

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

Before Commissioners:

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

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

Docket No. R2011-4

INITIAL COMMENTS OF THE PUBLIC REPRESENTATIVE

(February 14, 2011)

I. INTRODUCTION

On January 31, 2011, the Postal Service filed a notice pursuant to 39 U.S.C. 3622(c)(10) and 39 CFR 3010.40 *et seq.* concerning a Type 2 rate adjustment.¹ The Notice concerns the inbound portion of a bilateral agreement with HongKong Post as a functionally equivalent agreement to the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 contracts added to the market dominant

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, January 31, 2011 (Notice). *See also* PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010.

product list in Docket Nos. MC2010-35, R2010-5 and R2010-6.² In response to Order No. 663, the Public Representative hereby comments on the Postal Service's January 31, 2011, request.³

The Postal Service states 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.⁴ The agreement is scheduled to become effective upon the Postal Service's obtaining all regulatory approvals and notifying HongKong Post that such approvals have been obtained.⁵

This agreement includes inbound Letter Post, in the form of letters, flats, small packets, and bags, and International Registered mail service for letter Post. As with the existing agreement with China Post Group in Docket No. R2010-6, the HongKong Post agreement also establishes an ancillary service for delivery confirmation scanning with Letter Post small packets. The notice requirements of the Commission for the mail Classification Schedule (MCS) – appear to have been met by this request.

In its notice, the Postal Service identifies the statutory criteria under 39 U.S.C. § 3622(c)(10) for the Commission's review as whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers.⁶

The Postal Service asserts that it has provided information about the expected financial improvements, costs, volumes and revenues in the financial work papers it

² See *also* PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010.

³ Order No. 663, February 4, 2011.

⁴ Notice at 1.

⁵ The Postal Service's Notice may have inadvertently stated the effective date as April 1, 2010.

⁶ Notice at 6.

filed under seal. In terms of operational improvements under HongKong Post agreement the Postal Service notes the following aspects:

The parties' agreement suggests sortations for routing to the Postal Service's International Service Centers based on destination zip codes and the parties have created a delivery confirmation service for Letter Post small packets, which is designed to track and report specified scanning events for customers in Hong Kong and recipients in the United States. In addition, the parties provided for separation of those pieces for processing purposes.⁷

The Postal Service asserts that this agreement will not cause unreasonable harm to the marketplace since HongKong Post maintains a generally dominant position in the market for letter post originating in its home country and therefore is the only entity in a position to avail itself of an agreement with the Postal Service of this type and scope.

The Postal Service also observes that because no other entities are in a position to serve as designated operators for the relevant types of mail either originating in Hong Kong or destined to the United States, and because no other entities are subject to terminal dues rates with respect to inbound Letter Post to the United States from Hong Kong, the market for services offered under this agreement is in essence limited to its parties.

The Postal Service is proposing that no special data collection plan be created for this agreement as it intends to report information under the Annual Compliance Report. Finally, with respect to performance measurement, because this agreement covers "merely a grouping of other products already measured, the Postal Service requests that it be exempted from separate reporting under 39 C.F.R. § 3055.3(a)(3), as have been the existing agreements in Docket Nos. R2010-5 and R2010-6.⁸

⁷ *Id.* at 5-6.

⁸ *Id.* at 6.

The Postal Service argues that the HongKong Post Agreement is functionally equivalent to the TNT and China Post agreements previously filed.⁹ It also maintains that the terms of the HongKong Post agreement fit within the Proposed MCS language for Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators “1”. Thus, the HongKong Post Agreement and the existing agreements conform to a common description.

Discussion

The Public Representative reviewed the Agreement with HongKong Post (filed under seal) and the accompanying financial spreadsheets as well as the Postal Service’s notice in this docket. The Public Representative concurs with the Postal Service’s conclusion that the negotiated rates represent an improvement over the UPU-default rates. A visual inspection of the default rates and the negotiated rates applicable to this agreement suggests that this agreement will be financially beneficial to the Postal Service. However, the Postal Service does not explicitly calculate the improvement in the Postal Service’s financial situation. The Commission should direct the Postal Service to show the improvement in cost coverage using the negotiated rates and the default rates.

An issue for consideration under this agreement is that Hong Kong is a transition system country which is moving to the target system. In calendar year 2012, Hong Kong will become a target system country paying provisional terminal dues which will include the quality of service link. The UPU Rates themselves go up in 2012 and with implementation of the quality of service link to terminal dues the Postal Service could get an additional bonus, which would potentially lessen the differential between the negotiated rates and the UPU default rates.

The effective period of this agreement is also somewhat confusing. The Postal Service’s notice states that “the agreement’s inbound market dominant rates are

⁹ *Id.* at 7.

planned to become effective on April 1, 2010.”¹⁰ The agreement itself states “this agreement shall come into effect upon all such approvals having been obtained by USPS and notification to HongKong Post by USPS that all such approvals have been obtained, and the date of notification shall be the ‘effective date’...”¹¹ However, in the Postal Service’s financial spreadsheets, it appears that certain calculations spill over into calendar year 2012. If calendar year 2012 were to contain different rates, the projected costs and revenues could differ and thus the projected cost coverage would be altered.

At the conclusion of the first calendar year of this agreement, the agreement will be re-evaluated by both parties as to whether to extend the agreement for the next calendar year or modify the agreement. The Public Representative feels that this is prudent. If new rates are negotiated applicable to this contract, the Commission should require the Postal Service to submit the revised agreement to the Commission for approval.

Conclusion

The Public Representative acknowledges that this bilateral agreement and the concurrent Type 2 rate adjustment appear to comport with the provisions of title 39. The Public Representative also concurs with the Postal Service’s assertion that the agreement with HongKong Post is functionally equivalent to the earlier functionally equivalent agreements and should be added to the market dominant product list within the same product listing. The Public Representative respectfully tenders these comments for the Commission’s consideration.

Kenneth R. Moeller
Public Representative

¹⁰ Notice at 2.

¹¹ Notice, attachment 2, at 1.