

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Section 407 Proceeding

Docket No. IM2016-1

PUBLIC REPRESENTATIVE COMMENTS

(July 21, 2016)

I. INTRODUCTION

On April 1, 2016, the Secretary of State requested the Commission's views on whether certain proposals to be discussed at the 26th Congress of the Universal Postal Union (UPU) are consistent with standards and criteria under 39 U.S.C. § 3622.¹ On April 20, 2016, the Commission issued Order No. 3253 inviting public comments on those proposals affecting market dominant rates and classifications for international postal products and services.² The Commission requested public comments on the principles that should guide the development of its views, as well as comments on the consistency of the proposals subject to subchapter I of chapter 36 with the standards and criteria of 39 U.S.C. § 3622.

The Secretary of State has primary authority with respect to international postal services, including the determination of the position of the United States in negotiations with international bodies such as the UPU. 39 U.S.C. § 407(b)(1). However, the Secretary of State must obtain the views of the Commission on whether a proposed treaty, convention, or amendment that establishes rates or classifications for international market dominant products is consistent with regulations on the standards and criteria established by the Commission pursuant to 39 U.S.C. § 3622. *Id.* The Secretary of State must ensure that each treaty, convention, or amendment concluded under section 407(b) is consistent with the views submitted by the Commission, unless the Secretary of State determines that such

¹ See Letter from Nerissa J. Cook, Deputy Assistant Secretary, U.S. Department of State, Bureau of International Organization Affairs, on behalf of the Secretary of State, April 1, 2016 (State's Request)

² Notice and Order Establishing Section 407 Proceeding, Order No. 3253, April 20, 2016 (Notice).

consistency is not in the foreign policy or national security interest of the United States. 39 U.S.C. § 407(c)(2).

The posted proposals primarily involve changes to terminal dues which are payments made by postal operators to compensate the destination country for the handling, transport, and delivery of letter-post mail from other countries. The framework for terminal dues appears in the Universal Postal Convention, Articles 27, 28 and 29.

II. COMMENTS

A. Lack of Timely Public Access to Essential Information.

A significant limitation on the Public Representative's ability to comment on the impact of the proposals is the inaccessibility of information and details directly related to the proposals. The Commission issued the Notice establishing this proceeding on April 20, 2016, but did not post the proposals on its website until May 6, 2016.³ That posting was followed by another notice on June 20, 2016 posting a replacement for one of the five proposals.⁴ Additional information, discussed below, was posted on July 14, 2016.

The initial postings in May and June consist of Attachment A and Attachment B. Attachment A simply identifies the five Proposal Numbers and Proposal Titles.⁵ Attachment B consists of 8 pages covering five separate detailed proposals for modifications of five Articles in legislative format identifying proposed new language and updated rates for the years 2018-2021 with strikethroughs for replaced language and rates. Many paragraphs indicate "no change." The underlying Articles into which these proposals are inserted are apparently unavailable to the public, as well as unavailable to the Public Representative, as they are password protected and confidential within the UPU files. These are draft revisions

³ Notice of Posting of Proposals, May 6, 2016.

⁴ Notice of Posting of Proposal, June 20, 2016.

⁵ 20.1.2 UPU Convention Article 1 Definitions; 20.16.2 UPU Convention Article 16 Basic Services; 20.27.1 UPU Convention Article 27 Terminal dues General provisions; 20.28.1Rev 1 UPU Convention Article 28 Terminal Dues Provisions applicable to mail flows between designated operators of countries in the target system; 20.29.1 UPU Convention Article 29 Terminal dues Provisions applicable to mail flows to, from and between designated operators of countries in the transitional system.

of the 2012 UPU Convention set out in Congress Document 15 that has apparently not been posted on the UPU website, but some Articles of document 15 were posted on July 14, 2016 pursuant to a FedEx motion.⁶ However, the potential impact of the changes is modelled on the UPU's website.⁷ From this, the potential impact of the proposals may be calculated.

It would have been useful if the Commission's Notice for this unusual proceeding, recently established through new Commission rules by Order No. 2960,⁸ had included references to the locations of basic documents available at the UPU and the Department of State. Without ready and open access to the pertinent documents, the public is unable to interpret or adequately comment on the proposals. Transparency should be a guiding principle. Information to determine the impact of the proposals on the Postal Service should be transparent and readily accessible. Transparency should not only apply to the documents within the Postal Service or even the Commission, but also to other institutions having vital information regarding the impact on the Postal Service for Commission consideration. An essential ingredient of transparency is also one of ensuring public access to necessary documents for participation in Commission proceedings, subject to confidentiality constraints. This would provide interested persons the ability to participate fully in agency action *a priori* rather than merely the ability to trace the reasoning behind an agency action *a fortiori*.

The need to review all relevant documents is especially important in this proceeding where the Commission's views offered to the Secretary of State carry much greater weight than would merely advisory views expressing recommendations for the Secretary of State's consideration. The law requires, under section 407(c)(2), the Secretary of State is to ensure

⁶ See, Motion of Federal Express Corporation (FedEx Motion), June 16, 2016, at 9. The FedEx Motion seeking access to information was recently acted upon by the Commission. Order Granting, In Part, Request for Data and Explanations, July 14, 2016, Order No. 3427. Although the Commission's order provided for the posting of limited information regarding UPU Document 40 and a few Articles of UPU Document 15, Annex 1, that access was not posted until 7 working days before public comments were due. It also provided for posting the UPU website address of an impact tool to forecast the financial impact of the terminal dues proposals.

⁷ UPU Impact Tool (VI of the 2018-2021 cycle) and Instructions can be found on the UPU's website at [http://www.upu.int/nc/en/activities/terminal-dues-and-transit-charges/2018-2021-cycle.html?sword_list\[0\]=terminal&sword_list\[1\]=dues](http://www.upu.int/nc/en/activities/terminal-dues-and-transit-charges/2018-2021-cycle.html?sword_list[0]=terminal&sword_list[1]=dues).

⁸ Docket No. RM2015-14, Order Adopting Final Rules on Procedures Related to Commission Views, December 30, 2015. The order established new rules as 39 C.F.R. part 3017-Procedures Related to Commission Views.

that each treaty, convention, or amendment concluded under section 407(b) is consistent with the views submitted by the Commission. If the advice the Commission receives and in turn relays to the Secretary of State is based on inadequate or faulty information, the Secretary of State may by law need to make a treaty, convention, or amendment consistent with Commission views based on inadequate or faulty information.

In responding to the Department of State, the Commission should urge as a matter of principle that the Department of State and the Universal Postal Union Congress make all relevant documents, subject to confidentiality claims, available in a timely manner for the Commission and, in turn, for the public to assist the Commission in its review.

When proposals were offered for the 2012 UPU Congress, there were many more proposals than the few made available to the Public Representative to be reviewed for consistency with 39 U.S.C. § 3622. For instance, for the 2012 UPU Congress, the Commission's Public Representative stated that it appeared only a few of the approximately 400 proposals offered were available for his review.⁹ As the Public Representative there noted, many other proposals might have an impact on section 3622 rates. The Commission's subsequent Response to the Department of State indicates that it reviewed approximately 400 proposals.¹⁰ The Response indicates many of the proposals had a potential impact on section 3622 rates, yet they were not available to the Public Representative for review. There is no reason to expect that the same situation is not also present in this proceeding.

B. Market Dominant Inbound Mail Remains Non-Compensatory

The Commission's Notice requested comments on the principles that should guide the development of its views. Notice at 2. In addition to the above discussed principle, the most fundamental principle that should guide the Commission's response is to encourage the

⁹ Docket No. PI2012-1, Public Representative Comments, August 27, 2016, at 4.

¹⁰ Commission Response to Section 407(c)(1) Request for Views in Connection with 2012 Universal Postal Union Congress in Doha, Qatar, September 12, 2012, at 1 (Response).

market dominant inbound International mail rates to be fully compensatory as soon as feasible consistent with the objectives of title 39 and other policies including those invoked by the Department of State. In furtherance of this principle, the Commission should continue to urge, as it has in the past, that the Postal Service working through the auspices of the Department of State continue to negotiate additional compensatory bilateral (or multi-lateral) agreements with foreign postal operators. See FY 2011 ACD at 146. The objective is to establish terminal dues rates that closely align with domestic postage rates and provide sufficient cost coverage for the cost of inbound market dominant mail. This principle was expressed by the Commission in its response to the 2012 Universal Postal Union Congress. Response at 3-4.

In the first Commission Annual Compliance Determination Report (FY 2007 ACD), the Commission found market dominant inbound mail to be non-compensatory. This means domestic mailers are subsidizing foreign mailers who use the same postal infra-structure, but who do not contribute to the Postal Service's institutional costs. The Commission found that, "While the UPU is moving, in principle, towards more cost-based, country specific rates, progress has been slow." 2007 ACD at 116.

The cost coverage in FY 2007 for First-Class Mail International was "far below 100 percent." *Id.* at 121. In the years since, cost coverage had been raised significantly from 60.5 percent in FY 2008 (2008 ACD at 81) to 86.4 percent in FY 2011. 2011 ACD at 145. However, it has remained non-compensatory. While the Commission found in the FY 2015 ACD that market dominant inbound international rates coverage increased above the FY 2014 level, in FY 2015 it was only 71.9 percent, well below the FY 2011 level, and with a negative contribution of \$97.9 million. 2015 ACD at 69. The Commission also concluded that, "Because UPU terminal dues rates are not equivalent to domestic postage rates in the destination country, the Commission considers them discriminatory." *Id.* at 70.

The Commission should follow the principle of compensatory rates and express a view to the Department of State that greater efforts must be made to ensure the rates in question are compensatory and, if the rates as proposed will continue to fall short of full cost

coverage, additional proposals and bilateral agreements to further that principle should be presented.

C. Analysis of Individual Proposals

1. Proposal 20.1.2

Proposal No. 20.1.2, UPU Convention Proposal, Article 1, Definitions.

Proposal. This would add, without deletion of language, new definitions for letter-post, parcel-post, EMS, document and goods items. The new definitions state the items are as described in and conveyed under the Universal Postal Convention and Regulations or lie within the limits specified in the Regulations. Reasons are “See Congress-Doc 39.”

Comment. By their terms, these definitions are consistent with current Universal Postal Convention and Regulations. The proposals do not appear to contravene the provisions of 39 U.S.C. § 3622 or the regulations thereunder.

2. Proposal 20.16.2 Basic Services

Proposal No. 20.16.2 UPU convention Proposal Article 16, Basic Services,

Proposal. This proposal would amend paragraph 2 of Article 16 to separate letters, postcards, and printed papers from small packets and reduce to 500 grammes the defined weight of letters, postcards and printed papers, down from 2 kilogrammes. Letter-post items containing goods only may be up to 2 kilogrammes.

Paragraph 3 would reclassify letter-post items on the basis of both speed of treatment and content of items rather than on either of those characteristics, alone.

The stated reasons for the proposals are: See Congress –Doc 39 Consequence of the first proposal, 20.1.2.

Comment. The proposed new limit on the weight of letters, postcards printed papers and their placement into a different rate category may enhance the Postal Service's revenues. The proposals may increase efficiency, assure adequate revenues and better reflect the value of service provided each class or type of mail service. The proposals do not appear to contravene the provisions of 39 U.S.C. § 3622 or the regulations thereunder. .

3. Proposal 20.27.1 Terminal Dues. General Provisions

Proposal No.20.27.1 UPU convention, Article 27 Terminal Dues. General provisions.

This proposal would revise paragraph 2 of Article 27 to update the resolution number for the Congress list classifying designated operators, countries and territories for the payment of terminal dues.

Proposal.

1. *Terminal dues rates.* This proposal would revise paragraph 7 of Article 27 to increase terminal dues rates, year over year 2018-2021, for M bags weighing less than 5 kilogrammes, by annual percentages of 2.86 percent, 2.78 percent and 2.71 percent. The proposed increases would raise the terminal dues rate from 0.885 SDR in 2017 to 0.988 SDR in 2021 for a total rate increase of 11.6 percent. For comparison, terminal dues rates were increased three times from 2014-2017 by a total of 8.6 percent and would increase three times in the years from 2018-2021 by a total of 8.7 percent.

2. *Registered items.* Proposed revisions to paragraph 8 of Article 27 would increase the registered item rates, year over year from 2018-2021, by annual percentages of 9.09 percent, 8.33 percent and 7.77 percent. However, because of the very large increase for registered items between the established rate of 0.67 SDR in 2017 to a proposed rate of 1.100 SDR in 2018, the total proposed increase for registered items would be 109 percent from 2017-2021. For comparison, registered item rates were increased three times from

2014-2017 by a total of 8.6 percent, but would increase three times in the years from 2018-2021 by a total of 27.3 percent.

3. *Insured items.* Additional proposed revisions to paragraph 8 of Article 27 would increase the insured items rates, year over year from 2018 through 2021, by annual percentages of 7.14 percent, 6.66 percent and 6.25 percent. The proposed increases would raise the insured item rate from 1.34 SDR in 2017 to 1.70 SDR in 2021 for a total increase of 26.7 percent. For comparison, these rates were increased three times in the years 2014 to 2017 by a total of 8.8 percent and would increase three times in the years from 2018-2021 by a total of 21.4 percent.

Comment. The proposed rate increases are substantial, yet consistent with the principle that terminal dues recover appropriate Postal Service costs. These proposed increases would improve cost coverage, help to maintain financial stability, and the measured annual rate increases would further predictability and stability in rates. While increases in terminal dues are also passed along to users of outbound international mail, the proposal's movement toward an improved coverage of inbound mail costs is consistent with 39 U.S.C. § 3622.

4. Proposal 20.28.1.Rev 1

Proposal 20.28.1Rev.1, UPU Convention-Proposal Article 28, Terminal Dues. Provisions applicable to mail flows between designated operators of countries in the target system. The proposal establishes terminal dues for members of the UPU target system, industrialized countries and their territories, and recently transitioned into the target system in 2010 and 2012 and from 2016.

The stated reasons are: See Congress-Doc 40. An example of the calculation for the worldwide average composition of one kilogramme of mail is provided. The example calculates a rate of 4.472 SDR per kilo.

Proposal. The proposal would revise Article 28 to separate rates per item into small (P) letter-post items, large (G) letter-post items and bulky (E) letter-post items and updates rate caps and rate floors for the four years 2018 through 2021. The proposal would revise paragraph 5 to separate small, large and bulky letter-post items and to provide that bulky letter-post items shall be calculated from the P/G format line at 372 grammes, exclusive of taxes.

The proposal would revise paragraph 7 of Article 28 to lower the weight limit on items that are subject to the annual limitation of 13 percent increase in terminal dues revenues to 37.6 grammes for letter-post items in the P/G format and 375 grammes for items in the bulky format.

The proposal revises (and adds) to paragraph 8 of Article 28 to *raise* the existing price cap on mail flows in target system countries entering prior to 2010 for small and large letter-post items for 2018-2021. It also establishes a new cap for bulky letter-post items for those countries for the years 2018-2021.

Paragraph 9 of Article 28 would be revised to *increase the minimum rates* for small and large letter-post items and establish a new minimum rate for bulky letter-post items, for countries in the target system prior to 2010, from 2010, 2012 and 2016, for the years 2018-2021.

Paragraph 10 of Article 28 would be revised to increase substantially the price cap for 2018-2021 for mail flows in the target system from 2010 and 2012 or those in the target system prior to 2010 for small and large letter-post items. It would also add new separate price caps for bulky letter-post items. In addition, paragraph 10 would add new price caps for all items for the years 2018-2021 for mail flows between countries in the target system from 2016 as well as between those in the target system prior to 2010 or from 2010 and 2012 .

Paragraph 13 of Article 28 would be amended for flows below 50 tonnes and country entry dates of 2010 and 2012, to change the total rate calculation to the basis of a worldwide average. Other mail flows below 75 tonnes a year, or for other countries, 40 tonnes in 2021, the weights and items shall be converted into total rate per kilogramme on the basis of a worldwide average composition of one kilogramme of mail.

Comment. The amendments to the per item and per kilogram floor and cap rates will serve to enhance revenues from terminal dues to further the principle that terminal dues should align with Postal Service costs and domestic rates. The proposal is consistent the 39 U.S.C. § 3622.

5. Proposal 20.29.1

Proposal UPU Convention-Proposal Article 29, Terminal Dues. Provision applicable to mail flows to, from and between designated operators of countries in the transitional system. Countries in the transitional system are countries with predominantly smaller volumes and lower levels of postal technology than target system countries and are transitioning to the target system at various speeds.

Proposal. This proposal would revise paragraph 3 of Article 29 to increase rates from 2018-2021 for small and large letter-post items and for bulky letter-post items.

The proposal also would revise paragraph 4 of Article 29 to increase the rates for 2018-2021 mail flows below 75 tonnes a year to the flow threshold specified in Article 28.13. It also adjusts rates for mail flows greater than the flow threshold specified in Article 28.13. The reasons are: See Congress-doc 40. The purpose is to make the threshold follow the threshold for sampling for countries that joined the target system as of 2016.

The rates for small and large letter-post items would increase from 2017 to 2018 by 2.7 percent per item and by 2.6 percent per kilogramme. Then, from 2018 to 2021 the rates would increase by a total of 8.8 percent per item and 8.7 percent per kilogramme. New bulky letter-post rates are proposed to increase by a similar amount between 2018-2021. Also, for lower volume flows, the increase in rates would be similar.

Comment. The proposed rate increases are steady and consistent with the principle that terminal dues recover appropriate Postal Service costs. These proposed increases

would improve cost coverage, help to maintain financial stability, and the measured annual rate increases would further predictability and stability in rates, all consistent with 39 U.S.C. § 3622.

D. CONCLUSION

The Public Representative respectfully submits the foregoing Comments for the Commission's consideration.

Respectfully submitted,

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