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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

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

Docket No. CP2015-133

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

(September 2, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2692.[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 3 (GEPS 3) negotiated service agreement (Agreement).[2]

Agreements with the GEPS 3 product offer incentive pricing to mailers that send items directly 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 depending upon the volume or postage commitments made by the mailers. *Id.* To qualify for a GEPS agreement, a business mailer must be capable,

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[1] Notice and Order Concerning Additional Global Expedited Package Services 3 Negotiated Service Agreement, September 1, 2015 (Order No. 2692).

[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, August 31, 2015 (Notice).

on an annualized basis, of paying at least $200,000 in international postage to the Postal Service.[3]

Prices and classifications not "of general applicability" for GEPS agreements were previously established by Governors' Decision No. 08-7.[4] In Order No. 86, the Commission established GEPS as a product on the competitive product list.[5] 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 agreement (CP2010-71) that would serve as the baseline agreement for functional equivalence comparisons with future agreements.[6] 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 (MC2010-28) product.

The Agreement is a new GEPS 3 agreement, and is intended to become effective on September 15, 2015. Notice at 3. The Agreement is expected to remain in effect for one calendar year from the effective date, subject to early termination provisions. Notice, Attachment 1 at 3.

The Postal Service states that the Agreement is functionally equivalent in all pertinent respects to the baseline agreement and is in compliance with the requirements of 39 U.S.C. § 3633. Notice at 7. The Postal Service therefore requests that the Agreement be added to the GEPS 3 product grouping. *Id*.

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[3] *See* Docket No. MC2012-8, Notice of the United States Postal Service of Minor Classification Change, January 30, 2012, at 3, showing conforming changes to the Mail Classification Schedule, 2510.3.1.

[4] *See* Docket No. CP2008-5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08-7, May 6, 2008 (Governors' Decision No. 08-7). A redacted copy of the Governors' Decision was also filed as Attachment 3 to the Notice. An unredacted copy of the Governors' Decision was filed previously under seal. Docket No. CP2008-4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Service Contracts, May 20, 2008.

[5] Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86).

[6] Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010 (Order No. 503).

COMMENTS

The Public Representative has reviewed the Postal Service's Notice, the Agreement, and supporting financial model filed under seal as part of the Notice. Based upon that review, the Public Representative concludes that the Agreement is functionally equivalent to the baseline agreement. In addition, it appears that 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 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. However, the Postal Service identifies differences between the Agreement and the GEPS 3 baseline agreement. *Id.* at 4-7. Most of these differences consist of changes similar to those included in other recent GEPS 3 agreements,[7] or are specific to the customer (*e.g.,* the customer's name and address). Since Qualifying Mail is limited to Priority Mail International (see Article 4), there are no references to Express Mail International in the Agreement. Other differences between the Agreement and the GEPS 3 baseline agreement include revisions to paragraphs; revisions to numerous existing articles, as well as deletion, addition and renumbering of some articles; revision to Annex 1. *Id*.

The Postal Service maintains that these differences do not affect either the fundamental service the Postal Service is offering or the fundamental structure of the contract. *Id*. at 7. The Public Representative concludes that the Agreement exhibits similar cost and market characteristics to the baseline agreement. Therefore, the Public Representative agrees that the Agreement is functionally equivalent to the baseline agreement and should be added to the GEPS 3 product.

[7] *See e.g.,* Docket No. CP2015-79, 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 27, 2015, at 4-7; Docket No. CP2015-64, 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 6, 2015, at 4-7.

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

As presented, 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 revenue to cover its attributable costs. Therefore, the addition of the Agreement to the GEPS 3 product will not cause the product's cost coverage to fall below 100 percent - assuming the product currently covers its attributable costs.[8] Under this assumption, the addition of the Agreement should allow the GEPS 3 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 completive products as whole contribute an appropriate share to the Postal Service's institutional costs, consistent with 39 U.S.C. § 3633(a)(3). The Commission will have an opportunity to review the financial results for the Agreement in the future ACD Report for compliance with 39 U.S.C. 3633(a).

[8] In the FY 2014 Annual Compliance Determination (ACD) Report, the Commission determined that the GEPS 3 product covered the attributable costs. *See* Docket No. ACR2014, *Annual Compliance Determination*, March 27, 2015, at 77-78.

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

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Kenneth R. Moeller
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6888
Kenneth.moeller@prc.gov