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

Competitive Product Prices — Docket No. MC2016-165
Priority Mail & First-Class Package Service
Priority Mail & First-Class Package Service Contract 21

Competitive Product Prices — Docket No. CP2016-239
Priority Mail & First-Class Package Service
Contract 21 (MC2016-165)
Negotiated Service Agreement

PUBLIC REPRESENTATIVE COMMENTS ON THE UNITED STATES POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE CONTRACT 21 TO THE COMPETITIVE PRODUCT LIST

(July 18, 2016)

The Public Representative hereby provides comments pursuant to a notice initiating this docket.[1] In that notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail & First-Class Package Service Contract 21 to the competitive product list.[2] 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 public version of the contract related to the proposed new product. The contract was also filed in its entirety as a non-public document, along with required financial data.

The Postal Service states that Priority Mail & First-Class Package Service Contract 21 is a competitive product "not of general applicability within the meaning of

[1] Notice Inititating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, July 11, 2016.

[2] Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 21 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 8, 2016 (Request).

39 U.S.C. § 3632(b)(3)." *Request* at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6.[3]

The effective date of the instant contract is 2 business days following the day on which the Commission issues all necessary regulatory approvals. *Id.*, *Attachment B* at 5. The contract is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days' prior written notification. *Id*

COMMENTS

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail and First-Class Package Service Contract 21 be added to the competitive product list. 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 these considerations. *Request*, *Attachment D*, at 1. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail and First-Class Package Service Contract 21 to the competitive product list is appropriate.

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.

[3] 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, March 22, 2011 (Governors' Decision No. 11-6).

The Postal Service provides no data to demonstrate that the instant contract will comply with the requirements of 39 U.S.C. § 3633(a) during the entire 3-year period of the contract. This concern is somewhat mitigated by the fact that the terms of the instant contract provide a formula for an annual adjustment in the negotiated rates that should permit revenues to cover cost during years 2 and 3. In addition, the Commission has an opportunity to review the financial results for the instant contract for compliance with 39 U.S.C. § 3633(a) each year of the contract in the Annual Compliance Determination.

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and financial model filed under seal that accompanies the Postal Service's Request. Based upon the complete review, the Public Representative concludes that Priority Mail & First-Class Package Service Contract 21 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues to cover costs and thereby satisfy the standards of 39 U.S.C. § 3633(a).

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

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