

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

Competitive Product Prices  
First-Class Package Service  
First-Class Package Service Contract 38

Docket No. MC2016-33

Competitive Product Prices  
First-Class Package Service Contract 38 (MC2016-33)  
Negotiated Service Agreement

Docket No. CP2016-39

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD  
FIRST-CLASS PACKAGE SERVICE CONTRACT 38  
TO THE COMPETITIVE PRODUCT LIST

(December 21, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2868.<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 filed pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add First-Class Package Service Contract 38 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), and a copy of Governor's Decision No. 11-6. In addition, the Postal Service filed a redacted (public) copy of Contract 38. The Postal Service also filed under seal an unredacted, non-public copy of Contract 38, along with required financial workpapers.

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<sup>1</sup> PRC Order No. 2868, Notice and Order Concerning the Addition of First-Class Package Service Contract 38 to the Competitive Product List, December 18, 2015.

<sup>2</sup> Request of the United States Postal Service to Add First-Class Package Service Contract 38 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 11, 2015 (Request).

According to the Postal Service, First-Class Package Service Contract 38 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 38 are supported by Governors’ Decision No. 11-6.<sup>3</sup> The Postal Service further asserts that the Statement of Supporting Justification provides support for adding First-Class Package Service Contract 38 to the competitive product list. *Request at 2*.

Contract 38 is scheduled to expire 3 years from the effective date unless (1) renewed by mutual agreement in writing, (2) superseded by a subsequent contract between the Parties, (3) ordered by the Commission or a court, or (4) required to comply with subsequently enacted legislation. *Attachment B at 4*.

## COMMENTS

*Product List Assignment.* 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 such powers are categorized as market dominant while all others are categorized as competitive. The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). *Attachment D at 2*. These assertions appear reasonable for purposes of categorizing Contract 38 as competitive.

*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; 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. Based upon a review of the financial model filed under seal with the Postal Service’s Request, the negotiated

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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, May 22, 2011 (Governors’ Decision No. 11-6), filed in Request, Attachment A.

prices in the instant contract should generate sufficient revenues to cover costs during contract years.

The Public Representative has reviewed Contract 38, the Statement of Supporting Justification, and the financial workpapers filed under seal that accompany the Postal Service's Request. Based upon that review, the Public Representative concludes that First-Class Package Service Contract 38 should be categorized as a competitive product and added to the competitive product list.

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

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Curtis Kidd  
Public Representative

901 New York Ave. NW  
Washington, DC 20268-0001  
202-789-6881  
Curtis.Kidd@prc.gov