

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Competitive Product Prices
Global Reseller Expedited Package Contracts
Negotiated Service Agreement

Docket No. MC2013-64

Competitive Product Prices
Global Reseller Expedited Package Contracts 3
(MC2013-64)
Negotiated Service Agreement

Docket No. CP2013-84

ORDER ADDING GLOBAL RESELLER EXPEDITED PACKAGE
CONTRACTS 3 TO THE COMPETITIVE PRODUCT LIST
AND APPROVAL OF DESIGNATION AS BASELINE AGREEMENT

(Issued November 7, 2013)

I. INTRODUCTION

The Postal Service seeks the addition of a new product identified as Global Reseller Expedited Package (GREP) Contracts 3 to the competitive product list, inclusion of a related contract within the new product, and designation of that contract

as the baseline agreement for future assessments of functional equivalence of other contracts.¹ For the reasons discussed below, the Commission approves the Request.

II. BACKGROUND

On September 30, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed its Request, supporting documents, and the negotiated service agreement it seeks to have designated as the baseline agreement for the GREP Contracts 3 product (Agreement). The supporting documents include a copy of the Agreement, a copy of Governors' Decision No. 11-6;² proposed Mail Classification Schedule (MCS) language; a statement supporting the Request; a certification of compliance with 39 U.S.C. § 3633(a), and supporting financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials covering redacted versions of Governors' Decision No. 11-6, the Agreement, customer-identifying information, and related financial information filed under seal. Request, Attachment 1.

In the Request, the Postal Service asserts that GREP Contracts 3 is a competitive product that establishes prices and classifications "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1.

On October 18, 2013, the Commission issued Order No. 1850 establishing two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

¹ Request of the United States Postal Service to Add Global Reseller Expedited Package Contracts 3 to the Competitive Products List and Notice of Filing a Global Reseller Expedited Package 3 Negotiated Service Agreement, September 30, 2013 (Request).

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for 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).

³ Order No. 1850, Notice and Order Concerning Filing of Global Reseller Expedited Package Contracts 3 Negotiated Service Agreement, October 18, 2013.

III. COMMENTS

Comments were filed by the Public Representative.⁴ The Postal Service filed a response to the Public Representative's comments.⁵ No other comments were submitted.

The Public Representative concludes that the GREP Contracts 3 product is appropriately classified as competitive and should be added to the competitive product list. PR Comments at 3. He notes that the addition of Global Express Guaranteed to the GREP Contracts 3 product, which differs from GREP Contracts 1 and 2, does not alter the conclusion that the product is competitive. *Id.* at 4. In addition, the Public Representative concludes that the prices under the Agreement satisfy the requirements of 39 U.S.C. § 3633(a). *Id.* at 3 and 4.

The Public Representative raises a concern that the Postal Service's presentation of the proposed MCS reflects an unintended result with respect to Priority Mail International (PMI). Specifically, he observes that the revision to the table for Priority Mail International (PMI) in section 2510.7.2 (which concerns size and weight limitations) strikes through superscript "2," but does not strike through the corresponding text in Note 2. *Id.* at 4.

Postal Service Response. The Postal Service acknowledges that superscript "2," in section 2510.7.2, should not be stricken. Postal Service Response at 2.

⁴ Public Representative Comments on Postal Service Notice Concerning Filing of Global Reseller Expedited Package Contracts 3 Negotiated Service Agreement, October 25, 2013 (PR Comments).

⁵ Response of the United States Postal Service to Comments of the Public Representative, October 29, 2013 (Postal Service Response). The Postal Service contemporaneously filed a motion for leave to file a response to the Public Representative's Comments. See United States Postal Service Motion for Leave to File Response to Public Representative Comments, October 29, 2013. This motion is granted.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, the supporting data filed under seal, the Public Representative's comments, and the Postal Service's response.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning GREP Contracts 3 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. In addition, the Commission must give due regard to the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service states that other shippers who provide services similar to GREP Contracts 3 constrain its bargaining position and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment 3 at 3. The Postal Service states that analogous international delivery services are available from private consolidators, freight forwarders, and integrators. *Id.* at 4. It further states that it is unaware of any small business concerns that could offer comparable services to the contract partner, but opines that the "net impact on small businesses is positive," because a GREP agreement offers small businesses "an additional option for shipping articles internationally, beyond the services offered by competitors." *Id.* at 5. Although the Postal Service asserts that it has no specific data relating to customer views regarding the Request, it reasons that the contract partner is "presumably aware" that other entities offer competitive services. *Id.* at 4-5.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that GREP Contracts 3 is appropriately classified as competitive and adds it to the competitive product list.

Product list. The Commission added GREP Contracts 1 and GREP Contracts 2 to the competitive product list by operation of Order Nos. 445 and 1746, respectively.⁶ Request at 1-2. The Postal Service states the proposed classification change adding GREP Contracts 3 to the MCS is consistent with the requirements of 39 U.S.C. § 3642, and proposes conforming revisions to MCS section 2510.7, which covers GREP Contracts. *Id.* at 7; Attachment 2B.

Clarification of proposed MCS changes. The inconsistency the Public Representative identifies in the proposed MCS revision has been resolved by the Postal Service, which states that superscript “2” should not be stricken. Postal Service Response at 2. Both superscript “2” and corresponding Note 2 should be included in section 2510.7.2.

The Commission will make the changes to the draft MCS regarding the GREP Contracts 3 product and the GREP Contracts group product description proposed by the Postal Service, but for the strikethrough of superscript “2” in section 2510.7.2. The Commission’s revisions to the draft MCS to reflect approval of the proposed changes are shown below the signature line of this Order.

Cost considerations. Because GREP Contracts 3 is a competitive product, the Postal Service must show that a negotiated service agreement included within the product covers its attributable costs, contributes to the Postal Service’s institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

The Request includes a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment 2C. In addition, the Postal Service filed supporting revenue and cost data showing that the Agreement is expected to cover its costs. Based on its review of the statement and an analysis of the supporting data, the Commission finds that the Agreement comports with the provisions

⁶ See *respectively* Docket Nos. MC2010-21 and CP2010-36 and Docket Nos. MC2013-51 and CP2013-64.

applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Baseline agreement. The Commission designates the Agreement as the baseline agreement for the GREP Contracts 3 product.⁷ Following current practice, in any future request to add a negotiated service agreement to the GREP Contracts 3 product, the Postal Service shall identify all significant differences between the new negotiated service agreement and the baseline agreement. Significant differences include terms and conditions that impose new obligations or new requirements on any party to the negotiated service agreement. The docket referenced in the caption of the request should be Docket No. MC2013-64. In conformity with current practice, a redacted copy of Governors' Decision No. 11-6 should be included with the request.

Effective date/term. The Postal Service will notify the customer of the effective date within 90 days of receipt of all necessary regulatory approvals. Request, Attachment 4 at 5. The Agreement is scheduled to expire 12 months after the effective date of the Agreement, unless either party terminates the Agreement earlier. *Id.* at 5-6.

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the Agreement. Upon termination of the Agreement by either party, the Postal Service shall inform the Commission of this development and the date of termination. In addition, within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the Agreement, including any penalties paid.

In conclusion, the Commission approves GREP Contracts 3 as a new product and designates the Agreement as the baseline agreement for the GREP Contracts 3

⁷ The Postal Service asks that the Agreement "be considered as the new 'baseline' contract for future functional equivalency analysis concerning the Global Reseller Expedited Package Contracts product." Request at 5. Because baseline agreements are generally established for each product within a grouping, the Commission views this as a request to consider the Agreement as the baseline agreement for the GREP Contracts 3 product, not for the GREP Contracts group as a whole. See, e.g., section 2510.3.6 of the draft MCS (establishing separate baseline agreements for GEPS 3 and GEPS 4) and section 2510.6.6 of the draft MCS (establishing separate baseline agreements for Global Plus 1C and Global Plus 2C).

product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Global Reseller Expedited Package Contracts 3 (MC2013-64 and CP2013-84) is added to the competitive product list as a new product under Negotiated Service Agreements, International. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission of the effective date of the Agreement and if the Agreement terminates earlier than scheduled, as discussed in this Order.
3. Within 30 days of the expiration or termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.
4. The draft Mail Classification Schedule will be modified as discussed in the body of this Order and as shown below the signature line of this Order.

5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the changes made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-64 and CP2013-84. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

* * * * *

Negotiated Service Agreements

* * * * *

Outbound International

* * * * *

Global Reseller Expedited Package Contracts

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Global Reseller Expedited Package Services 3

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CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

* * * * *

Negotiated Service Agreements

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Outbound International

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Global Reseller Expedited Package Contracts

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Global Reseller Expedited Package Services 3

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2510.7 Global Reseller Expedited Package Contracts

2510.7.1 Description

- a. Global Reseller Expedited Package Contracts provide discounted prices to a reseller for Global Express Guaranteed (GXG), Priority Mail Express International (PMEI), Priority Mail International (PMI), and Outbound Single-Piece First-Class Package International Service (FCPIS) for destinations serviced by GXG, PMEI, PMI, and FCPIS. The reseller offers prices based on its contract to its customer (reseller's customers).
- b. Preparation requirements are the same as for all GXG, PMEI, PMI, and FCPIS shipments with the following exceptions:
 - The reseller's customers are required to use PC Postage from an authorized PC Postage vendor for payment of postage or use an authorized Meter Provider using devices and methods for data entry authorized by USPS.
 - The reseller's customers may be required to prepare specific shipments according to country specific requirements.
 - The reseller's customers may be required to tender shipments through limited acceptance channels.
- c. The reseller must be capable of either tendering at least 5,000 pieces on international mail to the Postal Service, or paying at least \$100,000.00 in international postage to the Postal Service.
- d. For a reseller to qualify, the contract must cover its attributable costs.

2510.7.2 Size and Weight Limitations

Global Express Guaranteed¹

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum</u>	<u>Must be able to hold the shipping label with pouch and postage</u>			<u>none</u>
<u>Maximum</u>	<u>46 inches</u>	<u>35 inches</u>	<u>46 inches</u>	<u>70 pounds</u>
	<u>108 inches in combined length and girth</u>			

Priority Mail Express International¹

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum</u>	none	none	none	<u>none</u>
	<u>Large enough to accommodate postage, address, and other required elements on the address side</u>			
<u>Maximum</u>	36 <u>79 inches</u>			<u>70 pounds</u>
	<u>79 108 inches in combined length and girth</u>			

Notes

1. Country-specific restrictions may apply as specified in the International Mail Manual.

Priority Mail International^{1, 2}

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum²</u>	<u>5.5 inches</u>	<u>none</u>	<u>3.5 inch</u>	<u>none</u>
<u>Maximum</u>	<u>42 79 inches</u>			<u>70 pounds</u>
	<u>79 108 inches in combined length and girth</u>			

Notes

1. Weight and other exceptional size limits based on shape and destination country restrictions may apply as specified in the International Mail Manual.
2. Items must be large enough to accommodate postage, address and other required elements on the address side.

Outbound Single-Piece First-Class Package International Service

Packages (Small Packets)

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side			none
Maximum	24 inches			4 pounds
	Length plus height plus thickness of 36 inches			

Rolls

	Length	Length plus twice the diameter	Weight
Minimum	4 inches	6.75 inches	none
Maximum	36 inches	42 inches	4 pounds

2510.7.3 Minimum Volume or Revenue Requirements

The reseller must commit to varying minimum volumes or postage of GXG, PMEI, PEMI, PMI, and/or FCPIS, on a quarterly or annualized basis.

2510.7.4 Price Categories

The incentives are based on the volume or revenue commitment above a specified cost floor.

The following price categories are available for the product specified in this section:

- Global Reseller Expedited Package Contracts – Global Express Guaranteed
- Global Reseller Expedited Package Contracts – Priority Mail Express International
- Global Reseller Expedited Package Contracts – Priority Mail International

- Global Reseller Expedited Package Contracts – Outbound Single-Piece First-Class Package International Service

2510.7.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand Service: PMEI and PMI only
- International Ancillary Services (2615)
 - International Certificate of Mailing: FCPIS, PMI Flat Rate Envelopes, PMI Small Letter Post Flat Rate Boxes, PMI parcels purchased without insurance only (2615.1)
 - International Insurance: GXG, PMEI merchandise, PMI parcels, PMI Large and Medium Flat Rate Boxes only (2615.5)
 - Outbound Competitive International Registered Mail: FCPIS, PMI Flat Rate Envelopes and Small Letter Post Flat Rate Boxes only (2615.2)
 - International Return Receipt: subject to availability in the destination country for registered FCPIS, PMI Flat Rate Envelopes, PMI Small Letter Post Flat Rate Boxes, and insured PMI parcels only (2615.3)

2510.7.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Global Reseller Expedited Package Services 1
 - Baseline Reference*
Docket Nos. MC2010-21 and CP2010-36
PRC Order No. 445, April 22, 2010
 - Included Agreements*
CP2011-1, expires November 30, 2013
CP2011-55, expires February 16, 2016
CP2012-14, expires June 30, 2014
CP2013-20, expires January 26, 2014
CP2013-49, expires TBD
- Global Reseller Expedited Package Services 2
 - Baseline Reference*
Docket Nos. MC2013-51 and CP2013-64
PRC Order No. 1746, June 13, 2013
 - Included Agreements*
CP2013-64, expires August 7, 2014

- Global Reseller Expedited Package Services 3
Baseline Reference
Docket Nos. MC2013-64 and CP2013-84
PRC Order No. 1870, November 7, 2013
Included Agreements
CP2013-84, expires TBD

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Docket No. MC2013-64

Competitive Product Prices
Global Reseller Expedited Package Contracts
(MC2013-64)
Negotiated Service Agreement

Docket No. CP2013-84

ORDER DENYING MOTION REQUESTING ACCESS TO NON-PUBLIC MATERIALS

(Issued April 11, 2014)

I. INTRODUCTION

On March 31, 2014, Mark Jamison filed a motion pursuant to 39 C.F.R. § 3007.50 requesting access to the non-public Governors' Decision, contract, and workpapers filed by the Postal Service in the above-captioned dockets.¹ For the reasons discussed below, the Motion is denied without prejudice.

¹ Motion of Mark Jamison Requesting Access to Non-Public Materials, March 31, 2014 (Motion).

II. BACKGROUND

On September 30, 2013, the Postal Service filed with the Commission a request to add Global Reseller Expedited Package Contracts 3 to the competitive product list.² The Request included the contract, supporting workpapers, and Governors' Decision 11-6.³ The Postal Service asserted that portions of the contract, workpapers, and Governors' Decision are commercial information that would not be publicly disclosed under good business practice and, pursuant to 39 C.F.R. § 3007.21, applied for non-public treatment of those portions. Request, Attachment 1 at 1.

On October 18, 2013, the Commission issued an order noticing the filing, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴ The deadline for comments concerning the contract was October 25, 2013. *Id.* at 3. Comments were filed by the Public Representative who concluded that it satisfied relevant statutory requirements and suggested modifications to the Mail Classification Schedule language.⁵

The Commission examined the contract and the supporting workpapers and concluded that the rates in the first year of the contract cover attributable costs and that the contract otherwise complies with 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.5.⁶ The

² Request of the United States Postal Service to Add Global Reseller Expedited Package Contracts 3 to the Competitive Products List and Notice of Filing a Global Reseller Expedited Package 3 Negotiated Service Agreement, September 30, 2013 (Request).

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for 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).

⁴ Notice and Order Concerning Filing of Global Reseller Expedited Package Contracts 3 Negotiated Service Agreement, October 18, 2013 (Order No. 1850).

⁵ Public Representative Comments on Postal Service Notice Concerning Filing of Global Reseller Expedited Package Contracts 3 Negotiated Service Agreement, October 25, 2013, at 3-4 (PR Comments).

⁶ Order Adding Global Reseller Expedited Package Contracts 3 to the Competitive Product List and Approval of Designation as Baseline Agreement, November 7, 2013, at 4-7 (Order No. 1870).

Commission granted the Request on November 7, 2013. Order No. 1870 at 7. The contract took effect December 1, 2013, and it is scheduled to terminate November 30, 2014.⁷

Mr. Jamison filed a Motion for access to non-public materials relating to the contract on March 31, 2014. On April 3, 2014, the Postal Service filed a response in opposition to the Motion that includes as an attachment a letter from the Counterparty's counsel supporting the Postal Service's position.⁸

III. PARTIES' POSITIONS

Motion. Mr. Jamison requests access to the contract, supporting workpapers, and Governors' Decision filed in the above-captioned dockets in order to conduct "an independent evaluation of the contract to determine if it meets the terms and conditions asserted by the Postal Service in its filing." Motion at 1. Mr. Jamison states that he plans to review the materials pursuant to 39 U.S.C. § 3653 specifically in the 2014 Annual Compliance Review. *Id.* He contends that as he is an individual interested in several competitive dockets it would likely take several months to review materials relevant to the FY 2014 ACR and therefore access is "wholly appropriate at this time." *Id.* at 1-2.

Mr. Jamison references review of the materials pursuant to: 39 U.S.C. § 3642, the section that provides criteria and guidance as to whether Postal Service products are properly categorized as market dominant or competitive; 39 U.S.C. § 101(b), a policy statement of title 39 regarding the provision of postal services, including retail channels, to all areas, especially rural areas, communities, and small towns where post offices are not self-sustaining; and 39 C.F.R. § 3007.20, the Commission's rule that

⁷ Response of the United States Postal Service to Order No. 1870, Concerning Effective Date of a Global Reseller Expedited Package Contracts 3 Negotiated Service Agreement, November 25, 2013.

⁸ Response of the United States Postal Service in Opposition to Motion for Access to Non-Public Materials, April 3, 2014 (Postal Service Response).

requires the Postal Service to file an application for non-public treatment when it files materials under seal. *Id.*

Mr. Jamison asserts that he has no commercial relationship with the Postal Service, companies doing business with the Postal Service, or the mailing industry in general. *Id.* at 3. The Motion includes a signed copy of the protective conditions set out in Appendix A of 39 C.F.R. part 3007.

Mr. Jamison references his previous request for access to non-public materials in Docket Nos. MC2014-1 and CP2014-1. He provides responses to two anticipated objections from the Postal Service: (1) that disclosure of such commercially sensitive material to him would harm the Postal Service and Counterparty; and (2) that the request is insufficiently specific and detailed to show the cause for the request. *Id.* at 2. Mr. Jamison argues that the first anticipated objection would create an insurmountable hurdle that would frustrate the intent of the applicable procedures, especially given that he has signed the protective conditions and has no relationship with any entity in the mailing industry. *Id.* Mr. Jamison similarly argues that the second anticipated objection would also create an insurmountable obstacle, as it would be impossible to be more specific without access to more specific information about the materials. *Id.*

Mr. Jamison contends that his request meets a public purpose because he contributes “reporting and commentary” to a website that “exists purely for the purpose of providing a public service, information related to postal affairs.” *Id.* at 3.

Postal Service. The Postal Service opposes the Motion. It states that, in its view, the requested materials are “information of a commercial nature, which under good business practice would not be publicly disclosed.” Postal Service Response at 2. It asserts that disclosure would cause clear commercial injury to the Postal Service and its Counterparty, by allowing competitors and prospective contract partners to gain advantages in negotiating similar contracts. *Id.* at 2-3. It also asserts that disclosure could have a significant negative effect on its ability to enter negotiated service

agreements, because it could not assure its contract partners that information submitted to the Commission would remain confidential. *Id.*

The Postal Service argues that the Motion lacks a detailed statement of justification for access as well as a compelling justification for access. *Id.* at 3. It notes that the Commission has already determined that the contract complies with chapter 36 of title 39, United States Code, and that the Commission will review the contract for compliance each year as part of its Annual Compliance Determination (ACD). *Id.* at 4. The Postal Service contends that insofar as the Motion seeks the materials for Mr. Jamison to conduct an independent evaluation of the contract to determine if it meets the terms and conditions asserted by the Postal Service, it is untimely and should be denied. *Id.*

The Postal Service states that the FY 2013 ACR process concluded on March 27, 2014 when the Commission issued its ACD Report. *Id.* at 5. It also explains that because the contract at issue did not take effect until after the end of FY 2013, it is not subject to review in the FY 2013 ACR. With regard to the FY 2014 ACR process, the Postal Service contends that the relevant data are not yet available as the Fiscal Year is ongoing. *Id.* The Postal Service concludes that the request for access pursuant to compliance review (39 U.S.C. § 3653) should be denied as premature. *Id.* at 6.

The Postal Service reiterates that the docket opened to consider the contract at issue and receive comments on the contract had a deadline for comments of more than five months previous. *Id.* Therefore, the Postal Service contends that Mr. Jamison's motion to review the contract materials pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3007.20 is either out of time for the underlying docket, inappropriate for the FY 2013 ACR process as no data are available and the deadline has passed, or premature for the FY 2014 ACR process. *Id.* at 5-6.

Further, the Postal Service contends that Mr. Jamison's reference to review for issues related to 39 U.S.C. § 101(b) is not explained, and the nexus between the policy

statement in section 101(b) and a contract for rates and services “not of general applicability” is not alleged. *Id.* at 6-7.

The Postal Service also alleges that Mr. Jamison’s motion fails because he did not include his affiliation with a website that provides reporting and commentary on postal issues. *Id.* at 7.

Counterparty. The Counterparty supports the Postal Service’s opposition to the Motion. See Postal Service Response at Attachment 1. It asserts that given the short timeframe, it is unable to prepare a filing on its own. *Id.* It asserts that the contract contains commercial information of a highly confidential and commercially sensitive nature, disclosure of which would unfairly and inappropriately place the Counterparty at a significant competitive disadvantage. *Id.* at 2.

The Counterparty asserts that the terms at issue are confidential and not known within the broader retail market. *Id.* Specifically the Counterparty states that the sealed material includes “specific price terms, incentive arrangements, and volume requirements (among others)...[that are] among the most protected, sensitive business information in any vendor-supplier relationship.” *Id.*

The Counterparty contends that disclosure of the material under seal would cause competitive harm because “[c]ompetitors could use such information to evaluate revenues and profitability associated with [the Counterparty’s] provision of certain products and services.” *Id.* at 1.

IV. COMMISSION ANALYSIS

The Commission’s rules allow any person to file a motion requesting access to non-public materials relevant to compliance under 39 U.S.C. § 3653. 39 C.F.R. § 3007.50(a). The motion must contain a “detailed statement providing justification for access, including reference to the materials’ relevance to compliance under chapter 36 of title 39 of the U.S. Code” and a list of relevant affiliations, including relationships with the party requesting access and whether that party is affiliated with the delivery

services, communications or mailing industries. *Id.* In determining whether to grant a motion for access to non-public materials relevant to compliance, the Commission is required to “balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).” 39 C.F.R. § 3007.52.

Mr. Jamison requests the materials filed under seal in Docket Nos. MC2013-64 and CP2013-84 pursuant to 39 C.F.R. § 3007.50. Specifically, Mr. Jamison seeks “access to the non-public materials for the purpose of conducting an independent evaluation of the contract to determine if it meets the terms and conditions asserted by the Postal Service in its filing.” Motion at 1. On the surface, his request appears to be broader than the mandate of the Annual Compliance Report (ACR) process.

The Commission established Docket Nos. MC2013-64 and CP2013-84 on October 18, 2013 to conduct an independent evaluation of the Global Reseller Expedited Package Contracts 3 and the supporting materials. Interested persons were invited to comment by October 25, 2013. Mr. Jamison did not participate in that proceeding. At the conclusion of the proceeding, the Public Representative concluded that the contract appears to comport with the relevant requirements and the Commission agreed in Order No. 1870. Review of the information relevant to those dockets concluded with issuance of Order No. 1870. Insofar as Mr. Jamison requests access to the protected materials for the purpose of conducting an independent evaluation of the docket materials that is not related to the ACR process, the request is denied as untimely.

Mr. Jamison also requests access to materials on the basis that they are relevant to his review of compliance pursuant to 39 U.S.C. § 3653. Under the authority of that section, the Commission conducts an annual review of the Postal Service’s compliance with the provisions of chapter 36 of title 39, United States Code, and the service standards in effect for the fiscal year. The annual review process for each fiscal year begins when the Postal Service submits its ACR to the Commission, not later than 90 days after the end of the fiscal year. 39 U.S.C. § 3652(a). For each competitive

contract in effect during that fiscal year, the ACR must identify the rates and service features under the contract and estimate the contract's costs, volumes, and revenues. 39 C.F.R. § 3050.21(g).

Upon receipt of the ACR, the Commission issues a notice and order providing the opportunity for comment on the ACR by users of the mails, affected parties, and the Public Representative. 39 U.S.C. § 3653(a). The Commission issues its ACD for a fiscal year not later than 90 days after the date on which the Postal Service submits the ACR for that fiscal year. *Id.* at 3653(b).

The Global Reseller Expedited Package Contracts 3 agreement took effect on December 1, 2013, approximately two months after the end of fiscal year 2013; therefore the FY 2013 ACR did not contain information concerning this contract. As a consequence, the contract was not subject to review in Docket No. ACR2013.

Information relevant to compliance for the FY 2014 ACR proceeding has not yet been filed. The contract at issue contains price information, and forecasted estimates of cost and volume. To determine compliance in the ACR proceeding, the Commission and other participating parties will review the revenues (which are a function of price and volume) and the costs (which are updated annually as part of the proceeding). The forecasted estimates of cost or volume are no longer used. Mr. Jamison would require, in addition to the available price information, volume and cost data.

Mr. Jamison's contention that an individual with limited resources could not endeavor to work through the materials in "several competitive dockets" during the course of the ACR proceeding is not persuasive. The principal analysis entails a review of cost and revenue under the contract for the relevant fiscal year. That does not require extensive time. Moreover, during the ACR proceeding, parties of varying sizes review voluminous and complex materials relating to a range of Postal Service products, both market dominant and competitive. Further, to assess compliance, the Postal Service must first provide volume and cost data that do not currently exist.

Without access to this yet-to-be developed or filed data, there is no meaningful analysis relevant to section 3653 that any party could undertake.

Therefore, in the absence of any current compliance issue relevant to Global Reseller Expedited Package Contracts 3, the Motion is denied as premature.

V. ORDERING PARAGRAPH

It is ordered:

The Motion of Mark Jamison Requesting Access to Non-Public Materials, filed March 31, 2014, is denied without prejudice.

By the Commission.

Ruth Ann Abrams
Acting Secretary