

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 ADDRESSING MODIFICATIONS, GRANTING TEMPORARY RELIEF,  
AND PROVIDING GUIDANCE

(Issued December 14, 2018)

## I. INTRODUCTION

The negotiated service agreements in the above-captioned dockets (Existing Agreements) expired November 30, 2018.<sup>1</sup> The Postal Service now seeks to modify the Existing Agreements to extend the expiration dates until December 31, 2018.<sup>2</sup> For the reasons discussed below, the Commission denies as moot the extension modifications, but exceptionally grants the requested extensions in the form of temporary relief.<sup>3</sup> The Commission also provides additional guidance to explicitly preclude future extensions requested after a contract has already expired.<sup>4</sup>

## II. COMMISSION ANALYSIS

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

*Modifications.* In Order No. 4866, the Commission issued guidance on the extension of negotiated service agreements. The Commission stated that “[s]hould 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.” Order No. 4866 at 4. Modifications to the

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<sup>1</sup> See Docket No. CP2017-253, Notice of the United States Postal Service of Filing Modification Two(D) to a Global Plus 1D Negotiated Service Agreement, December 11, 2018, at 1 (CP2017-253 Notice); Docket No. CP2017-259, Notice of the United States Postal Service of Filing Modification Three(D) to a Global Plus 3 Negotiated Service Agreement, December 11, 2018, at 1 (CP2017-259 Notice); Docket No. CP2017-306, Notice of the United States Postal Service of Filing Modification Three to Global Expedited Package Services 8 Negotiated Service Agreement, December 11, 2018, at 1 (CP2017-306 Notice); Docket No. CP2018-4, Notice of the United States Postal Service of Filing Modification One(B) to Global Plus 1D Negotiated Service Agreement, December 11, 2018, at 1 (CP2018-4 Notice) (collectively, Notices).

<sup>2</sup> Notices at 1. The modifications are attachments to the Notices (Modifications). The modification in Docket No. CP2017-259 also updates the name and contact information of the customer. CP2017-259 Notice at 2.

<sup>3</sup> The modification in Docket No. CP2017-259 is granted in part to permit updating the name and contract information of the customer.

<sup>4</sup> See Docket Nos. CP2017-253, *et al.*, Order Approving Modifications and Providing Guidance Regarding Extending Negotiated Service Agreements, October 30, 2018 (Order No. 4866).

Existing Agreements thus should have been filed no later than November 23, 2018. Instead, the Postal Service filed on December 11, 2018, 18 days after the deadline and 11 days after the Existing Agreements already expired. Order No. 4866 further states: “[i]n 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.” *Id.* The Postal Service did not file motions for late acceptance in these dockets.

The Postal Service notes that Order No. 4866 “does not provide specific guidance concerning this particular situation” where signed modifications are filed to extend contracts after those contracts have already expired.<sup>5</sup> The Commission has repeatedly reminded the Postal Service of the importance of timely filings and regular order.<sup>6</sup> Order No. 4866 did not provide specific guidance on this particular situation because the Commission did not anticipate a circumstance so far outside of regular order that the Postal Service, being in possession of modifications timely signed by the customers no later than November 14, 2018,<sup>7</sup> would neglect to file them with the Commission until December 11, 2018, after the contracts had each expired.

The Postal Service explains that the delay was due to “ongoing revisions to the Postal Service’s negotiated service agreement process.”<sup>8</sup> The Commission is cognizant of the disruptions an internal review may cause, but cautions the Postal Service that such a review cannot relieve it of the obligation to make timely filings.

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<sup>5</sup> CP2017-253 Notice at 2; CP2017-259 Notice at 2; CP2017-306 Notice at 2; CP2018-4 Notice at 1.

<sup>6</sup> See, e.g., Docket No. CP2016-152, Order Granting Motion for Temporary Relief, June 28, 2018 (Order No. 4690).

<sup>7</sup> See CP2017-253 Notice, Attachment 1 at 2 (showing customer signature date of November 2, 2018); CP2017-259 Notice, Attachment 1 at 3 (showing customer signature date of November 6, 2018); CP2017-306 Notice, Attachment 1 at 3 (showing customer signature date of November 6, 2018); CP2018-4 Notice, Attachment 1 at 2 (showing customer signature date of November 14, 2018).

<sup>8</sup> CP2017-253 Notice at 1; CP2017-259 Notice at 1; CP2017-306 Notice at 1; CP2018-4 Notice at 1.

The Postal Service's delay also renders the Modifications ineffective at extending the Existing Agreements. Upon reaching their expiration dates on November 30, 2018, the Existing Agreements lapsed. Providing to the contract partner the negotiated rates in the Existing Agreements would, at this point, require the lapsed contracts to be reinstated, which the text of the Modifications—agreed upon in anticipation of timely filing—would not accomplish. As the Commission has previously noted, a modification extending a contract becomes moot upon contract expiration.<sup>9</sup> Accordingly, with the exception of the provisions related to the change in customer name in Docket No. CP2017-259, the Modifications are denied as moot.

*Temporary relief.* In Order No. 4866, the Commission stated: "Filing a notice of modification simultaneously along with a motion for temporary relief will rarely, if ever, be necessary." Order No. 4866 at 5. The Commission appreciates that the Postal Service adhered to that guidance when electing not to submit contemporaneous motions for temporary relief seeking the reinstatement of the Existing Agreements. However, given that the Modifications were filed too late to be effective at providing the relief the Postal Service seeks, this is such a "rare circumstance" where a motion for temporary relief can provide relief that the filed modification cannot. Unlike the Modifications, temporary relief could reinstate the lapsed contracts, and historically the Commission has provided such relief on extremely rare occasion.

In Docket No. CP2019-38, the Commission twice reinstated a lapsed contract.<sup>10</sup> First, in Order No. 1523, the Commission retroactively reinstated the contract "in this

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<sup>9</sup> Docket No. CP2017-266, Order Approving Modification One to GEPS 3 Negotiated Service Agreement, August 31, 2018, at 3 (approving an extension modification on the last business day prior to contract expiration, noting: "[i]f the Commission had not been able to complete its review of the Modification today, the contract would have expired and the Modification would have become moot.")

<sup>10</sup> Docket No. CP2009-38, Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012 (Order No. 1523); Docket No. CP2009-38, Order Granting Emergency Motion of the United Postal Service for Temporary Relief, December 5, 2012 (Order No. 1565). See also Docket No. CP2016-15, Order Authorizing Extension of Priority Mail Negotiated Service Agreement and Denying Motion for Late Acceptance, November 23, 2016 (Order No. 3635) (prospectively reinstating a contract pursuant to a pre-approved extension clause after untimely filing of a Notice of Extension).

instance” and issued guidance requiring future motions for temporary relief to be filed at least seven days prior to contract expiration. Order No. 1523 at 2. The contract had lapsed for a single business day at the time of filing, partially as a result of severe weather. See *id.* at 1-2. In Order No. 1565 the Commission again reinstated the same contract, but this time only prospectively, stating that a retroactive extension was not appropriate due to the serial extensions in that docket and the failure of the Postal Service to follow its guidance in Order No. 1523. Order No. 1565 at 3. The contract again lapsed for one business day before the Postal Service filed for relief. See Order No. 1565 at 1, n.1.

In keeping with this past practice and to avoid further disruption to the Postal Service’s contract partners, the Commission, on its own motion, exercises its discretion to grant the Postal Service temporary relief in these four dockets. The contract partners may receive the corresponding negotiated rates on a start date to be determined by the Postal Service, and ending December 31, 2018. The Postal Service shall file notice in the respective dockets of the start dates. During the interim period in which the Existing Agreements lapsed, the contract partners shall pay the approved prices of general applicability.

*Commission guidance.* The Commission again stresses the importance of timely filings and regular order. Untimely filings waste Postal Service and Commission time and unnecessarily disrupt the Postal Service’s operations and the operations of their contract partners. Accordingly, the Commission expects all future requests to extend negotiated service agreements to be filed according to the guidance provided in Order No. 4866. The Commission will not grant future requests to extend or reinstate contracts that have already expired, whether by activation of an extension clause, filing a signed modification, or moving for temporary relief.

*Other considerations.* If any of the Existing Agreements, as modified, are terminated prior to December 31, 2018, the Postal Service shall promptly notify the Commission in the respective docket(s).

In conclusion, the Commission denies as moot the modification in Docket Nos. CP2017-253, CP2017-306, and CP2018-4, and approves in part and denies as moot in part the modification in Docket No. CP2017-259. The Commission additionally grants the Postal Service temporary relief to reinstate the Existing Agreements from the date the Postal Service files notice in the respective dockets and lasting until December 31, 2018.

### III. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission denies as moot Modification Two(D), filed in Docket No. CP2017-253.
2. The Commission approves in part and denies as moot in part Modification Three(D), filed in Docket No. CP2017-259, as discussed in the body of this Order.
3. The Commission denies as moot Modification Three, filed in Docket No. CP2017-306.
4. The Commission denies as moot Modification One(B), filed in Docket No. CP2018-4.
5. The Existing Agreements in these dockets are each authorized to be in effect starting on the date the Postal Service files Notice in the respective docket and ending December 31, 2018.
6. 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, December 31, 2018.

Docket Nos. CP2017-253, CP2017-259,  
CP2017-306, CP2018-4

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Order No. 4925

By the Commission.

Stacy L. Ruble  
Secretary