

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

Before Commissioners:

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

Competitive Product Prices
Global Plus 1D (CP2016-193)
Negotiated Service Agreements

Docket No. CP2017-253

Competitive Product Prices
Global Plus 3 (MC2016-152)
Negotiated Service Agreements

Docket No. CP2017-259

Competitive Product Prices
GEPS 8 (MC2017-183)
Negotiated Service Agreements

Docket No. CP2017-306

Competitive Product Prices
Global Plus 1D (CP2016-193)
Negotiated Service Agreements

Docket No. CP2018-4

ORDER APPROVING MODIFICATIONS AND PROVIDING GUIDANCE REGARDING
EXTENDING NEGOTIATED SERVICE AGREEMENTS

(Issued October 30, 2018)

I. INTRODUCTION

The Postal Service seeks to modify the negotiated service agreements in the above-captioned dockets (Existing Agreements) to extend the expiration dates.¹ For the reasons discussed below, the Commission approves the modifications and provides guidance on the process for requesting extensions to negotiated service agreements.

II. COMMISSION ANALYSIS

The Commission has reviewed the Notices and the accompanying materials filed under seal.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, 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 the 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, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreements are set to expire October 31, 2018. Notices at 1. The Modifications revise the expiration dates of the contracts to November 30, 2018. *Id.*

¹ See Docket No. CP2017-253, Motion for Temporary Relief and Notice of the United States Postal Service of Filing Modification Two(C) to a Global Plus 1D Negotiated Service Agreement, October 29, 2018; Docket No. CP2017-259, Motion for Temporary Relief and Notice of the United States Postal Service of Filing Modification Three(C) to a Global Plus 3 Negotiated Service Agreement, October 29, 2018; Docket No. CP2017-306, Motion for Temporary Relief and Notice of the United States Postal Service of Filing Modification Two to Global Expedited Package Services 8 Negotiated Service Agreement, October 29, 2018; Docket No. CP2018-4, Motion for Temporary Relief and Notice of the United States Postal Service of Filing Modification One (A) to Global Plus 1D Negotiated Service Agreement, October 29, 2018 (collectively, Notices). The modifications are attachments to the Notices (Modifications).

The Modifications do not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreements, as modified, comport with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Timeliness and Motions. The Postal Service filed the Notices only two days before the Existing Agreements are set to expire. The Postal Service explains that the delay in filing resulted from “an internal review of the Postal Service’s contract approval process.”²

In addition to the Modifications, the four Notices each include a motion for temporary relief. Notices at 1 (Motions for Temporary Relief). Because those motions are untimely, the four Notices also each include a motion for late acceptance of the corresponding motion for temporary relief (Motions for Late Acceptance). *Id.* With the approval of the Modifications, all eight motions are moot. However, the untimely filings and large volume of moot modifications relating to extension modifications warrant additional Commission guidance to limit the number of unnecessary filings in the future.

Commission Guidance. The Commission reiterates that the dates on which contracts are scheduled to expire are known.³ Expiration dates are set at the time each contract is approved, or soon thereafter. The Postal Service is aware well in advance of the deadline by which it must act if it desires to extend a contract beyond its original expiration date. Those deadlines are consolidated and clarified below.

The Postal Service may activate an extension clause in a contract by filing notice with the Commission at least seven days prior to the contract’s expiration date.⁴

² Notices at 2. The Commission notes that the Postal Service states that had it filed its Motions for Temporary Relief by October 25, 2018, that they would have been timely. This assertion is incorrect. Because the Existing Agreements expire October 31, 2018, the Postal Service would have had to file the Motions for Temporary Relief no later than October 24, 2018.

³ See, e.g., Docket No. CP2017-266, Order Approving Modification One to GEPS 3 Negotiated Service Agreement, August 31, 2018, at 3 (Order No. 4806).

⁴ See, e.g., Docket Nos. MC2019-10 and CP2019-9, Order Adding Priority Mail Express & Priority Mail Contract 74 to the Competitive Product List, October 26, 2018, at 5 (Order No. 4865).

Because such extensions were approved as part of the contract as originally reviewed, the Commission does not take further action on such notices. In the rare situation where the Postal Service is unable to file the notice at least seven days prior to the contract's expiration date, the Postal Service must file a motion for late acceptance specifying the circumstances justifying the delay.

Should the contract permit modification, the Postal Service may file a Notice including a signed modification extending the contract. Such notices must be filed no later than seven days prior to the contract's expiration date. Under current practice, the Commission reviews a modification that does not materially affect the financial analysis of the agreement without setting it for public comment, and issues an order approving or denying the modification.⁵ Consistent with Order No. 2017, the Commission does not take action on extension modifications filed as part of "Non-Published Rates" type agreements.⁶ In the rare situation where the Postal Service is unable to file the notice at least seven days prior to the contract's expiration date, the Postal Service should file a motion for late acceptance specifying the circumstances justifying the delay.

The Postal Service may also file a motion for temporary relief requesting that the Commission continue to list a contract on the Mail Classification Schedule beyond its original expiration date. The Commission has repeatedly stated that such motions are to be used only in limited circumstances and not as a standard practice.⁷ The

⁵ See, e.g., Docket No. CP2017-306, Order Approving Modification One to GEPS 8 Negotiated Service Agreement and Denying as Moot Motion for Temporary Relief, September 24, 2018 (Order No. 4830). To date the Commission has not denied a modification but has, on occasion, approved one in part. See, e.g., Docket No. CP2017-19, Order Approving in Part Modifications Three and Four to Global Reseller Expedited Package Services 2 Negotiated Service Agreement and Denying as Moot Motions for Temporary Relief, November 28, 2017 (Order No. 4240).

⁶ Docket No. CP2013-35, Order Concerning Motion for Temporary Relief Regarding Contract with Serial Number Ending in 0017 and Providing Guidance on Motions for Temporary Relief, March 13, 2014, at 3 n.7 (Order No. 2017).

⁷ See, e.g., Docket No. CP2012-38, Order Granting Second Motion for Temporary Relief, August 26, 2015, at 2 (Order No. 2685); Docket No. CP2013-83, Order Granting Third Motion for Temporary Relief, December 14, 2016, at 2 (Order No. 3665); Docket No. CP2014-57, Order Granting Motion for Temporary Relief, July 13, 2017, at 2 (Order No. 4001).

Commission has directed the Postal Service to state with particularity the circumstances justifying the requested extension. Order No. 4001 at 2. Such motions are to be filed at least seven days prior to contract expiration.⁸ If such motions are not timely filed, the Postal Service must meet the higher burden of demonstrating “compelling circumstances.”⁹

Filing a notice of modification simultaneously along with a motion for temporary relief will rarely, if ever, be necessary. For example, in the instant dockets, in the event that the Commission had not accepted the Postal Service’s explanation for the untimely filing of the Modifications, the untimely Motions for Temporary Relief would have been held to the even higher “compelling circumstances” standard, making their inclusion redundant.

Other considerations. The Existing Agreements, as modified, are set to expire November 30, 2018. Notices at 1.

If any of the Existing Agreements, as modified, are terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission in the respective docket(s).

In conclusion, the Commission approves the Existing Agreements, as modified. The Motions for Temporary Relief and Motions for Late Acceptance are denied as moot.

⁸ Docket No. CP2009-38, Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012, at 2 (Order No. 1523).

⁹ See *id.* See also, Docket No. CP2017-266, Order Denying Motion for Temporary Relief, August 30, 2018, at 2-3 (Order No. 4803)

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves, as modified, the Global Plus 1D negotiated service agreement, filed in Docket No. CP2017-253.
2. The Commission approves, as modified, the Global Plus 3 negotiated service agreement, filed in Docket No. CP2017-259.
3. The Commission approves, as modified, the GEPS 8 negotiated service agreement, filed in Docket No. CP2017-306.
4. The Commission approves, as modified, the Global Plus 1D negotiated service agreement, filed in Docket No. CP2018-4.
5. The Postal Service shall notify the Commission in the respective docket(s) if any of the Existing Agreements, as modified, terminate prior to the revised expiration date, November 30, 2018.
6. The Postal Service's Motions for Temporary Relief and Motions for Late Acceptance are denied as moot as described in the body of this order.

By the Commission.

Stacy L. Ruble
Secretary