

ORDER NO. 2007

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

Market Dominant Product Prices
Bilateral Agreement Between United States Postal
Service and Singapore Post Limited (MC2010-35)
Negotiated Service Agreement

Docket No. R2014-5

ORDER APPROVING 2014 BILATERAL AGREEMENT
WITH SINGAPORE POST LIMITED

(Issued March 5, 2014)

I. INTRODUCTION

On February 12, 2014, the Postal Service filed Notice, pursuant to 39 C.F.R. § 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a bilateral agreement (2014 Agreement) with Singapore Post Limited (Singapore Post) and a functionally equivalent agreement.¹ The Postal Service seeks inclusion of the

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, February 12, 2014 (collectively, Notice). The Notice was filed pursuant to 39 C.F.R. § 3010.40 *et seq.* and explains how the Postal Service has addressed the requirements therein. The Postal Service refers to the changes identified in its Notice as Singapore Post Agreement Modification Four. *See id.* at 2.

2014 Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal Operators 1) product. For the reasons provided below, the Commission approves the Postal Service's request.

II. BACKGROUND

Product history. In Order No. 549, the Commission approved the addition of the Foreign Postal Operators 1 product to the market dominant product list, and concurrently included two agreements within that product.² Since then, the Commission has approved the inclusion of other agreements within this product, including a bilateral agreement with Singapore Post (2012 Agreement) concerning inbound Letter Post small packets with delivery confirmation scanning.³ The Commission also approved a successor agreement with Singapore Post (2013 Agreement), which is now in effect, but expires March 31, 2014.⁴

Instant Notice. The Notice includes attachments consisting of an application for non-public treatment of certain materials, the 2014 Agreement, and other previous Singapore Post Agreements (as modified). See Notice, Attachments 1 through 5. Supporting financial documentation was filed in public and non-public versions. Notice at 3. The Notice includes requests for exceptions to data collection and service performance reporting requirements in 39 C.F.R. §§ 3010.43 and 3055.3(a)(3), respectively. *Id.* at 6. The Notice states that the 2014 Agreement results in an

² Docket Nos. MC2010-35, R2010-5, and R2010-6, 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 Agreements, September 30, 2010.

³ Docket No. R2012-1, Order No. 995, Order Approving Rate Adjustment for Singapore Post-United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, November 23, 2011 (Order No. 995). See also Docket No. R2013-5, Order No. 1610, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Singapore Post), January 3, 2013 (extending termination date and revising contact information) and Order No. 1721, Order Granting Motion for Temporary Relief, May 17, 2013 (granting another extension).

⁴ Docket No. R2013-8, Order No. 1766, Order Approving Modification to Singapore Post Limited-United States Postal Service Bilateral Agreement, June 26, 2013 (new contract term and new rates) (Order No. 1766).

improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter-post items and addresses other data and information requirements in Commission rules. *Id.* at 1, 3-6.

Initial Commission action. On February 18, 2014, the Commission issued Order No. 1988 establishing a docket for consideration of matters raised in the Notice, inviting public comment, and appointing a Public Representative to represent the interests of the general public.⁵

Scope, effective date and duration. The 2014 Agreement includes negotiated pricing for inbound small packets with delivery scanning. Notice at 4. It makes two changes to the 2013 Agreement: it establishes a new term (from April 1, 2014 through March 31, 2015), and adds a sentence in Annex 2. *Id.* at 2, n.5. The new sentence specifies how Singapore Post is to communicate to the Postal Service the settlement charge status of the contents of receptacles sent pursuant to the 2014 Agreement.⁶ The Notice states that 2014 Agreement does not materially change other terms of the 2013 Agreement. Notice at 5. Prices continue at the same level as in the 2013 Agreement.⁷

III. THE POSTAL SERVICE'S POSITION

Statutory criteria. The Postal Service observes that under 39 U.S.C. § 3622, the criteria for the Commission's review are whether the 2014 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. Notice at 7.

⁵ Notice and Order Concerning Modification of Bilateral Agreement with Singapore Post Limited, February 18, 2014 (Order No.1988).

⁶ Singapore Post sends an electronic message to the Postal Service prior to dispatch (referred to as PREDES) and, under the terms of the 2014 Agreement, will have the Exempt Indicator set to "N" to indicate that the contents are not exempt from settlement charges. See Response of the United States Postal Service to Request for Supplemental Information, February 24, 2014 at 2-3.

⁷ See Notice, Singapore_MD_IB_2014_FINAL.xls (Excel worksheet 17).

With respect to the first two criteria, the Postal Service states the 2014 Agreement is expected to enhance the performance of mail preparation, processing, transportation, or other functions, and the nature and expected impact of such enhancements. *Id.* at 3-5. It incorporates by reference the discussion of these matters in its Docket No. R2012-1 Notice.⁸ The Postal Service also incorporates by reference the discussion in its Docket No. R2012-1 Notice about actions it has taken to assure that the 2014 Agreement will not result in unreasonable harm to the marketplace. Notice at 5, citing Docket No. R2012 Notice at 5-6. The Postal Service considers the third criterion inapplicable based on its assessment that there are no entities similarly situated to Singapore Post in their ability to tender broad-based Letter Post flows from Singapore under similar operational conditions, nor are there any other entities that serve as a designated operator for Letter Post originating in Singapore. Notice at 7.

Functional equivalence. The Postal Service posits that the 2014 Agreement is functionally equivalent to the agreements previously filed and included in the Foreign Postal Operators 1 product because it is very similar to the 2013 Agreement (Docket No. R2013-8). *Id.* at 8. The Postal Service states that the main difference is that the 2014 Agreement includes the addition of one sentence to Annex 2 of the 2013 Agreement. *Id.* The Postal Service also states that the 2013 Agreement was found by the Commission to be appropriately classified in the Foreign Postal Operators 1 product grouping because it met all of the applicable statutory and regulatory requirements. *Id.* at 8.

The Postal Service states that as with the 2013 Agreement, the 2014 Agreement fits within the Mail Classification Schedule (MCS) for the Foreign Postal Operators 1 product, so it views both agreements as conforming to a common description. *Id.* The Postal Service also states that the agreements share a common market, and that the

⁸ *Id.* at 5; see Docket No. R2012-1, Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, October 14, 2011, at 4-5 (Docket No. R2012-1 Notice).

financial models used to project costs and revenues for the duration of the agreements are similar. *Id.* The Postal Service therefore submits that the 2014 Agreement is functionally equivalent to its predecessor, which is a logical baseline agreement to use for purposes of the functional equivalency comparison. *Id.* at 8-9.

Data collection plan and service performance reporting. The Postal Service intends to report information on the 2014 Agreement through the Annual Compliance Report (ACR), and therefore proposes no special data collection plan for the 2014 Agreement pursuant to 39 C.F.R. § 3010.43. *Id.* at 6. The Postal Service notes, with respect to service performance measurement, that the 2014 Agreement is excepted from separate reporting under 39 C.F.R. § 3055.3(a)(3) by virtue of Order No. 996, which established a standing exception for all agreements filed in the Foreign Postal Operators 1 product.⁹

IV. COMMENTS

The Public Representative filed comments on February 25, 2014.¹⁰ No other comments were received. The Public Representative concludes, based on a review of the Postal Service's filing, that the 2014 Agreement is consistent with the statutory criteria and is functionally equivalent to the agreements within the Foreign Postal Operators 1 product. PR Comments at 2. She notes, with respect to pricing, that her analysis of the sealed financial spreadsheets shows that the rates should generate more contribution for the Postal Service than the applicable UPU rates absent a bilateral agreement. *Id.* at 3. She further observes that the projected cost coverage is below 100 percent, and significantly less than the reported cost coverage for the 2013 Agreement (Docket No. R2013-8) in the Postal Service's FY 2013 Annual Compliance Report. *Id.* n.7. She nevertheless states that the 2014 Agreement, when compared to

⁹ *Id.*; see Docket No. R2012-2, Order No. 996, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2012 (Order No. 996).

¹⁰ Public Representative Comments, February 25, 2014 (PR Comments).

UPU rates, improves the net financial position of the Postal Service. *Id.* The Public Representative also states that the 2014 Agreement should continue to enhance the operational performance of the Postal Service. *Id.* at 3. With respect to functional equivalence, the Public Representative notes that the Commission has included the Postal Service's previous agreements with Singapore Post within the Foreign Postal Operators 1 product. *Id.* She concludes that the two modifications in the 2014 Agreement do not materially change those terms, and that the 2014 Agreement is therefore functionally equivalent to the agreements within the Foreign Postal Operators 1 product. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Postal Service's filing and comments filed by the Public Representative.

Impact of 2014 Agreement on previous product classification. Neither the new term nor the practical effect of the new sentence, which enhances accurate assessment of settlement charges, affects the Commission's previous finding that bilateral agreements entered into with Singapore Post under the Foreign Postal Operators 1 product are properly classified as market dominant. See Order Nos. 995 and 1766.

Consistency with statutory criteria. Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 C.F.R. §§ 3010.40(a) and (b), the 2014 Agreement must either improve the net financial position of the Postal Service or enhance the performance of various operational functions, and must not cause unreasonable harm to the marketplace. The 2014 Agreement also must be available on public and reasonable terms to similarly situated mailers. See 39 U.S.C. § 3622(c)(10) and 39 C.F.R. § 3010.40(c). The expected starting date of the 2014 Agreement means there will be a seamless transition between the 2013 Agreement and the 2014 Agreement. The rates that take effect April 1, 2014 will be identical to those now

charged under the 2013 Agreement.¹¹ The Commission finds that the negotiated rates in the 2014 Agreement will improve the net financial position of the Postal Service, consistent with 39 U.S.C. § 3622(c)(10)(A)(i), as they will generate higher revenues, contribution, and cost coverage than the otherwise applicable UPU default rates.¹² The Commission notes that the projected cost coverage is below 100 percent, unlike the projected and actual cost coverages for the 2013 Agreement.¹³ The Commission urges the Postal Service to negotiate rates that meet or exceed costs. In this docket, as the standard is net improvement in finances, the rates in the 2014 Agreement are nevertheless consistent with the statutory requirement. The Commission also finds, consistent with 39 U.S.C. § 3622(c)(10)(A)(ii), that the 2014 Agreement continues to include several provisions intended to enhance performance. With respect to 39 U.S.C. § 3622(c)(10)(B), the Commission finds that the 2014 Agreement will not cause unreasonable harm to the marketplace based, in part, on the status of both contracting parties as the designated operators in their respective country.

Functional equivalence. The Commission finds that changes in the 2014 Agreement do not affect its functional equivalence to previous Singapore Post Agreements, which the Commission has found are properly included within the Foreign Postal Operators 1 product. Thus, the 2014 Agreement may be included within the Foreign Postal Operators 1 product.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the 2014 Agreement, effectively seeking a waiver of rule

¹¹ This avoids reversion to UPU default rates.

¹² The Commission considers Worksheet 17 in the supporting financial documentation for the 2014 Agreement fully responsive, with respect to the 2014 Agreement, to the directive in Order No. 1058, as supplemented by Order No. 1610, concerning inclusion of a demonstration of the improvement of negotiated rates over UPU default rates.

¹³ As noted by the Public Representative, the projected cost coverage for the 2014 Agreement is below 100 percent and is significantly less than the reported cost coverage for the 2013 Agreement. See PR Comments at 3, n.7. The actual results for the 2013 Agreement also differ significantly from the projected results for the 2013 Agreement. This suggests that the forecasting methodology may warrant review by the Postal Service. (The Postal Service states that the financial models for the Singapore Post Agreements are similar. See Notice at 8).

3010.43's data collection reporting requirements. Notice at 6. Instead, it intends to report data and information related to the 2014 Agreement through the ACR process. *Id.* The Commission grants the requested exception to rule 3010.43.

The Postal Service invokes Order No. 996, which established a standing exception to the service performance reporting requirements of 39 C.F.R. § 3055 (a)(3) for Foreign Postal Operators 1 agreements, as support for an exception for the 2014 Agreement. *Id.* Order No. 996's standing exemption continues to apply.

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the 2014 Agreement if it differs from the expected date of April 1, 2014. The Postal Service shall promptly notify the Commission if the 2014 Agreement terminates prior to the expiration date set forth in the 2014 Agreement and shall provide the date of any such termination. In addition, within 30 days of the expiration or termination of the 2014 Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the 2014 Agreement, including any financial penalties.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The 2014 Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product (MC2010-35, R2010-5, and R2010-6).
2. The Commission approves the Type 2 rate adjustment requested in the Postal Service's February 12, 2014 Notice filed in this proceeding.
3. The Postal Service shall notify the Commission if the effective date of the 2014 Agreement differs from the expected effective date identified in the Notice.

4. The Postal Service shall notify the Commission if the 2014 Agreement terminates early.
5. Within 30 days of expiration, or upon early termination of the 2014 Agreement, the Postal Service shall file related costs, volumes, and revenues data, including any financial penalties.
6. The Postal Service's request that the 2014 Agreement be excepted from separate financial performance reporting under 39 C.F.R. § 3010.43 is granted.
7. The standing exception in Order No. 996 continues to apply with respect to reporting on service performance pursuant to 39 C.F.R. § 3055.3(a)(3).

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 A—Market Dominant Products

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1602.3 Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators

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1602.3.5 Products Included in Group (Agreements)

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

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-35, R2010-5 and R2010-6
PRC Order No. 549, September 30, 2010

Included Agreements

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Singapore Post Limited–United States Postal Service Small Packet with Delivery Scanning Bilateral Agreement, R2013-8, and R2014-5, expires March 31, ~~2014~~ 2015

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