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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MARKET DOMINANT PRODUCT PRICES INBOUND MARKET DOMINANT MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1 CANADA POST CORPORATION - UNITED STATES POSTAL SERVICE BILATERAL AGREEMENT (MC2010-35) NEGOTIATED SERVICE AGREEMENT	Docket No. R2014-3

NOTICE OF UNITED STATES POSTAL SERVICE OF TYPE 2 RATE ADJUSTMENT, AND NOTICE OF FILING FUNCTIONALLY EQUIVALENT AGREEMENT
(November 15, 2013)

Pursuant to authorization from its Governors, the United States Postal Service (Postal Service) hereby provides notice of a Type 2 rate adjustment, in accordance with 39 C.F.R. § 3010.40 *et seq.*, that results in improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items. This notice concerns the inbound portion of a bilateral agreement with Canada Post Corporation ("Canada Post" or "CPC"), which is replacing the agreement reviewed by the Commission in PRC Docket No. R2012-5. The Commission determined that the predecessor agreement was functionally equivalent to the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 contracts added to the market dominant product list.[1] The Commission is quite familiar with the longstanding relationship the Postal Service has with CPC and the serial bilateral agreements arising out of that relationship. The agreement presented in PRC Docket No. R2012-5 (the

[1] PRC Order No. 1078, Order Concerning Rate Adjustment For Bilateral Agreement With Canada Post Negotiated Service Agreement, Docket No. R2012-5, December 27, 2011, and confirmed by PRC Order 1611, Order Concerning Amendment To Bilateral Agreement With Canada Post Negotiated Service Agreement, Docket No. R2012-5, January 7, 2013.

"predecessor agreement") gave the Postal Service its first opportunity to include this bilateral with the other agreements of its kind in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 grouping.

Attachment 1 to this Notice is the Postal Service's application for non-public treatment of these materials. A redacted copy of the agreement is included in the public version of this filing as Attachment 2. The full text of the agreement and supporting financial documentation are being filed separately under seal with the Commission. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

I. Notice of Agreement and Rate Adjustment

A. Satisfaction of the Criteria under Part 3010, Subpart D of the Rules of Practice and Procedure

The Postal Service provides the following answers, descriptions, and affirmations in response to the criteria for contents of a notice of agreement in support of a negotiated service agreement, as provided in 39 C.F.R. § 3010.42. This statement provides support for the implementation of the Agreement and the establishment of the rates offered therein.

> *(a) … [A] notice of agreement that shall include at a minimum:*
> *(1) A copy of the negotiated service agreement;*
> *(2) The planned effective date(s) of the proposed rates;*
> *(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the proposed new rates; and*
> *(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.*

A copy of the agreement is being filed under seal in connection with this filing. The agreement's inbound market dominant rates are planned to become effective on

January 1, 2014. Public notice of these rates is being given through this Notice at least 45 days before the effective date. Ms. Lea Emerson, Executive Director, International Postal Affairs, will be available to provide prompt responses to requests for clarification from the Commission.

(b) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.

The parties to the agreement are the United States Postal Service and Canada Post. This agreement includes negotiated pricing and settlement for various inbound letter-post products, including International Business Reply Service, registered mail, and small packets with delivery confirmation. The agreement has a term of two years, includes provisions for dispute resolution, and may be amended by the Parties in writing, subject to conditions precedent, including Commission review, as appropriate.

(c) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:
(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;
(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;
(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement; and
(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.

The agreement with Canada Post is expected to improve the financial performance over the default UPU rates that the Postal Service would receive, and it is expected to continue improvements to operational performance established under prior similar agreements with Canada Post. New provisions set the stage for introduction of International Business Reply Services to be offered to CPC's customers sending items to recipients in the United States, enabling the U.S. recipients to return the items prepaid. The Postal Service provides the required information about expected financial improvements, costs, volumes, and revenues in the financial workpapers that it filed under seal with this Notice. Operational and other improvements that are expected to flow from this agreement are described below.

> *(d) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.*

For the Canada Post agreement, operational and other improvements include:

- Refinement of the use of a web-based inquiry system to improve customer service response time when inquiries are made for the loss of, damage to, or missing contents from parcels; and
- Settlement processes based on exchange of electronic data from the pre-advice of dispatch. Using the electronic data will reduce accounting errors and make it possible to settle accounts more quickly.

> *(e) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace.*

While it should improve financial and operational performance for the Postal Service, this agreement will not result in unreasonable harm to the marketplace, as past experience has demonstrated. Canada Post maintains a dominant position in the market for letter-post originating in its home country. Therefore, Canada Post is the only entity in a position to avail itself of an agreement with the Postal Service of this type and scope. The United States' Private Express Statutes also generally prohibit entities other than the Postal Service from carrying inbound international letters commercially after entry at a U.S. port, at least below certain price and weight thresholds. The Postal Service is unaware of any private entity that would be able to serve the United States market for inbound letter-post from Canada on the terms and scale contemplated in this agreement.

In addition, the Postal Service and Canada Post serve as their respective countries' designated operators for the exchange of mail, including in particular letter-post, under rules set by the UPU. Designated operators ordinarily compensate one another for the delivery of letter-post in accordance with terminal dues rates set by the UPU, unless a bilateral agreement is concluded.[2] Because no other entities are in a position to serve as designated operators for the relevant types of mail either originating in Canada or destined for 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 Canada, the market for the services offered under this agreement is in essence limited to its parties.

Because there is no significant competition in the relevant market when the inbound letter-post flows are considered in totality, the Postal Service submits that the agreement, which in relevant terms is unchanged from its predecessor, is as unlikely to

[2] See Universal Postal Convention Article 27 ¶ 9.

pose competitive harm to the marketplace as the agreements of the past between the Postal Service and Canada Post.[3]

> *(f) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.*

In this docket, the Postal Service is presenting only those parts of the agreement that call for delivery of letter-post in the United States that is tendered by a foreign postal operator, i.e., negotiated rates for inbound market dominant products. The agreement is submitted in an unsigned form, because negotiation of terms unrelated to this filing are ongoing. In substance and in respects material to this notice, the most salient terms of the market dominant portions of the agreement are final. Most importantly, this includes the rates upon which the Postal Service's financial analysis are based.

The rates paid by the Postal Service to Canada Post for outbound delivery of the Postal Service's products in Canada are not presented to the Commission, because those rates represent supplier costs to the Postal Service, akin to an agreement to purchase trucking services from highway contractors or air transportation from air carriers. As such, they are built into the prices that the Postal Service charges its mailing customers for outbound products, which are the subject of a different regulatory filing.

The parts of the agreement that relate to competitive products will be the subject of regulatory review in a separate PRC docket.

B. Data Collection Plan

[3] This does not imply, however, that there is an absence of competition in this market. The market is liberalized to some degree, particularly for bulk business letters and heavier weight letter-post.

Under 39 C.F.R. § 3010.43, the Postal Service must include with its notice of agreement "a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. § 3622(c)(10)."[4] The Commission previously granted the Postal Service's request to report information on the predecessor agreement through the Annual Compliance Report (ACR). The Postal Service asks that the Commission again allow it to submit the relevant data within the ACR. With respect to performance measurement, the Postal Service notes that PRC Order 966 in Docket No. R2012-2 provides an exception to the reporting requirement under 39 CFR § 3055(a)(3) for functionally equivalent agreements added to the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product grouping.

C. Statutory Criteria

Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are 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. The first two criteria are addressed in Part IA above. With respect to the third criterion, there are no entities that are similarly situated to Canada Post in their ability to tender the broad-based letter-post flows from Canada under similar operational conditions, nor any other entities that serve as a designated operator for letter-post originating in Canada. The Commission agreed in its review of a prior

[4] 39 C.F.R. § 3010.43.

similar agreement that this conclusion was correctly drawn. [5] Moreover, the Commission determined with regard to the predecessor agreement that it complied with all statutory and regulatory requirements to be included in this product grouping.[6] Because all of the criteria set forth in 39 U.S.C. § 3622(c)(10) have been met, the Postal Service respectfully urges the Commission to act promptly by allowing the agreement's rates to be implemented under 39 C.F.R. § 3010.40, as requested.

II. Functional Equivalence

The Commission, in Order 1864,[7] called upon the Postal Service to put forth, in its "next" filing of an agreement in this product group, a proposal for identification of the appropriate baseline for comparison of agreements for the purpose of determining whether a new agreement is functionally equivalent to others in an existing product grouping such that it can be included in that group. The Postal Service filed a Motion for Partial Reconsideration of Order 1864 and incorporates by reference the substance of that motion here.[8]

The 2014-2015 Canada Post agreement is the substantive equivalent to the predecessor agreement with Canada Post for the 2012-2013 period, That agreement was included in the product grouping for Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1.[9] The Commission found previously that

[5] *See* PRC Order No. 163, Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, Docket Nos. MC2009-7 and R2009-1, December 31, 2008, at 9-10 ("Given its narrow characterization of the underlying Agreement, the Postal Service's position [as to 'similarly situated mailers'] is correct. For purposes of this proceeding, the Commission concludes that it would be largely an academic exercise to consider whether a broader characterization should be employed.").

[6] Order No. 1078 at 8-10 and confirmed by Order No. 1611 at 4.

[7] PRC Order No. 1864, Order Approving and Additional Inbound Market Dominant Multi-Service Agreement With Foreign Postal Operators 1 Negotiated Service Agreement (With Korea Post), Docket No. R2013-9, October 30, 2013 at 8 and 10.

[8] Motion For Partial Reconsideration Of Order No. 1864, Docket No. R2013-9, November 6, 2013.

[9] *See* footnote 1.

the terms of the Canada Post agreement fit within the Mail Classification Schedule language for that product grouping. These terms have not changed in the present rendering of the agreement. Therefore, the 2014-2015 Canada Post agreement and the existing agreement in the product grouping conform to a common description. The agreements share a common market: Foreign postal operators designated by their countries to fulfill the obligations of the UPU Acts, specifically in this case, Canada Post.

The agreements also share cost characteristics. The financial model used to generate the rates offered under this Canada Post agreement is the same as that used to generate the rates offered under the predecessor agreement. The methodology for determining the rates is the same and the costs underlying the agreement are taken from the International Cost and Revenue Analysis Report, as was the case with the predecessor agreement. Therefore, the Postal Service submits that the 2014-2015 Canada Post agreement is functionally equivalent to the predecessor agreement and should be added to the market dominant product list within the same product grouping.

There are, however, differences between the 2014-2015 Canada Post agreement and the predecessor agreement as initially reviewed in Order 1078 and modified by Order 1611. Most of these differences reflect a reorganization of the terms of the agreement without any actual changes to those terms.

The Postal Service does not consider that any differences detract from the logical conclusion that the 2014-2015 Canada Post agreement is functionally equivalent to its predecessor agreement and the other agreements in the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product grouping.

III. Application for Non-Public Treatment

The Postal Service maintains that certain portions of the agreement and related financial information should remain confidential. In accordance with 39 C.F.R. § 3007.21, the Postal Service files as Attachment 1 to this Request its application for non-public treatment of materials filed under seal. A full discussion of the required elements of the application appears in Attachment 1.

IV. Conclusion

For the reasons discussed, the Postal Service believes that the agreement with Canada Post discussed herein should be added to the product listing for Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 and that data reporting for this agreement should be included in the ACR.

Respectfully submitted,

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ATTACHMENT 1

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to the inbound market dominant agreement between the Postal Service and Canada Post Corporation (Agreement) filed in this proceeding. The Agreement and supporting documents establishing compliance are being filed separately under seal with the Commission. A redacted copy of the Agreement is filed with the Request as Attachment 2. In addition, a redacted version of the supporting financial documentation is included with this public filing as a separate Excel file.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).[1] Because the portions of the materials that the Postal Service is

[1] In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed

applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of this Agreement, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the contract is made. The Postal Service has already informed Canada Post Corporation (Canada Post), in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service identifies Terry Dunn, General Manager, International Relations, Canada Post Corporation, as the appropriate contact on behalf of Canada Post. Mr. Dunn's telephone number is (613) 734-8894, and his email address is terry.dunn@canadapost.ca. Canada Post has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Ewa Kowalski, Director, International Mail Settlement, Canada

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broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

Post Corporation. Ms. Kowalski's telephone number is (613) 734-6201, and her email address is ewa.kowalski@canadapost.ca.[2]

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In connection with its Request filed in this docket, the Postal Service included an Agreement and financial work papers associated with that Agreement. These materials were filed under seal, with redacted copies filed publicly, after notice to the affected postal operator. The Postal Service maintains that the redacted portions of the Agreement and related financial information should remain confidential.

With regard to the Agreement filed in this docket, the redactions withhold the actual prices being offered between the parties under the Agreement, as well as the particulars of financial performance incentives and assignments of liability, certain thresholds for eligibility for discounted services, and the specific products that the parties have agreed to make the focus of their collaborative development for the North American market.[3] The redactions applied to the financial work

[2] In the event of a request for early termination of non-public treatment under 39 C.F.R. § 3007.31, a preliminary determination of non-public status under 39 C.F.R. § 3007.32, or a request for access to non-public materials under 39 C.F.R. § 3007.40, the Postal Service notes, on Canada Post's behalf, that differences in the official observation of national holidays might adversely and unduly affect Canada Post's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, Canada Post has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect Canada Post's interests. A listing of Canada's official holidays can be found at http://www.pch.gc.ca/pgm/ceem-cced/jfa-ha/index-eng.cfm.

[3] Some of the redactions apply to terms of the agreement that are still under negotiation and have been redacted in the interest of protecting the course of the negotiations from public disclosure. The final language of the entire agreement will be filed with the Commission before its anticipated effective date. None of the on-going negotiations affect the rates or services to be provided on the Effective Date of this Agreement.

papers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the work papers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b).

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the Agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Foreign postal operators could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. Competitors could also use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. If the areas in which Canada Post and the Postal Service intend to collaboratively develop new products and services were to be disclosed publicly, their competitors could use this information to preemptively enter the market in those areas. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial work papers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingency rates included to account for market fluctuations and exchange risks. All of this information is highly confidential in the business world. Competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant inbound delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the Agreement or from the information in the workpapers whether additional margin for net contribution exists under Agreement's prices. The settlement charges between the Postal Service and the foreign postal operator constitute costs underlying the postal services offered to each postal operator's customers, and disclosure of this cost basis would upset the balance of Postal Service negotiations with contract customers by allowing them to negotiate, rightly or wrongly, on the basis of the Postal Service's perceived supplier costs. From this information, each foreign postal operator or customer could also attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator involved in the Agreement at issue in this docket could use the information in the work papers in an attempt to renegotiate the rates in its instrument by threatening to terminate its current Agreement.

Price information in the Agreement and financial spreadsheets also consists of sensitive commercial information of the foreign postal operator. Disclosure of such information could be used by competitors of the foreign postal operator to assess the foreign postal operator's underlying costs, and thereby develop a benchmark for the development of a competitive alternative. The foreign postal operator would also be exposed to the same risks as the Postal Service in customer negotiations based on the revelation of their supplier costs.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the prices in the Agreement, as well as any negotiated terms, would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: The negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional available margin below the rates provided to either operator. The other postal operator, which was offered rates comparable to those published in the Agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered.

Harm: Public disclosure of information in the financial work papers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains unredacted versions of the financial workpapers from the Postal Regulatory Commission's website. It analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to comply with business or legal considerations regarding cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of one or more relevant international delivery markets. Even if the competing providers do not manage wholly to freeze out the Postal Service, they will significantly cut into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the financial workpapers would be used detrimentally by the foreign postal operator's competitors.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the workpapers to assess the foreign postal operator's underlying costs for the corresponding products. The competitor uses that information as a baseline to negotiate with U.S. companies to develop lower-cost alternatives.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-public materials. This includes the counter-party to the Agreement with respect to all materials filed under seal except for the text of the postal operator's Agreement, to which that counter-party already has access.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.