

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

Before Commissioners:

Robert G. Taub, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Michael Kubayanda

Annual Compliance Report, 2018

Docket No. ACR2018

ORDER GRANTING IN PART MOTION FOR ACCESS

(Issued January 30, 2019)

On January 10, 2019, the Association for Postal Commerce (PostCom) filed a motion pursuant to 39 C.F.R. § 3007.40¹ requesting access to certain non-public library references filed as part of the Postal Service's Annual Compliance Report.² PostCom seeks access to non-public Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, –NP12, –NP14, –NP20, and –NP30. PostCom Motion at 1. PostCom's motion includes a statement of protective conditions and certifications for each individual for whom access is requested. *Id.* at 4-10.

¹ This rule is no longer in effect. See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018 (Order No. 4679); Non-Public Information, 83 Fed. Reg. 31,258, 31,277-78 (July 3, 2018) (to be codified at 39 C.F.R. pt. 3007). Although PostCom's motion cites to the rule no longer in effect, its motion complies with the new rules under 39 C.F.R. pt. 3007.

² Motion of Association for Postal Commerce for Access to Nonpublic Materials, January 10, 2019, at 1 (PostCom Motion).

On January 28, 2019, the Postal Service filed a response to PostCom's motion and states that it opposes PostCom gaining access to non-public Library References USPS–FY18–NP2, –NP3, –NP7, –NP8, –NP9, and –NP14.³ It expresses concern that granting PostCom access to the materials contained in these library references would cause the Postal Service to be at a “disadvantage if customers are forced to accept an uncertain risk that such information would be shared with third parties or their representatives[.]” Postal Service Response to PostCom Motion at 4. The Postal Service argues that this disadvantage could result in a potential loss of business and damaged business relationships. *Id.* The Postal Service also states that it received correspondence from several business partners opposing PostCom's request for access to the above library references.⁴

On January 30, 2019, PostCom filed a reply to the Postal Service's response.⁵ In its reply, PostCom states that granting access to its outside counsel and to its president “would entail *no* risk of commercial injury to the Postal Service[] [because] PostCom does not compete with the Postal Service[]...[or] with any foreign posts.” PostCom Reply at 3 (emphasis in original). Additionally, PostCom states that its access will be governed by the Commission's rules and protective conditions, which include restrictions on disclosing the information to any party not granted access. *Id.* at 4.

As the Postal Service does not oppose PostCom's request for access to Library References USPS–FY18–NP12, –NP20, and –NP30, the Commission grants PostCom access to these library references. The Commission is continuing its review of PostCom's request for access to Library References USPS–FY18–NP2, –NP3, –NP7,

³ United States Postal Service Response to Association for Postal Commerce's Motion Requesting Access to Non-Public Materials Under Protective Conditions, January 28, 2019, at 1 (Postal Service Response to PostCom Motion).

⁴ *Id.* at 5; *see id.* Attachments 1-5; *see also* United States Postal Service Notice of Filing Third Party Comments, January 28, 2019, at 2.

⁵ Motion for Leave to Reply and Reply of the Association for Postal Commerce to United States Postal Service Response to Motion Requesting Access to Non-Public Materials, January 30, 2019 (PostCom Reply). The motion for leave to reply is granted only to the extent it responds to new arguments raised by the Postal Service.

–NP8, –NP9, and –NP14 and will issue an order regarding PostCom’s request for access to these library references shortly.

It is ordered:

1. The Motion of Association for Postal Commerce for Access to Nonpublic Materials, filed January 10, 2019, is granted in part, and access is hereby granted to the non-public materials for use in Docket No. ACR2018 for Library References USPS–FY18–NP12, –NP20, and –NP30.
2. Effective upon issuance of this Order, the outside counsel and consultants covered by the motion are each granted access to the non-public materials.

By the Commission.

Stacy L. Ruble
Secretary