

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

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Mark Acton, Vice Chairman;  
Ruth Y. Goldway;  
Tony Hammond; and  
Nanci E. Langley

Market Dominant Product Prices  
Inbound Market Dominant Multi-Service Agreements  
with Foreign Postal Operators

Docket No. R2015-3

PostNL – United States Postal Service Bilateral  
Agreement (MC2010-35)  
Negotiated Service Agreement

ORDER APPROVING AN ADDITIONAL INBOUND MARKET DOMINANT  
MULTI-SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1  
NEGOTIATED SERVICE AGREEMENT (WITH ROYAL POSTNL BV)

(Issued December 17, 2014)

I. INTRODUCTION

On November 14, 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 Royal PostNL BV (PostNL).<sup>1</sup> The Postal Service seeks inclusion of the 2014 Agreement within the Inbound Market Dominant

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<sup>1</sup> United States Postal Service Notice of Type 2 Rate Adjustment, Notice of Filing Functionally Equivalent Agreement and Application for Nonpublic Treatment, November 14, 2014 (Notice).

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.<sup>2</sup> Since then, the Commission has approved the inclusion of other agreements within this product, including a bilateral agreement with PostNL (2013 Agreement), which is scheduled to expire on December 31, 2014.<sup>3</sup>

*Instant Notice.* The Notice includes attachments consisting of an application for non-public treatment of certain materials, the 2014 Agreement, and supporting financial workpapers filed in both public and non-public versions.<sup>4</sup> Notice at 2. 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 7.

The Notice states that the 2014 Agreement results in an 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

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<sup>2</sup> Docket Nos. MC2010-35, R2010-5, and R2010-6, 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 (Order No. 549). One of the two included agreements was with an agreement between the Postal Service and Koninklijke TNT PostBV and TNT Post Pakketservice Benelux BV (TNT).

<sup>3</sup> Docket No. R2013-4, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), December 28, 2012 (Order No. 1602).

<sup>4</sup> The full text of the Agreement (signed by the Postal Service) and the supporting financial documentation establishing compliance with 39 U.S.C. § 3622 and 39 C.F.R. § 3010.42 were filed under seal. *Id.* at 3.

rules. *Id.* at 3-8. In addition, the Postal Service states that the 2014 Agreement is functionally equivalent to the TNT baseline agreement.<sup>5</sup>

The 2014 Agreement is intended to take effect January 1, 2015, after the 2013 Agreement expires on December 31, 2014. Notice at 2. The 2014 Agreement is to remain in effect for two years, unless terminated earlier. *Id.* Attachment 2 at 10 (Article 22).

*Initial Commission action.* On November 17, 2014, the Commission issued Order No. 2251 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.<sup>6</sup>

### III. THE POSTAL SERVICE'S POSITION

*Functional equivalence.* The Postal Service posits that the 2014 Agreement is functionally equivalent to the TNT baseline agreement. Notice at 9. The Postal Service states that the terms of the 2014 Agreement fit within the Mail Classification Schedule (MCS) for the Foreign Postal Operators 1 product and therefore both agreements conform to a common description. *Id.* The Postal Service also asserts that both agreements are constructed from a similar template; contain many similar terms and conditions; provide rates for Letter Post tendered to the Postal Service from each foreign operator's territory, along with ancillary services to accompany inbound Letter Post; and are with a foreign postal operator. *Id.*

However, the Postal Service does identify and summarize differences that distinguish the 2014 Agreement from the TNT baseline agreement. *Id.* at 10-11. It asserts that, despite these differences, the 2014 Agreement is functionally equivalent to

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<sup>5</sup> *Id.* at 8-11. See also Order No. 549; and Docket No. R2013-9, Order No. 2148, Order Granting, in Part, Motion for Partial Reconsideration of Order No. 1864 and Modifying, in Part, Order No. 1864, August 11, 2014.

<sup>6</sup> Notice and Order Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiated Service Agreement, November 17, 2014 (Order No. 2251).

the TNT baseline agreement, and that the differences do not affect either the fundamental service being offered or the fundamental structure of the contracts. *Id.* at 11.

*Statutory Criteria.* Under 39 U.S.C. § 3622, the Postal Service asserts that the criteria for the Commission's review are whether the 2014 Agreement: (1) will be available on public and reasonable terms to similarly situated mailers, (2) either improves the net financial position of the Postal Service or enhances the performance of operational functions, and (3) will not cause unreasonable harm to the marketplace. See 39 U.S.C. § 3622(c)(10).

With respect to the first criterion, the Postal Service considers the criterion inapplicable based on its assessment that there are no entities similarly situated to PostNL in their ability to tender broad-based Letter Post flows from the Netherlands under similar operational conditions, nor are there any other entities that serve as a designated operator for Letter Post originating in the Netherlands. Notice at 8.

In addition, the Postal Service asserts it provides information in its workpapers showing the expected financial improvements over UPU default rates. *Id.* at 4. It also identifies three components of the 2014 Agreement that are expected to enhance operational performance: (1) the parties have agreed to work together to revise the Accounting Business Rules between the Parties to include changes in settlement related to the PostNL Agreement; (2) the parties are encouraged, but not required, to consider offering one another incentives for optional activities, such as sortation or separation changes; and (3) Annex 3 provides suggested Office of Exchange Routing details, and information about the Offices of Exchange that registered mail can be entered into. *Id.* at 5.

Finally, with respect to the third criterion, the Postal Service presents several reasons why the 2014 Agreement will not result in unreasonable harm to the marketplace, including PostNL's status as the only entity in a position to avail itself of an agreement of this type and the role of the Postal Service and PostNL as their countries' designated operators for exchanging of mail. *Id.* at 6.

*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 7. 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.<sup>7</sup>

#### IV. COMMENTS

The Public Representative filed comments on December 2, 2014.<sup>8</sup> No other comments were received.

*Functional Equivalency.* The Public Representative concludes, based on a review of the Postal Service's filing, that the 2014 Agreement is functionally equivalent to the agreements within the Foreign Postal Operators 1 product. PR Comments at 3.

*Statutory Criteria.* The Public Representative states that while the Postal Service makes reasonable arguments that criteria (1) and (3) are not implicated by the 2014 Agreement, the Postal Service fails to meet the requirements of criteria (2). He asserts that the negotiated rates for inbound letterpost under the 2014 Agreement do not represent an improvement of the Postal Service's net financial position compared to the terminal dues rates established by the UPU for Calendar Year (CY) 2015. *Id.* at 4. The Public Representative states that, in the Postal Service's financial model, it inaccurately uses estimated rates when calculating financial improvement instead of using the

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<sup>7</sup> *Id.*; see Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011 (Order No. 996).

<sup>8</sup> Public Representative Comments on Postal Service Notice Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiated Service Agreement, December 2, 2014 (PR Comments).

provisional 2015 quality of service linked terminal dues applicable to mail flows between designated operators.<sup>9</sup> PR Comments at 4.

In addition, the Public Representative indicates that the Postal Service does not provide an adequate explanation of how the performance enhancements listed will improve operational functions. *Id.* at 4-6. Based on his calculations and his review of the Postal Service's filing, the Public Representative concludes that the Postal Service does not demonstrate the 2014 Agreement meets either requirement of 39 U.S.C. 3622(c)(10)(A). *Id.* at 6.

## V. POSTAL SERVICE RESPONSE AND SUBSEQUENT FILINGS

On December 5, 2014, the Postal Service filed a response to the Public Representative Comments.<sup>10</sup> In its Response, the Postal Service states that the Public Representative's conclusion is based on "mistaken assumptions" and that he erred in two ways: (1) the Public Representative failed to apply a quality of service link multiplier to both the UPU default rates and the rates resulting from the 2014 Agreement in his calculations; and (2) the multiplier applied reflects Postal Service performance in 2013, and the Public Representative should have instead applied the multiplier utilized by the Postal Service in its financial workpapers which reflects more recent performance data. Response at 1-2. The Postal Service reasserts that the 2014 Agreement improves the net financial position of the Postal Service. *Id.*

Based on the concerns raised by the Public Representative and the Postal Service's Response, on December 9, 2014, CHIR No. 1 was issued to obtain additional

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<sup>9</sup> The Public Representative filed a nonpublic Library Reference showing all calculations on which his conclusions are based. See PR-LR-R2015-3/NP1.

<sup>10</sup> United States Postal Service Comments in Response to Public Representative Comments on Postal Service Notice Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiated Service Agreement, December 5, 2014 (Response). The Postal Service also filed a motion for leave to file reply comments. See United State Postal Service Motion for Leave to Reply to Public Representative Comments on Postal Service Notice Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiated Service Agreement, December 5, 2014 (Postal Service Motion). The Postal Service Motion is granted.

information on the operational performance enhancements provided by the 2014 Agreement.<sup>11</sup> On the same day, the Public Representative filed reply comments in response to the Postal Service's Response.<sup>12</sup>

On December 12, 2014, the Postal Service filed its Response to CHIR No. 1 and filed revised financial workpapers.<sup>13</sup> In its Response to CHIR No. 1, the Postal Service argues that the 2014 Agreement improves the net financial position of the Postal Service and demonstrates its belief that the Public Representative erred in his calculations. Response to CHIR No. 1. In its revised financial workpapers, the Postal Service utilizes the multiplier identified by the Public Representative as the appropriate multiplier, but continues to apply the multiplier to both the UPU default rates and the rates resulting from the 2014 Agreement. The Postal Service also offers a more detailed discussion concerning the performance improvements that will result from the information provided in Annex 3 of the 2014 Agreement. *Id.*

## VI. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Agreement, the financial analyses provided under seal, the Response to CHIR No. 1, and all comments and submissions filed by both the Public Representative and the Postal Service.

*Functional equivalence.* The Commission finds that the 2014 Agreement is functionally equivalent to the TNT baseline agreement. Differences between the 2014

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<sup>11</sup> Chairman's Information Request No. 1, December 9, 2014 (CHIR No.1).

<sup>12</sup> Public Representative Reply Comments in Response to Postal Service Comments Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiated Service Agreement, December 9, 2014. The Public Representative also filed a motion for leave to file reply comments. See Public Representative Motion for Leave to Reply to Postal Service Comments Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiate Service Agreement, December 9, 2014 (PR Motion). The PR Motion is granted. In his reply comments, the Public Representative provides additional reasoning supporting his previously filed comments and suggests questions that could be proffered to the Postal Service concerning its financial results.

<sup>13</sup> United States Postal Service Response to Chairman's Information Request No. 1, December 12, 2104 (Response to CHIR No. 1). Portions of its Response to CHIR No. 1 were redacted and the Postal Service filed concurrently an application for non-public treatment of materials. See United States Postal Service Application for Non-Public treatment of Materials, December 12, 2014.

Agreement and the TNT baseline agreement do not foreclose a finding that the agreements are functionally equivalent. The Public Representative supports this finding. The Commission therefore concludes that the 2014 Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

*Statutory responsibilities.* Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 C.F.R. § 3010.40(a), the Commission's approval requires a finding that the agreement either improves the net financial position of the Postal Service or enhances the performance of various operational functions and does not cause unreasonable harm to the marketplace. The agreement also must be available on public and reasonable terms to similarly situated mailers. 39 C.F.R. § 3010.40(c).

The Commission finds that the negotiated rates in the 2014 Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than otherwise applicable UPU default rates. The revised financial workpapers submitted by the Postal Service, after applying the appropriate multiplier identified by the Public Representative to both the CY 2015 UPU default rates and the rates of the 2014 Agreement, results in calculations that show an improvement of the Postal Service's net financial position over UPU default rates.

The Commission finds that the Agreement will not cause unreasonable harm to the marketplace, given the impact of the contracting parties' status as designated operators on the market. The Commission also concurs with the Postal Service's assessment that there are no entities similarly situated to PostNL, and as such finds that the third criterion is inapplicable.

*Reporting exceptions.* The Postal Service proposes that no special data collection plan be created for the 2014 Agreement, essentially seeking a waiver of section 3010.43's data collection reporting requirements. Notice at 7. Instead, it intends to report information under the 2014 Agreement through the ACR and provide information about mail flows from PostNL within the course of the ACR review process.

*Id.* Given the limited nature of this negotiated service agreement with a foreign postal operator, the Commission grants the waiver of section 3010.43. The Commission also approves the Postal Service's invocation of Order No. 996 in support of an exception from separate service performance reporting under 39 C.F.R. § 3055(a)(3) on the basis that the standing exception in Order No. 996 continues to apply.

*Follow-up submissions.* The Postal Service shall promptly notify the Commission if the effective date of the 2014 Agreement differs from the intended effective date. The Postal Service shall also promptly notify the Commission if the 2014 Agreement terminates earlier than intended. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, and revenues associated with the 2014 Agreement.

*Conclusion.* The Commission finds that the 2014 Agreement satisfies relevant statutory criteria and approves its inclusion within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

## VII. 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.
2. The Commission approves the Type 2 rate adjustment requested in the Postal Service's November 14, 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 (MCS). The Commission uses two main conventions when making changes to the MCS. 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 that 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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Royal PostNL BV Agreement, ~~R2013-4~~R2015-3, expires December 31, ~~2014~~2016

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