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Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices — Docket No. MC2016-39
Priority Mail
Priority Mail Contract 165

Competitive Product Prices — Docket No. CP2016-48
Priority Contract 165 (MC2016-39)
Negotiated Service Agreement

PUBLIC REPRESENTATIVE COMMENTS ON
REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD
PRIORITY MAIL CONTRACT 165 TO THE COMPETITIVE PRODUCT LIST

(January 21, 2016)

Introduction

The Public Representative hereby provides comments pursuant to Order No. 2888 (*Order*).[1] In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's request to add Priority Mail Contract 165 to the competitive products list (*Request*).[2]

Under 39 U.S.C. § 3642(b) the criteria governing Commission review are whether the product (1) qualifies as market dominant, (2) is covered by the postal monopoly and therefore precluded from classification as a competitive product, and (3) reflects certain market considerations, including private sector competition, the impact on small businesses, and the views of product users.

[1] PRC Order No. 2888. Notice and Order Concerning the Addition of Priority Mail Contract 165 to the Competitive Product List (*Order*). December 17, 2015.

[2] Request of the United States Postal Service to Add Priority Mail Contract 165 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, And Supporting Data (*Request*). December 15, 2015.

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.

Discussion

While it appears that Priority Mail Contract 165 will meet the requirements of 39 U.S.C. § 3633, the Public Representative offers two recommendations to enhance transparency specific to this Postal Service request. First, the Postal Service's *Request* should be more transparent in explaining the provisions offered under this contract, particularly provisions that differ from other types of Priority Mail contracts.[3] In this proceeding, the Postal Service's *Request* should have indicated that the instant agreement provides same-day delivery for customers using Priority Mail service. The *Notice* should have also stated that the Postal Service developed the agreement from Metro Post market test data. Such language would have enabled interested parties to better understand the filings, especially those that were redacted.

Second, the Commission should direct the Postal Service to provide contract-specific data in each Annual Compliance Determination proceeding during the life of the contract; including revenues, volumes by weight step, workhours, and miles. The Chairman Information Requests (CHIRs) included questions related to the Postal Service's ability to identify specific costs related to this Priority Mail contract that offers same-day delivery. In order to ensure that the product complies with 39 U.S.C. § 3633, the Commission should have access to financial models that accurately account for all costs associated with the product. *See* 39 U.S.C. § 3652(a)(1). Specifically, for each

[3] The Public Representative takes no issue including this agreement under the Priority Mail Contracts grouping. The Postal Service uses a similar practice for Priority Mail Open and Distribute negotiated service agreements that provide dropship service for Priority Mail packages. *See* Docket Nos. MC2016-53 and CP2016-68, Request of the United States Postal Service to Add Priority Mail Contract 175 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision Contract, and Supporting Data, December 23, 2015. However, Priority Mail negotiated service agreements that have unique characteristics, such as Priority Mail Open and Distribute contracts or Priority Mail contracts offering same-day delivery, should be better identified in the Postal Service's Notice.

competitive negotiated service agreement, the Commission requires the Postal service to provide estimates for that agreement's costs, volumes, and revenues. 39 C.F.R. § 3050.21(g)(2).

Conclusion

The Public Representative has reviewed the Postal Service's Request, Statement of Supporting Justification, attached contract, Certification of Compliance with 39 U.S.C. 3633(a), and the Postal Service's proposed revised changes to the Mail Classification Schedule (MCS). The Public Representative has also reviewed the supporting financial models for the contract filed separately under seal. Based upon that review, the Public Representative concludes that the Priority Mail Contract 165 satisfies the criteria of section 3642(b), concerning the classification of new competitive products, and complies with the requirements of section 3633(a), concerning rates for competitive products.

The contract is expected to remain in effect for a period of three years.[4] The Postal Service provides no definite evidence to demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during the second and third years of the contract. This concern is largely mitigated by the fact that the terms of the contract provide a formula for an annual adjustment in the negotiated rates that should permit revenues to cover costs during years 2 and 3.[5] The Commission also has an opportunity to conduct an annual compliance review in its Annual Compliance Determination.

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

[4] The contract may be (1) terminated by either party with 30 days' notice to the other party in writing, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent contract between the parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation. Request, Attachment B at 3.

[5] *See* Appendix B of Request of the United States Postal Service to Add Priority Mail Contract 165 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data. December 15, 2015. Page 3.

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