comments to the Commission to guide its views regarding the consistency of proposed rates and classifications for international

mail with the requirements of U.S. postal law. The data requested is a highly aggregated version of the data which the Commission normally requires in assessing the lawfulness of rates of market dominant products. The explanations and documents requested are similar to those that accompany every proposal to adjust rates for market dominant products. To enable informed comments in this docket, FedEx urges the Commission to make available the requested information as soon as possible.

1 The need for transparency of basic information concerning the proposed rates

The main thrust of the POC proposals posted by the Commission is a revision of the “terminal dues” provisions of the Universal Postal Convention. “Terminal dues” are charges that post offices pay each other for the “last mile” delivery of inbound international “letter post” mail, i.e., documents and parcels weighing up to 2 kilograms. Last mile delivery of inbound international letter post mail is a wholly domestic postal service. Destination sortation and delivery are identical for international and domestic mail. In last mile operations, neither United States Postal Service (USPS) nor any other major post office distinguishes between domestic mail and inbound international mail.¹ Both are sorted and delivered together. In reality, terminal dues are *domestic postage rates* applicable to delivery of international letter post mail.

The specific responsibility of the Commission — and hence the specific task of commenters — is to assess whether the proposed system of terminal dues establishes rates or classifications for *inbound* market dominant letter post mail which are “consistent with the

¹USPS may collect customs duties and customs presentation fees for some inbound international letter post items, but these extra services, not applicable to domestic-origin mail, are not included in the bundle of services compensated by terminal dues.

standards and criteria established by the Commission under section 3622,” the section which directs the Commission to establish “a modern system for regulating rates and classes for market-dominant products.” 39 U.S.C. § 407(c). Almost all of the inbound letter post mail delivered by USPS is classified in the market dominant category and therefore subject to the proposed UPU terminal dues rates.

Four schedules of terminal dues rates are proposed in the POC proposals. The first rate schedule establishes charges for delivery of letter post mail received from the post offices of 40 industrialized countries and territories classified by the UPU in Group I (excluding the U.S.). The second rate schedule establishes charges for delivery of letter post mail received from 27 high-level developing countries classified by the UPU in Group II. Similarly, the third and fourth rate schedules establish charges for delivery of letter post mail received from post offices in Groups III and IV, respectively. See Table 1. These four rate schedules are, in turn, divided into sub-schedules. The rates schedules for Groups I, II, and III establish different rates for *documents* (i.e., “small (P) and for large (G) letter-post items”) and *small packets* (i.e., “bulky letter-post items (E)”). All four schedules provide different rates if the volume of letter post in one direction of a bilateral exchange is above or below 75 tonnes per year.

Table 1. Proposed terminal dues rate schedules for letter post received by USPS, 2018 through 2021

USPS to/from	Description	Number of countries & territories
Group I	Industrialized countries	40
Group II	High-level developing countries	27
Group III	Mid-level developing countries	39
Group IV	Low-level developing countries	94

In order to evaluate rates of market dominant products, the Commission first requires

USPS to provide appropriate data and explanations. Unless commercially sensitive, such data and explanations are provided to affected parties to allow them to make informed comments. The Commission's primary proceeding for evaluating the consistency of market dominant rates with the criteria of section 3622 is the Annual Compliance Determination. As a starting point for both the Commission's review and comments of affected parties, USPS submits a detailed report, the "Annual Compliance Report," which analyzes "cost, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the United States Code." Rule 3950.21(a). This report is accompanied by very detailed supporting documentation. Rules 3950.22 -40. Similarly, in reviewing proposals for adjustments to market dominant rates, the Commission requires USPS to submit, in addition to projections of costs, volumes, and revenues, a "discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c)." Rule 3010.12(b)(7).

In order to comment on whether the proposed terminal dues rates are consistent with section 3622, affected parties need the same transparency of relevant data and explanations as provided in proceedings for evaluating the rates for other market dominant products. Without such information, informed public comment is impossible. Indeed, a failure to inform affected parties of relevant data and explanations before making a regulatory determination with substantial consequences for affected parties may fall short of due process of law.² FedEx urges

² The views of the Commission will have a substantial effect on U.S. participation in the proposed UPU terminal dues system and, therefore, a substantial economic effect on FedEx, which competes against UPU operators in the worldwide package delivery market. Independent economic studies for the Commission have amply confirmed that the UPU terminal dues system results in "[d]istortion of competition for (i) last-mile handling and (ii) first-mile handling of cross-border letter post items." Copenhagen Economics, *Quantification of financial transfers caused by*

the Commission to recognize this basic principle and, in the future, to provide the same level of transparency of data in considering proposed terminal dues rates as provided in the evaluation of proposed rates for other domestic market dominant products.

In the current proceeding such transparency, however, appears impossible because the Commission has not issued regulations explicitly defining what information must be provided in a request for its views on proposals for new terminal dues rates. For the present proceeding, therefore, FedEx requests the Commission to disclose or to request other parties to produce a minimal amount of data and explanations as described below. All of the information requested should be readily available since, if it were not, it would be logically impossible for the Commission to evaluate whether the proposed terminal dues rates are consistent with section 3622. The data requested represents only high-level aggregations without the detailed supporting documentation normally required in evaluation of the rates of other market dominant products. Publication of such high-level data should present no risk of “likely commercial injury to the Postal Service.” 39 U.S.C. § 504(g)(3)(A). Some of the information requested may have been filed with the Commission under a USPS request for confidentiality. If so, FedEx requests the Commission to terminate the non-public status of such information pursuant to Rule 3007.30. In other cases, the requested information may be in the hands of the USPS or the State Department, in which case FedEx is asking the Commission to request the information from those parties.

Universal Postal Union terminal dues (Dec. 2015) at 6. Under section 407(c)(2), the Secretary of State must “ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with the views submitted by the Commission.” The Secretary can disregard the views of the Commission only if and to the extent that “the Secretary determines, in writing, that it is not in the foreign policy or national security interest of the United States to ensure consistency with the Commission’s views.” The Commission’s views therefore limit the authority of the Secretary to participate in UPU terminal dues except to the extent that such participation can be justified by foreign policy or national security interests. In developing its views, the Commission is, therefore, bound to respect the due process requirements of the Constitution. See generally, *United States v. Florida East Coast R. Co.*, 410 U.S. 224 (1973) and the famous, still cogent discussion of that case and administrative due process by Judge Henry Friendly, “Some Kind of Hearing,” 123 U. Pa. L. Rev. 1267 (1975).

2 DATA AND DOCUMENTS REQUESTED

2.1 Volume, cost, and revenue data by terminal dues rate schedule

2.1.1 Inbound letter post mail

In order to provide comments to the Commission to enable it to assess the consistency of the proposed terminal dues rates with U.S. law, affected parties need, at a minimum, high-level summaries of the *inbound* volume, cost, and revenue data for each proposed rate schedule or sub-schedule. An outline of such data is presented in Table 2. Historical data should be provided for a sufficient time period (say, the last five years) so that recent trends and variability in data are evident. The source for this data should be explained by the provider. The Commission should also describe what factors it will consider in “rolling forward” this data to the 2018-2021 period during which the proposed terminal dues rates will be in effect.

Table 2. Data for inbound letter post

(1) Inbound flows	(2) Volume	(3) Weight	(4) Revenue (terminal dues)	(5) Volume variable cost	(6) Product specific cost	(7) Percent in flows < 75 t
Group I: letters and flats						
Group I: small packets						
Group II: letters and flats						
Group II: small packets						
Group III: letters and flats						
Group III: small packets						
Group IV: letter post						

2.1.2 Outbound letter post mail

In the Commission’s public inquiry concerning proposed terminal dues rates for the 2012 Universal Postal Convention, USPS argued that the Commission must consider “the reciprocal relationship between inbound rates and outbound costs for international mail” in assessing

whether proposed terminal dues rates for inbound letter post mail are consistent with section 3622.³ In that proceeding USPS implied that “Depending on the destination country, First Class Mail International (FCMI) rate increases would range from 5 percent to well over 60 percent, affecting primarily the general public. . . . International Priority Airmail (IPA) and International Surface Air Lift (ISAL) rate increases would be significantly higher.”⁴ In the 2012 proceeding, however, commenters were wholly unable to evaluate such statements since USPS provided no data to support or quantify its assertions.

Nonetheless, the 2012 inquiry makes clear that, in the present docket, affected parties need data on outbound as well as inbound letter post mail in order to evaluate the consistency of inbound terminal dues rates with section 3622. FedEx therefore requests the Commission to provide or require the submission of the high-level data for outbound letter post mail. The data should include sufficient detail to indicate how much changes in terminal dues rates may affect total outbound costs for the letter post mail in each rate schedule. See Table 3. As with the inbound data, historical data should be provided for sufficient time period so that trends and variability in data may be assessed and the source for this data should be explained by the provider. Similarly, the Commission should also describe how these data can be rolled forward to the 2018-2021 period.

³ See Docket No. PI2012-1, USPS, “Reply Comments Of The United States Postal Service (August 31, 2012)” at 7 (“the Commission still must understand the reciprocal relationship between inbound rates and outbound costs for international mail in order to understand what is at stake. As both are based on the same terminal dues system, the dynamics of reciprocity compel that a change in the terminal dues system will have proportional effects on both inbound and outbound international letter post.”).

⁴ See Docket No. PI2012-1, USPS, “Comments of the United States Postal Service (August 27, 2012)” at 8. As this quotation indicates, outbound letter post spans several different products of USPS. The data requested, for both inbound and outbound mail, should include all letter post mail regardless of USPS product definitions.

Table 3. Outbound letter post data

(1) Outbound flows	(2) Volume	(3) Weight	(4) Revenue	(5) Volume variable cost other than TDs	(6) Terminal dues	(7) Product specific cost	(8) Percent in flows < 75 t
Group I: letters and flats							
Group I: small packets							
Group II: letters and flats							
Group II: small packets							
Group III: letters and flats							
Group III: small packets							
Group IV: letter post							

2.2 Discussion of the objectives and factors of section 3622(b) and (c)

As noted above, when USPS proposes new rates for market dominant products, it is required to provide a “discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).” An analysis of the proposed rates under the legal criteria of section 3622 by the proposer of the rates is an essential component of a reasoned discussion of proposed rates. The twenty-three objectives and factors of section 3622 encompass all facets of Title 39. It is impossible for commenters (or the Commission) to guess in advance what the factual bases may be asserted to justify the proposed rates. It would extremely helpful for potential commenters for the proposer of the new terminal dues rates to explain how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).

In the present docket, it appears that either the State Department or USPS or both must be viewed as the proposer of the new terminal dues rates. Either the State Department or USPS

acting under the auspices of the State Department negotiated the proposed rates in the POC. The State Department is apparently proposing to sign an international agreement that would apply the proposed terminal dues rates to the inbound post mail of the Postal Service and give the Postal Service the benefit of these rates for delivery of outbound letter post mail. If either the State Department or USPS takes the position that some or all of the proposed terminal dues rates are consistent with section 3622, then it should provide an appropriate discussion of the objectives and factors of section 3622. If either the State Department or USPS does not take the position that the proposed terminal dues rates are consistent with section 3622, then it would be helpful to affected parties for such positions to be clarified.

2.3 All proposals relating to the establishment of rates and classifications

The Commission has so far posted some but not all of the proposals that define the rates and classifications proposed for adoption in the 2016 Universal Postal Convention. While the proposed terminal dues rates are set out Props 20.27.1, 20.28.1, and 20.29.1 — posted by the Commission in this docket on May 6th — these proposals are amendments to a draft revision of the 2012 UPU Convention that is to be set out in Congress Document 15.⁵ Congress Proposal 1, in turn, proposes that the Congress adopt Document 15 as the base text for the 2016 Convention to which additional proposals should be applied. Proposal 1 and Document 15 are thus necessary for understanding the amendments in the proposals posted by the Commission on May 6th. Similarly, Props 20.27.1, 20.28.1, and 20.29.1 define four terminal dues groups but do not identify which countries are in which group or the basis for the distinction. The terminal dues groups are defined in Congress Document 40. In addition, details of the classification of the

⁵ Document 15 has not yet been posted to the UPU's website, but a final draft is set out in CA C1 AUPG 2015.2, Doc 2, Annex 1).

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letter post mail subject to the four terminal dues rate schedules are further specified in Article 12 of the recast Convention (re-mail) and Prop. 20.12.91 (use of UPU forms). FedEx respectfully requests that these proposals, and any other proposals defining rates and classifications for market dominant products, be added to the docket.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy S. Sparks". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Nancy S. Sparks
Managing Director, Regulatory Affairs
Federal Express Corporation

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