



February 19, 2020

Honorable Erica Barker
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Ms. Barker:

Pursuant to 39 U.S.C. § 407(d)(2), the United States Postal Service (Postal Service) files as Enclosure 1 to this letter a redacted copy of a settlement agreement (Agreement) between the Postal Service and a foreign postal operator. The Postal Service has marked the nonpublic, unredacted version of this Agreement as "Confidential" and "Non-Public" and has filed it under seal because it contains information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of the Agreement filed in this matter to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the Agreement contains the commercial information of the Postal Service and the affected postal operator, and, as such, certain portions of the Agreement are subject to protection under Exemptions 3 and 4 of FOIA. Consequently, we enclose, as Enclosure 2, an application for non-public treatment of the unredacted version of this Agreement pursuant to 39 C.F.R. § 3007.201. In addition, we respectfully request that the Commission coordinate with the Postal Service in the event that this Agreement becomes the subject of a FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "M R".

Mikhail Raykher
Attorney
Global Business & Service Development

Enclosures

ROBERT H. RAINES, JR.
MANAGING DIRECTOR
GLOBAL BUSINESS



January 28, 2020



Dear [REDACTED]

I hope you had happy New Year! Thank you for participating in our [REDACTED] conference call. I appreciate your patience as we work to address this matter.

As background, the United States Postal Service (USPS) and [REDACTED] have an ongoing dispute about rates for EMS flows that were destined in both directions in 2018 and 2019 to [REDACTED] and the United States (U.S.). Although [REDACTED] made a provisional payment to the USPS in the amount of [REDACTED] on [REDACTED] [REDACTED] as a net payment for 2018 EMS flows that were destined in both directions in 2018 to [REDACTED] and the U.S., the 2018 and 2019 EMS account between the USPS and [REDACTED] remains unsettled.



As we discussed during our teleconference on [REDACTED] USPS proposes the following compromise and settlement with [REDACTED] to resolve fully the good faith disputes between USPS and [REDACTED] over the 2018 and 2019 fees for the delivery of EMS items:

- (1) for calendar year 2018, [REDACTED] agrees pay the USPS a net balance of [REDACTED] within thirty days of the date of this letter in order to resolve the disputes over the 2018 EMS flows that were destined in both directions in 2018 to [REDACTED] and the U.S.;
- (2) for calendar year 2019, [REDACTED] agrees pay the USPS a net balance of [REDACTED] within thirty days of the date of this letter in order to resolve the disputes over the 2019 EMS flows that were destined in both directions in 2019 to [REDACTED] and the U.S.;

- (3) [REDACTED]

[REDACTED]

(4) [REDACTED]

We hope that the proposals above are acceptable, and we look forward to your response. If these terms are acceptable as a binding compromise and settlement to resolve fully the disputes between USPS and [REDACTED] over the 2018 and 2019 fees for the delivery of EMS items, please countersign this letter agreement below on behalf of [REDACTED] and then return it to me. If countersigned, this letter agreement is a commercial agreement between the postal operators; this letter is not an international law agreement that purports to bind the operators' respective governments.

Under U.S. law, the USPS is required to file all commercial agreements signed with an agency of a foreign government, including this letter, with the Postal Regulatory Commission (PRC), an independent U.S. government agency. The USPS believes that it is possible that your organization may have a proprietary interest in information in this letter. Because we consider it to be sensitive commercial information, we will designate the letter as "non-public." In other words, some of the information in the letter will not be publicly available on the PRC's website; rather, it will be available only to the PRC staff and third persons who are able to certify that they are not involved in competitive decision making.

Under U.S. law (Title 39, Code of Federal Regulations, Part 3007), whenever the USPS files information non-publicly, the USPS is required to notify any organization that may have an interest in the nonpublic information that it is filing such information with the PRC, together with an application for the PRC to treat the information as non-public material. As required by its regulations, we will identify the USPS as the PRC's point of contact in the event that additional notices need to be sent concerning this filing. This is done to protect your confidentiality. USPS will inform you of any such notices it receives.

We are also required to notify you that your organization may address any confidentiality concerns that you may have directly with the PRC. At this time, we do not believe any action is needed on the part of your organization. However, we are required to advise you that the procedure for making an application to the PRC for non-public treatment of materials believed to be protected from disclosure is found at Title 39, U.S. Code of Federal Regulations, Part 3007, Subpart B, including Sections 3007.201 and 3007.204, and it also may be viewed on the PRC's website at: www.prc.gov/docs/105/105579/Order%20No.%204679.pdf.

Again, we do not believe there is any need for action on your part; we are simply fulfilling our obligation to give your organization notice of the non-public filing, as required by U.S. law. If you have any questions or concerns, please feel free to contact Mikhail Raykher, Attorney, U.S. Postal Service Law Department, at 202-268-4277 or via e-mail at mikhail.raykher@usps.gov.

Please confirm your acceptance of the above agreement by February 10, 2020 by counter signing below and returning a copy of this signed letter by email to Ms. Teresa Yeager at teresa.yeager@usps.gov and Ms. Allison Laakso at allison.s.laakso@usps.gov. We value our relationship with [REDACTED] and look forward to your response.

Sincerely,


Robert Raines

On behalf of [REDACTED] I agree that the terms and conditions set forth in this letter agreement constitute all the terms and conditions agreed upon with USPS to resolve fully the disputes between USPS and [REDACTED] over the 2018 and 2019 fees for the delivery of EMS items.

Signature

Name

Title

Date

[REDACTED]

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

In accordance with 39 C.F.R. § 3007, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed settlement agreement (the Agreement) with a foreign postal operator. The Postal Service is transmitting the Agreement to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). The unredacted Agreement is being filed under seal, while a redacted copy is included with the public filing.

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

(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 nonpublic consist of information of a commercial nature as well as third party business information that, under good business practice, would not be disclosed publicly. The Postal Service does not believe that any commercial enterprise would voluntarily publish portions of the materials designated as nonpublic. Rather, 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).¹ Because the portions of material filed non-publicly fall within

¹ 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. 4679, Order Adopting Final Rules Relating to Non-Public Information, Docket No. RM2018-3, June 27, 2018, at 16 (reconfirming that the adopted final

the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that this material is exempt from public disclosure and grant its application for its 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;²

The Postal Service believes that the postal operator that is the signatory to the Agreement is the only third party with proprietary interests in the material.

Due to the sensitivity in providing the identification of the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator.³ The Postal Service identifies as an appropriate contact person Peter Chandler,

rules do not alter this long-standing practice); PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

² 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 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.

³ The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) 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 response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

Manager, UPU Relations, International Postal Affairs. Mr. Chandler's phone number is (202) 268-5549, and his email address is peter.r.chandler@usps.gov.

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

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting this document concerning a settlement agreement between the Postal Service and a foreign postal operator. The Agreement specifically defines the terms on which the Postal Service and the foreign postal operator have agreed to settle certain disputes related to the rates for EMS flows that were destined in both directions in 2018 and 2019 to the foreign postal operator's country and the United States. The Postal Service maintains that the redacted portions of the document should remain confidential.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of such harm alleged to result from disclosure;

If the information in the Agreement that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practice. Other counterparty foreign postal operators could use the information to undermine the Postal Service's position in negotiations regarding settlement, as well as the position of the foreign postal operator that is the signatory to the Agreement. Competitors could also use the information to assess volumes

between particular markets and market potential. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

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

Harm: Foreign postal operators could use the settlement terms to undermine the Postal Service's position in future negotiations.

Hypothetical: The settlement terms in the Agreement are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating the settlement of disputes and future bilateral agreements with the Postal Service in an effort to lower their own obligations or raise the amount owed by the Postal Service.

Harm: Foreign postal operators could use the settlement terms to undermine the respective foreign postal operator's position in future negotiations.

Hypothetical: The settlement terms in the Agreement are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating the settlement of disputes and future bilateral agreements with the foreign postal operator in an effort to lower their own obligations or raise the amount owed by the foreign postal operator.

Harm: Other foreign postal operators could use the total amount of the settlement to undermine the position of the Postal Service or the counterparty foreign postal operator in negotiations concerning settlement or bilateral agreements.

Hypothetical: The settlement terms in the Agreement are disclosed to the public.

Foreign postal operators obtain the information and are able to ascertain the magnitude and scope of the volumes that the Postal Service exchanges with the

foreign postal operator. Alternatively, competitors could use the information about volumes to assess market potential to the detriment of both counterparty operators.

(6) The extent of protection from public disclosure deemed to be necessary with justification thereof;

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

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

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 customers and foreign postal operators will continue beyond ten years, the Postal Service intends to oppose requests for disclosure of this material pursuant to 39 C.F.R. § 3007.401(b)-(c).

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

None.

Conclusion

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