

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

Before Commissioners:

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

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators

Docket Nos. MC2010-34

Competitive Product Prices
Strategic Bilateral Agreement Between United States
Postal Service and Koninklijke TNT Post BV and
TNT Post Pakketservice Benelux BV (MC2010-34)
Negotiated Service Agreement

CP2010-95

NOTICE AND ORDER CONCERNING ADDING INBOUND COMPETITIVE
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL
OPERATORS TO THE COMPETITIVE PRODUCT LIST AND
NEGOTIATED SERVICE AGREEMENT

(Issued August 19, 2010)

I. INTRODUCTION

On August 13, 2010, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, to add Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Multi-Service Agreements) to the

competitive product list.¹ The Postal Service asserts that Multi-Service Agreements are a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632 (b)(3). This Request has been assigned Docket No. MC2010-34.

The Postal Service contemporaneously gave notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, that the Governors have established prices and classifications not of general applicability for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators in Governors’ Decision No. 10-3.² *Id.* at 1-2. Additionally, the Postal Service filed the first agreement (TNT Agreement) with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV, collectively “TNT Post”. The TNT Agreement governs rates for Inbound Air Parcel Post (Air CP), Surface Parcel Post (Surface CP) and Express Mail Service (EMS), along with ancillary services. *Id.* at 4. The TNT Agreement has been assigned Docket No. CP2010-95.

In support of its Request, the Postal Service filed five attachments as follows:

- Attachment 1—Statement of Supporting Justification required by 39 CFR 3020.32;
- Attachment 2—a redacted copy of Governors’ Decision No. 10-3, which establishes prices and classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, proposed descriptive Mail Classification Change (MCS) language, pricing formulas and certification of prices, and certification of the Governors’ vote;
- Attachment 3—a redacted copy of the TNT Agreement;
- Attachment 4—a certified statement required by 39 CFR 3015.5(c)(2); and
- Attachment 5—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal.

¹ 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 (Request).

² See Request, Attachment 2.

The Postal Service states that the Multi-Service Agreements create rates for competitive inbound International Mail exchanged between postal operators. This would include traditional mail services such as Air CP and EMS, as well as ancillary services. *Id.* at 3.

The Postal Service asserts that this product will permit the Postal Service to create pricing for any combination of products in an equivalent agreement that meets the pricing criteria of the Governors' Decision. *Id.* at 3.

The Postal Service states that the classification language also covers nontraditional services exchanged among postal operators, *e.g.*, inbound direct entry, and other services offered by a foreign postal operation to customers under terms other than those not commonly used, but which are processed and delivered similar to an existing service within the Postal Service's network. *Id.* at 3-4. The Postal Service indicates that the proposed classification language would permit the establishment of unique operating terms and conditions that modify the default arrangements of the UPU. *Id.* at 4.

Related agreement. The Postal Service asserts that the terms of the TNT Agreement conform to the proposed MCS language. *Id.* The agreement, which is scheduled to commence October 1, 2010, covers two one-year periods with different rates for the second period. *Id.* The Postal Service also identifies various terms included on the TNT Agreement, *e.g.*, performance metrics and electronic settlement and payment processes and incentives for optional activities. *Id.* at 4-5.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, asserts that the service to be provided under the contract 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. Additionally, the Postal Service contends that its filings demonstrate compliance with 39 U.S.C. 3642(b). Ms. Emerson also states that Multi-Service Agreements are consistent with the Commission's finding in Order No. 43

that Surface CP at Non-UPU Rates, EMS and Air CP be considered competitive products. *Id.*

The Statement of Supporting Justification addresses the requirements of 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, *e.g.*, that the product is properly classified as competitive and is not subject to the Private Express Statutes. *Id.* at 5-6, Attachment 1. The Postal Service asserts that all requisite requirements have been satisfied. *Id.* at 7.

Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the TNT Agreement complies with 39 U.S.C. 3633(a). *Id.*, Attachment 2. He asserts that the prices for the TNT Agreement “should cover its attributable costs and preclude the subsidization of competitive products by market dominant products.” *Id.*

The Postal Service contends that the proposed classification would enhance its pricing flexibility and ease administrative burdens by enabling it to negotiate multiple inbound competitive services at once rather than filing separate agreements for regulatory review. *Id.* at 7.

The Postal Service requests that Inbound Competitive Multi-Service Agreements with Foreign Postal Operators be added as a new product to the competitive product list. *Id.* at 8. It proposes that additional functionally equivalent contracts be added to the competitive product list as price categories under the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators listing. *Id.* at 6.

II. NOTICE OF FILINGS

The Commission establishes Docket Nos. MC2010-34 and CP2010-95 for consideration of the Request pertaining to the proposed Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, and the related rates and classifications, respectively. In keeping with existing practice, these dockets are

addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than August 31, 2010. The public portions of these filings can be accessed via the Commission's website (www.prc.gov).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. ORDERING PARAGRAPHS

It is Ordered:

1. The Commission establishes Docket Nos. MC2010-34 and CP2010-95 for consideration of the matters raised in each docket.
2. 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 these proceedings.

3. Comments by interested persons in these proceedings are due no later than August 31, 2010.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary