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

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Korea Post Limited–United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2013-9

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE NOTICE CONCERNING RATE ADJUSTMENT AND BILATERAL AGREEMENT WITH KOREA POST

(September 25, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1833.[1] In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service notice of a Type 2 rate adjustment in conjunction with a new market dominant international negotiated service agreement.[2] The Notice concerns the inbound portion of a bilateral agreement with Korea Post (Korea Post Agreement) to be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Multi-Service Agreements) product. The inbound portion of the Korea Post Agreement establishes negotiated rates for delivery confirmation scanning of inbound letterpost small packets. Notice at 1.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke

[1] PRC Order No. 1833, Notice and Order Concerning Korea Post Negotiated Service Agreement, September 12, 2013.

[2] Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Bilateral Agreement with Korea Post, September 10, 2013 (Notice).

TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post 2010 Agreement) within the product.[3] Subsequently, the Commission determined that bilateral agreements with HongKong Post (HongKong Post Agreement) and China Post Group (China Post 2011 Agreement) should be included within the Multi-Service Agreements product.[4] The Commission also approved additional bilateral agreements with Singapore Post Limited, the Australian Postal Corporation, HongKong Post, Canada Post Corporation, China Post Group, HongKong Post, and the Netherlands Royal PostNL BV for inclusion within the product.[5]

The Korea Post Agreement is the first bilateral agreement with Korea Post proposed to be included within the Multi-Service Agreements product. The Postal

[3] *See* 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 Agreement, Docket Nos. MC2010-35, R2010-5 and R2010-6, September 30, 2010.

[4] *See* PRC Order No. 700, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2011-4, March 18, 2011; *see also* Order No. 871, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2011-7, September 23, 2011.

[5] *See* PRC Order No. 995, Order Approving Rate Adjustment for Singapore Post-United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2012-1, November 23, 2011 (Singapore Post Agreement); PRC Order No. 996, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2012-2, November 23, 2011 (Australia Post Agreement); PRC Order No. 1058, Order Approving Request to Include HongKong Post Group Bilateral Agreement within an Existing Market Dominant Product, Docket No. R2012-4, December 20, 2011 (HongKong Post 2012 Agreement); PRC Order No. 1078, Order Concerning Rate Adjustment for Bilateral Agreement with Canada Post Negotiated Service Agreement, Docket No. R2012-5, December 27, 2011 (Canada Post Agreement); PRC Order No. 1597, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with HongKong Post), Docket No. R2013-3, December 28, 2012 (HongKong Post 2013 Agreement); PRC Order No. 1598, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with China Post), Docket No. R2013-2, December 28, 2012 (China Post 2013 Agreement); PRC Order No. 1602, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), Docket No. R2013-4, December 28, 2012 (PostNL Agreement); PRC Order No. 1610, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Singapore Post), Docket No. R2013-5, January 3, 2013 (Singapore Post Agreement Modification), *see also* PRC Order No. 1721, Order Granting Motion for Temporary Relief, Docket No. R2013-5, May 17, 2013 (Singapore Post Agreement Modification Two); *and*, PRC Order No. 1766, Order Approving Modification to Singapore Post Limited-United States Postal Service Bilateral Agreement, Docket No. R2013-8, June 26, 2013 (Singapore Post Agreement Modification Three).

Service states that the proposed Effective Date for the Korea Post Agreement is December 1, 2013.[6] The Korea Post Agreement is to remain in effect for one calendar year after the Effective Date, unless terminated sooner. Notice, Attachment 2 at 6.

The Postal Service asserts that the negotiated rates in the Korea Post Agreement will result in an "improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items." *Id.* at 1. The Postal Service also asserts that the Korea Post Agreement is similar, and therefore functionally equivalent, to the "other agreements" previously included within the Multi-Service Agreements product.[7] Therefore, the Postal Service requests that the Korea Post Agreement be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1(MC2010-35) product. *Id.* at 3 and 10-11.

COMMENTS

The Public Representative has reviewed the Korea Post Agreement and the supporting financial model filed under seal that accompanied the Postal Service's Notice. Based upon that review, the Public Representative concludes that the Korea Post Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service during the term of the Agreement.

With respect to functional equivalence, the Public Representative considers the Korea Post Agreement to be functionally equivalent to the Singapore Post Agreement,[8]

[6] United States Postal Service Response to Order No. 1833 and Notice of Filing Errata, September 13, 2013 (Notice of Errata), at 1.

[7] Notice at 3. Those "other agreements" are listed in the Postal Service's Notice at 9.

[8] *See* Order No. 995. The Postal Service variously refers to the agreement approved in Order No. 995 in general terms as the "Singapore 2011 Agreement" or "Singapore Post 2011 Agreement." Notice at 2 and 10. In notices prior to this docket, the Postal Service identifies the agreement that is the subject of Docket No. R2012-1 in general terms as the "Singapore Post Agreement." Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, Docket No. R2012-1, October 14, 2011 at 1 (This notice concerns a bilateral agreement with Singapore Post Limited (Singapore Post Agreement), . . .); and Notice of United States Postal Service of Filing Additional Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with Singapore Post Limited), Docket No. R2013-8 at 1 (The modification extends the agreement filed in Docket No. R2012-1 (the "Singapore Post Agreement"), [footnote omitted]

as this is the agreement the Postal Service identified as appropriate for purposes of comparison to identify material differences between the two agreements. In this regard, the Public Representative recommends that the Commission clarify what is the "baseline" agreement(s) for the Multi-Service Agreements product or otherwise provide guidance to the Postal Service for identifying which agreement among the many agreements previously included within the product should serve as the "baseline" agreement for purposes of functional equivalency comparisons in future dockets.

Statutory Criteria. Under 39 U.S.C. § 3622(c)(10), the criteria for Commission review are whether a Postal Service agreement (1) will be available on public and reasonable terms to similarly situated mailers, (2) either improves the net financial position of the Postal Service or enhances the performance of operational functions, and (3) will not cause unreasonable harm to the marketplace.

With respect to criterion (2), the negotiated rates for inbound letterpost small packets with delivery scanning represent an improvement compared to the default terminal dues rates established by the UPU for CY2013. Based upon the negotiated rates, the financial model indicates that the Korea Post Agreement will generate unit revenue on projected volumes in excess of estimated unit attributable costs, resulting in a positive cost coverage during the term of the agreement.[9] The Korea Post Agreement should also improve the operational performance of the Postal Service. Notice at 5. With respect to criteria (1) and (3), the Postal Service makes reasonable arguments that they are not implicated by the inbound Korea Post Agreement. *Id.* at 6-7.

Functional Equivalence. In its Notice, the Postal Service asserts that the Korea Post Agreement is functionally equivalent to a number of previously approved agreements. Those agreements are the China Post 2010 Agreement, the TNT

. . .). The "Singapore Post Agreement" will be used herein to refer to the agreement approved in Order No. 995.

[9] *Compare* the CY2013 UPU terminal dues rates per piece and per kilogram applicable to inbound letterpost from Korea to the negotiated rates in the financial model, Excel file (Non-Public) Korea_MD_IB_2013 09 09.xls, worksheet tab 10_Current_TDues_Rates, Columns [D] and [E], and [F] and [G]. Given that 11 months of the term of the Korea Post Agreement coincide with CY 2014, the Public Representative believes that the proper comparison should be to the CY 2014, rather than the CY 2013, UPU terminal dues rates applicable to Korea Post.

Agreement, the China Post 2012 Agreement, the PostNL Agreement, the Hongkong Post Agreement, Hongkong Post 2012 Agreement, the China Post 2011 Agreement, the Singapore Post 2011 Agreement, the Singapore Post 2012 Agreement, and the Singapore Post 2013 Agreement. *Id.* at 9. The Postal Service also states that the "terms of the Korea Postal Agreement fit within the proposed Mail Classification [Schedule] (MCS) language" for the product, and that the Korea Post Agreement and the other agreements "are constructed from a similar template and contain many similar terms and conditions." *Id.*

"For simplicity," however, the Postal Service compares the Korea Post Agreement with the Singapore 2011 Agreement, and identifies the following material differences: Article 8, Termination, is revised to state that failure to make timely and full payment of any undisputed invoice or portion thereof constitutes good cause to terminate an agreement; and, in Annex 2, concerning General Settlement Requirements, a provision is added to charge interest to Korea Post on all undisputed invoices and undisputed portions of invoices for inbound mail streams which are past due. *Id.* at 10-11. The Postal Service states that the "specified differences [do not] detract from the conclusion that the Korea Post Agreement is functionally equivalent to the Singapore 2011 Agreement and other agreements in the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product grouping." *Id.* at 11.

In the Public Representative's view, these changes do not affect the similarity of the cost or market characteristics between the two agreements. Consequently, the Public Representative considers the Korea Post Agreement to be functionally equivalent to the Singapore Post Agreement, which in turn was found to be functionally equivalent to the China Post 2010 Agreement, the Hongkong Post Agreement, and the China Post 2011 Agreement.

Nevertheless, the Postal Service's choice of the Singapore Post Agreement, out of all the agreements previously included within the Multi-Service Agreements product, for purposes of comparison with the text of the Korea Post Agreement, is not explained. The Postal Service simply states that the comparison is "illuminating and appropriate." *Id.* at 10–11, n. 14.

In addition, it is not clear why the Postal Service identified some, but not all, of the agreements previously included within the product when asserting that the Korea Post Agreement was functionally equivalent to those other agreements. Specifically, the Postal Service excludes the Canada Post Agreement and the HongKong Post 2013 Agreement from the listing of other agreements that the Postal Service asserts are functionally equivalent to the Korea Post Agreement.[10] For those agreements included in its listing, the Postal Service offers the following reasoning: "[i]f these agreements are added under a single product heading within the First-Class Mail class, then, presumably, other subsequent agreements similar to these instruments for country-specific inbound flows of Letter Post would be presented to the Commission under cover of a notice of filing, without the need for a separate classification request accompanying each such agreement." Notice at 10, n. 13.

As the Public Representative understands this statement, all agreements previously included within the product may be used for purposes of functional equivalency comparisons with all subsequent agreements proposed for inclusion within the product, including the Korea Post Agreement. Conversely, using this logic, any *single* agreement previously included within the product could be used for purposes of functional equivalency comparisons, and therefore serve as the baseline agreement for the Korea Post Agreement, and the product generally. However, this begs the question why the Postal Service has not designated a baseline agreement for the product.

In this regard, the Postal Service has never explained why it has not designated a "baseline" agreement(s) for the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. The Postal Service merely observes that "The China Post 2010 Agreement and the TNT Agreement were added simultaneously to the market dominant product list as functionally equivalent in Docket Nos. MC2010-35, R2010-5, and R2010-6, without indicating which would serve as the 'baseline' for functional equivalence comparisons with future agreements." *Id.*, n. 14. For the relatively few agreements that were proposed by the Postal Service shortly after the

[10] *Compare* agreements identified in the Postal Service's Notice at 9 with the agreements in Notes 3, 4, and 5, *supra*.

Commission added the Multi-Service Agreements product to the market dominant product list, designation of a baseline agreement was unnecessary as there were only the two simultaneously approved agreements. It appears the Postal Service has delayed designating a baseline agreement while it seeks to add additional features and options within the general classification of the Multi-Service Agreements product. The Public Representative believes that after three years of operation and the negotiation of 12 functionally equivalent agreements, the Postal Service should designate a baseline agreement for this product, or explain why it has not done so.

In PRC Order No. 871, which concerned the China Post 2011 Agreement, the Commission stated that:

> [b]ecause the Postal Service has not identified a 'baseline agreement,' the [China Post 2010 Agreement and the TNT Agreement] collectively serve as the measure for functional equivalence. The Commission may review this issue further in the event that the Postal Service does submit an agreement to be considered a baseline agreement.[11]

The Public Representative submits that sufficient time has elapsed for the Commission to review this issue and provide some guidance to the Postal Service or, at a minimum, request from the Postal Service an explanation for its decision not to designate a baseline agreement for the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

[11] PRC Order No. 871 at 6-7.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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