

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

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 88

Docket No. MC2014-37

Competitive Product Prices  
Priority Mail Contracts 88 (MC2014-37)  
Negotiated Service Agreement

Docket No. CP2014-63

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD  
PRIORITY MAIL CONTRACT 88 TO  
COMPETITIVE PRODUCT LIST

(July 31, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2134.<sup>1</sup> 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 Request to add Priority Mail Contract 88 to the competitive product list.<sup>2</sup>

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), a redacted copy of Governor's Decision No. 11-6, and proposed changes to the Mail Classification Schedule competitive product list with the addition underlined. The Postal Service also filed (under seal) a shipping services contract related to the proposed new product and supporting financial data.

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<sup>1</sup> PRC Order No. 2134, Notice and Order Concerning the Addition of Priority Mail Contract 88 to the Competitive Product List, July 24, 2014 (Notice).

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Contract 88 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 23, 2014 (Request).

According to the Postal Service, Priority Mail Contract 88 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification underlying Contract 88 are supported by Governors’ Decision No. 11-6.<sup>3</sup> The Postal Service further asserts that the Statement of Supporting Justification (Statement) provides support for adding Contract 88 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D.

The effective date for Contract 88 is the day following the date on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 2-3. The contract is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days’ prior written notification, or other specific events. *Id.*

## COMMENTS

The Public Representative has reviewed the shipping services contract for Contract 88, the Statement of Supporting Justification, and the financial data filed under seal that accompanies the Postal Service’s Request. Based upon that review, the Public Representative concludes that Priority Mail Contract 88 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that Contract 88 in the first year should generate sufficient revenues to cover costs and thereby satisfy 39 U.S.C. § 3633(a).

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Contract 88 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises

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<sup>3</sup> Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service's Statement of Supporting Justification makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D at 2. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service's Request to add Priority Mail Contract 88 to the competitive product list is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; and, must ensure that each competitive product will cover its attributable costs, and that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial data, the negotiated prices should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

As noted above, Contract 88 is expected to remain in effect for a period of three years. During this period, the shipping services contract, as presented in the unredacted version thereof, includes a mechanism for the annual adjustment of prices to improve the likelihood that Contract 88 meets the requirements of 39 U.S.C. § 3633(a) over the lifetime of the contract. However, the annual price adjustments are linked to the generally applicable prices for Priority Mail Commercial Plus. If the Postal Service does not seek an adjustment in the generally applicable prices for Commercial Plus the cost coverage for Contract 88 would decline, assuming costs rise over the three-year period. That said, this concern is mitigated somewhat by the fact that the Postal Service will file revenue and cost data for Contract 88 in its Annual Compliance Report. This data will permit the Commission to annually review the financial results for Priority Mail Contract 88 in its Annual Compliance Determination (ACD) report for compliance with 39 U.S.C. § 3633(a).

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

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