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

Competitive Product Prices
Global Expedited Package Services 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2015-77

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE NOTICE CONCERNING ADDITIONAL GLOBAL EXPEDITED PACKAGE SERVICES 3 NEGOTIATED SERVICE AGREEMENT

(June 3, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2511.[1] 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 Notice of filing an additional Global Expedited Package Services (GEPS) 3 agreement (Agreement).[2]

The Postal Service's Notice includes a public (redacted) version of the Agreement, a certified statement of compliance required by 39 C.F.R. § 3015(c)(2), and a public version of Governors' Decision No. 08-7. The Postal Service also filed under seal an unredacted version of Governor's Decision No. 08-7, the Agreement, and a supporting financial model estimating the contract value.

On June 1, 2015, the Commission filed (under seal) Chairman's Information Request No. 1, seeking clarification of the Postal Service's request to add the Agreement to the GEPS 3 product.[3]

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[1] PRC Order No. 2511, Notice and Order Concerning Additional Global Expedited Package Services 3 Negotiated Services Agreement, May 27, 2015.
[2] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 26, 2015 (Notice).
[3] Chairman's Information Request No. 1 and Notice of Filing Under Seal, June 1, 2015.

Background. Agreements within the GEPS 3 product offer incentive pricing to mailers that send items to foreign destinations using Priority Mail Express International (PMEI), Priority Mail International (PMI), or both. Notice at 4. Prices offered pursuant to an agreement may differ from mailer to mailer depending upon the volume or postage commitments made by such mailers. *Id.* To qualify for an agreement, a mailer "must be capable, on an annualized basis, of paying at least $200,000 in international postage to the Postal Service."[4]

Prices and classifications not "of general applicability" for GEPS agreements were previously established by Governors' Decision No. 08-7.[5] In Order No. 86, the Commission approved GEPS as a product on the competitive product list.[6] The Commission subsequently approved the addition of the GEPS 3 product to the competitive product list (MC2010-28), and included within that product a GEPS 3 agreement (CP2010-71) that would serve as the baseline agreement for functional equivalence comparisons with future agreements.[7] Since the addition of the GEPS 3 product to the competitive product list, the Commission has determined that many additional GEPS 3 agreements were functionally equivalent to the baseline agreement and should be included in the GEPS 3 product (MC2010-28).

The effective date of the Agreement will be established by Postal Service notice to the mailer, but not later than 30 days, after receiving all regulatory approvals. Notice, Attachment 1 at 3 (Article 11). The Agreement is to remain in effect for one calendar year from the effective date, unless terminated sooner. *Id.* The Agreement is a successor to an existing GEPS 3 agreement with mailer.

The Postal Service states that the Agreement is functionally equivalent to the baseline agreement and is in compliance with the requirements of 39 U.S.C. § 3633.

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[4] Notice of the United States Postal Service of Minor Classification Change, Docket No. MC2012-8, January 30, 2012, at 3, showing conforming changes to the Mail Classification Schedule, 2510.3.1.
[5] *See* United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, Docket No. CP2008-5, July 23, 2008.
[6] *See* PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, Docket No. CP2008-5, June 27, 2008.
[7] *See* PRC Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, Docket Nos. MC2010-28 and CP2010-71, July 29, 2010.

Notice at 7. The Postal Service therefore states that the Agreement "should be added to the GEPS 3 product grouping." *Id.*

COMMENTS

The Public Representative has reviewed the Postal Service's Notice, the Agreement, and supporting financial model filed under seal accompanying the Notice. Based upon that review, the Public Representative concludes that the Agreement is functionally equivalent to the baseline agreement. In addition, the negotiated prices in the Agreement should generate sufficient revenues to cover costs.

Functional Equivalence. The Postal Service asserts that the Agreement "shares similar cost and market characteristics . . . [and the] functional terms of the contract at issue are the same as those of the contract that is the subject of Docket No. CP2010-71, which serves as the baseline agreement for the GEPS 3 product grouping." *Id.* at 3. In this regard, the Postal Service identifies a number of differences between the Agreement and the GEPS 3 baseline agreement. *Id.* at 4-7. Most of these differences consist of changes to contract terms that affect certain obligations of the mailer and are similar to those included in other recent GEPS 3 agreements, or are specific to the mailer (*i.e.*, mailer name, address, and identification of mailer's representative to receive notice).[8] The Postal Service maintains that these specified differences do not affect either the fundamental service the Postal Service is offering or the fundamental structure of the Agreement. *Id*. at 7.

The Public Representative's review of the financial model suggests there may be a change in the cost characteristics associated with the Agreement compared to the baseline agreement. The Agreement includes new, discounted prices for additional workshare activities for mail tendered via dropship at the Postal Service's International Service Centers (ISCs). As presented in the financial model for the baseline agreement, costs for the outbound PMEI and PMI shipping services in the GEPS 3 product are grouped into six cost functions: domestic processing, delivery, and all

[8] Notice at 4-7; Docket No. CP2015-63, Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 5, 2015, at 4-7.

other, domestic transportation, settlement (payments to foreign postal operators), and international transportation.[9] The introduction of workshare discounts for mail dropshipped at an ISC eliminates all costs associated with domestic delivery activities compared to the financial model for the baseline agreement, which includes domestic delivery activity costs.

The Postal Accountability and Enhancement Act (PAEA) defines a postal product as "a postal service with a distinct cost *or* market characteristic for which a rate or rates are, or may reasonably be, applied." (Emphasis added.) 39 U.S.C. § 102(6). Both the Commission and the Postal Service agree that a Negotiated Service Agreement (NSA) may be added to an existing product if the NSA is functionally equivalent to the baseline agreement for that product. Under such circumstances, an NSA is considered functionally equivalent if it exhibits similar cost or market characteristics to the baseline agreement.[10]

Although distinct cost or market characteristics are not defined by statute or Commission rules, the elimination of the domestic delivery cost function suggests that cost characteristics for the Agreement are no longer similar to the baseline agreement of the GEPS 3 product, and the Agreement may be no longer functionally equivalent. That said, the market characteristics of the Agreement are similar to the baseline agreement as both agreements feature PMEI and/or PMI, the timeliest shipping services offered by the Postal Service to foreign destinations. Therefore, the Public Representative concludes that the Agreement remains functionally equivalent to the baseline agreement and should be added to the GEPS 3 product.

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; ensure that each competitive product will cover its attributable costs;

[9] Domestic transportation costs are incurred by the Postal Service for GEPS 3 agreements where the mailer selects the "nationwide" service option. Domestic transportation costs are not incurred by the Postal Service where the mailer selects either the "metro" or "ISC" dropship service options.
[10] Conversely, by this logic, an NSA should not be considered functionally equivalent to the baseline agreement if it exhibits both distinct cost *and* market characteristics that differ from the baseline agreement. Such an NSA should therefore be the baseline agreement for a new product.

and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

The Postal Service's financial model does not directly address whether the addition of the Agreement to the GEPS 3 product will result in the product as a whole covering costs as required by 39 U.S.C. § 3633(a)(2). However, the Postal Service's financial model indicates that the negotiated rates in the Agreement will generate sufficient revenues to cover its attributable costs. The Public Representative notes that in the FY 2014 Annual Compliance Determination (ACD) Report, the Commission determined that the GEPS 3 product covered costs. 2014 ACD at 78. Therefore, the addition of the Agreement to the GEPS 3 product should not cause the product's cost coverage to fall below 100 percent. As a result, the addition of the Agreement to the GEPS 3 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2), and should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Moreover, the GEPS 3 product should improve the likelihood that competitive products as a whole contribute an appropriate share to the Postal Service's institutional costs, consistent with 39 U.S.C. § 3633(a)(3).

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

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