

ORDER NO. 78

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

Before Commissioners:

Dan G. Blair, Chairman;
Mark Acton, Vice Chairman;
Ruth Y. Goldway; and
Tony L. Hammond

Competitive Product Prices
Global Expedited Package Services
Negotiated Service Agreements

Docket No. CP2008-4
Docket No. CP2008-5

NOTICE AND ORDER CONCERNING PRICES
UNDER GLOBAL EXPEDITED PACKAGE SERVICES
NEGOTIATED SERVICE AGREEMENTS

(Issued June 3, 2008)

On May 20, 2008, the Postal Service filed two notices, which have been assigned to Docket Nos. CP2008-4 and CP2008-5, announcing prices and classification changes for competitive products not of general applicability. The notice in Docket No. CP2008-4 informs the Commission that “the Governors have established prices and classifications for competitive products not of general applicability for Global Expedited Package Services (GEPS) Contracts.”¹ The Postal Service attached a revision of the draft Mail Classification Schedule (section 2610.2) concerning GEPS contracts to the

¹ Notice of United States Postal Service of Governors’ Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008 (Notice).

Notice.² Docket No. CP2008-4 has been filed pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5 and 3020.90. In support of this docket, the Postal Service has also filed materials under seal, including the Governors' decision. The Postal Service claims that "[c]ontract prices are highly confidential in the business world ... [and that its] ability ... to negotiate individual contracts would be severely compromised if prices for these types of agreements were publicly disclosed." *Id.* at 1-2.

The notice in Docket No. CP2008-5, announces an individual negotiated service agreement, namely, a specific GEPS contract the Postal Service has entered into with an individual mailer.³ Docket No. CP2008-5 has been filed pursuant to 39 CFR 3015.5. In support of this docket, the Postal Service has also filed materials, including the contract and supporting materials, under seal. Here the Postal Service asserts that "[t]he names of customers who enter into respective contracts and the related contract prices are highly confidential business information." *Id.* at 1.

The Postal Service's filings in these dockets are related. Docket No. CP2008-4 establishes, in essence, a shell classification, while Docket No. CP2008-5 is a specific agreement negotiated pursuant to the conditions of the shell classification. Given this interrelationship, the Commission will consolidate these proceedings for purposes of review.⁴

In Order No. 43, the Commission issued regulations establishing a modern system of rate regulation, including a list of competitive products. PRC Order No. 43, October 29, 2007, ¶¶ 3061, 4013. Among other things, the Commission determined that each negotiated service agreement would initially be classified as a separate product. The Commission also acknowledged, however, the possibility of grouping

² The draft MCS remains under review. The Commission anticipates providing interested persons an opportunity to comment on the draft MCS in the near future.

³ Notice of United States Postal Service of Filing a Global Expedited Package Service Contract (Pricing Notice).

⁴ All future filings in the consolidated docket shall be made under Docket No. CP-2008-5.

functionally equivalent agreements as a single product if they exhibit similar cost and market characteristics. *Id.* ¶¶ 2177 and 3001. Thus, the specific GEPS agreement filed in Docket No. CP2008-5 will be classified as a new product.

As noted above, the Postal Service filed both dockets pursuant to rule 3015.5.⁵ Recognizing that the Postal Service's filings in this consolidated proceeding (along with the concomitantly filed notices in Docket Nos. CP2008-6 and CP2008-7) represent the Postal Service's first filings involving competitive rates not of general applicability under section 3632(b)(3) of title 39, the Commission will proceed as if the GEPS negotiated service agreement also had been filed pursuant to 39 CFR part 3020, subpart B. As a consequence, the Commission will review the consolidated dockets pursuant to rule 3020.34.⁶ Because the Commission in its own discretion consolidated Docket Nos. CP2008-4 and CP2008-5 and will review them under Rule 3020.34, the Postal Service may, if it wishes to do so, supplement the materials already filed with the Commission.⁷

In addition, the Commission directs the Postal Service to identify and list any contracts currently in existence (and their respective expiration dates) that would no longer qualify as GEPS contracts under the proposed revised Mail Classification Schedule language for section 2610.2 attached to the Notice in Docket No. CP2008-4. The revised language modifies the GEPS eligibility criteria by, among other things, requiring the mailer on an annual basis to mail at least 5,000 pieces (instead of 600 pieces), or pay postage of at least \$100,000 (instead of \$12,000). The Commission also directs the Postal Service to provide a detailed justification for why it believes that

⁵ Docket No. CP2008-4 was also filed pursuant to 39 CFR 3020.90.

⁶ Filings to change or add rates not of general applicability are properly made under rule 3015.5. Postal Service filings to modify the product lists are properly made under part 3020, subpart B. Filings involving negotiated service agreements implicate both sets of rules until such time that a group of negotiated service agreements are shown to be classified properly as one product. The Commission anticipates that with experience and the adoption of the MCS, the review process will proceed relatively quickly.

⁷ The Commission characterizes the Governors' decision and associated materials filed in Docket No. CP2008-4 as material that supports the specific negotiated service agreement filed in Docket No. CP2008-5.

GEPS contracts' expiration dates (without disclosing the identity of the customer) should not be made publicly available. Answers to the Commission's questions and any supplemental materials that the Postal Service plans to provide are due no later than June 10, 2008.

Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3632, 3633 or 3642. Comments are due no later than June 16, 2008.

Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

It is ordered:

1. The proceedings under Docket Nos. CP2008-4 and CP2008-5 are consolidated. All future filings in the consolidated docket are to be made under Docket No. CP-2008-5.
2. As set forth in the body of this Order, the Postal Service is provided with an opportunity to supplement the materials already filed with the Commission. Any supplemental materials that the Postal Service wishes to provide are due no later than June 10, 2008.
3. Comments on issues in this consolidated proceeding are due no later than June 16, 2008.

4. The Commission appoints Paul L. Harrington as Public Representative to represent the interests of the general public in this proceeding.
5. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary