

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

Before Commissioners:

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

Competitive Product Prices  
Global Plus 2  
Negotiated Service Agreements

Docket No. MC2008-7

Competitive Product Prices  
Global Plus 2 Contract (MC2008-7)  
Negotiated Service Agreement

Docket No. CP2008-16

Competitive Product Prices  
Global Plus 2 Contract (MC2008-7)  
Negotiated Service Agreement

Docket No. CP2008-17

ORDER CONCERNING GLOBAL PLUS 2  
NEGOTIATED SERVICE AGREEMENTS

(Issued October 3, 2008)

The Postal Service seeks to add a new product identified as Global Plus 2 Negotiated Service Agreements to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

## I. BACKGROUND

On August 8, 2008, the Postal Service filed a Request with the Commission for the addition of a new product, which it identifies as Global Plus 2 Negotiated Service Agreements, to the Mail Classification Schedule's Competitive Product List for prices not of general applicability. A concurrent Notice announces issuance of a Governors' Decision authorizing the new product and the Postal Service's execution, under this authority, of two contracts it considers functionally equivalent.<sup>1</sup>

The proposed new product includes three services: Global Bulk Economy (GBE), Global Direct, and Global Plus 2 contracts.<sup>2</sup> Mail classification language accompanying the Request describes each of these services. Global Plus 2 contracts are described as a combination of GBE and Global Direct designed for high-volume mailers or Postal Qualified Wholesalers. They require a mailer to have the capability, on an annualized basis, of either tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in international postage to the Postal Service, and meeting other requirements. Governors' Decision, Attachment 1, Attachment A-3, at 1 (§ 2610.6) (Global Plus 2). *Id.*, Attachments A-1 and A-3 (GBE and Global Direct, respectively).

Commission Order No. 98 provided formal notice of the Request and related submissions; established the captioned dockets to consider the Request; appointed an

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<sup>1</sup> Request of the United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Two Functionally Equivalent Agreements, August 8, 2008 (collectively referred to as Request). The Request was filed pursuant to 39 U.S.C. 3642 and implementing regulations at 39 CFR 3020.30 *et seq.* A public (redacted) version of the referenced Governors' Decision appears as Attachment 1 to the Request. See Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts (Governors' Decision No. 08-10), July 16, 2008 (Governors' Decision).

<sup>2</sup> The Governors' Decision notes that the classifications for Global Direct and Global Bulk Economy contracts are contained in the Mail Classification Schedule language originally proposed by the Postal Service as modified in attachments to the instant decision. Eligible customers may also contract separately for GBE and Global Direct service. Governors' Decision at 1, n.1.

officer of the Commission to represent the interests of the general public; and set August 27, 2008 as the deadline for comments.<sup>3</sup>

*Commission decision.* The Commission has reviewed the filing in terms of relevant statutory provisions, and concludes that the filing is consistent with all pertinent statutory considerations. It finds that Global Plus 2 is appropriately classified as a competitive product. Accordingly, it grants the Request to add the Global Plus 2 product to the Competitive Product List. It also classifies the two contracts filed in Docket Nos. CP2008-16 and CP2008-17 as falling within the Global Plus 2 product, based on a finding that they are functionally equivalent.

## II. COMMENTS

### A. Public Representative's Comments

The Public Representative finds the Postal Service's filing consistent with requirements in the Postal Accountability and Enhancement Act (PAEA) and related Commission regulations. In particular, he concludes that pricing for the two proffered contracts satisfies 39 U.S.C. 3633 and falls within the floor and ceiling for the "shell"—or umbrella—classification in the Governors' Decision.<sup>4</sup> He also concludes that the Postal Service has "concisely justified" the extent of confidentiality it seeks in this filing; states that contractual provisions on preparation and volume requirements ensure that some economies of scale will result from implementation; and finds that the two contracts appear to be functionally equivalent. *Id.* at 2-4.

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<sup>3</sup> See Notice and Order Concerning Global Plus 2 Negotiated Service Agreements, August 14, 2008 (Order No. 98). Order No. 98 appears at 73 FR 49723 (August 22, 2008).

<sup>4</sup> Public Representative Comments in Response to United States Postal Service Request to Add Global Plus 2 Negotiated Service Agreements to the Competitive Products List, August 27, 2008 at 4 (Public Representative Comments).

However, the Public Representative expresses concern that the inclusion of Global Direct as a component of Global Plus 2 service raises a question about the appropriateness of assigning Global Plus 2 to the Competitive Product List because:

- Global Direct appears to provide shipments of First-Class Mail to a destination country;
- Single-piece outbound International First-Class Mail has been classified as a market dominant product; and
- The PAEA assigns “single piece” international mail to the market dominant product line and “bulk” international to the competitive line.

*Id.* at 2-8.<sup>5</sup>

#### B. The Postal Service’s Reply Comments

The Postal Service maintains that the treatment of competitive products under the PAEA and an assessment of competitive market characteristics support a conclusion that Global Plus 2 is properly classified as a competitive product.<sup>6</sup> It acknowledges that the PAEA requires that international mail be classified as either market dominant or competitive depending upon whether it is “single-piece” or “bulk,” but maintains that the PAEA does not further define those terms or seek to provide guidance on the existing and future international mail categories they are intended to encompass. *Id.* at 2. However, it notes that when classifying postal products [in Docket No. RM2007-1] as either market dominant or competitive, the Commission proposed to define bulk international mail by reference to bulk commercial services, which may be satisfied by volume commitments or other types of annual guarantees. *Id.* The Postal

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<sup>5</sup> The Public Representative notes that he also raised the issue of whether a proposed service is a “hybrid” product in Docket No. MC2008-6. *Id.* at 4-5.

<sup>6</sup> Reply of United States Postal Service to Public Representative Comments in Response to United States Postal Service Request to Add Global Plus 2 Negotiated Service Agreements to the Competitive Products List, August 29, 2008 at 1-2 (Postal Service Reply Comments).

Service further observes that the Commission included International Customized Mail (ICM) agreements among the products classified as “bulk,” and that each ICM was further initially defined as an individual product. *Id.*

Applying this line of reasoning to the instant case, the Postal Service says that the Global Plus 2 contracts are tied to revenue commitments, just as are the Global Plus 1 contracts, and thus appear to satisfy the Commission’s determination that an annual revenue guarantee would suffice to define a product as “bulk.” It therefore contends that even if pieces under the contract were mailed individually, this should not change the fact that the annual revenue guarantee ensures that this is a bulk product. Moreover, it contends that because the Commission views the contract as the product, as opposed to the individual services under the contract (which include both Global Direct and Global Bulk Economy services), it would seem that even assuming that a piece of Global Direct mail were sent individually, this likewise should not convert a bulk product into a single-piece product. *Id.* at 2-3.

In addition, the Postal Service maintains that as a practical matter, Global Direct is not a single-piece service, so each mailing involving Global Bulk Economy and Global Direct is, in fact, a bulk mailing. *Id.* at 3. In support of this position, it asserts that Global Direct service has only been available through customized agreements; notes that a customer cannot walk into a post office and deposit a single piece bearing foreign indicia; states that retail Global Direct service does not exist; and says that both Global Plus 2 contracts provide that postage payments are to be made by permit imprint. *Id.*

The Postal Service provides a hypothetical example involving a single-piece mailing, but asserts that this example does not reflect routine mailer behavior. Instead, it maintains that the customers are large volume, Postal Qualified Wholesalers who are required under the terms of the contract to deposit their Global Direct mail at specific locations designated by the Postal Service and who also must comply with foreign postal administrations’ preparation requirements. *Id.* at 3-4. It says it is more than likely that any one mailing will contain multiple Global Direct pieces. In fact, it says that the

Postal Service does not recall ever seeing a postage statement containing only one piece of Global Direct mail. *Id.* at 4.

The Postal Service acknowledges that certain items sent using Global Direct services, including under Global Plus 2 contracts, are “letters” within the meaning of 39 CFR 310.1(a). *Id.* It notes, however, that private entities are entitled to offer service for outbound letters “to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States.” *Id.* (footnote omitted).

“The Postal Service asserts that Congress codified this statutory exception to the so-called letter monopoly in the PAEA, and that competition exists in the outbound letter market, with a variety of entities providing services comparable to the Postal Service’s. It further states that in addition to facing competing providers, the Postal Service must also contend with mailers’ prerogative to carry their own letters out of the United States and deposit them in the destination country’s mailstream. *Id.*”

The Postal Service then says that for reasons described more fully in the Statement of Supporting Justification filed in these dockets, it operates within competitive constraints in offering Global Plus 2 contracts, including their Global Direct components, rather than from a position of market dominance. Thus, it says that under the descriptive criteria in 39 U.S.C. 3642(b) and 39 CFR 3020.32, these contracts should be construed as competitive products. *Id.* at 4-5.

### III. COMMISSION ANALYSIS

#### A. Statutory Requirements

The Commission’s statutory responsibilities, in this instance, entail assigning Global Plus 2 to either the Market Dominant List or the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also preliminarily reviews the proposals for compliance with PAEA requirements. This includes, for proposed

competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

*Product list assignment.* 39 U.S.C. 3642 governs the assignment of new products to a list, in terms of the contract or product as a whole, not an individual component. In context, it is apparent that Global Direct—which is the source of the Public Representative’s classification concern—is a bulk service. In particular, Global Direct is:

- A service that imposes minimum annual volume or revenue requirements on mailers;
- Intended for high-volume users and Postal Qualified Wholesalers; and
- Not available as a retail service for individuals.

Postal Service Reply Comments at 3-4. Thus, the Global Plus 2 contracts are appropriately classified as competitive products.

The Commission must also consider the Postal Service’s market position in determining appropriate product classification. The main consideration is whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1).

Review of a statement provided by Frank Cebello, the Postal Service’s executive director of Global Business Management, provides adequate support for a finding that the Postal Service’s position with respect to Global Plus 2 precludes it from being able to take any of the actions referred to in the referenced provision without risk of losing a significant level of business to other firms or offering similar products. See Request, Attachment 2.

*Cost considerations.* The Commission has reviewed the financial analyses provided under seal as well as the comments and the reply comments. This preliminary

review indicates that each contract comports with the provisions applicable to rates for competitive products. In particular, based on the information provided, the Commission finds that the proposed contracts should cover their individual attributable costs (39 U.S.C. 3633(a)(2)); should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and each should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)).

#### B. Nature of the Agreements

The Postal Service requests that the Commission classify the two Global Plus 2 contracts as part of the same product. The Commission finds that these contracts are premised on similar cost and market characteristics. It concludes that these two contracts are functionally equivalent in all pertinent respects, and can be appropriately classified as one product within the Competitive Product List.

#### C. Updating the Mail Classification Schedule

The Commission is adding the new product, Global Plus 2, to the Competitive Product List, as requested. As noted, the two related contracts fall within that product. The changes to the product list are shown below the signature on this Order, and shall become effective upon publication in the *Federal Register*.

The Postal Service shall notify the Commission of the effective date of each contract on the same date it notifies the contracting parties. The Commission notes that each Global Plus 2 contract contains a provision for early termination. The Postal Service shall promptly notify the Commission of an early termination no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

#### IV. ORDERING PARAGRAPHS

*It is Ordered:*

1. Global Plus 2 is added as a new product to the Competitive Product List.
2. The Negotiated Service Agreement submitted in Docket No. CP2008-16 and the Negotiated Service Agreement submitted in Docket No. CP2008-17 fall within the Global Plus 2 product.
3. The Postal Service shall notify the Commission of the effective date of the Global Plus 2 contracts (in Docket Nos. CP2008-16 and CP2008-17) on the same date it notifies the contracting parties.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams  
Secretary

**CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST**

The following material represents changes to the product list codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2008-7, CP2008-16 and CP2008-17. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

Docket Nos. MC2008-7  
CP2008-16  
CP2008-17

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Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

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Outbound International

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Global Plus Contracts

Global Plus 1 (CP2008-9 and CP2008-10)

Global Plus 2 (MC2008-7, CP2008-16 and CP2008-17)

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