

ORDER NO. 3264

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

Before Commissioners:

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

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

Docket No. CP2016-13

ORDER APPROVING MODIFICATION TO
GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(Issued April 27, 2016)

I. INTRODUCTION

The Postal Service seeks to modify a Global Expedited Package Services 3 negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Modification.

¹ Notice of the United States Postal Service of Filing Modification One to Global Expedited Package Services 3 Negotiated Service Agreement, April 14, 2016 (Notice). The modification is an attachment to the Notice (Modification).

In Order No. 2801, the Commission approved the Global Expedited Package Services 3 negotiated service agreement (Existing Agreement).² On April 14, 2016, the Postal Service filed notice that it has agreed to the Modification to the Existing Agreement. On April 15, 2016, the Commission issued an order reopening this docket to consider the Modification, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Modification to become effective May 1, 2016. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the Modification will not impair the ability of the contract to comply with 39 U.S.C. § 3633. *Id.* Attachment 2.

II. COMMENTS

Comments were filed by the Public Representative.⁴ The Public Representative reviewed the Modification, the Existing Agreement, and the financial model filed under seal. PR Comments at 2. Based on that review, the Public Representative states he is concerned that there are some aspects of the Existing Agreement, as modified, that do not fully comply with some statutory requirements. *Id.* However, he states his concern is mitigated by the fact that the overall contract continues to meet the statutory requirements (*i.e.*, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a)), and remains functionally equivalent to the baseline agreement). *See id.*

² See Order Approving Additional Global Expedited Package Services 3 Negotiated Service Agreement, November 4, 2015 (Order No. 2801).

³ Order No. 3241, Notice and Order Concerning Modification One to a Global Expedited Package Services 3 Negotiated Service Agreement, April 15, 2016.

⁴ Public Representative Comments on Postal Service Notice Concerning Modification to Global Expedited Package Services 3 Negotiated Service Agreement, April 22, 2016 (PR Comments).

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Modification enables the customer to make use of Priority Mail Express International service under the agreement, revises the customer's minimum commitment, and amends Annex 1 of the agreement. Notice at 1.

Based on a review of the record, the Commission finds that the Existing Agreement, as modified, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). The Public Representative's comments allude to the fact that that certain elements of the modified agreement do not cover their attributable cost. However, the cost coverage of other elements of the modified agreement ensure that overall the Existing Agreement, as modified, does cover its attributable costs and thereby comply with 39 U.S.C. § 3633(a)(2).

Because the Commission finds that the modified agreement should cover its attributable costs, it also finds that the modified agreement 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). Similarly, it finds the modified agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Modification indicates it is

consistent with section 3633(a). The annual rate adjustment provision in Article 14 of the modified agreement should allow the modified agreement's revenue to cover costs for the duration of its term.⁵ The Commission will continue to review the cost coverage of the modified agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Modification shall become effective May 1, 2016. Notice at 1. The Existing Agreement, as modified, is set to expire November 30, 2016, unless terminated sooner.⁶ If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Global Expedited Package Services 3 negotiated service agreement, as modified.
2. The Postal Service shall notify the Commission if the Existing Agreement, as modified, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

⁵ See 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, Attachment 1 at 3, October 26, 2015.

⁶ See Order No. 2801 at 7.