

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
United States Postal Service
Contractual Bilateral Agreement – FY20-3 (MC2010-34)
Negotiated Service Agreement

Docket No. CP2020-211

ORDER APPROVING ADDITIONAL
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATOR – FY20-3

(Issued July 10, 2020)

I. INTRODUCTION

On June 30, 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

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY20-3, June 30, 2020 (Notice). See also 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).

Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (FPO). The Notice concerns the inbound portions of a competitive multi-product agreement referred to as the FPO-USPS Agreement FY20-3. Notice at 1. The Postal Service seeks to include the FPO-USPS Agreement FY20-3 within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

For the reasons discussed below, the Commission approves the addition of the FPO-USPS Agreement FY20-3 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

II. BACKGROUND

On June 30, 2020, in accordance with 39 C.F.R. § 3035.105 and Order No. 546, the Postal Service filed its Notice, along with supporting documents. *See id.* at 5. The Postal Service notes that the FPO-USPS Agreement FY20-3 provides rates for inbound tracked packets. *Id.* at 6. In the Notice, the Postal Service asserts that the FPO-USPS Agreement FY20-3 is functionally equivalent to the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and requests that the agreement be added to the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 3. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, the FPO-USPS Agreement FY20-3, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. *Id.* at 5. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the FPO-USPS Agreement FY20-3, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 1.

The Postal Service states it intends for FPO-USPS Agreement FY20-3 to take effect on July 1, 2020. Notice at 1, 2, 6. The Postal Service “acknowledges that, despite the best efforts of the counterparties..., this Notice is not being filed at least 15

days prior to the rates' intended effective date.”² It maintains that because “settlement would not occur until well after th[e] intended effective date,” the Commission could timely review FPO-USPS Agreement FY20-3 and allow parties to implement rates on July 1, 2020. *Id.* at 2. The Postal Service contends that a later implementation date “could lead to complexities in accounting for the time period between July 1 and the date that [FPO-USPS Agreement FY20-3] would become effective.” *Id.* The FPO-USPS Agreement FY20-3 is set to expire on December 31, 2021. *Id.* Attachment 2 at 8.

On July 1, 2020, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

III. COMMENTS

The Public Representative filed comments on July 9, 2020.⁴ No other comments were received. Based upon a review of the FPO-USPS Agreement FY20-3 and supporting justification, the Public Representative concludes that the FPO-USPS Agreement FY20-3 should be categorized as a competitive product and added to the competitive product list. PR Comments at 2.

With respect to the Postal Service's late filing of the Notice, the Public Representative states that he is “inclined to agree” with the Postal Service's assertion that, due to the timing of the agreement's settlement, the Commission could conduct a timely review and allow the implementation of rates as of July 1, 2020. *Id.*; Notice at 2. The Public Representative maintains that “the effect will be negligible.” PR Comments at 2.

² *Id.* at 2. The Postal Service's Notice was filed 1 day prior to the FPO-USPS Agreement FY20-3 intended effective date. See *generally* Notice.

³ Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY20-3, July 1, 2020 (Order No. 5575).

⁴ Public Representative Comments in Response to United States Postal Service Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY20-3, July 9, 2020 (PR Comments).

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the FPO-USPS Agreement FY20-3 is functionally equivalent to the baseline agreement established for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3035.105 and 3035.107).

Functional equivalence. In Order No. 546, the Commission added the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list and established a baseline agreement for assessing the functional equivalence of future agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.⁵

The Postal Service asserts that its filing demonstrates that the FPO-USPS Agreement FY20-3 is functionally equivalent to the baseline agreement, and requests that the agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. It asserts that the FPO-USPS Agreement FY20-3 fits within the Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 5-6. The Postal Service also asserts that the FPO-USPS Agreement FY20-3 and the baseline agreement are materially similar with respect to products and cost characteristics. *Id.* at 7. The Postal Service identifies numerous differences between the FPO-USPS Agreement FY20-3 and the baseline agreement, but asserts

⁵ See Order No. 546 at 9. The agreement was with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV. *Id.* at 1-2. See also Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No.10-3), August 6, 2010; 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).

that these differences do not affect the fundamental service being offered or the fundamental structure of the agreements.⁶

The Commission has reviewed the Postal Service's reasons for asserting that the FPO-USPS Agreement FY20-3 shares similar cost characteristics with the baseline agreement, meets the pricing formula, and falls within the classification established in the Governors' Decision authorizing this product.

The Commission concludes that the FPO-USPS Agreement FY20-3 is functionally equivalent to the baseline agreement and that the differences between the two agreements do not fundamentally alter either the service the Postal Service will provide under the FPO-USPS Agreement FY20-3 or the structure of the FPO-USPS Agreement FY20-3. The Commission therefore finds that the FPO-USPS Agreement FY20-3 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 FPO-USPS Agreement FY20-3 should cover its attributable costs. The addition of the FPO-USPS Agreement FY20-3

⁶ *Id.* at 7-9. Differences include, among others, revisions to existing articles and attachments and the inclusion of new articles and annexes. *Id.*

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 FPO-USPS Agreement FY20-3 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 FPO-USPS Agreement FY20-3 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to cover its attributable costs, the Commission concludes that the addition of the 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, the Commission finds the addition of the FPO-USPS Agreement FY20-3 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 FPO-USPS Agreement FY20-3 indicates it is consistent with section 3633(a). The Commission will review the cost coverage of the FPO-USPS Agreement FY20-3, 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 Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The Postal Service states it intends for the FPO-USPS Agreement FY20-3 to take effect on July 1, 2020. Notice at 1, 2, 6. The Postal Service acknowledges that its Notice was not filed at least 15 days prior to the rates' intended effective date. *Id.* at 2; 39 C.F.R. § 3035.105(a). Nevertheless, the Postal Service requests that the Commission designate July 1, 2020 as the agreement's implementation date because a later implementation date "could lead to complexities in accounting for the time period between July 1 and the date that [the FPO-USPS Agreement FY20-3] would become effective." Notice at 2.

Despite the Public Representative's support of the Postal Service's contentions, the Commission declines to permit an effective date of July 1, 2020 for the FPO-USPS Agreement FY20-3.

Section 3035.105(a) clearly states that, "[w]hen the Postal Service determines to add or change a rate or class not of general applicability, it shall file notice of its decision with the Commission at least 15 days before the effective date of the change." See 39 C.F.R. § 3035.105(a). The timing requirements of 39 C.F.R. § 3035.105(a) are intended to provide the Commission with sufficient time to conduct a review of Postal Service filings. The Postal Service is aware of the timing requirements associated with filings submitted pursuant to 39 C.F.R. § 3035.105 and failed to comply in this instance.

In addition, the Postal Service failed to provide a reasonable explanation for filing its late Notice⁷ or a thorough description of the harm associated with the Commission's potential denial of the July 1, 2020 implementation date.⁸ Without a reasoned and detailed justification to demonstrate good cause for the Postal Service's delay, and a more thorough explanation of the potential harm facing the Postal Service if the agreement does not take effect on July 1, 2020, the Commission is not compelled to grant the Postal Service's request.⁹

⁷ The Postal Service notes only that, "despite the best efforts of the counterparties," the Postal Service was unable file the Notice at least 15 days prior to the effective date. Notice at 2.

⁸ The Postal Service states only that implementation of the agreement at some date after July 1, 2020 "could lead to complexities in accounting." *Id.*

⁹ Prior instances of the Postal Service failing to file a timely notice or motion resulted in the Commission reminding the Postal Service of the need to ensure timely filings, and in the infrequent alternative, when extenuating circumstances exist, to clearly identify and explain those circumstances and the potential harm or prejudice. See, e.g., Docket No. CP2016-93, Order Denying as Moot Amendment Three to Parcel Select Negotiated Service Agreement, July 12, 2019, at 2-3 (Order No. 5149) (noting the lack of a timely notice or explanation for the delay); Docket No. CP2017-253, *et. al.*, Order Approving Modifications and Providing Guidance Regarding Extending Negotiated Service Agreements, October 30, 2018, at 4-5 (Order No. 4866) (emphasizing that in the case of motions for temporary relief that are filed less than a week before contract expiration, such motion must demonstrate the "compelling circumstances" justifying the relief sought); Docket No. CP2016-185, Order Approving Amendment Three to First-Class Package Service Negotiated Service Agreement, Granting Motion for Temporary Relief, and Providing Guidance, March 3, 2020, at 3-4 (Order No. 5444) (noting the Postal Service's provision of information to justify its late filing).

For these reasons, the Commission denies the Postal Service's request for implementation of the FPO-USPS Agreement FY20-3 on July 1, 2020. The FPO-USPS Agreement FY20-3 may become effective no earlier than July 10, 2020, the date of the Commission's approval of the FPO-USPS Agreement FY20-3. The Postal Service shall promptly notify the Commission of the effective date of the FPO-USPS Agreement FY20-3.

The FPO-USPS Agreement FY20-3 is set to expire December 31, 2021, unless terminated earlier in accordance with Article 9 of the FPO-USPS Agreement FY20-3. Notice, Attachment 2 at 3, 8. If the agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The FPO-USPS Agreement FY20-3 filed in Docket No. CP2020-211 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.
2. The Postal Service shall promptly notify the Commission of the effective date for the FPO-USPS Agreement FY20-3.
3. Revisions to the Mail Classification Schedule appear below the signature of this Order and are effective upon the Postal Service's filing of the effective date for the FPO-USPS Agreement FY20-3.

4. The Postal Service shall promptly file notice of the FPO-USPS Agreement FY20-3's termination with the Commission in this docket if the FPO-USPS Agreement FY20-3 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

FPO-USPS Agreement FY20-3, expires December 31, 2021
