Postal Regulatory Commission
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ORDER NO. 218

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

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

Competitive Product Prices
Royal Mail Inbound Air Parcel Post Agreement
Docket No. MC2009-24

Competitive Product Prices
Royal Mail Inbound Air Parcel Post Agreement
(MC2009-24)
Negotiated Service Agreement
Docket No. CP2009-28

ORDER CONCERNING ROYAL MAIL INBOUND AIR PARCEL POST NEGOTIATED SERVICE AGREEMENT

(Issued May 29, 2009)

The Postal Service seeks to add a new product identified as the Royal Mail Inbound Air Parcel Post Agreement to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. BACKGROUND

On April 21, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et. seq*. to add the Royal Mail Inbound Air Parcel Post Agreement (Agreement) to the Competitive Product List.[1] The Postal Service asserts that the Governors have established a price and classification "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id* at 1. This Request has been assigned Docket No. MC2009-24.

The Postal Service contemporaneously filed the Agreement related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* The Agreement has been assigned Docket No. CP2009-28.

In support of its Request, the Postal Service filed the following materials: (1) a statement of supporting justification as required by 39 CFR 3020.32;[2] (2) Governors' Decision No. 09-5 authorizing the new product which includes a certification of the vote, requested changes in the Mail Classification Schedule (MCS) product list, an analysis of the Agreement, a certification of compliance with 39 U.S.C. 3633(a);[3] and (3) a redacted version of the Agreement.[4] An additional certification of compliance with 39 U.S.C. 3633(a) is included to reflect changes in the estimated amount of inward land rate payments in 2010 due to revisions to the payment structure under the Universal Postal Union's Parcel Post Regulations that will become effective on January 1, 2010.[5] Substantively, the Request seeks to add the Royal Mail Inbound Air Parcel Post Agreement to the Competitive Product List. *Id*. at 1-2.

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[1] Request of the United States Postal Service to Add Royal Mail Inbound Air Parcel Post Agreement to the Competitive Products List and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, April 21, 2009 (Request).

[2] Attachment 1 to the Request.

[3] Attachment 2 to the Request.

[4] Attachment 3 to the Request.

[5] Attachment 4 to the Request.

In the statement of supporting justification, Giselle Valera, Executive Director, Global Finance and Business Analysis, asserts that the service to be provided under the Agreement will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment 1. Thus, Ms. Valera contends there will be no issue of subsidization of competitive products by market dominant products as a result of this Agreement. *Id.* W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the Agreement complies with 39 U.S.C. 3633(a). *See id,.* Attachment C.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted Agreement, under seal. In its Request, the Postal Service maintains that portions of the Agreement with prices, terms and conditions along with related financial information, and portions of the accompanying analyses that provide prices, or financial projections, should remain confidential. *Id.* at 2-3.

In Order No. 207, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[6]

On May 12, 2009, the Postal Service filed revised information relating to two changes that occurred subsequent to the filing of its Request.[7] The first change corrects certain discrepancies in Transportation Cost Systems (TRACS) data filed by the Postal Service in Docket No. ACR2008. In the FY 2008 Annual Compliance Determination, the Commission found minor discrepancies in the TRACS data used to distribute FY08 highway transportation costs to a few international products. Revised Notice at 1-2. On April 30, 2009, the Postal Service filed corrected data in Library

[6] PRC Order No. 207, Notice and Order Concerning Royal Mail Inbound Air Parcel Post Negotiated Service Agreement, April 27, 2009 (Order No. 207).

[7] Notice of United States Postal Service of Filing Revised Information Under 39 C.F.R 3015.5(c)(1), May 12, 2009 (Revised Notice).

Reference USPS-FY08-NP37 in Docket No. ACR2008, explaining that the discrepancies were inadvertent.

The second change concerns a reduction in the inward land rates applicable for Universal Postal Union (UPU) air parcels tendered by foreign posts to the United States beginning on July 1, 2009.[8] The reduction is due to the denial of a bonus payment to the Postal Service for the delivery of inbound UPU parcels starting July 1, 2009. The Postal Service believes that the denial is in error and is appealing it. In the interim, however, the Postal Service revised financial information showing effects of the reduced inward land rates.

The Postal Service concludes that the revised financial information does not adversely affect the cost coverage of the Royal Mail Agreement and the Agreement is still in compliance with all applicable statutory and regulatory requirements. *Id*. at 3.

II. COMMENTS

Comments were filed by the Public Representative,[9] and Express Delivery and Logistics Association (XLA).[10] The Postal Service filed a reply to the comments of

[8] Inward land rates are charges posts pay each other for delivery of incoming parcels. The Postal Service indicates that inward land rates are based on a rate formula prescribed by the UPU's Postal Operations Council. Alternatively, countries may negotiate rates with other UPU members. *Id.* at 2, n.1.

[9] Public Representative Comments in Response to United States Postal Service Request to Add Royal Mail Inbound Air Parcel Post Agreement to the Competitive Product List, May 5, 2009 (Public Representative Comments).

[10] Comments of Express Delivery and Logistics Association Pursuant to PRC Order 207, May 5, 2009 (XLA Comments).

XLA,[11] and XLA filed reply comments to the Postal Service comments.[12] The Public Representative filed reply comments to the revised Notice filed by the Postal Service.[13]

The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Royal Mail Inbound Air Parcel Post Agreement comports with the requirements of title 39. Public Representative Comments at 1 and 4. The Public Representative determines that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id. at 3.* He also states that the Agreement appears beneficial to the general public. *Id.* at 1.

The Public Representative also commented on the Postal Service's revised information, concluding that the instant Agreement appears to have more than adequate cost coverage. Public Representative Reply Comments at 2. As a result, he maintains that the Agreement appears to be in compliance with 39 U.S.C. 3633.

XLA's comments focus on section 407(e)(2) of title 39 regarding application of customs laws to shipments of competitive products by the Postal Service and similar shipments by private companies. XLA Comments at 1. XLA contends that the Postal Service has singular customs advantages for all international mail. It objects to adding the Royal Mail Inbound Air Parcel Post Agreement to the Competitive Products List. *Id.* XLA requests that the Commission reject the Postal Service request until a single customs clearance process has been adopted or, alternatively, condition approval of the

[11] Reply of the United States Postal Service to Comments by the Express Delivery and Logistics Association in Response to Order No. 207, May 6, 2009 (Postal Service Reply Comments).

[12] Final Reply of XLA to Reply by the United States Postal Service Pursuant to XLA's Comments Pursuant to PRC Order 207, May 7, 2009 (XLA Reply Comments). XLA also filed an accompanying Motion of Express Delivery and Logistics Association for Late Acceptance of Comments on United States Postal Service Reply to XLA Comments on Order 207, May 7, 2009. The motion is granted.

[13] Public Representative Comments in Reply to the United States Postal Service Notice of Filing Revised Information Under 39 CFR 3015.5(c)(1), May 20, 2009 (Public Representative Reply Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Reply to the United States Postal Service's Notice of Filing Revised Information Under 39 CFR 3015.5(c)(1), May 20, 2009. The motion is granted.

request on Postal Service using the commercial custom clearance process applicable to competing inbound international parcel delivery services. *Id.* at 2.

In its reply, the Postal Service contends that XLA raises similar claims to those filed by International Transit Solutions, Inc. to Order No. 141 regarding Docket No. MC2009-10. Postal Service Reply Comments at 1. It argues that the Commission has previously ruled that such comments (relative to customs issues) are outside the scope of the rate and classification proceedings. *Id. at* 1-2. Further, the Postal Service incorporates by reference its previous responses to the comments made by International Transit Solutions and, in addition, argues that this proceeding does not implicate customs procedures. *Id*. at 3.

In its reply to the Postal Service, XLA contends that its comments are distinguishable from its earlier comments since it has not cited any regulatory advantages attributed to the Postal Service in the instant case. XLA Reply Comments at 1. XLA takes issue with Postal Service comments that section 407(e)(2) is being implemented and offers its view that the PAEA "has interconnected parts [which] must be applied evenly and simultaneously as written". *Id.* at 2.

III. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, the financial analysis filed under seal, and the comments filed by all parties.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning the Royal Mail Inbound Air Parcel Post Agreement to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (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. In determining whether to assign the Royal Mail Inbound Air Parcel Post Agreement as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider 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). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices or decrease service without the risk of losing volume to private companies. It indicates that if it increases prices, it risks losing inbound United Kingdom–origin volume to a private competitor in the international shipping industry. Request, Attachment 1, ¶ (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar international parcel delivery services. *Id*. It further states that this Agreement has been classified as competitive because of its exclusion from the letter monopoly and the level of competition in the relevant market. *Id*.

The Postal Service notes that even though some incoming parcels subject to this Agreement may contain letters, the prices paid under the Agreement are six times the rate for the first ounce of a First-Class Mail letter and are expected to weigh more than 12.5 ounces. *Id*. at ¶ (e). It also remarks that the Royal Mail Group and its customers find the terms and conditions of the Agreement satisfactory since it is aware of

competitors offering similar services. *Id*. at ¶ (g). The Postal Service states that the market for expedited delivery services is highly competitive and the addition of the Agreement should have minimal if any impact on small business concerns. It observes that Royal Mail's small business customers will have an additional option for shipping articles to the United States and small businesses in this country will benefit from being able to receive shipments from the United Kingdom. Therefore, the Postal Service concludes the net impact on small business should be positive. *Id.* at ¶ (h).

The Public Representative supports the proposed classification of Royal Mail Inbound Air Parcel Post Agreement as a competitive product. Public Representative Reply Comments at 1.

As noted above, XLA opposes adding the instant Agreement to the Competitive Product List on the grounds that the Postal Service receives preferential customs clearance processing. XLA Comments at 1. The issue raised by XLA is beyond the scope of this proceeding. The issues presented by the Postal Service's filing are whether the proposed Agreement is consistent with the policies of sections 3632, 3633, and 3642 of title 39.[14] The issue raised by XLA does not implicate changes to the Mail Classification Schedule.

Having considered the statutory requirements, the support offered by the Postal Service, and all comments, the Commission finds that the Royal Mail Inbound Air Parcel Post Agreement is appropriately classified as a competitive product and should be added to the Competitive Product List.[15]

Cost considerations. The Postal Service presents a financial analysis showing that Royal Mail Inbound Air Parcel Post results in cost savings while ensuring that the Agreement covers its attributable costs, does not result in subsidization of competitive

[14] *See* Public Representative Comments at 2.

[15] In Docket No. RM2007-1, the Commission previously accepted and considered comments from multiple parties (XLA included) on the categorization of classes of products, including outbound international mail. *See* PRC Order No. 43, Order Establishing Ratemaking Regulations For Market Dominant and Competitive Products, October 29, 2007. In that docket, XLA argued that outbound and inbound international mail should be categorized as competitive. *Id.* at 85.

products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that the Royal Mail Inbound Air Parcel Post Agreement should cover its 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 should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Royal Mail Inbound Air Parcel Post Agreement indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the termination date of the Agreement. If the Agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves the Royal Mail Inbound Air Parcel Post Agreement as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

It is Ordered:

1. Royal Mail Inbound Air Parcel Post Agreement (MC2009-24 and CP2009-28) is added to the Competitive Product List as a new product under Priority Mail, Inbound Air Parcel Post.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if the termination date occurs prior to that date, as discussed in this Order.

3. The Secretary shall arrange for the 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 to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2009-24 and CP2009-28. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

PART B—Competitive Products

2000 Competitive Product List

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Priority Mail

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Inbound Air Parcel Post

Royal Mail Group Inbound Air Parcel Post Agreement

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