Postal Regulatory Commission
Submitted 12/19/2008 3:36:26 PM
Filing ID: 61643
Accepted 12/19/2008

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

**ANNNUAL COMPLIANCE REPORT, 2008 }** **Docket No. ACR2008**

---

# RESPONSE OF THE PARCEL SHIPPERS ASSOCIATION AND DIRECT MARKETING ASSOCIATION, INC TO MOTION OF THE UNITED STATES POSTAL SERVICE REQUESTING THE ESTABLISHMENT OF PROTECTIVE CONDITIONS

---

Pursuant to Rule 3001.21(b) of the Postal Regulatory Commission's (Commission) Rules of Practice and Procedure, the Parcel Shippers Association (PSA) and Direct Marketing Association (DMA) submit this response to the United States Postal Service's Motion Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation.[1]

After waiting for months and after failing to raise the matter in an earlier related proceeding that included the publication of illustrative protective conditions,[2] on December 12, 2008, the Postal Service asked the Commission to establish protective conditions with respect to the extensive supporting documentation for the 2008 Annual Compliance Report (ACR) to be filed on December 29, 2008. [3] The Postal Service's

---

[1] *See* Motion of the United States Postal Service Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation ( Motion), filed December 12, 2008.

[2] *See* Notice of Filing Illustrative Protective Conditions (Dkt. No. RM2008-1)(Model Protective Order), filed September 18, 2008.

[3] The supporting documentation involved includes: the Cost and Revenue Analysis (CRA) Report, the Cost Segments and Components Report (CSC), the CRA Models, the CRA "B" Workpapers, Cost Segment 3 Cost Pools, In-Office Cost System (IOCS) data, City Carrier Cost System (CCCS) data, Rural Carrier Cost System (RCCS) data, and Transportation Cost Systems (TRACS) data.

excuse for this belated request is that USPS warned in its 2007 ACR filing that "in the future it will be necessary to protect sensitive commercial information about competitive products that was formerly made public under the PRA." [4] That warning about competitive product data was certainly understood by the postal community. However, the Postal Service's new proposal would appear to put off base and deny public access to all kinds of data that may not directly relate to "sensitive commercial information about competitive products." Less than three weeks before the filing of the 2008 ACR we are told that protection of the competitive products sensitive information "… requires that the background documentation, in which the cost splits between competitive and market dominant products are developed, must likewise be shifted into the nonpublic annex." Motion at 3. The Postal Service appears to understand what it calls the "frustration" (but which is more likely will be outrage) the public will feel if they cannot get access to material portions of the core cost documentation. The Postal Service's solution to this blackout of information is to allow, under certain protective conditions, certain members of the public to gain access.

On page 4 of its Motion, the Postal Service categorizes an extensive list of material that it says "could reasonably be considered necessary in order to obtain a comprehensive understanding of the inputs and analyses which lead to the summary product costs reported in the CRA." Motion at 4-5. Yet, the Service argues that those materials would allow one to know or make reasonable inferences about the sensitive data of competitive products, and thus all of those data sets are candidates to be moved from the public portion of the ACR filing to the nonpublic portion. Id.

The Postal Service's cure for the censorship of relevant postal data relating to both market dominant and competitive products is to allow certain individuals to have access to these materials under protective conditions, similar to, but yet not the same as, those that have obtained in the past for materials that were filed under seal and

[4] Motion at 2 citing Dkt. No. ACR2007 (December 28, 2007) at 33."

those announced by the Commission three months ago in the Model Protective Order.[5] The Postal Service wishes not only to exclude competitors from access to this information, but also customers who could be perceived to gain some advantage in negotiating their own deals for competitive products. The Postal Service has broadened the standard language used in the past in a way that is ambiguous, if not oblique. (It would appear, however, to allow parties to have access to sequestered information in the course of negotiations concerning market dominant products, under protective conditions.)

The breadth of secrecy at the heart of the Postal Service's Motion is contrary to of one of the principal objectives of the PAEA: transparency of the Postal Service. Under this proposal, the public would be denied not only information that relates to competitive products but comparable data on market dominant products and would gain access to data under seal which arguably is available only to those who would not seek to put to use the information they have examined under seal.

Is this breadth of secrecy really necessary? It appears to us that the Postal Service could sufficiently protect the confidentiality of its competitive product cost data by replacing codes (in its core costing materials) for specific competitive products (e.g., Parcel Select) with a general code for competitive products. For example, in IOCS (USPS-FY07-27 from Docket No. ACR2007), a direct tally for Parcel Select could be recoded as a direct tally for competitive products. This approach is consistent with the approach taken in the FY 2008 RPW report (see Exhibit A attached), which effectively treats all competitive products as one product.

PSA has consistently argued for confidentiality rules that protect the Postal Service's ability to negotiate contract rates for its competitive products. And, PSA recognizes the needs of the Postal Service to shield commercially sensitive information

---

[5] *See* Notice of Filing Illustrative Protective Conditions (Dkt. No. RM2008-1)(Model Protective Order), filed September 18, 2008.

about those competitive products. Clearly, however, the Postal Service motion raises complex issues that deserve more consideration than that allowed in the context of 7-day motion practice. Further, the Postal Service has failed to demonstrate any need for the extraordinary consideration and relief it seeks in this Motion.

Accordingly, PSA urges the Commission to deny the Postal Service Motion and instead convene a separate proceeding to consider the issues raised by the Postal Service's proposal. In that proceeding it should require the Postal Service to document its claim that the information that is seeks to "protect" cannot be disclosed without compromising its competitive position, or by limiting access as proposed by the Commission in its Model Protective Order.

Respectfully submitted,

Timothy J. May
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037
tmay@pattonboggs.com

James Pierce Myers
Attorney at Law
1617 Courtland Road
Alexandria, VA 22306
jpm@piercemyers.com

**Counsel for Parcel Shippers Association**

Jerry Cerasale
Senior Vice President for Government Affairs
**Direct Marketing Association, Inc**
1615 L St. NW
Suite 1100
Washington, DC 20036
www.the-dma.org