Postal Regulatory Commission
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UNITED STATES POSTAL SERVICE

July 21, 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 bilateral agreement entered into between the Postal Service and a foreign postal operator (Agreement). 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, the Postal Service requests that the redacted portions of the Agreement remain confidential and files as Enclosure 2 to this letter the Application of the United States Postal Service for Non-Public Treatment of Materials. In addition, the Postal Service respectfully requests 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,

/s/

Mikhail Raykher
Attorney
Global Business & Service Development

Enclosures

475 L'ENFANT PLAZA SW
WASHINGTON, DC 20260-1101
(202) 268-4277
WWW.USPS.COM

ROBERT H. RAINES JR.
MANAGING DIRECTOR, GLOBAL BUSINESS

UNITED STATES
POSTAL SERVICE

July 17, 2020

[redacted]

Dear [redacted]

I write in reference to our e-mail exchanges regarding the United States Postal Service's (USPS) exchange of certain [redacted] dispatched by the USPS and [redacted] Based on your e-mail, we propose the following arrangement for the exchange of the Subject Items to [redacted]:

1) [redacted]

2) [redacted]

[redacted]

1) [redacted]

2) [redacted]

3) [redacted]

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260
202-268-2978
USPS.COM

This arrangement shall expire 30 days from the date of this letter unless it is renewed by the parties. Each such renewal shall be by mutual written consent, which may be expressed in the form of e-mail exchanges between the Managing Director of Global Business of the USPS and [redacted], and shall last at most 30 days. [redacted] and USPS may amend this arrangement through the mutual execution of a written replacement agreement. [redacted] We trust you will agree that these terms are acceptable. [redacted]

1) [redacted]

2) [redacted]

[redacted]

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). 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 3011), 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. The 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. 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 3011, including Sections 3011.201 and 3011.204. The procedure is also available on the PRC's website at https://www.prc.gov/sites/default/files/Title39/Introductory%20Statement.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 about confidentiality matters, 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 offer and terms by counter signing below and returning a copy of this signed letter by e-mail to Richard Brown at Richard.K.Brown@usps.gov. If countersigned, this letter agreement is a commercial agreement between postal operators; this letter is not an international law agreement that purports to bind the operators' respective governments.

Please mail the original copy back to:

MR. ROBERT H. RAINES JR.
MANAGING DIRECTOR
U.S. POSTAL SERVICE
475 LENFANT PLAZA, SW, ROOM 5100
WASHINGTON, DC 20260-0004
UNITED STATES OF AMERICA

We look forward to continuing to collaborate in the future on matters of importance to our posts.

Sincerely,

Robert H Raines Jr

Robert H. Raines Jr.

On behalf of [redacted] I accept the above terms.

[redacted]

Enclosure 2

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

In accordance with 39 C.F.R. Part 3011, the United States Postal Service (Postal Service) hereby applies for non-public treatment of a bilateral agreement between the Postal Service and a Foreign Postal Operator (FPO) (referred to as the "FPO-USPS Agreement"), filed with the Postal Regulatory Commission (Commission). The Postal Service is transmitting the FPO-USPS Agreement to the Commission in accordance with 39 U.S.C. § 407(d). The Postal Service is filing an unredacted copy of the FPO-USPS Agreement under seal, and a redacted copy with its public filing.

The Postal Service hereby furnishes below the justification for this application as required by 39 C.F.R. § 3011.201(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 non-public consist of information of a commercial nature, including Postal Service and third party business information that under good business practice would not be disclosed to the public. Based on its longstanding and deep familiarity with the postal and communications businesses and markets generally, and its knowledge of many firms, including competitors, mailers, and suppliers, 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 portion of content that the Postal Service is filing non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its 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.[2]

The Postal Service has a proprietary interest in the information contained within the non-public materials. The Postal Service believes that the only third party that has a proprietary interest in the materials submitted in this matter is the FPO that is the counterparty to the FPO-USPS Agreement. Since the identity of this affected FPO is commercially sensitive information, the Postal Service proposes that a designated

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[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. *See* 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 a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1 (Mar. 20, 2009), at 11.

[2] Section 3011.201(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.

Postal Service employee serve as the point of contact for any notices to this FPO. The Postal Service identifies as an appropriate contact person Robert Raines, Managing Director, Global Business. Mr. Raines' phone number is (202) 268-2978, and his email address is robert.h.rainesjr@usps.gov.

The Postal Service also hereby provides notice that the FPO-USPS Agreement informs the FPO that is the counterparty to the FPO-USPS Agreement, in compliance with 39 C.F.R. § 3011.200(b), of the nature and scope of this filing and its right to address its confidentiality concerns directly with the Commission.

(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.

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting the FPO-USPS Agreement to the Commission. The redactions to the FPO-USPS Agreement withhold, among other things, business rules for operation and settlement, specific payments, non-disclosure provisions, and the FPO's identity as well as the information that, due to its context, would reveal the identity of the FPO. 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 each harm alleged to result from disclosure.

If the information the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers it 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. In this regard, the Postal Service is not aware

of any business with which it competes (or in any other commercial enterprise), either within industries engaged in the carriage and delivery of materials and hard copy messages, or those engaged in communications generally, that would disclose publicly information and data of comparable nature and detail.

If the portions of the FPO-USPS Agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Other FPOs could use the information to their advantage in negotiating the terms of their own future agreements with the Postal Service. Competitors could also use the information to assess the offers made by the Postal Service to the FPO that is the counterparty to the FPO-USPS Agreement for any possible comparative vulnerabilities. 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.

The following restates the harms discussed above and presents at least one hypothetical situation illustrating the consequences of disclosure.

Harm: Public disclosure of the information redacted from the FPO-USPS Agreement would provide competitors or other postal operators commercial advantages at the Postal Service's expense.

Hypothetical: A competitor or other postal operator is able to review certain clauses and sections in the FPO-USPS Agreement that concern such sensitive commercial information as the business rules for operation and settlement, specific payments, and non-disclosure provisions. The competitor or other postal operator could take this information and use it to differentiate its own product from the Postal Service's product

when it sells to potential customers, including FPOs, and could convince those customers that the competitor's product is better.

Harm: Public disclosure of identifying information concerning the counterparty FPO to the FPO-USPS Agreement would give competitors an advantage in the marketplace.

Hypothetical: A FPO is able to identify the counterparty FPO to the FPO-USPS Agreement from information provided on the PRC's website. The FPO uses this information to determine specify operational procedures in the marketplace and mimics them for its own benefit and to the financial detriment of the Postal Service.

Harm: Foreign postal operators could use the redacted terms in the FPO-USPS Agreement to undermine the Postal Service's position in future negotiations.

Hypothetical: The redacted terms in the FPO-USPS Agreement are disclosed to the public. Foreign postal operators obtain the information and use it to their advantage in negotiating future bilateral or multilateral agreements with the Postal Service in an effort to negotiate more favorable terms for themselves.

Harm: Foreign postal operators could use the redacted terms in the FPO-USPS Agreement to undermine the counterparty foreign postal operator's position in future negotiations.

Hypothetical: The redacted terms in the FPO-USPS Agreement are disclosed to the public. Foreign postal operators obtain the information and use it to their advantage in negotiating future bilateral or multilateral agreements with the counterparty foreign postal operator in an effort to negotiate more favorable terms for themselves.

(6) The extent of protection from public disclosure deemed to be necessary.

The Postal Service maintains that the portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for competitive delivery products (including both private sector integrators and FPOs), as well as their consultants and attorneys. Additionally, the Postal Service believes that FPOs, as well as actual or potential customers of a postal operator for these or similar products 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. § 3011.401(a). However, because the Postal Service's relationships with customers and FPOs continue well beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3011.401(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 respectfully requests that the Commission grant its application for non-public treatment of the identified materials.