

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

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO COMMENTS FILED
BY THE PUBLIC REPRESENTATIVE
(June 10, 2020)

The United States Postal Service (Postal Service) files this response (Response) with the Postal Regulatory Commission (Commission or PRC) to the comments filed in this docket by the Public Representative on June 1, 2020.¹ The Postal Service appreciates the Public Representative's observations, but believes that her concerns could be adequately addressed through the submission of these reply comments and supporting materials.²

I. Summary of PR's Comments

In her comments, the Public Representative confirmed that the supporting workpapers filed under seal by the Postal Service "demonstrate that the IRA-USPS Agreement, as a whole, will meet the requirements of 39 U.S.C. § 3633(a)."³ The Public Representative noted, however, two concerns with the Postal Service's Notice.

¹ Public Representative Comments, Docket No. CP2020-141, June 1, 2020 (PR Comments). Concurrent with this filing, the Postal Service also filed a motion for leave to respond to the PR's Comments. See Motion Of The United States Postal Service For Leave To Respond To Comments Filed By The Public Representative, Docket No. CP2020-141, June 10, 2020.

² *Id.*; Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, Docket No. CP2020-141, May 15, 2020 (Notice).

³ PR Comments, at 5.

First, the Public Representative noted that the “Interconnect Remuneration Agreement USPS and Specified Postal Operators” (referred to as the “IRA-USPS Agreement”) is structurally different from the baseline agreement that the Postal Service filed in Docket No. MC2010-34, and recommended that: (1) the PRC find that the IRA-USPS Agreement is not functionally equivalent to the baseline agreement, and (2) that the Postal Service should refile the IRA-USPS Agreement to be reviewed as a new product pursuant to 39 U.S.C § 3642.⁴ Second, the Public Representative noted that, as proposed, there would not be sufficient regulatory oversight to ensure that the IRA-USPS Agreement will continuously meet the requirements of 39 U.S.C. § 3633(a), and recommended that the PRC adopt reporting requirements similar to the Global Expedited Package Services Contracts – Non-Published Rates products in order to monitor the rates offered to the foreign postal operators that accede the IRA-USPS Agreement.⁵

II. The Postal Service’s Responses

The Public Representative’s suggestion that the Postal Service should refile the IRA-USPS Agreement to be reviewed as a new product pursuant to 39 U.S.C § 3642 would seriously complicate the Postal Service’s business practices and strategies. First, this suggestion could hinder the Postal Service’s efforts to introduce negotiated rates for E format items by July 1, which is a key business strategy for the Postal Service that has ramifications for the Postal Service’s ability to continue service including successful execution of customer agreements and upcoming published rate changes. Additionally, the practical effect of the Public Representative’s argument

⁴ PR Comments, at 3-4.

⁵ PR Comments, at 4-5.

would be to obstruct substantial mail exchange with the Postal Service's key trading partners, and also affect the outbound settlement rates used by the Postal Service to support the financials for hundreds of outbound agreements scheduled to take effect on July 1, to coincide with new, self-declared rates for inbound E format items.

Moreover, the Public Representative's recommendation runs counter to the Commission's regular practice. The Commission has undertaken to treat all inbound competitive agreements collectively in the single product grouping.⁶ The fact that contracts may have different terms or concern only specified services does not detract from their functional equivalence: they are intended to provide rates and terms (including service performance terms as the instant contract does) for inbound packets, parcels, and EMS. The IRA-USPS Agreement concerns packets and parcels, and is no different than many of the agreements that the PRC has recently classified in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.⁷ Indeed, there is a great variety of templates of inbound competitive agreements.⁸

⁶ PRC, (Draft) Mail Classification Schedule, posted March 31, 2020, 2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, at 592-593, available at <http://www.prc.gov/mail-classification-schedule>.

⁷ See PRC Order No. 5437, Order Approving Transfer of Market Dominant Negotiated Service Agreements to the Competitive Product List, Docket No. MC2020-73, February 19, 2020, at 10-11.

⁸ See PRC Order No. 218, Order Concerning Royal Mail Inbound Air Parcel Post Negotiated Service Agreement, Docket Nos. MC2009-24 and CP2009-28, May 29, 2009, at 10; PRC Order No. 4308, Order Approving Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2018-96, December 28, 2017, at 7; PRC Order No. 5224, Order Acknowledging Modification Two to an Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2018-96, September 11, 2019; PRC Order No. 5386, Order Approving Modification Three to an Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2018-96, December 31, 2019, at 5.

Additionally, the Commission did not specifically note in its scheduling order in this matter that the classification questions would be considered in this docket.⁹ This is to be contrasted with Docket Nos. CP2008-8 and CP2008-9, where the Commission gave notice in its scheduling order of the need to consider classification matters in connection with the contracts filed in those dockets and remedial measures were undertaken within the scope of the dockets in question.¹⁰ In Docket Nos. CP2008-8 and CP2008-9, the PRC did not, however, require the Postal Service to refile these contracts.

Without waiver of its position on this matter, and to plan for all contingencies without risk to the Postal Service's business practices and strategies, the Postal Service has undertaken to prepare and furnish as Attachment 1 to this Response a statement of supporting justification and as Attachment 2 draft classification language for the IRA-USPS Agreement. While the Postal Service believes this measure is unnecessary, it is doing so in an abundance of caution and in the interest of avoiding a potential breakdown in relations with foreign postal operators and to ensure continuity with customers in the United States.

Finally, the Public Representative's suggestion that the PRC adopt additional regulatory oversight over the IRA-USPS Agreement through the use of reporting requirements is unnecessary. The IRA-USPS Agreement's financials are quite healthy. To the extent that new rates are introduced in the future for inbound mail under this agreement, the Postal Service commits to submit those rates for advance review with

⁹ PRC Order No. 5514, Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, Docket No. CP2020-141, May 18, 2020, at 3.

¹⁰ PRC Order No. 81, Notice and Order Concerning Prices Under Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9, and CP2008-10, June 6, 2008, at 3.

the Commission at the appropriate time on annual cycles. Indeed, the IRA-USPS Agreement has specific provisions in place to allow the Postal Service to terminate the agreement should the Commission not favorably review new rates under this agreement in the future.¹¹ The Commission can also monitor this docket through the Annual Compliance Report process as it does with all other inbound competitive agreements.

III. Conclusion

The Postal Service respectfully furnishes this information to respond to the Public Representative's Comments.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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¹¹ Notice, at Attachment 2 (Article 12.3 and Annex 9, Section 1).

Statement of Supporting Justification

I, Robert Raines, Jr., Managing Director of Global Business, am sponsoring the request that the Postal Regulatory Commission (Commission or PRC) (1) add the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 2 (Inbound Competitive NPR-FPO 2) product as a separate product grouping to the competitive products list for prices not of general applicability as outlined in the proposed Mail Classification Schedule (MCS) language; and (2) include the “Interconnect Remuneration Agreement USPS and Specified Postal Operators” (referred to as the “IRA-USPS Agreement”), which is the subject of this docket, within the Inbound Competitive NPR-FPO 2. This Statement of Supporting Justification is submitted as a contingency in the event the Commission concludes that it merits treatment as a separate product in the MCS, and is not intended to be an admission that the Postal Service believes that such treatment is necessary.

This Statement of Supporting Justification supports the notice made by the United States Postal Service (Postal Service) in its initial filing in this matter by providing the information required by each applicable subsection of 39 C.F.R. § 3040.132.¹ I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of chapter 36 of title 39 of the United States Code.*

¹ PRC Order No. 5514, Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, Docket No. CP2020-141, May 18, 2020 (Notice).

As explained below in subsections (b) through (i), the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Not applicable.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Section 3633 sets forth three standards for competitive products.

Subsection (a)(1) prohibits the subsidization of competitive products by market-dominant products. Subsection (a)(2) requires that each competitive product cover its attributable costs. And subsection (a)(3) requires that all competitive products collectively cover an appropriate share of Postal Service institutional costs.

As shown in the financial models filed with the Postal Service's Notice, the Inbound Competitive NPR-FPO 2 product will provide sufficient cost coverage. This estimated cost coverage also shows that the creation of the product will not adversely affect the Postal Service's ability to cover its total institutional costs. Hence, there will be no subsidization of this competitive product by market dominant products.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs; (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The addition of the Inbound Competitive NPR-FPO 2 product to the competitive products list will not result in classifying a product over which the Postal Service has market dominance as a competitive product. The Inbound Competitive NPR-FPO 2 product consists of prices offered to foreign postal operators for acceptance, transportation within the United States, and delivery of inbound parcels and packets and registered mail, which are discussed in greater detail in subsection (e) below. Each of the subproducts included in the Inbound Competitive NPR-FPO 2 product are already classified on the competitive product list. International revenue makes up a tiny fraction of total Postal Service revenue. In the recent annual reports of two of the Postal Service's competitors in the international package delivery market, Federal Express reported "[t]otal international export package revenue" of \$10.851 billion for its FY2019, of which \$4.54 billion was described as "[i]nternational domestic" and related to FedEx's "international intra-country operations."² In addition, FedEx offers a number of inbound-to-the-United States products. Also, United Parcel Service (UPS) reported international package operations revenue of \$14.22 billion for its FY2019.³ In addition, UPS offers a number of inbound-to-the-United-States products. A certain percentage of that revenue is probably related to packages shipped to the United States. The Postal Service does not maintain a position of dominance in this market.

² FedEx Corporation, *2019 Annual Report*, (2020), available at https://s1.q4cdn.com/714383399/files/doc_financials/annual/2019/FedEx-Corporation-2019-Annual-Report.pdf?utm_source=InvestorRelations&utm_medium=Referral&utm_campaign=AnnualReport2018&utm_content=FinancialInformationAnnualReports, at 71.

³ United Parcel Service, Inc., *2019 Annual Report*, (2019), available at <http://www.investors.ups.com/static-files/e4d06ff9-8dcd-45a7-a8f5-b400c944455e>, at 42.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696 subject to the exceptions set forth in 39 U.S.C. § 601.*

The Inbound Competitive NPR-FPO 2 product consists of three subproducts that are currently classified as competitive products in the MCS. Thus, all of the services within the scope of this request and notice should likewise be classified on the competitive product list.⁴

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

As noted in part (d) above, major competitors in the market for inbound parcels and packets and registered mail and for other miscellaneous services that are included within the Inbound Competitive NPR-FPO 2 product, include Federal Express and UPS, which are widely available to customers in other countries. Private consolidators, freight forwarders, and integrators also offer international carriage arrangements whereby they provide inbound expedited, parcels, and packet shipments under similar conditions.

- (g) *Provide any information available on the views of those who use the product on the appropriateness of the proposed modification.*

Foreign postal operators currently tender inbound parcels and packets and registered mail to the Postal Service for delivery in the United States. The Postal Service has concluded bilateral agreements with many postal operators for competitive services in the past and filed them in individual dockets.⁵ In addition, the Commission granted the Postal Service's request to establish the

⁴ Mail Classification Schedule, March 31, 2020 (with revisions through March 31, 2020), available at <http://www.prc.gov/mail-classification-schedule>.

⁵ *Id.*

Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list, and added several functionally equivalent bilaterals with postal operators to that product grouping.⁶ This indicates that foreign postal operators, as well as their end users, find this type of product to be satisfactory.

(h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for the subproducts included in the Inbound Competitive NPR-FPO 2 product is highly competitive. Therefore, addition of the product grouping for Inbound Competitive NPR-FPO 2 will likely have little, if any, negative impact upon small business concerns. By executing agreements conforming to the product description, the Postal Service is giving foreign postal operators' small business customers an additional option for shipping articles to the United States. Small businesses in the United States also benefit from the ability to receive shipments that they have ordered from foreign businesses. Thus, the net impact on small businesses is positive, because of the absence of negative impact on small business competitors, as well as the positive impact on small businesses served by foreign postal operators and the Postal Service.

(i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

Numerous bilateral contracts presented to the Commission as customized bilateral contracts in separate dockets, or as functionally equivalent Inbound

⁶ *Id.*

Competitive Multi-Service Agreements with Foreign Postal Operators, have been favorably reviewed by the Commission. For each of these customized contracts that was added to the competitive product list, the Postal Service filed a notice and the Commission established a docket to review the agreement. Moreover, these new contracts will be an important means to helping ensure continuity of international mail exchanges between the United States and other countries. As indicated above, the Postal Service does not believe separate treatment in the MCS is necessary, but is nonetheless submitting this Statement of Supporting Justification as a contingency in the event that the Commission concludes that the instrument is not functionally equivalent to all other inbound competitive agreements contained in the product grouping known as Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.

2000 COMPETITIVE PRODUCT LIST

INTERNATIONAL PRODUCTS*

Inbound International*

Inbound Competitive Multi-Service Agreements
with Foreign Postal Operators
Inbound Competitive Multi-Service Agreements
with Foreign Postal Operators 1
Inbound Competitive Multi-Service Agreements
with Foreign Postal Operators 2

2001 COMPETITIVE PRODUCT DESCRIPTIONS

2500 Negotiated Service Agreements

2515 Inbound International

2515.2 Negotiated Service Agreement Groups

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 2 (2515.10)

2515.10.5 Products Included in Group (Agreements)

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 2
Baseline Reference
Docket No. CP2020-141

PRC Order No. ####, [Month Day, Year]
Included Agreements

Interconnect Remuneration Agreement USPS and Specified Postal
Operators, CP2020-141, expires TBD
