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ORDER NO. 4252

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

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

Competitive Product Prices
GEPS 9 (MC2018-6)
Negotiated Service Agreements

Docket No. CP2018-56

ORDER APPROVING ADDITIONAL GEPS 9 NEGOTIATED SERVICE AGREEMENT

(Issued November 30, 2017)

I. INTRODUCTION

The Postal Service seeks to include an additional Global Expedited Package Services 9 (GEPS 9) agreement (Agreement) within the GEPS 9 product.[1] For the reasons discussed below, the Commission approves the Postal Service's request.

II. BACKGROUND

Agreements included within the GEPS 9 product offer price incentives to mailers that use Priority Mail Express International or Priority Mail International.

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[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 9 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, November 17, 2017 (Notice).

On November 17, 2017, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the GEPS 9 product and requests that the Agreement be added to the existing GEPS 9 product. Notice at 2-3. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the GEPS 9 product, the Agreement proposed to be added to the product, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 4.

The Postal Service will establish the effective date of the Agreement as soon as the Commission completes its review. Notice at 3. If the effective date of the Agreement is the first of the month, the Agreement will expire one year after the effective date; otherwise, the agreement will expire on the last day of the month one year after the effective date. *Id.*

On November 20, 2017, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.[2]

[2] *See* Docket No. CP2017-280, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, November 20, 2017.

III. COMMENTS

The Public Representative filed comments on November 22, 2017.[3] No other comments were received.

Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes that the contract is functionally equivalent to the baseline agreement and should generate sufficient revenue to cover its costs. PR Comments at 2. He notes that the Postal Service identifies differences between the contract and the baseline agreement, but concludes that they exhibit similar cost and market characteristics. *Id.* at 3. He also notes that the Commission will have an opportunity to review the financial results for the contract in a future Annual Compliance Determination (ACD). *Id.* at 4.

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement established for the GEPS 9 product; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

Functional equivalence. In Order No. 4199, the Commission approved the addition of GEPS 9 to the competitive product list and designated an agreement as the baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the GEPS 9 product.[4]

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the GEPS 9 product. Notice at 2-3. It asserts that the Agreement fits

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[3] Public Representative Comments on Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 9 Negotiated Service Agreement, November 22, 2017 (PR Comments).

[4] *See* Docket Nos. MC2018-6 and CP2018-11, Order Adding GEPS 9 to the Competitive Product List and Designating Baseline Agreement, November 1, 2017, at 7 (Order No. 4199).

within the draft Mail Classification Schedule language for the GEPS 9 product. *Id*. at 3. The Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms but states that prices may differ. *Id*. at 4. The Postal Service identifies numerous differences between the Agreement and the baseline agreement but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.[5]

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement. The Commission therefore finds that the Agreement may be included within the GEPS 9 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

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[5] Differences include, among others, the renumbering of an article, and the inclusion of new articles. *Id.* at 5.

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. Consequently, the Commission finds that the addition of the Agreement to the GEPS 9 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the GEPS 9 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Agreement to the GEPS 9 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the GEPS 9 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The Postal Service will establish the effective date of the Agreement as soon as the Commission completes its review. Notice at 3. The Postal Service shall promptly notify the Commission of the effective date of the Agreement. If the effective date of the Agreement is the first of the month, the Agreement will expire one year after the effective date; otherwise, the agreement will expire on the last day of the month one year after the effective date. *Id.*

If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2018-56 is included within the Global Expedited Package Services 9 (MC2018-6) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.

2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.

3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

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2500 Negotiated Service Agreements

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2510 Outbound International

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2510.3 Global Expedited Package Services (GEPS) Contracts

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2510.3.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- GEPS 9
  Baseline Reference
  Docket Nos. MC2018-6 and CP2018-11
  PRC Order No. 4199, November 1, 2017
  Included Agreements
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  <u>CP2018-56, expires TBD</u>
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