

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

MARKET DOMINANT PRODUCT PRICES  
INBOUND MARKET DOMINANT EXPRESS SERVICE AGREEMENT 1  
(MC2010-35)  
NEGOTIATED SERVICE AGREEMENT

Docket No.  
R2011-6

**NOTICE OF UNITED STATES POSTAL SERVICE PROVIDING UPDATE  
CONCERNING INBOUND MARKET DOMINANT EXPRESS SERVICE AGREEMENT 1**  
(April 8, 2019)

On September 26, 2011, the Postal Regulatory Commission (“Commission”) issued Order No. 876, adding Inbound Market Dominant Express Service Agreement 1 as a new product to the market dominant product list, and including the Express Service Agreement within that product.<sup>1</sup> The Inbound Market Dominant Express Service Agreement 1 is a multilateral agreement that “covers the delivery of cross-border LC/AO items weighing up to 2 kilograms tendered as Express items and branded with the Common Logo (“Express Items”).”<sup>2</sup>

Subsequently, on August 8, 2016, the Commission issued Order No. 3457, approving various modifications to the Inbound Market Dominant Express Service Agreement 1 that the United States Postal Service (“Postal Service”) filed with the Commission.<sup>3</sup> In addition, on July 26, 2017, the Commission issued Order No. 4015,

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<sup>1</sup> PRC Order No. 876, Order Adding Inbound Market Dominant Express Service Agreement 1 to the Market Dominant Product List, Docket No. R2011-6, September 26, 2011, at 9.

<sup>2</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, Docket No. R2011-6, August 12, 2011, at 1, and Attachment 2 Express Service Agreement made and entered into December 10, 1999, Article 2.

<sup>3</sup> PRC Order No. 3457, Order Approving Modification of Express Service Agreement, Docket No. R2011-6, August 8, 2016.

approving additional modifications to the Inbound Market Dominant Express Service Agreement 1.<sup>4</sup>

The Postal Service files this notice to inform the Commission of a revised version, v8.0, of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 that sets forth the delivery times (targets) for the Postal Service under the Agreement. The revised version went into effect on January 1, 2019, and includes a more elaborate list of destination offices of exchange, updates to the delivery times (targets), some changes in the postal (ZIP) Codes, as well as some additional information concerning instances when a bilateral agreement is in effect.<sup>5</sup> The Postal Service does not consider it necessary to include revised financial workpapers with this filing, because the updated version, v8.0, of the Postal Service's Annex 2 will not affect costs for the Inbound Market Dominant Express Service Agreement 1.

A redacted version of v8.0 of the Postal Service's Annex 2 is included with this filing.

With respect to the nonpublic version of v8.0 of the Postal Service's Annex 2 that is filed under seal, the Postal Service hereby includes an Application for Non-Public Treatment as Attachment 1. The application protects from disclosure the redacted portions of v8.0 of the Postal Service's Annex 2 that the Postal Service is filing today with this notice.

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<sup>4</sup> PRC Order No. 4015, Order Approving Modifications of Express Service Agreement, Docket No. R2011-6, July 26, 2017.

<sup>5</sup> The Postal Service regrets its oversight in not having timely filed with the Commission the revised version, v8.0, of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 that went into effect on January 1, 2019. Staff have been reminded of the importance of ensuring that changes to the instrument must be filed promptly with the Commission.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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## ATTACHMENT 1

### APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. Part 3007, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed separately under seal with the Commission in this docket. The materials consist of a revised version, v8.0, of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 that is the subject of Docket No. R2011-6. A redacted copy of v8.0 of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 is filed with the Notice as Attachment 1.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.201(b) below.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.**

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).<sup>1</sup> Because the portions of the materials that the Postal Service is

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<sup>1</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish

applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support the Postal Service's determination that these materials are exempt from public disclosure and requests the Commission to grant the Postal Service's application for their non-public treatment.

**(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.<sup>2</sup>**

In the case of v8.0 of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1, the Postal Service believes that the only third parties with a proprietary interest in the materials are the International Post Corporation (IPC) and the other parties to the PRIME Express Service Agreement.

Through Paragraph 6d of the Notice to the IPC and Parties to the PRIME Express Service Agreement concerning the United States Postal Service's Participation in the Express Service Agreement, the Postal Service has already

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a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

<sup>2</sup> Section 3007.201(b)(2) further states the following:

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

informed the IPC and the other parties to the Exprès Service Agreement, in compliance with 39 C.F.R. § 3007.200(b), of the nature and scope of this filing and the IPC's and the parties to the Exprès Service Agreement's ability to address their confidentiality concerns directly with the Commission.<sup>3</sup> Because of language and cultural differences as well as the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operators, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operators. The Postal Service identifies as an appropriate contact person Ms. Nima Rowhani, Strategic Planning Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza SW, Room 5229, Washington, DC 20260. Ms. Rowhani's telephone number is 202-268-5163 and her e-mail address is [Nima.Rowhani@usps.gov](mailto:Nima.Rowhani@usps.gov).<sup>4</sup>

**(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public;**

In connection with its Notice filed in this docket, the Postal Service included v8.0 of the Postal Service's Annex 2 to the Inbound Market Dominant Exprès Service Agreement 1. v8.0 was filed under seal, with a redacted copy filed publicly, after notice, as discussed above, to the IPC and the parties to the PRIME Exprès Service Agreement. The Postal Service maintains that the

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<sup>3</sup> See Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, Docket No. R2011-6, August 12, 2011, Attachment 3, at 2-3.

<sup>4</sup> The Postal Service acknowledges that 39 C.F.R. § 3007.201(b)(2)(ii) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

redacted portions of v8.0 of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 should remain confidential. The redactions withhold the destination offices of exchange, delivery times (targets), postal (ZIP) Codes, as well as some additional information concerning instances when a bilateral agreement is in effect, which apply to the Postal Service under the Inbound Market Dominant Express Service Agreement 1.

**(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.**

If the portions of v8.0 of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 that the Postal Service determined to be protected from disclosure because of their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that the Postal Service would suffer commercial harm. Information about quality of service performance information in relation to various postal operators is commercially sensitive, and the Postal Service does not believe that such information would be disclosed under good business practices. Foreign postal operators that are not parties to the PRIME Express Service Agreement could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. Competitors could also use the information to assess the terms that apply to the Postal Service under the PRIME Express Service Agreement, for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. This latter concern applies to the extent that the prices in the PRIME Express Service Agreement cover market dominant services for which competition exists, and

monopoly letters to the extent that competing providers are not fully cognizant of or compliant with the Private Express Statutes. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Information in v8.0 of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 also is sensitive commercial information of the IPC and the other parties to the Express Service Agreement. Disclosure of such information could be used by competitors of other parties to the Express Service Agreement to develop competitive alternatives, to the detriment of other parties to the Express Service Agreement.

**(5) At least one specific hypothetical, illustrative example of each alleged harm.**

Harm: Public disclosure of v8.0 of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 would be used by competitors and customers to the detriment of the Postal Service and foreign postal operators.

Hypothetical: A competing delivery service obtains an unredacted version of v8.0 of the Postal Service's Annex 2 to the Inbound Market Dominant Express Service Agreement 1 from the Commission's website. The competing delivery service analyzes v8.0 of the Postal Service's Annex 2 to learn more about the Postal Service's relations with various postal operators. The competing delivery service then revises its own rates and products based on information in version 8.0 of the Postal Service's Annex 2, to more effectively compete with the Postal Service, as well as foreign postal operators.

**(6) The extent of the protection from public disclosure alleged to be necessary.**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant delivery services markets, products (including both private sector integrators, as well as foreign postal operators not included in the list of parties), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including postal operators not included in the list of parties) should not be provided access to the non-public materials.

**(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3007.401(a). However, because the Postal Service's relationships with foreign postal operators often continue beyond ten years or decades, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b-c).

**(8) Any other relevant factors or reasons to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.