

Before the
Postal Regulatory Commission
Washington, DC 20268-0001

Competitive Product Prices)	
Parcel Select & Parcel Return Service)	
Parcel Select & Parcel Return Service Contract 5)	Docket No. MC2014-1
)	
Competitive Product Prices)	
Parcel Select & Parcel Return Service Contract 5)	Docket No. CP2014-1
(MC2014-1))	
Negotiated Service Agreement)	

RESPONSE TO UNITED STATES POSTAL SERVICE AND AMAZON FULFILLMENT SERVICES INC. RESPONSES OPPOSING ACCESS TO MATERIALS FILED UNDER SEAL

November 29, 2013

The United States Postal Service (Postal Service) and Amazon Fulfillment Services Inc. (Amazon) argue that my motion for access to unpublished materials in the above dockets fails on two counts:

1. The material in question is of a confidential and commercial nature and its disclosure to me would harm the interests of both Amazon and the USPS.
2. My request is insufficiently specific and detailed in order to show just cause for the request.

With respect to number one, my request meets the criteria established by the Commission. I explain that I have no commercial interest in the mailing or associated industries. Further, I executed a copy of the Appendix A agreement, which prohibits disclosure of any information I may review as a result of the request.

The Commission's rules and practices and specifically the document known as Appendix A sufficiently protect materials from disclosure beyond that granted to the party requesting access. An individual requesting access to materials under seal must sign a document acknowledging his responsibilities to keep the material confidential.

This carries the weight of law, and presumably if an individual were to violate the conditions he would be liable for damages.

One might argue that the material under seal is of such a high commercial value that an individual who violated the agreements contained in Appendix A would suffer minimal damage compared to what Amazon and the USPS might suffer. Such an argument fails on two fronts, however, one specific to the individual and one relating to the process generally.

Violating the confidentiality agreement would entail considerable risk to the individual. While he might not possess sufficient assets to recompense giants like the Postal Service or Amazon for damages, he would still risk everything he owned. That risk, everything the individual owned, which though relatively minute in relation to damage would be sufficiently consequential to the individual to be a brake on abuse of the privilege of access.

On a more general level, holding to this argument would imply that only commercial giants on the scale of Amazon or the Postal Service itself could reasonably participate in dockets with sealed material that may be of commercial value since only such entities would have similar levels of actual risk.

The argument that too much is at risk on the part of the Postal Service and Amazon versus what might be at risk for an individual violating an agreement against disclosure essentially makes the protections and procedures of the Commission void in every case. The Commission has established safeguards against disclosure. These safeguards should be viewed as sufficient. Otherwise, there would be no reason to give individuals access at all. The position of the Postal Service particularly is that no safeguard or procedure put in place by the Commission would be sufficient to ever allow disclosure of materials under seal. This is not a reasonable or even defensible position.

The second issue involved with a request for access to non-public materials is whether the requestor would gain commercial or competitive advantage by viewing the information. In this instance the mere knowledge of the sealed material, not any threat of disclosure, poses a problem for the parties.

In its response Amazon pointed out that I am a retired postmaster. My sole sources of income are my postal pension, a VA disability pension, the small rent I receive from the Postal Service for leasing the Webster, NC post office, which I own, and interest from my meager savings accounts. I don't own stocks or financial instruments of any sort let alone those related to the mailing, delivery, or logistics industries. I am not a shipping company that competes with the Postal Service, and I am not a retailer who ships merchandise like Amazon. No reasonable person could conclude that my access

to the materials in this docket would pose a commercial threat to either Amazon or the Postal Service.

Therefore, on the first issue of whether the information is of such a commercial and confidential nature that it should not be closed, it would seem eminently clear that I have met the criteria set forth by the Commission for access. The rules say that I must agree to non-disclosure, which I have done. The rules say I cannot have a financial interest or potentially benefit from the examined material. Clearly I do not and cannot. If the Commission's rules are valid then my request, on this basis, is valid.

The second objection the Postal Service and Amazon offer to my request is that the request is insufficiently broad and unsupported by sufficient cause. The problem with this argument is that it relies on a tautology. The very opacity of the initial docket prevents one from making any specific claims as to what may be problematic with the docket. Until Amazon filed its motion to oppose, there was no way of knowing if Amazon was even a party to the docket.

Based on the arguments presented by the Postal Service, no one, under any circumstances, could ever gain access to unpublished materials in a docket dealing with a competitive product. These sorts of dockets, this one being an example, are presented in a sufficiently generic and opaque manner so that the ability to raise specific questions in advance is essentially impossible.

The Commission rules require a detailed statement explaining one's reasons for access, but how can one provide details when the vast majority of the information needed to offer a detailed statement is under seal? The word "detailed" must be placed in context relative to the information that's available.

In my request I state that I wish to verify that the contract meets the terms and conditions asserted by the Postal Service in its filing. That is a specific statement. One might argue that it is the role of the Commission and its staff, supported by the oversight provided by the Public Representative, to make that evaluation. Such an argument is correct as far as it goes but it also, if presented as complete, obviates any role for the public or even any basic transparency. The judgment of the Commission is exemplary but it is not infallible, and it is not always reviewed by other agencies or individuals. A perusal of OIG reports on the Commission's website indicates that the OIG appears to have never done an audit of any competitive product docket – or any other docket for that matter – to ensure that all procedures and protocols were followed. Nor is there any indication that even basic fact-checking was done to verify data.

The Public Representative ostensibly fills the role of backstop in these proceedings, but no audits exist to indicate that the Public Representatives have done a complete and thorough job. Public Representatives are charged with representing the public's

interest, but neither public nor interest is defined specifically enough, in sufficient detail as it were, to determine exactly what portfolio has been filled.

In its response to my motion Amazon gratuitously engages in a not-so-subtle ad hominem attack as if my positions and extensive writings on postal issues would somehow disqualify me from viewing the material in question. This would seem to contradict Amazon's position later in its response that denial should be the proper response to any "curiosity seeker who professes an interest in the information for compliance review....". I think the record clearly demonstrates, through my involvement in prior proceedings before the Commission and through my work on STPO Save the Post Office, that I am not merely a "curiosity seeker" in these matters.

Amazon argues that "the Postal Service exercises considerable flexibility in determining how it delivers the mail", essentially implying that nothing is amiss in delivering packages on Sunday in a few selected markets. Looking more closely at Amazon's argument makes it clear that it doesn't stand scrutiny.

Five of the six examples of "flexibility" cited by Amazon involve the mode of delivery to one's residence – door delivery versus cluster boxes, bulk delivery to a university dorm, and so on. These examples are not especially relevant to the current discussion. It is well established that the Postal Service has considerable freedom to determine the mode of delivery to businesses and residences. There are copious and definitive regulations determining how those arrangements can be altered. In any case the existence of an obligation to deliver everywhere, universal delivery, has been clearly established.

The single example that may be relevant to this case involves Express Mail letter service. Amazon cites a part of a 1977 general rate case before the PRC in which the private carrier service Purolator challenged the legality of Express Mail, which was available for 700 (Amazon cites 47) cities located near airports that had necessary handling capacity. PRC Op. R77-1 (1978) at 411-412.

Purolator argued that this was skimming the cream, which made Express Mail unfairly anticompetitive, discriminatory and of questionable legality under Title 39, §3623(d). In citing the PRC's order responding to Purolator, Amazon says, "The Postal Service need not offer overnight Express Mail letter service to all cities nationwide." But the question at hand was not whether or not the Postal Service should be required to offer Express Mail everywhere, and nothing in the order suggests that the PRC believed the Postal Service could offer whatever products and services it wanted, wherever and whenever it wanted. The order states something more limited:

"When evaluating limitations on the availability of services such as Express Mail, we must therefore consider whether the limitation is reasonable. We must ask, for

example, whether it is motivated by genuine requirements of post economies, or is an attempt — as Purolator suggests elsewhere in its brief — to serve profitable routes while neglecting those with less desirable traffic levels. These are questions of fact to be answered on the basis of an evidentiary record.”

In response to Purolator’s allegation that offering Express Mail only in some cities amounted to cream skimming, the Commission’s order states the following:

“The difficulty we have with this argument is not that it is wrong as a matter of economic theory, but that its premises are not established. We have only a speculative allegation by Purolator that this policy is being followed by the Service. Nothing in the record before us, for example, indicates that requests from communities not now served, or not fully served, with Express Mail have been rejected by the Postal Service. We have no indication in the record that the Postal Service does not contemplate expansion of Express Mail to more communities, or that its future availability will be governed by anything other than the mandate of the Act to make services widely available.”

In other words, the Commission did not give the Postal Service carte blanche to develop products and services intended for only particular geographic regions. Rather, the Commission suggested that each case is unique and one must evaluate whether the limitation on services is “reasonable.” In order to determine that, one must look at the specific evidence in the record.

The problem with the Amazon NSA is that one cannot determine whether or not the limitation is reasonable without having access to the record. At this point, all we know is that Sunday delivery will be provided only to Amazon customers in New York and Los Angeles, and it will eventually be extended to customers in a few other big cities. It is unlikely that it will ever be extended as widely as Express Mail.

Amazon’s citation of the Commission’s order in R77-1 works against its argument. Furthermore, this speaks directly to the section of the Amazon response that discusses the limitations of the universal service obligation. Amazon quotes the PRC’s *Report on Universal Postal Service and the Postal Monopoly*, which states that (“USO”) is “tempered by, and subject to, reasonable economic and efficiency limitations.” Also, as stated in 39 U.S.C. § 403(a), the Postal Service need only “serve as nearly as practicable the entire population of the United States.”

These quotations go directly to the point of my interest in this matter. The Amazon contract purports to provide service to a limited number of zip codes (the specific codes are under seal). Do those zip codes represent an attempt to serve the nation with Sunday delivery “as nearly as is practicable”? Has the Postal Service provided the Commission with analysis showing why “reasonable economic and efficiency

limitations” prohibit it from delivering more widely on Sundays? Does the particular selection of zip codes indicate a more insidious purpose, to segregate service based on wealth or some other criteria not connected to practicable service – a question that would strike at the very heart and purpose of universal service?

Having not seen the material in this docket I would be hesitant to advance or even anticipate any sort of final arguments related to how this contract comports with compliance under section 3653. Some questions do come to mind which would hopefully be answered by reviewing the material in this docket and perhaps others. For example, would it have been more appropriate for the Postal Service to offer a Market Test Sunday Delivery product available to a wide array of mailers rather than to make a deal with a leviathan, one of the largest logistic firms in the nation? Does a marriage of this sort between a public monopoly, even when it is engaged in the supposedly competitive end of its business, and a company with the size, reach and penetration of Amazon serve the public interest in being protected from monopoly rent seekers?

I cannot answer such questions without further studying the specifics of this docket and perhaps many others. As Amazon has indicated, I have an interest in broad postal policy and issues. One must understand the specifics of these sorts of agreements to fully comprehend the direction of the Postal Service.

In a perfect world one would expect that groups that advocate on behalf of consumer welfare would take a keen interest in these sorts of proceedings. The relationships that our public post, for the time being it remains our public post, is entering are of keen interest and impact to the public.

Imagine, for a moment, if this docket had been titled Contract between Amazon Fulfillment Services and United States Postal Service for Sunday Parcel Delivery. Would it be more likely that a descriptive title would attract interest and participation in dockets of this nature? The Postal Service is clearly not interested in encouraging interest in its business dealings, having asked Congress for even less oversight and more leeway in conducting its (and the people’s business).

A great deal of information is presented to the Commission under seal. Often even the titles of dockets are so opaque that no one can tell what exists in the docket. One clear purpose for examining this docket would be to ascertain if all of the information under seal is appropriately placed there. One certainly can’t make an argument about what is appropriately under seal without actually seeing the material. Reviewing the information under seal speaks directly to annual compliance and to policies that govern what is placed under seal or redacted. For the reasons I have articulated above this docket would seem particularly fruitful for examination.

The Postal Service and Amazon argue that the reasons and justifications provided in my initial request would lead to the possibility of virtually anyone being able to request and gain access to materials under seal, that it could become an exercise in frivolity. My interest and involvement in postal issues and matters before this Commission is not and has not been frivolous. That the individual making the request has a demonstrated history of serious inquiry and discussion of issues that come before the Commission should mean something.

As I have argued, my initial request was as detailed as circumstances allowed. Amazon's involvement in the docket wasn't even known as a certainty prior to my request. Is an individual expected to provide a full set of final arguments based on information and data one hasn't seen? My request was both appropriate and sufficient based on the available information.

If the Commission rejects my request, it will send a clear message that the business and dealings of a large and growing part of our nation's Postal Service are beyond the scrutiny of concerned and interested citizens. It will also say that the Commission's own procedures ensuring confidentiality are virtually meaningless. And it will raise the bar so high that transparency, and again we are speaking of fundamental transparency that fully protects the commercial interests and confidentiality of the parties, is rendered impossible.

I hope the Commission will see fit to come down on the side of the public interest and appropriate levels of transparency and grant my request.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mark I. Jamison".

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