

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

Before Commissioners:

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

Market Dominant Product Prices
Exprès Service Multilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2011-6

NOTICE AND ORDER CONCERNING RATE ADJUSTMENT FOR
EXPRÈS SERVICE AGREEMENT
NEGOTIATED SERVICE AGREEMENT

(Issued August 18, 2011)

I. INTRODUCTION

On August 12, 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 Postal Service's accession to the Exprès Service Agreement, a multilateral agreement that covers the delivery of cross-border letters, flats, and small packets (LC/AO) items weighing up to 2 kilograms tendered as Exprès Items and branded with the Common Logo. Notice at 1, Attachment 2.

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 12, 2011 (Notice). 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).

The Postal Service explains that the *Exprès Service Agreement* establishes a delivery confirmation service for inbound Letter Post in the form of letters, flats, and small packets, which is currently in use for mailings between 24 countries. *Id.* at 6. The agreement provides that the *Exprès Items service* was developed as “a product with reliable, consistent delivery, track, & trace features and a common logo.” *Id.* at 6-7, Attachment 2 at 1 (footnote omitted). Article 12 of the *Exprès Service Agreement* states that any postal operator that is a postal administration as interpreted by the Universal Postal Union (UPU) can accede to the agreement by executing a Deed of Accession and delivering it to the group’s steering committee. *Id.* at 5-6.

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 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). In Order No. 700, the Commission approved the HongKong Post Agreement. The Postal Service states that both the CPG and HongKong Post Agreements contain annexes which include a Small Packet with Delivery Scanning service. Notice at 1-2. It maintains that the delivery confirmation service included in the *Exprès Service Agreement* is functionally equivalent to the delivery confirmation service provided with the Small Packet with Delivery Scanning service that is included in the CPG Agreement. *Id.* at 2. The Postal Service asserts that because the *Exprès Service Agreement* delivery confirmation service is similar to the CPG Agreement scanning service, it should be included as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product established in Docket Nos. MC2010-35, R2010-5 and R2010-6. *Id.*

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 UPU Acts for inbound Letter Post items. *Id.* at 1. In accordance with Article 12 of the Exprès Service Agreement, the Postal Service's accession will become effective on the first day of the second month following approval by the Steering Committee. *Id.* at 5. The Postal Service states if the accession is approved during the month of August, it expects the effective date to be October 1, 2011. *Id.*

In support of its Notice, the Postal Service filed three 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;
- Attachment 2—a redacted copy of the Exprès Service Agreement, including applicable annexes; and
- Attachment 3—redacted copies of documents related to the Postal Service's deed of accession, including notice and technical specifications.

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 performance attributes associated with the agreement, *e.g.*, delivery confirmation service for letter-class flats, letters, and packets using a specific barcode, and incentive to improve mail processing efficiency for remuneration based on timely delivery and return of scans for Exprès Items. *Id.* at 7-8.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this agreement 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 this agreement. With respect to performance measurement, it requests that the Commission exempt this agreement from separate reporting requirements under 39 CFR 3055.3 as determined in Order Nos. 549 and 570 for the agreements in Docket Nos. R2010-5, R2010-6 and R2011-4. *Id.* at 10.

Functional equivalency. The Postal Service advances reasons why the agreement is functionally equivalent to the previously filed TNT and CPG Agreements, and contains the same attributes and methodology.² Notice at 12-16. It asserts that the instant agreement fits within the Mail Classification Schedule language for Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Additionally, it states that it includes similar terms and conditions, e.g., is with a foreign postal operator, incorporates similar attributes and methodology for delivery confirmation services, conforms to a common description, and applies to rates for letter-class items tendered from the postal operator's territory similar to the Small Packets with Delivery Scanning included with the CPG and HongKong Post Agreements. *Id.* at 12-13.

The Postal Service identifies specific terms that distinguish the instant agreement from the CPG Agreement. *Id.* at 13-15. These distinctions include an indefinite term, single service nature, multilateral scope, applicability to letter-class flats, letters, and packets, and other differences. The Postal Service contends that the instant agreement is nonetheless functionally equivalent to existing agreements and "[t]he Postal Service does not consider that the specified differences affect the fundamental service the Postal Service is offering." *Id.* at 16.

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 16, Attachment 1.

The Postal Service concludes that the *Exprès* Service Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 16.

² The Postal Service states that because there is no "baseline agreement" in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, it has based its functional equivalency comparison primarily on the CPG Agreement since the CPG Agreement includes rates for "Small Packet with Delivery Scanning" and the TNT Agreement does not include rates for a service described as "Global Confirmation Over 2 lbs."

II. NOTICE OF FILINGS

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 and 39 CFR part 3010.40. Comments are due no later than August 25, 2011. The public portions of these filings can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints Emmett Rand Costich to serve as Public Representative in this docket.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. R2011-6 to consider matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than August 25, 2011.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary