

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

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
With Foreign Postal Operators 1

Docket Nos. MC2010-35

Market Dominant Product Prices
Strategic Bilateral Agreement Between United States
Postal Service and Koninklijke TNT Post BV and
TNT Post Pakketservice Benelux BV (MC2010-35)
Negotiated Service Agreement

R2010-5

Market Dominant Product Prices
China Post Group–United States Postal Service
Letter Post Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

R2010-6

NOTICE AND ORDER CONCERNING ADDING INBOUND MARKET DOMINANT
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1
TO THE MARKET DOMINANT PRODUCT LIST AND TWO
FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENTS

(Issued August 19, 2010)

I. INTRODUCTION

On August 13, 2010, the Postal Service filed a request pursuant to 39 U.S.C. 3622(c)(10) and 3642, and 39 CFR 3010.40 *et seq.* and 3020.30 *et seq.* to add Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

(Multi-Service Agreements 1) to the market dominant product list.¹ This Request has been assigned Docket No. MC2010-35.

The Postal Service contemporaneously gave notice, pursuant to 39 CFR 3010.40 *et seq.* and 39 CFR 3015.5, that the Governors have authorized Type 2 rate adjustments for negotiated service agreements in accordance with 39 CFR 3010.40 *et seq.* that will result generally in more remunerative rates than the default rates set by the Universal Postal Union (UPU) Acts for inbound Letter Post items. *Id.* Additionally, the Postal Service filed two functionally equivalent Multi-Service Agreements 1 described as follows:

1. The Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV, collectively “TNT Post” (TNT Agreement); and
2. China Post Group–United States Postal Service Letter Post Bilateral Agreement (CPG Agreement).

The Postal Service requests that the two Multi-Service Agreements 1 be listed along with any subsequent functionally equivalent agreements as part of a single product grouping on the market dominant product list. *Id.* at 2. The TNT Agreement and CPG Agreement have been assigned Docket Nos. R2010-5 and R2010-6, respectively.

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

- Attachment 1—proposed Mail Classification Schedule (MCS) language for Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators;
- Attachment 2—Statement of Supporting Justification required by 39 CFR 3020.32;

¹ Request of United States Postal Service to Add Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators to the Market Dominant Product List, Notice of Type 2 Rate Adjustments, and Notice of Filing Two Functionally Equivalent Agreements (Under Seal), August 13, 2010 (Request).

- Attachments 3A and 3B—redacted copies of each agreement; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the agreements and supporting documents under seal.

Related agreements. Parties to the TNT Agreement are the Postal Service and subsidiaries of the postal operator for the Netherlands. The instant agreement covers inbound Letter Post in the form of letters, flats, small packets, bags, containers, and International Registered Mail service for Letter Post. *Id.* at 4. It also includes a placeholder for additional ancillary services at rates yet to be determined. *Id.*

The CPG Agreement with the postal operator of the People’s Republic of China includes the same inbound Letter Post items, plus delivery confirmation scanning with Letter Post small packets. *Id.* The scheduled effective date for both agreements is October 1, 2010. *Id.* at 3.

The Postal Service states its filings comply with 39 CFR 3010.40 *et seq.* for the implementation of the negotiated service agreements. The Request identifies various performance attributes associated with the agreements, *e.g.*, electronic settlement and payment processes. *Id.* at 5-6.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. In response, the Postal Service indicated that it intends to report information on these agreements through its Annual Compliance Report. While indicating its willingness to provide information on mail flows within the annual compliance review process, the Postal Service proposes that no special data collection plan be established for these agreements. With respect to performance measurement, it requests that the Commission exempt these agreements from separate reporting requirements under 39 CFR 3055.3. *Id.* at 8-9.

Functional equivalency. The Request advances reasons why the agreements are functionally equivalent to one another and contain the same attributes and methodology. *Id.* at 12-13. The Postal Service asserts that both agreements fit within the proposed MCS language, are with foreign postal operators, conform to a common description, and include similar terms and conditions.

The Postal Service identifies specific terms that distinguish the agreements from one another, all of which are highlighted in the Request. *Id.* at 12-14. These include electronic settlement, termination, dispute resolution, and other differences. The Postal Service contends that the agreements nonetheless are functionally equivalent to each other and “[t]he Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contracts.” *Id.*

In its Request, the Postal Service maintains that certain portions of the agreements and related financial information should remain under seal. *Id.*, Attachment 4.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, reviews the factors of section 3622(c) and concludes, *inter alia*, that the revenues generated will cover the attributable costs of the services offered under the agreements and that the rates are preferable to default rates set by the UPU. *Id.*, Attachment 4, at 2-3. The Request also addresses the requirements of 39 U.S.C. 3622 and 39 CFR 3020.30 *et seq.* *Id.* at 10-11; Attachment 4 at 5-9.

The Postal Service asserts its filings demonstrate compliance with the statute. It requests that Inbound Market Dominant Multi-Service Agreements With Foreign Postal Operators 1 be added to the market dominant product list. *Id.* at 11-15.

II. NOTICE OF FILINGS

The Commission establishes Docket Nos. MC2010-35, R2010-5 and R2010-6 for consideration of the Request pertaining to the proposed Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1, and the related rates and classifications, respectively. In keeping with 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. 3622, 3642, or 39 CFR part 3010.40, 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 (<http://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. MC2010-35, R2010-5 and R2010-6 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