

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators
Hongkong Post – United States Postal
Service Bilateral Agreement (MC2010-34)
Negotiated Service Agreement

Docket No. CP2014-21

ORDER APPROVING ADDITIONAL INBOUND COMPETITIVE MULTI-SERVICE
AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT
(WITH HONGKONG POST)

(Issued January 8, 2014)

I. INTRODUCTION

The Postal Service seeks inclusion of the inbound portion of a bilateral agreement (Agreement) with Hongkong Post within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal Operator 1) product (MC2010-34) on the competitive product list.¹ For the reasons discussed below, the Commission approves the request.

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 26, 2013 (Notice).

II. BACKGROUND

Product History. In Order No. 546, following consideration in Docket Nos. MC2010-34 and CP2010-95, the Commission approved the Foreign Postal Operators 1 product, based on Governors' Decision No. 10-3, and contemporaneously included an agreement within the new product.² Since then, the Postal Service has requested, and the Commission has approved, the inclusion of additional agreements within the competitive Foreign Postal Operators 1 product on grounds of functional equivalence to the TNT Agreement, including an existing agreement with Hongkong Post (2013-2014 Agreement).³ The 2013-2014 Agreement is scheduled to expire February 28, 2014. Notice at 2.

Instant Agreement. The inbound portion of the Agreement concerns the rates for competitive services, inbound Air CP, offered to Hongkong Post. *Id.* at 3. The Postal Service's filing consists of the Notice, redacted financial workpapers, and four attachments. Attachment 1 is a redacted copy of the Agreement. Attachment 2 is the certified statement required by 39 C.F.R. § 3015.5(c)(2). Attachment 3 is a redacted copy of Governors' Decision No. 10-3. Attachment 4 is an application for non-public treatment of material filed under seal. A redacted version of the supporting financial documentation was filed with its Notice as a separate Excel file. *Id.* at 3.

² Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546). The included agreement was the Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV Agreement (TNT Agreement). *Id.* at 1-2. See also Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No.10-3), August 6, 2010.

³ Docket No. CP2013-22, Order Approving An Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators Negotiated Service Agreement (with Hongkong Post), December 17, 2012 (Order No. 1580).

III. THE POSTAL SERVICE'S POSITION

The Postal Service states that Commission found the 2013-2014 Agreement fit within the Mail Classification Schedule (MCS) language in Governors' Decision No. 10-3. *Id.* The Postal Service identifies the Agreement as the successor to the 2013-2014 Agreement and states that the two agreements are substantially similar and include the same services. *Id.* at 2, 3. Additionally, it contends that the Agreement is functionally equivalent to the 2013-2014 Agreement. *Id.* at 4-5.

The Agreement's intended effective date is March 1, 2014. *Id.* at 3; *Id.* Attachment 1 at 6. The Agreement is set to expire on February 28, 2015, unless, among other things, either party terminates the Agreement in accordance with Article 8 or it is extended by Amendment. *Id.* Attachment 1 at 2-3, 6.

Functional equivalence. The Postal Service identifies the 2013-2014 Agreement as the baseline agreement for purposes of determining functional equivalence. Notice at 4. It states that the inbound portion of the Agreement is substantially similar to the inbound portion of the 2013-2014 Agreement in terms of cost characteristics and the products being offered. *Id.* at 4-5. It also states that the Agreement, like the 2013-2014 Agreement, fits within the parameters outlined by Governors' Decision No. 10-3, which establishes rates for the competitive Foreign Postal Operators 1 product. *Id.* at 5.

The Postal Service identifies differences between the Agreement and the 2013-2014 Agreement. *Id.* However, it states that the differences are immaterial to the Commission's analysis for functional equivalence. *Id.* The Postal Service represents that the two agreements incorporate the same cost attributes and methodology and that the relevant cost and market characteristics are the same. *Id.* The Postal Service does not consider the specified differences as affecting either the fundamental service the Postal Service is offering or the fundamental structure of the agreements. *Id.* It asserts that nothing detracts from the conclusion that these agreements are "functionally equivalent in all pertinent respects." *Id.* (citation omitted). The Postal Service therefore contends that for the reasons it presents, and as demonstrated by the financial data filed under seal, it has established that the Agreement is in compliance with 39 U.S.C.

§ 3633 and is functionally equivalent to the 2013-2014 Agreement previously included within the Foreign Postal Operators 1 product. *Id.* at 6.

IV. COMMENTS

The Public Representative filed comments on January 2, 2014.⁴ No other interested person filed comments. The Public Representative states that she has reviewed the Notice, the Agreement, the supporting financial model under seal, the baseline agreement, and the provisions of 39 C.F.R. § 3015.5 and 39 U.S.C. § 3633. *Id.* at 2. She concludes that the Agreement is functionally equivalent to the 2013-2014 Agreement and that the negotiated inbound rates offered in the Agreement should generate sufficient revenues to cover attributable costs. *Id.* at 2-3.

Functional Equivalence. The Public Representative states that the differences identified by the Postal Service between the 2013-2014 Agreement and the Agreement do not substantively impact any cost or market characteristics. *Id.* at 2. She notes several additional differences between the 2013-2014 Agreement and the Agreement that were not discussed in the Notice, including changes to Article 11 and Annex 1. *Id.* She encourages the Commission to consider whether the changes to Article 11 could be construed as substantive. *Id.* at 2-3.

Consistency with Statutory Criteria. The Public Representative concludes that based on the financial analysis provided the Agreement should cover its attributable costs; should not be subsidized by market dominant products; and should make a positive contribution to competitive products' share of institutional costs. *Id.* at 3.

⁴ Public Representative Comments on Postal Service Notice Concerning Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operator, January 2, 2014 (PR Comments).

V. COMMISSION ANALYSIS

The Commission's responsibility with respect to an agreement of this type is to ensure that the Agreement is functionally equivalent to the baseline agreement and satisfies the requirements of 39 C.F.R. §§ 3015.5 and 3015.7 and 39 U.S.C. § 3633.

Functional equivalence. The Postal Service states that the inbound portion of the Agreement is substantially similar to the inbound portion of the 2013-2014 Agreement in terms of cost characteristics and the products being offered. It asserts that the Agreement meets the pricing formula and classification established in Governors' Decision No. 10-3, which comport with 39 U.S.C. § 3633 and the Commission's rules.

The Postal Service also identifies differences between the instant Agreement and the 2013-2014 Agreement. The Public Representative identified additional differences between the two agreements, not discussed in the Postal Service's Notice. PR Comments at 2. The differences between the 2013-2014 Agreement and the instant Agreement is minor and do not impact the service being offered, or the cost attributes and cost methodology. Therefore, the Commission concludes that the Agreement is functionally equivalent to the 2013-2014 Agreement and may be included in the Foreign Postal Operators 1 product. In future filings, however, the Postal Service should describe all differences between the successor agreement and the baseline agreement in its notice.

Compliance with 39 U.S.C. § 3633. The Commission reviews competitive products to ensure that they meet the applicable requirements of 39 C.F.R. §§ 3015.5 and 3015.7, and 39 U.S.C. § 3633. The Commission has reviewed the Notice, financial analyses provided under seal, and comments filed by the Public Representative in this proceeding. Based on its review of the record in this proceeding and the financial workpapers submitted under seal by the Postal Service, the Commission finds that the Agreement should cover its attributable costs (39 U.S.C. § 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)), and should have a positive effect on competitive products' contribution to

institutional costs (39 U.S.C. § 3633(a)(3)). Thus, the Agreement indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service states that the intended effective date is March 1, 2014. The Agreement is set to expire February 28, 2015, unless terminated or amended, subject to provisions in the Agreement. The Postal Service shall promptly notify the Commission if the Agreement terminates earlier than its proposed term, but no later than the actual termination date.

In addition, within 30 days of expiration, or early termination of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

In conclusion, the Commission finds that the Agreement submitted in Docket No. CP2014-21 is appropriately included within the Foreign Postal Operators 1 product.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the inclusion of the Agreement filed in Docket No. CP2014-21 within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.
2. If the Agreement terminates early, the Postal Service shall notify the Commission within 30 days of the termination date. The Postal Service shall also promptly notify the Commission if the Agreement is extended.

3. Within 30 days of expiration, or upon early termination of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

By the Commission.

Shoshana M. Grove
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

Included Agreements

Hongkong Post, ~~CP2013-22~~CP2014-21, expires ~~January 31, 2014~~February 28, 2015
