

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

ORDER APPROVING RATE ADJUSTMENT FOR HONGKONG POST–UNITED
STATES POSTAL SERVICE LETTER POST BILATERAL AGREEMENT
NEGOTIATED SERVICE AGREEMENT

(Issued March 18, 2011)

I. INTRODUCTION

The Postal Service requests approval of a Type 2 rate adjustment for the inbound portion of the Hongkong Post–United States Postal Service Bilateral Agreement. For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

Pursuant to 39 U.S.C. 3622(c)(10) and 39 CFR 3010.40 *et seq.*, the Postal Service filed notice concerning a Type 2 rate adjustment.¹ The Notice concerns the classification of the inbound portion of a bilateral agreement with Hongkong Post as a functionally equivalent agreement under the Inbound Multi-Service Agreements with Foreign Postal Operators 1 product in Docket Nos. MC2010-35, R2010-5, and R2010-6.

The Postal Service states that the proposed rates are in accordance with 39 CFR 3010.40 *et seq.* and 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.* at 1. The agreement is effective on the date of the Postal Service's notification to Hongkong Post of receipt of all regulatory approvals unless the parties agree to an alternative effective date.²

In support of its Notice, the Postal Service filed two attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal; and
- Attachment 2—a redacted copy of the agreement.

Related agreements. In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and two functionally equivalent agreements, Strategic Bilateral Agreement Between

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, January 31, 2011 (Notice); Erratum to Notice of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, February 7, 2011. *See also* Docket Nos. MC2010-35, R2010-5, and R2010-6, 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 (Order No. 549).

² The Postal Service's Notice stated inadvertently that the agreement's rates are intended to become effective April 1, 2010. *Id.* at 2. The bilateral agreement provides that the agreement becomes effective upon the Postal Service obtaining all regulatory approvals and notifying Hongkong Post that all such approvals have been obtained unless the parties agree to an alternative date. The agreement will continue in effect through the remainder of this calendar year. For the next calendar year, the parties will evaluate the agreement to determine if it will be modified. *Id.* Attachment 2.

United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement), and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (CPG) Agreement. The Postal Service and Hongkong Post, the postal operator for Hong Kong, are parties to the instant agreement, which covers inbound Letter Post in the form of letters, flats, small packets, bags, and International Registered Mail service for Letter Post. *Id.* at 2-3. As in the CPG agreement, the instant agreement also establishes an ancillary service for delivery confirmation scanning with Letter Post small packets. *Id.* at 3.

The Postal Service states its filings comply with 39 CFR 3010.40 *et seq.* for the implementation of a negotiated service agreement. The Notice identifies specific performance attributes associated with the agreement. *Id.* at 3-4.

The Postal Service requests that it be exempted from separate performance measurement reporting requirements under 39 CFR 3010.43 under the instant agreement similar to the Commission's treatment of the agreements in Docket Nos. R2010-5 and R2010-6. *Id.* at 5-6.

The Postal Service advances reasons why the instant agreement is functionally equivalent to the previously filed TNT and CPG agreements as it contains the same attributes and methodology. *Id.* at 7-9.

In its Notice, the Postal Service also maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 1, Attachment 1.

The Postal Service concludes that the inbound portion of the bilateral agreement with Hongkong Post should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 10.

In Order No. 663, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.³ Chairman's

³ Notice and Order Concerning Rate Adjustment for Bilateral Agreement with Kongkong Post and Functionally Equivalent Negotiated Service Agreement, February 4, 2011 (Order No. 663).

Information Request No. 1 (CHIR No. 1), issued February 18, 2011, sought clarification of various elements related to the proposed rates and terms of the instant agreement. On March 3, 2011, the Postal Service filed a modification to the agreement revising the price chart found in Annex 1 of the agreement.⁴ On March 4, 2011, the Postal Service provided its responses to CHIR No. 1, which clarified the applicability of the agreement and identified a new library reference to support its revised documentation.⁵

III. COMMENTS

Comments were filed by the Public Representative.⁶ No other interested person submitted comments. The Public Representative concurs with the Postal Service's conclusion that the negotiated rates represent an improvement over the UPU default rates. *Id.* at 4. According to the Public Representative, a comparison of the default rates and the negotiated rates filed under seal suggest that the agreement will be financially beneficial to the Postal Service. *Id.* Nevertheless, he observes that the Postal Service does not specifically calculate the improvement in cost coverage. The Public Representative recommends that the Commission direct the Postal Service to demonstrate the improvement in cost coverage by calculating the cost coverage using both the default rates and negotiated rates. *Id.*

The Public Representative mentions a possible inconsistency between the agreement's effective date as stated in the original notice and the provisions of the instant agreement. *Id.* at 4-5. He also notes that in the financial model, the CY 2011 rates are applicable in CY 2012—a period beyond the duration of the instant agreement. Moreover, he observes that the agreement is to be re-evaluated by the parties at its conclusion in CY 2011. *Id.* To the extent new rates are implemented in

⁴ Notice of the United States Postal Service of Filing Modification to Inbound Market Dominant Multi-Service Agreement with Hongkong Post, March 3, 2011 (Modification).

⁵ Notice of the United States Postal Service of Filing of USPS-R2011-4-NP1, March 4, 2011. The Postal Service filed an accompanying Motion for Late Acceptance of Responses of the United States Postal Service to Chairman's Information Request No. 1, March 4, 2011. The motion is granted.

⁶ Initial Comments of the Public Representative, February 14, 2011 (PR Comments).

CY 2012, the Public Representative states that the revenues and costs would differ from those presented in the financial model. *Id.* at 5.

The Public Representative concludes that the agreement appears to be functionally equivalent to the predecessor agreements, and that the rate adjustment appears to comport with title 39. He therefore recommends the addition of the instant agreement to the Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

IV. COMMISSION ANALYSIS

In Order No. 549, the Commission established the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and two functionally equivalent agreements. In its analysis of the market dominant product in that proceeding, the Commission reviewed the statutory requirements for inclusion of negotiated service agreements under this product. As the Postal Service seeks to add another functionally equivalent agreement in the instant proceeding, there is no need to determine whether the instant agreement should be classified as market dominant.

Statutory responsibilities. The statutory and regulatory provisions of 39 U.S.C. 3622(c)(10) and 39 CFR 3010.40(a) are applicable to the instant agreement and require the Commission to make a finding that the proposed market dominant negotiated service agreement must either (1) improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or (2) enhance the performance of various operational functions (39 U.S.C. 3622(c)(10)(A)(ii)). Additionally, the negotiated service agreement may not “cause unreasonable harm to the marketplace” (39 U.S.C. 3622(c)(10)(B)) and “must be available on public and reasonable terms to similarly situated mailers.” 39 CFR 3010.40(c).

Financial analysis. The Postal Service states that the negotiated rates in the bilateral agreement represent an improvement over the default rates set by the UPU. Notice at 1. Based upon the financial model, the Postal Service further states that the

agreement will improve the net financial position of the Postal Service and therefore complies with section 3622(c)(10). *Id.* at 6.

In response to CHIR No. 1, the Postal Service filed a revised financial model that reflects the revised price chart in Annex 1 and corrects reference to CY 2012 rates. The revised financial model estimates a slight reduction in the projected cost coverage compared to the Postal Service's original projection. The revised financial model also addresses concerns raised by the Public Representative.

Additionally, in CHIR No. 1, question 2, the Commission requested calculation of the cost coverage using the default rates to permit a comparison of the cost coverage at both the default and negotiated rates. In response to question 2, the Postal Service performed the necessary calculations and informed the Commission of the cost coverage at the default rates. Based upon its own analysis, the Commission finds that the negotiated prices represent a modest improvement over the default rates.

The Postal Service states that the agreement will not result in unreasonable harm to the marketplace. *Id.* at 4. The Postal Service contends that there is no significant competition in this market. As a result, it believes that the Hongkong Post is in the dominant position in the country to accept Letter Post, and the instant agreement does not pose competitive harm in the marketplace. *Id.* The Postal Service states that because the Postal Service and Hongkong Post serve as their respective countries designated operators to provide universal Letter Post service under the Universal Postal Union Convention, there are limited alternatives for receiving inbound single-piece Letter Post. It states particularly 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 the services subject to this agreement is limited. *Id.* at 5. Because it is not aware of any significant competition in this market, the Postal Service expects there will be no significant impact on small business competitors.

Performance and functional equivalency. The Postal Service states that additional performance improvements include proposed sortation for routing to the

Postal Service's International Service Centers based on destination ZIP Codes and delivery confirmation services for Letter Post packets. *Id.* at 3-4.

The Postal Service contends that the instant agreement is functionally equivalent to the previous TNT and CPG agreements. It asserts that the instant agreement includes similar terms and conditions, *e.g.*, is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory with accompanying ancillary services. *Id.* at 7-8.

The Postal Service also identifies differences in specific terms that distinguish the instant agreement from the two existing agreements. *Id.* at 8-9.⁷ These distinctions include the term, dispute resolution and confidentiality provisions, settlement charges and explanations, mail restrictions, and more detail on disclaimers, barcoding, and software. *Id.* at 9.

The instant agreement appears to be similar to the contracts filed in Docket Nos. R2010-5 and R2010-6, although they differ in some minor respects relative to specific negotiated and general terms. These differences notwithstanding, the Commission concludes that the instant agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

Request to exclude the proposed product from service performance measurement reporting. The Postal Service requests an exception from the requirement to report service performance for the instant agreement similar to the precursor agreements in Docket Nos. R2010-5 and R2010-6 filed under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 5-6. The Postal Service contends that the product is merely a grouping of other products already being measured. It also states that it will report information on this agreement in the Annual Compliance Report. Negotiated service agreements with

⁷ The Commission recognizes that the Postal Service's analysis of the distinctions between the previously filed agreements center on the instant agreement's comparison with the CPG agreement in Docket No. R2010-6.

substantially all components of the agreement included in the measurement of other products may be granted and exception from reporting pursuant to 39 CFR 3055(a)(3). The exception is granted.

Early termination. The Postal Service shall promptly notify the Commission if the inbound portion of the bilateral agreement with Hongkong Post terminates earlier than the proposed term, but no later than the actual termination date. The Commission will then remove the applicable agreement from the Mail Classification Schedule.

Conclusion. The Commission also finds that the inbound portion of the bilateral agreement with Hongkong Post falls within the parameters of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The inbound portion of the bilateral agreement with Hongkong Post filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5 and R2010-6) product.
2. If the instant agreement terminates earlier than the proposed term, the Postal Service shall notify the Commission and file relevant contract data as set forth in the body of this Order.

3. The inbound portion of the bilateral agreement with Hongkong Post is granted an exception from service performance measurement reporting pursuant to 39 U.S.C. 3055.3(a)(3).
4. The Secretary shall arrange for the publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary