

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators
Interconnect Remuneration Agreement –
United States Postal Service and
Specified Postal Operators (MC2010-34)
Negotiated Service Agreement

Docket No. CP2020-141

PUBLIC REPRESENTATIVE COMMENTS

(June 1, 2020)

I. BACKGROUND

The Public Representative hereby provides comments pursuant to Order No. 5514.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice that it entered into the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs).² The Notice concerns the inbound portions of the competitive multi-product Interconnect Remuneration Agreement USPS and Specified Postal Operators (IRA-USPS Agreement).

The Postal Service asserts that the IRA-USPS Agreement is functionally equivalent to the baseline agreement filed in Docket No. MC2010-34 and seeks to include the IRA-USPS Agreement within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-34) product. Notice at 1. The IRA-USPS Agreement contains rates for inbound competitive parcels, packets, and

¹ Order No. 5514, Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, May 18, 2020.

² Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, May 15, 2020 (Notice).

registered mail. *Id.* at 5-6. The Postal Service intends for the IRA-USPS Agreement to become effective July 1, 2020, and continue indefinitely. *Id.* at 5.

To support the IRA-USPS Agreement, the Postal Service filed a redacted version of the IRA-USPS Agreement, a copy of the certification required under 39 C.F.R. § 3035.105(c)(2), and redacted copies of Governors' Decision 19-1. Notice at 4-5; see *id.*, Attachments 2-4. The Postal Service also filed redacted supporting workpapers. Notice at 3.

In conjunction with its original filing, the Postal Service provided signature pages of a number of Foreign Postal Operators (FPOs) that are counterparties to the IRA-USPS Agreement. Notice at Attachment A. In addition, on May 26, 2020 the Postal Service filed notice of additional signatories to the IRA-USPS Agreement.³

The Public Representative also notes that a Chairman's Information Request was issued on May 27, 2020, however the responses will not be received until after these comments are due.⁴ In that inquiry, the Postal Service was asked if the IRA-USPS Agreement is consistent with the Presidential Memorandum⁵ "Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail." See CHIR No. 1, question 1. This question is important because in that Presidential Memorandum, the policy of the executive branch was to further "setting rates charged for delivery of foreign-origin mail in a manner that does not favor postal operators over non-postal operators."

³ Notice of United States Postal Service of Filing Additional Signatories and Other Related Information to Inbound Competitive Multi-Service IRA-USPS Agreement, May 26, 2020.

⁴ Chairman's Information Request No. 1 and Notice of Filing Under Seal, May 27, 2020 (CHIR No. 1).

⁵ Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018, available at: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretarystate-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatorycommission/> (Presidential Memorandum).

II. COMMENTS

The Public Representative has reviewed the Postal Service's Notice and supporting documentation and has two primary concerns. First, the Public Representative is concerned about the functional equivalence of the IRA-USPS Agreement to the baseline agreement. Second, the Public Representative is concerned that, as proposed, there would not be sufficient regulatory oversight to ensure that the IRA-USPS Agreement continuously meets the requirements of 39 U.S.C. § 3633(a). The Public Representative also observes that supporting information filed under seal does demonstrate that the IRA-USPS Agreement will likely meet the requirements of 39 U.S.C. 3633(a).

Functional Equivalence. The Postal Service asserts that IRA-USPS Agreement is functionally equivalent to baseline agreement filed in Docket No. MC2010-34 and that "the relevant cost and market characteristics are similar" without any additional support. Notice at 3 and 9. The Postal Service also identifies articles and annexes that "resemble" articles in the baseline agreement. Notice at 8. However, the Postal Service asserts that the agreements "share many terms and clauses in common." *Id.* The Postal Service provides a list that identifies the portions of the IRA-USPS Agreement that are materially similar to the baseline agreement, and identifies differences. Notice at 7-10.

Based on the Public Representative's review of the IRA-USPS Agreement and the baseline agreement it is not clear that the agreements are functionally equivalent. While there are some threads of similarities between the IRA-USPS Agreement and the baseline agreement, the agreements seem structurally very different. The Public Representative identifies the following differences that impact the IRA-USPS Agreement's functional equivalence with the baseline agreement:

1. The baseline agreement includes both market dominant and competitive offerings, while the IRA-USPS Agreement only include competitive offerings;⁶

⁶ The TNT Post Agreement included both inbound competitive and inbound market dominant portions, but the inbound portions of the IRA-USPS Agreement are only competitive. See PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements With Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, Docket No. R2010-5, September 30, 2010.

2. The baseline agreement was among the Postal Service and a single FPO, while the IRA-USPS Agreement is between the Postal Service and a number of FPOs;
3. The baseline agreement identified the partnering FPO, while the Postal Service has filed IRA-USPS Agreement partnering FPOs underseal; and
4. The IRA-USPS Agreement has many components that differ significantly from the baseline agreement, including the existence of a Steering Committee (Article 9), Quality of Service and Data Incentives (Article 4), and Cost Sharing (Article 10). Notice at 7-8.

These numerous differences equate to a structurally different agreement compared to the baseline agreement. Therefore, the IRA-USPS Agreement is not functionally equivalent to the baseline agreement. Because of the structural differences between the IRA-USPS Agreement and the baseline agreement, the Public Representative recommends that the Commission find that the IRA-USPS Agreement is not functionally equivalent to the baseline agreements, and the Postal Service should refile the IRA-USPS Agreement to be reviewed as a new product pursuant to 39 U.S.C § 3642.

Regulatory Oversight. The Postal Service has proposed the IRA-USPS Agreement be included within the Inbound Competitive Multi-Service Agreements product. The Public Representative is concerned that including the IRA-USPS Agreement as a “sub-product” within the Inbound Competitive Multi-Service Agreements product weakens the requirement that the IRA-USPS Agreement, on its own, meets the requirement that competitive products 39 U.S.C. § 3633(a). Therefore, to ensure the IRA-USPS Agreement annually meets the requirements of 39 U.S.C. § 3633(a), and is held accountable to meet the requirements of 39 U.S.C. § 3633(a), the Public Representative recommends that the Postal Service refile the IRA-USPS Agreement to be reviewed by the Commission as a new product pursuant to 39 U.S.C § 3642. As a competitive product, there will be a stricter standard for the IRA-USPS Agreement to meet the requirements of 39 U.S.C. § 3633(a).

The Public Representative also observes that the IRA-USPS Agreement will include different rates for several FPOs. To ensure that the IRA-USPS Agreement, as a whole, will meet the requirements of 39 U.S.C. § 3633(a), the Public Representative recommends that the Commission adopt reporting requirements similar to the Global Expedited Package Services Contracts – Non-Published Rates (GEPS-NPR) products to monitor the rates given to the FPOs that accede the IRA-USPS Agreement.⁷ The Commission should establish these reporting requirements to ensure that the rates paid by each additional FPO will be compensatory. The Public Representative believes that the reporting requirements associated with GEPS-NPR products have been successful in allowing the Postal Service the flexibility to enter into agreements, while ensuring an effective regulatory regime, therefore the Public Representative recommends a similar regime for the IRA-USPS Agreement.

Financial Workpapers. The Public Representative affirms that the supporting workpapers filed under seal related to the IRA-USPS Agreement demonstrate that the IRA-USPS Agreement, as a whole, will meet the requirements of 39 U.S.C. § 3633(a). The Public Representative notes that as additional FPOs enter the IRA-USPS Agreement it could impact the overall compliance of the IRA-USPS Agreement with 39 U.S.C. § 3633(a). The Public Representative recommends that the Commission establish reporting requirements to ensure that the addition of FPOs do not adversely impact the compliance of the IRA-USPS Agreement with 39 U.S.C. § 3633(a).⁸

III. CONCLUSION

For the reasons discussed above, the Public Representative cannot recommend that the Commission approve the IRA-USPS Agreement as a functionally equivalent agreement to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-34) product. The Public Representative recommends that the

⁷ See e.g. Docket Nos. MC2018-186 and CP2018-260, Order Concerning the Addition of Global Expedited Package Services (GEPS) – Non-Published Rates 14 to the Competitive Product List, July 9, 2018 at 6-8.

⁸ The Postal Service does state that it will “update this docket should those FPOs accede to this agreement.” Notice at 5. The Public Representative recommends that the Commission establish sufficient reporting requirements to ensure that the Postal Service updates are adequate to determine the financial impact of the FPOs that accede the IRA-USPS Agreement.

Postal Service refile the IRA-USPS Agreement as a product pursuant to 39 U.S.C § 3642, which resolve any issues related to functional equivalence, and provide sufficient transparency and accountability related to the IRA-USPS Agreement's compliance with 39 U.S.C § 3633(a). The Public Representative also encourages the Postal Service to ensure all of its agreements are consistent with Presidential Memorandum "Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail." See Presidential Memorandum.

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