

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

Before Commissioners:

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

Mail Processing Network
Rationalization Service Changes, 2012

Docket No. N2012-1

ORDER DENYING MOTION TO FURTHER UNSEAL NON-PUBLIC
LIBRARY REFERENCES USPS-LR-N2012-1/NP1 AND NP14

(Issued April 12, 2012)

On March 13, 2012, Representative Gerald E. Connolly, 11th District, Virginia, filed a motion which asks to change the status of library references USPS-LR-N2012-1/NP1 and NP14 from non-public to public.¹

Library reference USPS-LR-N2012-1/NP1 contains market research and associated calculations of volume, revenue, and contribution for customers in six customer segments assuming implementation of the changes to First-Class Mail service standards identified in Docket No. N2012-1.² A public version of summary data from this library reference is included in witness Whiteman's testimony. USPS-T-12 at 21,

¹ Motion for Termination of Non-Public Status of Library Reference, March 13, 2012 (Motion).

² Notice of United States Postal Service of Filing of Public and Non-Public Library References, December 5, 2011 (Notice). The Postal Service refers to the library reference as "Market Research Materials (Non-Public)." A separate United States Postal Service Notice of Filing of Applications for Non-Public Status for Certain Library References (NP1 Application) was filed on December 9, 2011.

Chart 1: Volume Revenue, Cost, and Net Contribution Changes with First-Class Mail Service Standard Change.

Library reference USPS-LR-N2012-1/NP14 contains the aggregated results of market research which was undertaken prior to starting the market research reported in library reference USPS-LR-N2012-1/NP1.³ It provides the “calculation of changes in volume, revenue, and contribution for customers in six customer segments if all of the many changes considered at various times by Postal Service management were made effective (at one time).”⁴ Subsequent to the motion to unseal, the Postal Service made public a summary derived from this library reference titled *“All Sources” Market Research Preliminary Results*. See public hearing transcript dated March 22, 2012, Tr. 4/906.

In determining the appropriate protective status of material filed by the Postal Service under seal, the Commission must balance the nature and extent of likely commercial injury identified by the Postal Service in an application for non-public status against the public interest in maintaining the financial transparency of a government entity competing in commercial markets. See 39 U.S.C. § 504(g)(3)(A) and 39 CFR § 3007.33.

The public release of summary results from both library references appears to answer the public policy arguments presented in the Motion. The summaries provide public disclosure of estimates of Postal Service losses obtained through the two

³ United States Postal Service Notice of Filing Library Reference USPS-LR-N2012-1/NP14 and Application for Non-Public Status, March 6, 2012 (NP14 Notice). The Postal Service refers to the library reference as “Non-Public ‘All Source’ Quantitative Market Research Materials.” The Application for Non-Public Status is attached to the NP14 Notice and shall be referred to as “NP14 Application.”

⁴ NP14 Application at 1. A comparison of the underlying survey questionnaires that form the bases of library references USPS-LR-N2012-1/NP1 and NP14 reveal both surveys follow a similar line of questioning, with several notable differences. For example (referring to “Consumer” questionnaires), the NP1 questionnaire concept statement is limited to a description of proposed First-Class Mail service standards. The NP14 questionnaire concept statement also includes a description of current First-Class Mail service standards, and mentions other legislative and Postal Service initiatives. A number of NP14 questions allow responses which include use of First-Class Mail, Priority Mail, Express Mail, e-mail, UPS, FedEx, and other methods. The equivalent NP1 responses are generally limited to First-Class Mail, Priority Mail, and Express Mail. A number of NP14 questions ask what a mailer would have done in the past. The equivalent NP1 questions ask what a mailer might do in the future.

different market research efforts. For the information that remains under seal, arguments regarding the expectation of privacy for survey respondents, and the disclosure of information related to competitive products weigh in favor of preserving the non-public status of the remainder of both library references. The Motion is denied.

Applications for non-public treatment. The Postal Service explains that library reference USPS-LR-N2012-1/NP1 includes three files. The first file contains market research which reflects customer responses regarding actual and projected mail volumes. The two additional files build upon the first and analyze impacts upon volume, revenue, and contribution. The Postal Service states that market research customarily promises respondent confidentiality. The Postal Service also states that the files contain information concerning competitive products including unit costs and volumes that is confidential to the Postal Service. NP1 Application at 1-2.

The Postal Service explains that library reference USPS-LR-N2012-1/NP14 includes one file (with the noted possibility of including more files at a later date). The file contains market research resembling, in certain design respects, the research contained in library reference USPS-LR-N2012-1/NP1. The Postal Service argues that library reference USPS-LR-N2012-1/NP14 should remain non-public for the same reasons as library reference USPS-LR-N2012-1/NP1. NP14 Application at 1. The Postal Service further asserts that the market research reported in library reference USPS-LR-N2012-1/NP14 was abandoned before completion.

Motion for termination of non-public status. The Motion argues that public disclosure of the market research would indicate that the Postal Service abandoned the research before completion because it would have shown revenue losses despite Postal Service management's assertions to the contrary. Motion at 1. It presents several public policy arguments for transparency in light of the ongoing legislative debate on postal reform. It argues that both customers and policy makers should have an opportunity to review the information as it relates to proposed reductions in service and facilities. *Id.* at 2. The Motion contends the information would allow members of Congress to better understand the ramifications of the Postal Service's proposals. *Id.* It

asserts that the public has a right to know the revenue impact of the Postal Service's proposals. *Id.* Finally, it states that since the Postal Reorganization Act of 1970, all Postal Service operations have been of a commercial nature and subject to public review. *Id.* at 3.

Answer to Motion. The Postal Service filed an answer in opposition to unsealing library references USPS-LR-N2012-1/NP1 and NP14.⁵ The Postal Service argues that Representative Connolly has not intervened in the proceeding and therefore lacks standing to file the Motion. *Id.* at 2-4. The Postal Service asserts that it has filed applications for non-public treatment for both library references and contends that it has shown sufficient justification for non-public treatment. *Id.* at 4-6. The Postal Service contends that the Motion is procedurally and substantively deficient because it does not address Postal Service rationales for non-public treatment, nor does it address third-party interests in the material. *Id.* at 8-9. Finally, the Postal Service points to the recent advice of the Commission that it is advisable for any party seeking to unseal a library reference to review and become familiar with the material prior to filing a motion to make it public. *Id.* at 7-8.

The Postal Service clarifies one aspect of its NP14 Application filing. Library reference USPS-LR-N2012-1/NP14 does not contain survey source data. Thus, the Postal Service states that respondent-specific information is aggregated to customer segment and application levels within the library reference. *Id.* at 6 n.16.

Commission discussion. The Commission need not reach a conclusion on the technical aspects of the Postal Service's argument that Representative Connolly lacks standing to file a motion in this docket. The rule concerning requests for early termination of non-public status extends beyond the boundaries of any specific docket, and allows any "person" to make a request to the Commission that non-public materials be publicly disclosed. 39 CFR 3007.31(a). This may occur during the pendency of a

⁵ United States Postal Service Answer in Opposition to Motion for Termination of Library References USPS-LR-N2012-1/NP1 and NP14's Non-Public Status, March 20, 2012 (Postal Service Answer).

proceeding, or afterwards, and whether or not the person has intervened as a party in the original docket. Under the Commission's rules, the proper procedure would have been to file this request with the Secretary of the Commission instead of by a case-specific motion. Notwithstanding the method of filing, the Commission's consideration of the request would be the same.

Representative Connolly argues that making the abandoned market research publicly available would indicate that the Postal Service's initiatives would result in revenue losses despite Postal Service management's assertions to the contrary. Representative Connolly further presents several public policy arguments in light of the ongoing legislative debate to support his position that the library references should be made public.

The Postal Service has substantially addressed the public policy arguments by creating publicly available summaries of the information contained in library references USPS-LR-N2012-1/NP1 and USPS-LR-N2012-1/NP14.⁶ The public summaries estimate cost and revenue changes disaggregated by various types of mail that result from the two market research efforts. With this information, Representative Connolly and the public are informed of the results of both surveys.

What remains under seal are raw survey data and the analysis or calculations necessary for deriving the publicly available summaries.

The Postal Service argues that the library references themselves should remain under seal in order to protect the third-party identities of market research survey participants. The Postal Service cites to the Code of Standards and Ethics of the Council of American Survey Research Organizations, Section I, Responsibilities to Respondents to support this position (CASRO). NP1 Application at 3-4.

⁶ The survey questions associated with the market research reported in library reference USPS-LR-N2012-1/NP1 are publicly available in USPS-T-11, Appendix F. The survey questions associated with the market research reported in library reference USPS-LR-N2012-1/NP14 are publicly available in library reference USPS-LR-N2012-1/70.

This argument is applicable only to one file in library reference USPS-LR-N2012-1/NP1, which contains raw survey data. All other files in both library references contain aggregate data that would appear to make it difficult to discern individual customers' responses.⁷ However, because the surveys are stratified into different account levels (National, Premier and Preferred; Small Business; and Consumer) and apparently include industry codes, there remains the possibility that some individual respondents may be identifiable. There is also a perception problem if respondents were to believe that their survey responses would not remain confidential. The perception, even if inaccurate, may dissuade future participation in Postal Service surveys. Although not highly persuasive, both concerns weigh in favor of non-disclosure.

The Postal Service further argues that the library references should remain under seal to protect competitive product volume, revenue, and contribution information. This information is, in fact, intertwined in the remaining data files in both library references. The data appears to be aggregated at least to account level such that individual customers are not identified. The Postal Service typically does not disclose detailed information concerning competitive products. The inclusion of this category of information weighs in favor of the material remaining under seal.

Finally, the Postal Service notes the latest Commission guidance to movants seeking to unseal non-public material. The Commission recently suggested that information initially should be reviewed with protective conditions preserved. If a need for public review of the underlying methodology arises, subsequent requests for

⁷ Initial examination of the one file under consideration reveals that individual respondents are given unique numeric identifiers and are not specifically identified by company or organizational name. It is assumed that Opinion Research Corporation (ORC), the company that undertook the surveys for the Postal Service, applied the unique identifiers to comply with the CASRO standard for protecting respondent identities. It is questionable if even the Postal Service knows the identity of individual respondents.

procedural relief can be framed.⁸ Although this step is not required, it remains appropriate advice.

Representative Connolly's comments on the importance of public knowledge of relevant facts during the current review of national postal policy are germane. Providing transparency is an important Commission function. The need for transparency is persuasive with regard to aggregated results, but this consideration is less pertinent when applied to raw survey results and intermediate calculations. The Commission finds the Postal Service has provided sufficient reasons arguing in favor of allowing this material to remain under seal at this time.

Persons seeking access to non-public material are reminded that they may directly approach the source of material, in this case the Postal Service, to gain access to non-public material. Nothing in the Commission's rules of practice prevent the Postal Service from releasing its own material to whomever it deems appropriate, and under any terms it deems appropriate, regardless of whether the material has been filed as non-public with the Commission.

The Postal Service has taken steps to inform the public of the financial estimates contained in the library references by providing public summaries of the material in the library references. The Postal Service also has supported its position that the remainder of library references USPS-LR-N2012-1/NP1 and NP14 should remain under seal. The Motion is denied.

⁸ P.O. Ruling N2012-1/19, Presiding Officer's Ruling Concerning David B. Popkin Motion Number 1, March 6, 2012, at 6 (confirmed by Order No. 1277, Order Concerning David B. Popkin Motion Number 1, March 8, 2012).

It is ordered:

The Motion for Termination of Non-Public Status of Library Reference, filed March 13, 2012, is denied.

By the Commission.

Shoshana M. Grove
Secretary