

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

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

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

ORDER ADDING AGREEMENT TO THE
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATORS 1 PRODUCT

(Issued June 19, 2020)

I. INTRODUCTION

On May 15, 2020, the Postal Service filed a notice with the Commission pursuant to 39 C.F.R. § 3035.105 and Order No. 546,¹ stating that it has entered into an Inbound

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, May 15, 2020 (Notice). Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs). The Notice concerns the inbound portions of a competitive multi-product referred to as the Interconnect Remuneration Agreement USPS and Specified Postal Operators (IRA-USPS Agreement). The IRA-USPS Agreement contains rates for inbound competitive parcels, packets, and registered mail. Notice at 5-6.

The Postal Service seeks to include the IRA-USPS Agreement within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-34) product. *Id.* at 1. For the reasons discussed below, the Commission approves the addition of the IRA-USPS Agreement to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

II. BACKGROUND

The Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product was added to the competitive product list in Order No. 546. That order also added the first negotiated agreement within the product: Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Post Agreement). *Id.* at 2. Order No. 840 then established the TNT Post Agreement as the baseline agreement for functional equivalency analyses to determine whether future agreements should be included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.²

The Postal Service asserts that the IRA-USPS Agreement is functionally equivalent to the TNT Post Agreement “because the terms of [the] agreement are similar in scope and purpose to the terms of the TNT Post Agreement” and “the agreements share many terms and clauses in common.” Notice at 3. The Postal Service also argues that Commission precedent supports the addition of the IRA-USPS

² Docket No. CP2011-69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011, at 5 (Order No. 840).

Agreement to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 3-4.

The Postal Service intends for the IRA-USPS Agreement to become effective July 1, 2020, and to continue indefinitely. *Id.* at 5. The Postal Service states that, beginning with the rates that will be in effect in 2021, any party to the IRA-USPS Agreement can change its delivery rates by communicating the new rates to the International Post Corporation by June 1 of the year preceding the rates' application. *Id.* at 6. Additionally, the Postal Service notes that the IRA-USPS Agreement allows parties to self-declare rates within defined parameters. *Id.*

The Postal Service expects that additional FPOs will become party to the agreement and states that it will update this docket should additional FPOs accede to the IRA-USPS Agreement. *Id.* at 5. The Postal Service has provided several updates to this docket with additional signatories to the IRA-USPS Agreement and rate changes.³

On May 18, 2020, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴ The Commission issued Chairman's Information Request No. 1 on May 27, 2020.⁵ The Postal Service responded on June 3, 2020.⁶

³ See 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; Notice of United States Postal Service of Filing Additional Signatories and Other Related Information to Inbound Competitive Multi-Service IRA-USPS Agreement, June 3, 2020; Notice of United States Postal Service of Filing Additional Signatories and Other Related Information to Inbound Competitive Multi-Service IRA-USPS Agreement, June 4, 2020; Notice of United States Postal Service of Filing Additional Rate-Related Information to Inbound Competitive Multi-Service IRA-USPS Agreement, June 5, 2020; Notice of United States Postal Service of Filing Additional Signatories and Other Related Information to Inbound Competitive Multi-Service IRA-USPS Agreement, June 12, 2020.

⁴ Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, May 18, 2020 (Order No. 5514).

⁵ Chairman's Information Request No. 1 and Notice of Filing Under Seal, May 27, 2020 (CHIR No. 1).

⁶ Response of the United States Postal Service to Chairman's Information Request No. 1, June 3, 2020 (Response to CHIR No. 1).

The Public Representative filed comments on June 1, 2020.⁷ On June 10, 2020, the Postal Service filed a motion for leave to respond to the Public Representative's comments and a provisional response.⁸ The Commission granted that motion on June 11, 2020.⁹

III. COMMENTS

The Public Representative expresses two "primary concerns." PR Comments at 3. For these reasons, she "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." *Id.* at 5.

First, she contends that it is not clear that the agreements are functionally equivalent because "the agreements seem structurally very different." *Id.* at 3. She notes several differences in the agreements, such as the number of contractual partners, the fact that the contracting FPOs were filed under seal, differences in contractual clauses, and the fact that the baseline agreement included market dominant and competitive offerings while the instant agreement contains only competitive rates. *Id.* at 3-4. For these reasons, she argues that the Commission should find that the IRA-USPS Agreement is not functionally equivalent to the baseline agreement, and the Postal Service should refile the IRA-USPS Agreement to be reviewed as a new product pursuant to 39 U.S.C. § 3642. *Id.* at 4.

Second, 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

⁷ Public Representative Comments, June 1, 2020 (PR Comments).

⁸ Motion of the United States Postal Service for Leave to Response to Comments Filed by the Public Representative, June 10, 2020; Response of the United States Postal Service to Comments Filed by the Public Representative, June 10, 2020 (Response).

⁹ Order Granting Motion for Leave to Respond, June 11, 2020 (Order No. 5541).

requirement[s] [of] 39 U.S.C. § 3633(a).” *Id.* The Public Representative also recommends that the Commission establish reporting requirements “to ensure that the rates paid by each additional FPO will be compensatory.” *Id.* at 5. However, the Public Representative concedes that the supporting financial workpapers filed under seal “demonstrate that the IRA-USPS Agreement, as a whole, will meet the requirements of 39 U.S.C. § 3633(a).” *Id.*

The Postal Service contends that the Public Representative’s concerns have been “adequately addressed.” Response at 1. The Postal Service avers, generally, that “[t]he 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 [Express Mail Service].” *Id.* at 3. Furthermore, the Postal Service states that “there is a great variety of templates of inbound competitive agreements” but that those contractual differences do not detract from their functional equivalence. *Id.* (footnote omitted). The Postal Service also contends that the IRA-USPS Agreement is “no different” than many of the agreements in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

The Postal Service also avers that “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.” *Id.* at 4. The Postal Service states that the IRA-USPS Agreement’s cost coverage is “quite healthy” and states that any new rates under the agreement will be submitted for advance review at the appropriate time. *Id.*

IV. COMMISSION ANALYSIS

The Commission’s responsibilities in this case are to ensure that the IRA-USPS Agreement: (1) is functionally equivalent to the baseline agreement established for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

product; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3035.105 and 3035.107).

Functional equivalence. The Postal Service asserts that its filing demonstrates that the IRA-USPS Agreement is functionally equivalent to the baseline agreement and requests that the IRA-USPS Agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. The Postal Service avers that the IRA-USPS Agreement fits within the Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 5. The Postal Service contends that “[t]he inbound portions of the IRA-USPS Agreement are materially similar to the inbound competitive portions of the baseline TNT Post Agreement with respect to products and cost characteristics.” *Id.* at 7. The Postal Service states that the relevant cost and market characteristics between the agreements are “similar” because the agreements “incorporate the same cost attributes and methodology.” *Id.* at 9. The Postal Service acknowledges some differences between the agreements, but contends that these differences do not affect “either the fundamental services that the Postal Service is offering or the fundamental structure of the agreements.” *Id.* at 9-10.

The Commission has reviewed the Postal Service’s reasons for asserting that the IRA-USPS Agreement is functionally equivalent to the baseline agreement. It also has considered the Public Representative’s comments. The Public Representative has correctly identified several differences between the IRA-USPS Agreement and the baseline agreement. PR Comments at 3-4. However, the Commission finds that these differences, such as the number of contractual partners, whether the contracting FPOs are under seal, and in contractual provisions, do not bear on the cost or market characteristics or affect the fundamental service or structure of the agreements and, therefore, do not preclude a finding that the agreements are functionally equivalent. The Commission concludes that the IRA-USPS Agreement is substantially similar to the baseline agreement and that the differences between the agreements do not fundamentally alter either the service the Postal Service will provide under the

agreement or the structure of the agreement. The Commission therefore also finds that the Agreement may be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and 3035.107. As long as the revenue generated by a 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, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the IRA-USPS Agreement should cover its attributable cost. Therefore, the addition of the IRA-USPS Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should not cause cost coverage for the product to fall below 100 percent. Consequently, the Commission finds that the addition of the IRA-USPS Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the IRA-USPS Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to cover its attributable cost, the Commission finds that the addition of the IRA-USPS Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the IRA-USPS Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product is unlikely to prevent competitive products as a whole from contributing an appropriate

share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the IRA-USPS Agreement indicates that it is consistent with section 3633(a). The Commission will review the cost coverage of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Report (ACR) to ensure that they continue to comply with 39 U.S.C. § 3633(a).

The Commission declines to adopt the Public Representative's proposed additional reporting requirements for the IRA-USPS Agreement. PR Comments at 5. The Public Representative concedes 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)." *Id.* The Commission will evaluate the regulatory compliance of each foreign postal operator through the ACR.

Other considerations. The 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" states that the policy of the executive branch shall be, *inter alia*, to support efforts that further "setting rates charged for delivery of foreign-origin mail in a manner that does not favor postal operators over non-postal operators."¹⁰ However, the IRA-USPS Agreement limits potential parties to the contract to designated operators, as defined by the Universal Postal Union.¹¹

CHIR No. 1 requested that the Postal Service explain how its decision to limit the IRA-USPS Agreement in this way comports with the objectives of the Presidential

¹⁰ 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, at Sec. 2(d)(ii), available at: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretarystate-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatorycommission/> (Presidential Memorandum).

¹¹ See Universal Postal Convention, Article 1.12, available at: http://www.upu.int/uploads/tx_sbdownloader/actInThreeVolumesManualOfConventionEn.pdf.

Memorandum.¹² Additionally, the Public Representative “encourages the Postal Service to ensure all of its agreements are consistent with Presidential Memorandum.” PR Comments at 6.

In response, the Postal Service contends that “differences between designated operators and other providers [can] justify limiting a particular offering to designated operators without necessarily creating an unreasonable discrimination or preference.”¹³ The Postal Service states that it “is able to negotiate commercial agreements with other providers for similar rates upon materially similar terms and conditions, depending on factors such as volume, average weight per piece, weight range, availability and payment for ancillary services, and entry profile.” *Id.* The Postal Service indicates that it maintains a “willingness to negotiate such service agreements with other providers.” *Id.* For these reasons, the Postal Service asserts that the IRA-USPS Agreement is in accordance with the Presidential Memorandum.

The Postal Service’s exclusion of non-designated postal operators in the IRA-USPS Agreement raises the potential, depending on future developments, for a 39 U.S.C. § 403(c) claim of undue preference or discrimination. At this juncture, however, the record in this proceeding does not contain sufficient evidence for the Commission to find such undue preference or discrimination. Future developments, such as the outcomes of the Postal Service’s proffer to negotiate with non-postal operators may provide more relevant information for the Commission’s evaluation, of its own accord, or should such a claim be raised in a section 3662 complaint proceeding.

¹² CHIR No. 1, question 1.

¹³ Response to CHIR No. 1, question 1 (footnote omitted).

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2020-141 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective July 1, 2020.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement.
3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.

By the Commission.

Erica A. Barker
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

2500 **Negotiated Service Agreements**

2515 **Inbound International**

2515.10 **Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**

2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

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

Baseline Reference

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

Included Agreements

Interconnect Remuneration Agreement USPS and Specified Postal Operators, expires TBD
