

ORDER NO. 6284

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  
Priority Mail & First-Class Package Service Contract 9  
(MC2016-44)  
Negotiated Service Agreements

Docket No. CP2016-59

ORDER APPROVING AMENDMENT FIVE TO  
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE NEGOTIATED SERVICE  
AGREEMENT

(Issued September 28, 2022)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail & First-Class Package Service negotiated service agreement.<sup>1</sup> For the reasons discussed below, the Commission approves the Amendment.

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<sup>1</sup> USPS Notice of Amendment to Priority Mail & First-Class Package Service Contract 9, Filed Under Seal, September 27, 2022 (Notice). The amendment is an attachment to the Notice (Amendment).

## II. BACKGROUND

In Order No. 2965, the Commission approved the Priority Mail & First-Class Package Service Contract 9 negotiated service agreement (Existing Agreement).<sup>2</sup> On September 27, 2022, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1.

## III. COMMISSION ANALYSIS

The Commission has reviewed the Notice and the accompanying materials filed under seal.

*Cost considerations.* The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, 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 the 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, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

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<sup>2</sup> See Docket Nos. MC2016-44 and CP2016-59, Order Adding Priority Mail & First-Class Package Service Contract 9 to the Competitive Product List, December 30, 2015 (Order No. 2965). The contract was later amended. See Order Approving Amendment One to Priority Mail & First-Class Package Service Negotiated Service Agreement, November 15, 2017 (Order No. 4222); Order Approving Amendment Two to Priority Mail & First-Class Package Service Negotiated Service Agreement, June 15, 2018 (Order No. 4649); Order Approving Amendment Three to Priority Mail & First-Class Package Service Negotiated Service Agreement, March 25, 2019 (Order No. 5025); Order Approving Amendment Four to Priority Mail & First-Class Package Service Negotiated Service Agreement, April 5, 2022 (Order No. 6137).

The Existing Agreement is set to expire September 29, 2022.<sup>3</sup> The Amendment revises the expiration date of the contract to October 29, 2022. Notice at 1.

The Amendment does not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3035.107.

*Timeliness.* The Notice is untimely.<sup>4</sup> Under the guidance previously provided by the Commission, the Notice should have been filed no later than September 21—seven days before the last day on which the Commission could approve the amendment so that the amendment would take effect prior to the expiration of the contract. See Order No. 5444 at 4-5. Additionally, the Postal Service failed to file the required motion for late acceptance. See Order No. 4866 at 4.

The Commission reminds the Postal Service of the importance of timely filings and regular order. Had the Commission been unable to review and approve the Amendment today, the Amendment could not have taken effect prior to the contract's expiration date, and thus would have been moot.<sup>5</sup> The Commission further reminds the Postal Service of its obligation to file a motion for late acceptance.

*Other considerations.* The Postal Service states that the Amendment shall become effective one business day after the date that the Commission completes its

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<sup>3</sup> USPS Notice of Extension of Priority Mail & First-Class Package Service Contract 9, June 24, 2022, at 1.

<sup>4</sup> See Docket No. CP2017-253, *et al.*, Order Approving Modifications and Providing Guidance Regarding Extending Negotiated Service Agreements, October 30, 2018, at 4 (Order No. 4866) (requiring notices of modification to be filed at least seven days prior to contract expiration); 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 4-5 (Order No. 5444) (advising that the Commission counts the seven day advance filing requirement from the earlier of (1) the contract's expiration date or (2) the last date by which the amendment or modification would need to be approved for the amendment or modification to be effective at extending the contract).

<sup>5</sup> See Docket No. CP2016-93 Order Denying as Moot Amendment Three to Parcel Select Negotiated Service Agreement, July 12, 2019 (Order No. 5149) (denying an untimely amendment that was both unaccompanied by the required motion for late acceptance and, as of the date the Commission completed its review, would not have been able to take effect prior to the expiration of the contract).

review. Notice at 1. The Existing Agreement, as amended, is set to expire October 29, 2022. Notice, Attachment A at 1.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the Priority Mail & First-Class Package Service Contract 9 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the revised expiration date, October 29, 2022.

By the Commission.

Erica A. Barker  
Secretary