

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
Standard Mail
PHI Acquisitions, Inc.

Docket No. MC2014-21

Market Dominant Product Prices
PHI Acquisitions, Inc. (MC2014-21)
Negotiated Service Agreement

Docket No. R2014-6

NOTICE AND ORDER CONCERNING ADDITION OF PHI ACQUISITIONS, INC.
NEGOTIATED SERVICE AGREEMENT TO THE MARKET DOMINANT PRODUCT
LIST

(Issued March 7, 2014)

I. INTRODUCTION

On March 5, 2014, the Postal Service filed a request pursuant to 39 U.S.C. 3622 and 3642, as well as 39 CFR 3010 and 3020, *et seq.*, to add a PHI Acquisitions, Inc. (PHI) negotiated service agreement to the market dominant product list.¹

¹ Notice of the United States Postal Service of Filing Contract and Supporting Data and Request to Add PHI Acquisitions, Inc. Negotiated Service Agreement to the Market-Dominant Product List, March 5, 2014 (Request).

Request. In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a copy of Governors’ Resolution No. 14-02, authorizing a negotiated service agreement with PHI;
- Attachment B—a copy of the contract;
- Attachment C—proposed descriptive language changes to the Mail Classification Schedule;
- Attachment D—a proposed data collection plan;
- Attachment E—a Statement of Supporting Justification as required by 39 CFR 3020.32, which the Postal Service also is using to satisfy the requirements of 39 CFR 3010.42(b)-(e); and
- Attachment F—a financial model, which the Postal Service believes demonstrates that the agreement will have a net value of approximately \$10.748 million.²

In its Request, the Postal Service identifies Bruce Allen, Manager, Pricing Innovation as the official able to provide responses to queries from the Commission. In his Statement of Supporting Justification, Mr. Allen reviews the factors and objectives of section 3622(b) and (c) and concludes, *inter alia*, that the agreement will provide an incentive for profitable mail; will enhance the financial position of the Postal Service; will increase mail volume; will not imperil the ability of Standard Mail to cover its attributable costs; and promotes the use of intelligent mail. *Id.*, Attachment E at 1-3.

The Postal Service believes that the PHI negotiated service agreement conforms to the policies of the Postal Accountability and Enhancement Act and meets the statutory standards supporting the desirability of this special classification under 39 U.S.C. 3622(c)(10). Request at 3. In particular, the Postal Service believes the agreement has the potential to enhance the Postal Service’s financial position, and it will not cause unreasonable harm to the marketplace. *Id.*

² This Attachment is also referred to as “Attachment X” in the Request. Request at 12.

Related contract. The Postal Service indicates that the agreement is designed to increase the total contribution the Postal Service receives from PHI Standard Mail Carrier Route Flats volume and revenue by generating new, incremental Standard Mail Carrier Route Flats volume and revenue. *Id.* at 6-7. The Postal Service describes the agreement and its four main components: (1) a volume threshold, (2) a volume threshold adjustment, (3) a volume commitment, and (4) rebates on qualifying Standard Mail Carrier Route Flats volume.

Specifically, the volume threshold is based on the amount of PHI's total volume for all four categories of Carrier Route Flats (Saturation, High Density Plus, High Density, and Basic), as well as Flats Sequencing System ("FSS") Flats with a full-service IMb barcode.³ *Id.* The baseline for the volume threshold is PHI's total volume for these categories over the four quarters from October 1, 2012 through September 30, 2013. For the first year of the agreement, the threshold is the baseline volume. *Id.* For years two through five of the agreement, the threshold is the previous year's annual volume growth times the adjustment factor plus the previous year's volume threshold. *Id.* at 7-8.

The volume threshold adjustment is intended to ensure that, after rebates, total volume and contribution from PHI's overall business will continue to grow and thus is adjusted upward annually. *Id.* The adjustment factor is based on the incremental response rate for the incremental volume and the aggregate number of catalogs mailed annually to each new buyer. *Id.* The agreement also contains a volume commitment, equal to the volume threshold. If the amount of PHI's total volume from eligible Standard Mail Carrier Route Flats in the first year of the contract is less than the threshold, PHI must pay a \$100,000 penalty to the Postal Service. *Id.* at 9.

If PHI exceeds the quarterly volume threshold in any quarter, it will earn rebates on its qualifying Standard Mail Carrier Route Flats volume. The rebates for PHI's

³ FSS Flats are included in the event FSS Flats become a category or sub-category during the term of the negotiated service agreement. *Id.* at 7.

qualifying mail will be determined based on the volume increase above the quarterly volume threshold. *Id.* For volume increases up to 10 percent above the quarterly threshold, PHI will receive a 10 percent rebate from published prices for all qualifying mail. *Id.* For volume increases between 10.01 percent and 18 percent above the quarterly threshold, PHI will receive a 15 percent rebate from published prices for all qualifying mail. *Id.* For volume increases over 18 percent above the quarterly threshold, PHI will receive a 20 percent rebate from published prices for all qualifying mail. *Id.*

The Postal Service also describes several other elements of the agreement: (1) an acquisition clause, which accounts for the acquisition of another company or catalog title; (2) a divestiture clause, which accounts for decreased mailing activity due to the divestiture of a catalog title; (3) a termination clause, which allows either party to end the agreement with 30 days written notice to the other party, based on certain conditions, including a package volume commitment by PHI; (4) an option to renew clause, which allows the parties to renew the agreement for up to five additional years if specified criteria is met; and (5) an incentive programs clause, which allows PHI to participate in Postal Service incentive programs while preventing PHI from double-dipping on incentives. *Id.* at 9-10.

The Postal Service indicates that the contract will become effective July 1, 2014 or on a date agreed to by the parties. *Id.* at 1.⁴ The agreement will expire five years from the effective date. *Id.*, Attachments A and B.

Similarly situated mailers. With respect to potential similarly situated mailers, the Postal Service states that the design imperative, to generate additional contributions, and the basic structure of the agreement described in the Request, will guide the Postal Service in the negotiation of similar agreements as well as those that are substantially different. *Id.* at 10-11. It notes that in assessing the desirability of the agreement, the

⁴ The agreement states the effective date “shall be the day after the Commission issues all necessary regulatory approval.” *Id.*, Attachment B at 12.

Postal Service believes that the defining characteristics of PHI are its size, its large but stagnant catalog mail volume history, and the availability of company mail and catalog data. *Id.* at 11. In offering a similar agreement to similarly situated customers, the Postal Service will look for these characteristics and for the customer to demonstrate that it has the resources and infrastructure to add significant incremental catalog volume. *Id.*

Notice. The Postal Service represents that it will inform customers of the new classification changes and associated price effects through a notice published in the *Federal Register*. *Id.* at 1.

II. NOTICE OF FILING

The Commission establishes Docket Nos. MC2014-21 and R2014-6 for consideration of the Request pertaining to the proposed new product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filing in the captioned dockets are consistent with the policies of 39 U.S.C. 3622 and 3642 as well as 39 CFR parts 3010 and 3020. Comments are due no later than March 27, 2014. Reply comments to initial comments are due no later than April 3, 2014. The filing can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints John P. Klingenberg to serve as Public Representative in these dockets.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket Nos. MC2014-21 and R2014-6 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, John P. Klingenberg is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than March 27, 2014.
4. Reply comments may be filed no later than April 3, 2014.
5. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Ruth Ann Abrams
Acting Secretary