

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

Before Commissioners:

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

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators
PRIME United States Postal Service
Registered Service Agreement (MC2010-34)
Negotiated Service Agreements

Docket No. CP2022-65

ORDER APPROVING ADDITIONAL
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATORS

(Issued June 16, 2022)

I. INTRODUCTION

On May 13, 2022, 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 13, 2022 (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).

Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs). The Notice concerns the inbound competitive portions of the PRIME United States Postal Service Registered Service Agreement, referred to as the “PRIME-USPS Registered Agreement.” Notice at 1. The Postal Service seeks to include the PRIME-USPS Registered Agreement 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 PRIME-USPS Registered Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

II. BACKGROUND

On May 13, 2022, 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 PRIME-USPS Registered Agreement does not affect any other PRIME agreements, including the existing agreement concerning registered mail. *Id.* at 6. The Postal Service explains that the PRIME-USPS Registered Agreement is designed to address particular circumstances of certain FPOs that do not want to sign other multilateral agreements. *Id.* In the Notice, the Postal Service asserts that the PRIME-USPS Registered Agreement 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 PRIME-USPS Registered Agreement, 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 redacted portions of the PRIME-USPS Registered Agreement,

customer-identifying information, and related financial information remain under seal. *Id.* Attachment 1.

The Postal Service notes that additional FPOs may also accede to the PRIME-USPS Registered Agreement. Notice at 6.

The PRIME-USPS Registered Agreement was intended to take effect on June 1, 2022, subject to regulatory approval, with an indefinite duration. *Id.* at 1, 6.

On May 16, 2022, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.² On May 25, 2022, Chairman's Information Request No. 1 was issued, with questions filed under seal, to which the Postal Service filed responses on June 1, 2022.³ On June 3, 2022, Chairman's Information Request No. 2 was issued, with a follow-up question filed under seal, to which the Postal Service filed a response on June 10, 2022.⁴

III. COMMENTS

The Public Representative filed comments on May 23, 2022.⁵ No other comments were received. Based upon a review of the PRIME-USPS Registered Agreement and financial workpapers, the Public Representative concludes that the PRIME-USPS Registered Agreement is functionally equivalent to the baseline agreement, and should meet the requirements of 39 U.S.C. § 3633(a). PR Comments

² Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, May 16, 2022 (Order No. 6173).

³ Chairman's Information Request No. 1 and Notice of Filing Under Seal, May 25, 2022 (CHIR No. 1); Responses of the United States Postal Service to Questions 1-3 of Chairman's Information Request No. 1 with Materials Filed Under Seal, June 1, 2022 (Response to CHIR No. 1).

⁴ Chairman's Information Request No. 2 and Notice of Filing Under Seal, June 3, 2022 (CHIR No. 2); Response of the United States Postal Service to Question 1 of Chairman's Information Request No. 2 with Materials Filed Under Seal, June 10, 2022 (Response to CHIR No. 2).

⁵ Public Representative Comments on Postal Service Notice of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, May 23, 2022 (PR Comments).

at 3. He states the differences between the PRIME-USPS Registered Agreement and the baseline agreement are not substantial. *Id.* He also affirms the financial workpapers demonstrate the prices in the PRIME-USPS Registered Agreement should generate sufficient revenues to cover costs and meet the requirements of 39 U.S.C. § 3633(a). *Id.*

For these reasons, the Public Representative recommends the Commission approve the addition of the PRIME-USPS Registered Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 4.

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this proceeding are to ensure that the PRIME-USPS Registered Agreement 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.⁶

The Postal Service asserts that its filing demonstrates that the PRIME-USPS Registered Agreement is functionally equivalent to the baseline agreement, and

⁶ 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 Docket Nos. MC2010-34 and CP2010-95, Request of United States Postal Service to Add Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the Competitive Product List, and Notice of Filing (Under Seal) of Enabling Governors' Decision and Negotiated Service Agreement, August 13, 2010, Attachment 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).

requests that the agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. The Postal Service also asserts that the PRIME-USPS Registered Agreement 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 PRIME-USPS Registered Agreement and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the agreements. *Id.* at 10.

The Commission has reviewed the Postal Service's reasons for asserting that the PRIME-USPS Registered Agreement shares similar cost characteristics with the baseline agreement and meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product. It also has considered the Public Representative's comments.

The Commission concludes that the PRIME-USPS Registered Agreement 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 PRIME-USPS Registered Agreement or the structure of the PRIME-USPS Registered Agreement. The Commission therefore finds that the PRIME-USPS Registered 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 PRIME-USPS Registered Agreement should cover its attributable costs. The addition of the PRIME-USPS Registered 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 PRIME-USPS Registered 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 PRIME-USPS Registered Agreement 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).

In its FY 2021 *Annual Compliance Determination* (ACD), the Commission found that a separate product, Inbound Competitive Registered Mail, did not cover its attributable costs.⁷ The Commission noted that the Postal Service addressed separate attributions of costs and revenues among products that include inbound registered items, such as the existing Inbound Competitive PRIME Registered Service Agreement 1. *Id.* The Commission directed the Postal Service to provide a detailed analysis of cost and revenue attribution for inbound registered items within 90 days of issuance of the ACD, and as part of that analysis to identify a potential new methodology that would improve the accuracy of cost and revenue attribution for inbound registered items. *Id.*

The Commission issued CHIR No. 1 and the follow-up CHIR No. 2 in this docket to address whether the proposed PRIME-USPS Registered Agreement would exacerbate issues pertaining to the accuracy of cost and revenue attribution for inbound

⁷ Docket No. ACR2021, *Annual Compliance Determination*, March, 29, 2022, at 88.

registered items before the required analysis is filed with the Commission and any possible methodological improvements can be implemented. In its under-seal responses, the Postal Service explained why the PRIME-USPS Registered Agreement is not expected to exacerbate those issues nor negatively affect the cost coverage of Inbound Competitive Registered Mail.⁸

The Commission finds the addition of the PRIME-USPS Registered 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 PRIME-USPS Registered Agreement indicates it is consistent with section 3633(a). The Commission will review the cost coverage of the PRIME-USPS Registered Agreement, 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 ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The PRIME-USPS Registered Agreement was intended to take effect on June 1, 2022, subject to regulatory approval, with an indefinite duration. Notice at 1, 6. The Postal Service shall promptly notify the Commission of the effective date of the PRIME-USPS Registered Agreement. If the agreement is terminated, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

⁸ See Response to CHIR No. 1 (filed under seal); Response to CHIR No. 2 (filed under seal).

V. ORDERING PARAGRAPHS

It is ordered:

1. The PRIME-USPS Registered Agreement filed in Docket No. CP2022-65 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 immediately.
2. The Postal Service shall promptly notify the Commission of the effective date of the PRIME-USPS Registered Agreement.
3. The Postal Service shall promptly file notice with the Commission in this docket if the PRIME-USPS Registered Agreement is terminated.

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

PRIME-USPS Registered Agreement, CP2022-65, expires TBD
