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

Market Dominant Product Prices — Docket No. R2016-2
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1

Australian Postal Corporation - United States
Postal Service Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE NOTICE CONCERNING AUSTRALIAN POSTAL CORPORATION BILATERAL AGREEMENT

(January 5, 2017)

The Public Representative hereby provides comments pursuant to Order No. 3707.[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 a Type 2 rate adjustment in conjunction with a new market dominant international negotiated service agreement (NSA).[2]

The Notice concerns the inbound portion of a bilateral agreement with Australian Postal Corporation to be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Multi-Service Agreements) product. The inbound portion of the agreement with Australian Postal Corporation (Australia Agreement) establishes negotiated rates for inbound letterpost in the form of small packets with delivery scanning. Notice at 1.

Included as Attachment 1 to the Notice is an application for non-public treatment of materials filed under seal. A public (redacted) version of the Australia Agreement is

[1] Order No. 2664, Notice and Order Concerning Type 2 Rate Adjustment and Functionally Equivalent Agreement, December 27, 2016.

[2] Notice of United States Postal Service of Type 2 Rate Adjustment, Notice of Filing Functionally Equivalent Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 22, 2016 (Notice).

provided in Attachment 2.[3] The Postal Service also filed under seal the full (unredacted) text of the Australia Agreement and a supporting financial model estimating the volume, revenue, costs and contribution of the Agreement.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post 2010 Agreement) within the product.[4] Subsequently, the Commission determined that bilateral agreements with the China Post Group, Hongkong Post, Singapore Post Limited, the Australian Postal Corporation, the Canada Post Corporation, Korea Post, and the Netherlands Royal PostNL BV should be included within the Multi-Service Agreements product.

In Order No. 2148, the Commission established the TNT Agreement and the China Post 2010 Agreement as baseline agreements that can be used as alternatives in future functional equivalence comparisons, with the selection of either agreement in any future multi-service agreement filing left to the option of the Postal Service.[5]

The Postal Service states that the proposed Effective Date for the Australia Agreement is February 1, 2017. Notice at 3. The Australia Agreement is to remain in effect indefinitely unless terminated by either party. *Id.*, Attachment 2 at 6 (Article 22).

The Postal Service states that the negotiated prices in the Australia Agreement will result in an "improvement over default rates established under the Universal Postal Union (UPU) Acts" for inbound letter post items. *Id.* at 1. The Postal Service also identifies four operational changes in the Australia Agreement that it states "should

[3] The Public Representative observes that the Postal Service's Notice did not include a copy of the Governors' Decision establishing prices and classifications for the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Nor does the Postal Service's initial request to add this product to the market dominant product list include a Governors' Decision.

[4] *See* Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreement, Docket Nos. MC2010-35, R2010-5 and R2010-6, September 30, 2010.

[5] Order No. 2148, Order Granting, in Part, Motion for Partial Reconsideration of Order No. 1864 and Modifying, in Part, Order No. 1864, Docket No. R2013-9, August 11, 2014, at 7.

enhance the performance of mail preparation, processing, transportation and other functions related to the delivery services provided for Letter Post items under the agreement." *Id.* at 4.

Pursuant to Order No. 2148, the Postal Service identifies the China Post 2010 Agreement as the baseline agreement for functional equivalence comparisons. *Id.* at 1. In this regard, the Postal Service maintains that the Australia Agreement is "functionally equivalent to the China Post 2010 Agreement filed in Docket No. R2010-6." *Id.* at 8. Therefore, the Postal Service requests that the Australia Agreement be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35) product. *Id.* at 9.

COMMENTS

The Public Representative has reviewed the Postal Service's Notice, and the Australia Agreement and supporting financial model filed under seal with the Notice. The Public Representative also reviewed the financial model for the Australia Agreement filed under seal in Docket No. R2010-6.

Based upon that review, the Public Representative concludes that the Australia Agreement is functionally equivalent to the baseline China Post 2010 Agreement. Moreover, the Public Representative finds that the Australia Agreement is likely to improve the net financial position of the Postal Service.

Functional Equivalence. In support of its claim as to functional equivalence, the Postal Service states that the terms of the Australia Agreement fit within the proposed Mail Classification Schedule (MCS) language for Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 9. The Postal Service also asserts that the Australia Agreement and the China Post 2010 Agreement are constructed from a similar template and contain many similar terms and conditions. *Id.* Importantly, the Postal Service states that both agreements provide rates for the delivery of inbound small packets with delivery scanning tendered to the Postal Service from the territory of each foreign postal operator. *Id.* Moreover, the financial models

used to project costs and revenues for the duration of the each of the agreements are similar. *Id.*

The Public Representative's review of the supporting financial models for the Australia Agreement and the China Post 2010 Agreement reveal that the Australia Agreement and the China Post 2010 Agreement share similar cost and market characteristics. In terms of market characteristics, both agreements establish negotiated rates for inbound small packets with delivery scanning tendered by foreign postal operators. In terms of cost characteristics, both financial models develop unit costs for mail processing, delivery, domestic transportation, and all other domestic costs associated with inbound small packet with delivery scanning. The Public Representative therefore concludes that the Australia Agreement is functionally equivalent to the China Post 2010 Agreement.

Statutory Criteria. Pursuant to 39 U.S.C. § 3622(c)(10), the statutory criteria for Commission review are whether a Postal Service agreement (1) will be available on public and reasonable terms to similarly situated mailers, (2) either improves the net financial position of the Postal Service or enhances the performance of operational functions, and (3) will not cause unreasonable harm to the marketplace. With respect to criteria (1) and (3), the Postal Service makes reasonable arguments that such criteria are not implicated by the Australia Agreement. *Id.* at 2-5.

The Postal Service's financial model addresses only the first year of the agreement[6]. Also, it did not present a comparison of the cost coverage at UPU and negotiated rates. Nonetheless, the Public Representative's analysis indicates that the cost coverage at the negotiated rates exceeds the cost coverage at UPU terminal dues for the first year. Additionally, the cost coverage of the Australia Agreement indicates that revenue generated from the negotiated rates exceeds the attributable costs estimated for the first year of the Australia Agreement. Thus, the Public Representative concludes that the negotiated rates in Australia Agreement "improve the net financial position of the Postal Service." 39 U.S.C. § 3622(c)(10)(A)(i) in the first year. The

[6] The term of the Australia Agreement is unclear. The term in the signed contract appears to be indefinite, while the financial workpapers indicate one year.

Postal Service did not provide analysis for future years of the agreement. However, based on the cost coverage of the Australia Agreement, it is unlikely that the Australia Agreement would fail to meet the requirements of § 3622 in future years. Nonetheless, the Commission will have opportunity to review the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product in its Annual Compliance Determination.

The Public Representative has reservations about the Postal Service volume projection in its financial model. The Postal Service cannot control the prices set by Australia Post Corporation for mailers in Australia, therefore the Postal Service's volume projection is questionable. If it was based on reasonable assumptions, they were not shared with the Commission.

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

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