

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail Express & Priority Mail Contracts
Priority Mail Express & Priority Mail Contract 22

Docket No. MC2016-20

Competitive Product Prices
Priority Mail Express & Priority Mail Contract 22
(MC2016-20)
Negotiated Service Agreements

Docket No. CP2016-26

Competitive Product Prices
Priority Mail Express Contracts
Priority Mail Express Contract 30

Docket No. MC2016-32

Competitive Product Prices
Priority Mail Express Contract 30 (MC2016-32)
Negotiated Service Agreements

Docket No. CP2016-38

Competitive Product Prices
Priority Mail Express Contracts
Priority Mail Express Contract 34

Docket No. MC2016-93

Competitive Product Prices
Priority Mail Express Contract 34 (MC2016-93)
Negotiated Service Agreements

Docket No. CP2016-118

Competitive Product Prices
First-Class Package Service Contracts
First-Class Package Service Contract 51

Docket No. MC2016-119

Competitive Product Prices
First-Class Package Service Contract 51
(MC2016-119)
Negotiated Service Agreements

Docket No. CP2016-149

Competitive Product Prices
First-Class Package Service Contracts
First-Class Package Service Contract 54

Docket No. MC2016-141

Competitive Product Prices
First-Class Package Service Contract 54
(MC2016-141)
Negotiated Service Agreements

Docket No. CP2016-178

Competitive Product Prices
Priority Mail Express Contracts
Priority Mail Express Contract 38

Docket No. MC2016-161

Competitive Product Prices
Priority Mail Express Contract 38 (MC2016-161)
Negotiated Service Agreements

Docket No. CP2016-232

Competitive Product Prices
Priority Mail & First-Class Package Service Contracts
Priority Mail & First-Class Package Service Contract 65

Docket No. MC2018-61

Competitive Product Prices
Priority Mail & First-Class Package Service Contract 65
(MC2018-61)
Negotiated Service Agreements

Docket No. CP2018-101

ORDER REQUIRING ADDITIONAL INFORMATION

(Issued April 10, 2019)

I. BACKGROUND

When a negotiated service agreement (NSA) terminates prior to its scheduled expiration date, the Postal Service is required to promptly file a notice of termination

with the Commission. The Commission has consistently imposed this requirement starting with Express Mail and Priority Mail Contract 3, in 2009.¹

During the FY 2016 Annual Compliance Review process, the Commission discovered that the Postal Service was not timely filing notices of termination with the Commission, and issued Order No. 3770, which required a senior manager to certify that he or she had reviewed every domestic competitive NSA appearing on the Mail Classification Schedule (MCS) and identified any additional agreements that were terminated prior to their expiration dates.² The Commission also required the Postal Service to file a notice stating the steps it would take to ensure ongoing compliance with the reporting requirements for domestic competitive NSAs. Order No. 3770 at 6. The Postal Service filed the required notice and the certification of the Senior Vice President of Sales & Customer Relations on February 16, 2017.³

Each of the seven NSAs filed in the instant dockets was scheduled to expire after the start of FY 2018.⁴ Therefore each should have had data appearing in the Postal Service's FY 2018 Annual Compliance Report (ACR). Because the Postal Service filed

¹ Docket Nos. MC2009-13 and CP2009-17, Order Concerning Express Mail & Priority Mail Contract 3 Negotiated Service Agreement, January 16, 2009, at 6 (Order No. 172) ("The Postal Service shall promptly notify the Commission if the contract terminates, earlier than 3 years from the effective date of the contract.").

² See Docket Nos. MC2014-8, *et al.*, Order Requiring Notice of Termination and Certification, February 2, 2017, at 2-3, 5-6 (Order No. 3770).

³ Docket Nos. MC2014-8, *et al.*, Notice of the United States Postal Service and Certification Provided in Response to Commission Order No. 3770, February 16, 2017 (Notice and Certification).

⁴ Docket Nos. MC2016-20 and CP2016-26, Order Adding Priority Mail Express & Priority Mail Contract 22 to the Competitive Product List, December 7, 2015, at 9 (Order No. 2852) (showing expiration date of December 8, 2018); Docket Nos. MC2016-32 and CP2016-38, Order Adding Priority Mail Express Contract 30 to the Competitive Product List, December 21, 2015, at 9 (Order No. 2906) (showing expiration date of December 22, 2018); Docket Nos. MC2016-93 and CP2016-118, Order Adding Priority Mail Express Contract 34 to the Competitive Product List, March 15, 2016, at 9 (Order No. 3155) (showing expiration date of March 16, 2019); Docket Nos. MC2016-119 and CP2016-149, Order Adding First-Class Package Service Contract 51 to the Competitive Product List, April 19, 2016, at 9 (Order No. 3251) (showing expiration date of April 20, 2019); Docket Nos. MC2016-141 and CP2016-178, Order Adding First-Class Package Service Contract 54 to the Competitive Product List, June 3, 2016, at 9 (Order No. 3341) (showing expiration date of June 6, 2019); Docket Nos. MC2016-161 and CP2016-232, Order Adding Priority Mail Express Contract 38 to the Competitive Product List, July 7, 2016, at 9 (Order No. 3416) (showing expiration date of July 10, 2019); Docket Nos. MC2018-61 and CP2018-101, Order Adding Priority Mail & First-Class Package Service Contract 65 to the Competitive Product List, December 28, 2017, at 9 (Order No. 4317) (showing expiration date of January 1, 2019).

no data for six of these NSAs, a chairman's information request was issued to determine why no data were submitted.⁵ In its response, the Postal Service stated these six agreements had terminated and that termination notices would be filed.⁶

On January 28, 2019, the Postal Service filed termination notices for those six NSAs, showing termination dates ranging from December 21, 2016, through August 31, 2017.⁷ The Postal Service also filed a termination notice for Priority Mail & First-Class Package Service Contract 65, showing a termination date of July 10, 2018.⁸ Two of these NSAs, Priority Mail Express Contracts 30 and 38, terminated *prior* to the Postal Service's filing of the Notice and Certification, but were not identified in that filing despite the Senior Vice President's certification that all such NSAs had been identified.⁹

II. DISCUSSION

The Commission reiterates the importance of keeping an accurate and up-to-date MCS. See Order No. 3770 at 4. As the Commission stated in Order No. 3770:

⁵ Docket No. ACR2018, Chairman's Information Request No. 3, January 11, 2019, question 17 (CHIR No. 3).

⁶ Docket No. ACR2018, Responses of the United States Postal Service to Questions 1-20 of Chairman's Information Request No. 3, January 28, 2019, question 17 (Responses to CHIR No. 3). The Postal Service also identified submitted data for two other NSAs. Responses to CHIR No. 3, question 17.

⁷ Docket Nos. MC2016-20 and CP2016-26, USPS Notice of Termination of Priority Mail Express & Priority Mail Contract 22, January 28, 2019, at 1 (showing termination date of April 20, 2017); Docket Nos. MC2016-32 and CP2016-38, USPS Notice of Termination of Priority Mail Express Contract 30, January 28, 2019, at 1 (Termination Notice for Priority Mail Express Contract 30) (showing termination date of February 8, 2017); Docket Nos. MC2016-93 and CP2016-118, USPS Notice of Termination of Priority Mail Express Contract 34, January 28, 2019, at 1 (showing termination date of September 16, 2017); Docket Nos. MC2016-119 and CP2016-149, USPS Notice of Termination of First-Class Package Service Contract 51, January 28, 2019, at 1 (showing termination date of August 8, 2017); Docket Nos. MC2016-141 and CP2016-178, USPS Notice of Termination of First-Class Package Service Contract 54, January 28, 2019, at 1 (showing termination date of August 31, 2017); Docket Nos. MC2016-161 and CP2016-232, USPS Notice of Termination of Priority Mail Express Contract 38, January 28, 2019, at 1 (Termination Notice for Priority Mail Express Contract 38) (showing termination date of December 21, 2016).

⁸ Docket Nos. MC2018-61 and CP2018-101, USPS Notice of Termination of Priority Mail & First-Class Package Service Contract 65, January 28, 2019, at 1 (showing termination date of July 10, 2018). FY 2018 data for Priority Mail & First-Class Package Service Contract 65 were submitted to the Commission in Docket No. ACR2018.

⁹ Termination Notice for Priority Mail Express Contract 38 at 1 (showing termination date of December 21, 2016); Termination Notice for Priority Mail Express Contract 30 at 1 (showing termination date of February 8, 2017); see *also* Notice and Certification, Attachment A.

“The requirement that the Postal Service notify the Commission when a domestic competitive NSA terminates prior to the scheduled expiration date is critical to ensuring the MCS accurately reflects the Postal Service’s current offerings.” *Id.* The Commission explicitly ordered the Postal Service to adhere to this requirement in each of these dockets.¹⁰

The Commission has offered the Postal Service ample opportunity to identify and remedy its failures to account for NSA agreements that terminate early, and notes with concern the Postal Service’s continued non-compliance. The Commission is particularly concerned that the changes to internal procedures promised by the Postal Service in the Notice and Certification failed to ensure ongoing compliance. See Notice and Certification at 3-4. It is important to identify why those procedures were insufficient and to devise new procedures that are up to the task of ensuring ongoing compliance.

Accordingly, the Postal Service is ordered to review its internal procedures to determine why the remedial measures described in the Notice and Certification failed to ensure timely filing of notices of termination for the NSAs in these dockets. A notice stating the results of this review and describing the additional steps the Postal Service will take to ensure ongoing compliance shall be filed in the instant dockets no later than 30 days after the date of this Order.

Additionally, the filing of the erroneous certification is itself a very serious matter. When non-compliance has been identified and corrective action ordered, it is imperative that the Postal Service correct the non-compliance as directed, and that the Commission is able to rely on the Postal Service’s certification that the non-compliance has in fact been corrected. To ensure that future certifications filed with the Commission can be relied upon as accurate, the Postal Service is ordered to conduct a thorough investigation to determine how Priority Mail Express Contracts 30 and 38 were omitted from Attachment A of the Notice and Certification despite the certification in Attachment B. A full report stating the findings of this investigation shall be filed in

¹⁰ Order No. 2852 at 7; Order No. 2906 at 7; Order No. 3155 at 7; Order No. 3251 at 7; Order No. 3341 at 7; Order No. 3416 at 7; Order No. 4317 at 6.

Docket Nos. MC2016-32, CP2016-38, MC2016-161, and CP2016-232 no later than 90 days after the date of this Order.

III. ORDERING PARAGRAPHS

It is ordered:

1. No later than 30 days after the date of this Order, the Postal Service shall file a notice in these dockets stating the results of its review of its internal procedures, as described in the body of this Order.
2. No later than 90 days after the date of this Order, the Postal Service shall file a report in the specified dockets stating the findings of the investigation into the Postal Service's filing of the erroneous certification, as described in the body of this Order.

By the Commission.

Stacy L. Ruble
Secretary