

BEFORE THE
POSTAL REGULATORY COMMISSION

Annual Compliance Review 2018

:
:
:

Docket No. ACR2018

**UNITED PARCEL SERVICE, INC.'S MOTION REQUESTING
ACCESS TO NON-PUBLIC MATERIALS UNDER
PROTECTIVE CONDITIONS
(January 9, 2019)**

United Parcel Service, Inc. ("UPS") respectfully submits this Motion pursuant to 39 C.F.R. § 3001.21 and 39 C.F.R. § 3007.50 requesting access to non-public library references from Docket No. ACR2018 (USPS-FY18-NP2, USPS-FY18-NP3, USPS-FY18-NP7, USPS-FY18-NP8, USPS-FY18-NP9, USPS-FY18-NP10, USPS-FY18-NP11, USPS-FY18-NP12, USPS-FY18-NP13, USPS-FY18-NP14, USPS-FY18-NP19, USPS-FY18-NP21, USPS-FY18-NP22, USPS-FY18-NP23, USPS-FY18-NP24), which the United States Postal Service filed with the Commission on December 28, 2018, as part of the Postal Service's Annual Compliance Report ("ACR"). In addition, UPS requests an extension of access for use in this docket to the non-public library references from Docket Nos. ACR2014, ACR2015, ACR2016, and ACR2017 which the Commission originally granted to UPS's outside counsel and consultants for use in Docket Nos. ACR2014, ACR2015, RM2016-2, ACR2016, and ACR2017.¹

¹ See Order Granting Unopposed Request For Continued Access to Non-Public Materials Under Seal, Order No. 2756, Dkt. No. RM2016-2 (October 15, 2015) (granting access to non-public ACR2014 library references previously granted in ACR2014 for use in RM2016-2); Order Granting First Motion for Access, Order No. 3033, Dkt. No. ACR2015 (Jan. 15, 2016) (granting access to non-public ACR2015 library references for use in ACR2015 and RM2016-2); Order Granting Revised Second Motion for Access, Order No. 3044, Dkt. No. ACR2015 (Jan.

UPS seeks access to the library references for its outside counsel and consultants so they may assist UPS in making informed comments in the Commission's fiscal year ("FY") 2018 Annual Compliance Review proceeding. See Order No. 4960, Dkt. No. ACR2018 (Dec. 31, 2018) (inviting comments). These outside counsel and consultants are identified in Exhibit 1, attached hereto, and each has executed a copy of the Commission's standard protective order conditions.

In determining whether to grant access to non-public data, the Commission "shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c)." See 39 C.F.R. § 3007.42. UPS's request satisfies this test. The requested materials are relevant to assessing whether the Postal Service complied in 2017 with the mandate of the Postal Accountability and Enhancement Act ("PAEA") that the Postal Service's competitive products pay their own costs, without subsidy from market-dominant products (see 39 U.S.C. § 3633), and UPS has a substantial interest in the subject-matter of this docket. UPS's outside counsel and consultants have been granted access to analogous nonpublic materials in previous ACR proceedings without incident.

The Postal Service filed its ACR for FY2018 on December 28, 2018, and the Commission has initiated a proceeding seeking comments on that Report, specifically on the topics of "cost coverage matters the Postal Service addresses in its filing; service performance results; levels of customer satisfaction achieved; and such other matters that may be relevant to the Commission's review." Order No. 4960 at 5. In support of

22, 2016) (granting access to one additional non-public ACR2015 library reference for use in ACR2015 and RM2016-2); Order Granting Motion for Access, Order No. 3741, Dkt. Nos. ACR2016 & RM2017-1 (January 10, 2017); Order Granting Motion for Access, Order No. 3771, Dkt. No. RM2017-1 (Feb. 3, 2017); Order on UPS's Motion for Access, Order No. 4394, Dkt. No. ACR2017 (Jan. 18, 2018).

its ACR, the Postal Service relies extensively on non-public materials filed under seal. Although the Postal Service has provided public library references, the extent of the analysis that can occur with the publically available data is limited.

For example, as in years past, Public Library Reference USPS-FY18-43 displays “group incremental costs for four of the six competitive product groups for which volume variable and product specific costs are shown in the Public CRA[.]” Docket No. ACR2018, USPS-FY18-9 at 46 (“ACR2018 Roadmap”) (Dec. 28, 2018). The competitive product cost data “however, are merely reproduced here as results.” *Id.* The corresponding competitive data are contained within nonpublic library reference USPS-FY18-NP10. Without the Postal Service’s underlying data and analysis contained in USPS-FY18-NP10, UPS will be unable to meaningfully comment on whether the results are “in compliance with applicable provisions[.]” Order No. 4960 at 5.

USPS-FY18-NP11 contains the Nonpublic Cost and Revenue Analysis, which “displays revenues, attributable costs, volume variable costs, volumes, and weights for each of the Postal Service’s Products.” ACR2018 Roadmap at 58. The Public Cost and Revenue Analysis, USPS-FY18-1, however, contains only “summary information” “[f]or competitive products[.]” ACR2018 Roadmap at 1-2. Meaningful comment on whether competitive product “rates or fees in effect during FY 2018 . . . were not in compliance with applicable provisions” will not be possible without access to the Nonpublic Cost and Revenue Analysis. Order No. 4960 at 5.

USPS-FY18-NP12 contains the “Nonpublic Cost Segments and Components[.]” which is “an output of the Cost and Revenue Analysis [] Model” contained in USPS-

FY18-NP13. ACR2018 Roadmap at 59. This data is essential to commenting meaningfully on “cost coverage matters the Postal Service addresses in its filing [and] service performance results[.]” Order No. 4960 at 5.

USPS-FY18-NP13 “contains the Cost and Revenue Analysis (CRA) Model along with associated cost matrices and reports.” ACR2018 Roadmap at 60. Without the model itself, UPS’s outside counsel and consultants will be unable to verify whether the figures presented in USPS-FY18-NP11 and USPS-FY18-NP12 are accurate and complete, nor will they be able to assess whether superior modeling is possible.

USPS-FY18-NP14, known as the nonpublic “CRA ‘B’ Workpapers,” is used to calculate volume variable and product specific cost for 12 of the 17 costs segments. USPS-FY18-NP14 provides additional detail on those calculations as they pertain to individual competitive product groups, such as Priority Mail and Parcel Select, whereas the corresponding public library reference (USPS-FY18-32) provides only the results of these calculations for the entire group of competitive products. In light of large differences in both the cost structures of individual competitive products and the extent to which individual competitive products are covering their incremental costs, access to NP14 is necessary to understand and comment meaningfully on whether the rates of individual products were in compliance with applicable provisions of section 3633, as well as on other cost coverage matters addressed in ACR2018.

USPS-FY18-NP19 documents the Non-Operation Specific Piggyback Factors. Access to this library reference is necessary to understand and comment on the extent to which changes to the costs attributed in certain cost components affect costs attributed in other components at the individual competitive product level.

Similarly, Library References NP21, NP22, NP23, and NP24 document the statistical design for several key data systems underlying cost estimates, cost pool formation, volume estimates, and distribution keys for several major cost segments.² The public versions of these library references lack detail about the volumes of and costs associated with individual competitive products, instead lumping all competitive product volumes and costs together. Given the significant differences in the cost structures and cost coverages of individual competitive products, this aggregation of data may mask important information relevant to the compliance of individual products with applicable provisions or other cost coverage matters relevant to this docket. Accordingly, access to these four non-public library references is necessary to allow UPS to comment in the most constructive manner possible.

Additionally, UPS requests access to certain nonpublic library references dealing with international competitive products. The Postal Service's international competitive costing practices remain exceedingly opaque, and meaningful comment on such practices has been nearly impossible in past years without access to the relevant nonpublic library references. Developments in fiscal year 2018, however, have highlighted that public participation, investigation of, and comment on the Postal Service's international products business is necessary. First, the Senate Permanent Subcommittee on Investigations under the Committee on Homeland Security and Government Affairs released a report detailing the Postal Service's vulnerability to

² Respectively, NP21 documents the In-Office Cost System, NP22 documents the City Carrier Cost System and the City Carrier Cost System – Special Purpose Routes, NP23 documents the Rural Carrier Cost System, and NP24 documents two Transportation Costs Systems, TRACS Air and TRACS Surface (Highway). See ACR2018 Roadmap at 68-73.

abuse by international drug traffickers.³ The Senate found that the Postal Service was only making limited efforts to screen suspicious inbound international packages at major airports throughout the country.⁴

Second, the failures of inbound letter post pricing under the Universal Postal Union's ("UPU") Terminal Dues system came to a head in 2018. In August, The White House published a memorandum detailing certain failures of the Terminal Dues system.⁵ The White House found that "UPU terminal dues, in many cases, are less than comparable domestic postage rates. As a result . . . the current terminal dues rates undermine the goal of unrestricted and undistorted competition in cross-border delivery services because they disadvantage non-postal operators seeking to offer competing collection and outward transportation services for goods covered by terminal dues in foreign markets."⁶ The White House subsequently ordered the State Department to file a notice of withdrawal from the UPU because "sufficient progress has not been made on reforming terms of the Acts of the Universal Postal Union (UPU) in line with the policies of the United States."⁷

³ See STAFF OF PERMANENT SEN. SUBCOMM. ON INVESTIGATIONS, 115TH CONG., COMBATTING THE OPIOID CRISIS: EXPLOITING VULNERABILITIES IN INTERNATIONAL MAIL (Jan. 2018), *available at* www.hsgac.senate.gov/download/psi-report_-combatting-the-opioid-crisis.

⁴ *Id.* at 51 – 66.

⁵ See Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail, Memorandum for the Secretary of State, the Secretary of the Treasury, the Secretary of Homeland Security, the Postmaster General, and the Chairman of the Postal Regulatory Commission, 83 Fed. Reg. 47791 (Aug. 23, 2018), *available at* <https://www.federalregister.gov/documents/2018/09/20/2018-20667/modernizing-the-monetary-reimbursement-model-for-the-delivery-of-goods-through-the-international>.

⁶ *Id.* at (c)(i).

⁷ See Statement from the Press Secretary, WHITE HOUSE (Oct. 17, 2018), *available at* <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-38/>.

So long as the Postal Service refuses to disclose granular international data, interested parties will be unable to investigate and comment meaningfully on the functioning of the Postal Service's international business. As a result, there is no way for interested parties to know whether other international postal issues similar to those highlighted above exist today. Accordingly, UPS requests that its outside counsel and consultants be granted access to nonpublic library references USPS-FY18-NP2, USPS-FY18-NP3, USPS-FY18-NP7, USPS-FY18-NP8, and USPS-FY18-NP9 dealing with international products. Only with access to these materials will it be possible for UPS's outside counsel and consultants to meaningfully comment on international competitive product issues.

Finally, UPS's outside counsel and consultants believe it will be useful to compare the non-public library references from ACR2014, ACR2015, ACR2016, and ACR2017 with any non-public library references to which its counsel and consultants may be granted access in ACR2018 in preparation of its comments in this docket. These materials from ACR2014, ACR2015, ACR2016, and ACR2017 contain important information on cost trends in past periods that are useful for comparison purposes with ACR2017 materials. While UPS's outside counsel and consultants have gained access to the non-public library references in ACR2014, ACR2015, ACR2016, and ACR2017, the Commission has not technically given permission for UPS's outside counsel and consultants to use the ACR2014, ACR2015, ACR2016, or ACR2017 materials for purposes of making comments in this docket. UPS, therefore, requests that access now.

For the foregoing reasons, UPS respectfully requests that this Motion be granted. Without the requested Non-Public Library References, UPS's outside counsel and consultants will be required to rely on less complete data. UPS's comments and expert materials will thus, necessarily, be more meaningful, helpful to the Commission, and complete if access to these materials is granted.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson
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New York, NY 10010
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Attorney for UPS

Exhibit 1

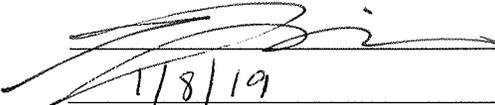
1. Steig Olson
2. David LeRay
3. Christopher Seck
4. Andrew Sutton
5. Kevin Neels
6. Nicholas Powers
7. Nathan Basch
8. Ezra Frankel
9. Findley Bowie
10. Jill Moraski
11. Brent Lutes
12. Marianne Gray

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Commission Docket No. ACR2018 by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Commission Docket No. ACR2018.

I certify that I have read and understand the protective conditions statement and this certification to comply with protective conditions. I certify that I am eligible to receive access to materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

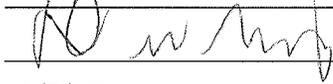
Name	<u>Steig Olson</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1/8/19</u>

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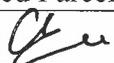
Name	<u>David LeRay</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1/8/19</u>

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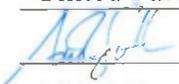
Name	<u>CHRISTOPHER M. SECK</u>
Firm	<u>QUINN EMANUEL</u>
Title	<u>ASSOCIATE</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>JAN. 4, 2018 2019</u>

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Name	<u>Andrew T. Sutton</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1/8/2019</u>

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Name	<u>Kevin Neels</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Kevin Neels</u>
Date	<u>1/6/19</u>

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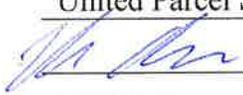
Name	<u>Nicholas Powers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>January 7, 2019</u>

CERTIFICATION

The undersigned represents that:

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Name	<u>Nathan Basch</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>1/4/2019</u>

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Name	<u>Ezra Frankel</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>January 4, 2019</u>

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Name

Findley Bowie

Firm

The Brattle Group

Title

Research Analyst

Representing

United Parcel Service

Signature

C. Findley Bowie

Date

1/4/2019

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Name	<u>Jill Moraski</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>Jill Moraski</i></u>
Date	<u>01/05/2019</u>

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Name	<u>Brent Lutes</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>Brent Lutes</i></u>
Date	<u>01/08/19</u>

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Name

Marianne Gray

Firm

The Brattle Group

Title

Sr. Admin Assistant

Representing

United Parcel Service

Signature

Marianne Gray

Date

1-4-2019