

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

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Competitive Product Prices
Global Direct
Negotiated Service Agreements

Docket No. MC2009-9

Competitive Product Prices
Global Direct Contract (MC2009-9)
Negotiated Service Agreement

Docket No. CP2009-10

Competitive Product Prices
Global Direct Contract (MC2009-9)
Negotiated Service Agreement

Docket No. CP2009-11

ORDER CONCERNING GLOBAL DIRECT CONTRACTS
NEGOTIATED SERVICE AGREEMENTS

(Issued December 19, 2008)

The Postal Service seeks to add a new product identified as Global Direct Contracts to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. BACKGROUND

On November 17, 2008, the Postal Service filed a formal request pursuant to 37 U.S.C. 3642 and 39 CFR 3020 *et seq.* to add Global Direct Contracts to the Competitive Product List.¹ The Postal Service indicates that Governors' Decision No. 08-10, July 16, 2008, establishes prices and classifications not of general applicability for Global Direct Contracts.² The Request has been assigned Docket No. MC2009-9.

The Postal Service contemporaneously filed two agreements related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request at 1. The agreements have been assigned Docket Nos. CP2009-10 and CP2009-11.

In support of its Request, the Postal Service filed the following materials: (1) a Statement of Supporting Justification as required by 39 CFR 2020.32;³ (2) certifications of compliance with 39 U.S.C. 3633(a);⁴ (3) two Global Direct Contracts agreements (under seal); and (4) supporting financial data tables (under seal). The Request incorporates by reference Governors' Decision No. 08-10 and the record of proceedings in Docket No. MC2008-7.⁵

In the Statement of Supporting Justification, Frank Cebello, Executive Director, Global Business Management, asserts that each contract will cover its attributable

¹ Request of the United States Postal Service to Add Global Direct Negotiated Service Agreements to the Competitive Products List, and Notice of Filing (Under Seal) Two Functionally Equivalent Agreements, November 17, 2008 (Request).

² See Docket No. MC2008-7, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, July 16, 2008 (Governors' Decision No. 08-10), establishing prices and classifications not of general applicability for Global Direct and Global Bulk Economy Contracts, as well as for Global Plus Contracts 2, which combines Global Direct and Global Bulk Economy services. In that proceeding, the Postal Service indicated that until it entered into contracts with customers for Global Direct, it would not ask the Commission to establish an individual classification for Global Direct Contracts. See *Id.* at 1, n.1.

³ Attachment 1 to the Request.

⁴ Attachments 2 and 3 to the Request.

⁵ The Public Representative raises an important point that for completeness, copies of all documents relevant to Docket No. MC2009-9 should be filed within this docket. See Public Representative Comments in Response to Order No. 137, December 2, 2008, at 6 (Public Representative Comments).

costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment 1, at 2. Thus, Mr. Cebello contends there will be no issue of subsidization of competitive products by market dominant products as a result of these agreements. *Id.*

The Postal Service filed much of the supporting materials, including Governors' Decision 08-10 (in Docket No. MC2008-7), the two Global Direct Contracts agreements at issue, and the financial data tables supporting those agreements, under seal. In its Request, the Postal Service maintains that the agreements and related financial information, including the customers' names and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain under seal. *Id.* at 2-4.

In Order No. 137, the Commission gave notice of the three dockets, appointed a public representative, and provided the public with an opportunity to comment.⁶ The Postal Service, in response to Chairman's Information Request No. 1,⁷ filed supplemental materials on December 5, 2008.⁸

II. COMMENTS

Initial comments were filed by the Public Representative.⁹ William Gensburg filed comments in his capacity as Joint Managing Director, International Transport Solutions, Inc. (International Transport) and subsequently in his capacity as Postal Committee

⁶ PRC Order No. 137, Notice and Order Concerning Global Direct Contracts Negotiated Service Agreements, November 20, 2008 (Order No. 137).

⁷ Chairman's Information Request No. 1 and Notice of Filing of Questions Under Seal, December 1, 2008.

⁸ Notice of United States Postal Service of Filing of Responses to Chairman's Information Request No. 1, December 5, 2008.

⁹ Public Representative Comments in Response to Order No. 137, December 2, 2008 (Public Representative Comments).

Chair, Express Delivery and Logistics Association (XLA).¹⁰ The Postal Service and the Public Representative filed reply comments.¹¹

The Public Representative Comments include discussion of the Global Direct Contracts product in general, and the adequacy of cost coverage in the CP2009-10 and CP2009-11 agreements. Public Representative Comments at 2-7. The Public Representative expresses concern that the Postal Service can use Universal Postal Union terminal dues rates¹² for competitive products like Global Direct Contracts, while Universal Postal Union terminal dues rates are not available to competitors. *Id.* at 7. The Public Representative believes that use of Universal Postal Union terminal dues rates may allow the Postal Service to hinder competition in the market for these types of competitive products. *Id.* at 8.

International Transport echoes the Public Representative's concerns regarding the Postal Service's use of Universal Postal Union terminal dues rates for a competitive product, and believes such an advantage does not comport with the PAEA. International Transport Comments at 1. Both ask the Commission to open a public inquiry into appropriateness of accessing Universal Postal Union terminal dues rates for competitive products. Public Representative Reply Comments at 2, International Transport Comments at 2. XLA comments that the Postal Service enjoys a competitive advantage as it is represented at the State Department, which is responsible for overall formulation of international postal policy. XLA Comments. However, XLA

¹⁰ Comments of William Gensburg of International Transport Solutions, Inc. Pursuant to the PRC Order 137, December 4, 2008 (International Transport Comments); Comments of Express Delivery and Logistics Association Reflecting Comments by the USPS and Public Representative Pursuant to the PRC Order 137, December 11, 2008 (XLA Comments).

¹¹ Reply of United States Postal Service to Comments in Response to Order No. 137, December 9, 2008 (Postal Service Reply Comments). Reply Comments by the Public Representative in Response to Order No. 137, December 9, 2008 (Public Representative Reply Comments).

¹² The Universal Postal Union is a specialized agency of the United Nations that facilitates the exchange of international mail among its 191 member countries. Terminal dues are payments made between postal administrations for the costs incurred by the destination administration to deliver international letter mail weighing up to 4.4 pounds.

acknowledges that its comments concerning the Postal Service's representation at the State Department may be beyond than the issues addressed in Docket No. MC2009-9. *Id.*

The Public Representative states that these agreements "overtly comport with the requirement that they will generate sufficient revenue to cover attributable costs for the services provided," and add to the 5.5 percent minimum institutional cost coverage. Public Representative Comments at 5. The Public Representative acknowledges that, based on a review of the materials the Postal Service filed under seal, these agreements are functionally equivalent. *Id.* at 6. The Public Representative also encourages the Commission's approval of these agreements. Public Representative Reply Comments at 2.

III. COMMISSION ANALYSIS

In reaching its findings and conclusions, the Commission has reviewed the Request, the agreements and the financial analyses provided under seal, and all comments.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Global Direct Contracts to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements, including a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Global Direct Contracts as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially

above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns.

39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment 1, at 3. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar international shipping services. *Id.* Finally, the Postal Service states that there are multiple market options for international shipping services including private consolidators, freight forwarders and integrators, all which offer services analogous to the agreements at issue. *Id.* at 4. Accordingly, the Postal Service states that since the market for international shipping services similar to Global Direct Contracts is highly competitive, and served by large shipping companies, it will not likely have any negative impact on small business concerns. *Id.* at 4-5.

The Public Representative supports the proposed classification of Global Direct Contracts as a competitive product. Public Representative Reply Comments at 2. International Transport and XLA do not believe that classification of Global Direct Contracts as a competitive product comports with the PAEA, yet they do not propose an alternative classification. International Transport Comments at 1, XLA Comments. The Public Representative and International Transport both express concern that the Postal

Service may be able to access Universal Postal Union terminal dues for competitive products. Public Representative Comments at 7-10, International Transport Comments.

In response to the Public Representative's and International Transport's concern, the Postal Service contends that is not accessing Universal Postal Union terminal dues rates for the Global Direct Contracts product. Postal Service Reply Comments at 2. The Postal Service maintains that it is in the same position as any private entity that wishes to negotiate rates with the foreign posts for similar services. *Id.*

The Public Representative's and International Transport's objection that the Postal Service has regulatory advantages is beyond the scope of this proceeding. The issues presented by the Postal Service's filing are whether the proposed agreements are consistent with the policies of sections 3632, 3633, and 3642 of title 39. The issues raised by the Public Representative, XLA, and International Transport concerning competitive advantages enjoyed by the Postal Service are beyond the scope of this proceeding.

Having considered the statutory requirements, the support offered by the Postal Service, and all comments, the Commission finds that Global Direct Contracts is appropriately classified as a competitive product and should be added to the Competitive Product List.¹³

Functional equivalence. The Postal Service claims the agreements in Docket Nos. CP2009-10 and CP2009-11 are functionally equivalent in that they share similar cost and market characteristics, encompass customers who send mail directly to foreign destinations and desire that their mail bear the indicia of the foreign country, and cover the same services to the same foreign destination. Request at 5-6. The Postal Service requests that the Commission classify these agreements as one product on the

¹³ In Docket No. RM2007-1, the Commission previously accepted and considered comments from multiple parties (XLA included) on the categorization of classes of products, including outbound international mail. See PRC Order No. 43, Order Establishing Ratemaking Regulations For Market Dominant and Competitive Products, October 29, 2007. In that docket, XLA argued that outbound and inbound international mail should be categorized as competitive. *Id.* at 85.

Competitive Products List in the Mail Classification Schedule. *Id.* at 2, 5. The Public Representative agrees that these agreements are functionally equivalent. Public Representative Comments at 6.

Having evaluated the nature of these agreements, the comments, and the supporting financial analyses, the Commission finds that the agreements submitted in Docket Nos. CP2009-10 and CP2009-11 are functionally equivalent, and are properly included within the Global Direct Contracts product on the Competitive Product List.

Cost considerations. The agreements are predicated on unit costs for major mail functions, *e.g.*, acceptance costs, mail processing, and transportation. The Postal Service believes that the financial analyses submitted in support of the agreements show that the prices charged for pieces subject to Global Direct Contracts cover their attributable costs, do not result in subsidization of competitive products by market dominant products, and increase contribution from competitive products. See Request, Attachments 2 and 3.

Based on the data submitted and the Commission's analysis, the Commission finds that both agreements should cover their attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed agreements indicates that they comport with the provisions applicable to rates for competitive products.

Mail Classification Schedule. As part of Governors' Decision No. 08-10, the Postal Service submitted a description of Global Direct Contracts which it describes as contracts giving a rate for mail acceptance within the United States and transportation to a receiving country with the addition by the customer of appropriate foreign postage charged by the receiving country.

The Mail Classification Schedule language proposed by the Postal Service implies that customers using a Global Direct Contracts product would pay the foreign postage directly. However, according to the agreements, the customers affix an image of the appropriate foreign post indicia, while the Postal Service pays the appropriate postage or settlement charge to the foreign post. The draft Mail Classification Schedule language will be modified to reflect the actual payment practice under these agreements.

The Postal Service shall promptly notify the Commission of the scheduled termination dates of these agreements. If either agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Global Direct Contracts as a new product. The agreements specified within Docket Nos. CP2009-10 and CP2009-11 fall within the Global Direct Contracts product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

It is Ordered:

1. Global Direct Contracts (MC2009-9, CP2009-10, and CP2009-11) are added to the Competitive Product List as a new product under Negotiated Service Agreements, Outbound International.
2. The Postal Service shall notify the Commission of the scheduled termination date, and update the Commission if the termination date changes for either contract as discussed in this Order.

Docket Nos. MC2009-9
CP2009-10
CP2009-11

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3. The Secretary shall arrange for the publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary

Docket Nos. MC2009-9
CP2009-10
CP2009-11

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CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-9, CP2009-10, and CP2009-11. The underlined text signifies the text is new, and shall appear in addition to all other Mail Classification Schedule text.

Docket Nos. MC2009-9
CP2009-10
CP2009-11

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PART B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

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Outbound International

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* * * * * Global Direct Contracts (MC2009-9, CP2009-10, and CP2009-11)

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