

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

Transferring Bound Printed Matter
Parcels to the Competitive Product List

Docket No. MC2021-78

**MOTION OF THE ASSOCIATION FOR POSTAL COMMERCE
FOR ACCESS TO NONPUBLIC MATERIALS**
(April 28, 2021)

Pursuant to 39 C.F.R. § 3011.301, the Association for Postal Commerce (“PostCom”) respectfully requests access by one of its outside counsel and its President to the nonpublic material provided with the Postal Service’s responses to Chairman’s Information Request No. 2. Specifically, PostCom requests access to the unredacted versions of the following materials:

- Attachment A to the USPS Responses to CHIR No. 2 Questions 3b and 4a

The redacted information in these reports consists of volume and revenue forecasts for BPM Parcels under various pricing scenarios.¹ The potential harm the Postal Service identifies related to disclosure of this information is use by a competitor of the Postal Service to direct their sales and marketing efforts towards current BPM Parcels users.² It also suggests that release of these internal projections could interfere with negotiation or renegotiation of Negotiated Service Agreements with present and future customers (implicitly assuming the product is moved to the competitive category).³ Because neither PostCom, an industry trade association, nor its outside counsel is a

¹ See United States Postal Service Notice of Filing Attachment Under Seal and Motion for Non-Public Treatment of Responses to Questions 3b and 4a of Chairman’s Information Request No. 2, Docket No. MC2021-78 (Apr. 23, 2021) (“USPS Notice”).

² *Id.* at 2.

³ *Id.* at 3.

competitor of the Postal Service or a current or potential future BPM Parcel customer that might seek a Negotiated Service Agreement for this product, providing access to this material carries no risk of the identified harms.

Accordingly, PostCom requests that the Commission authorize the following individuals to review the nonpublic material:

Matthew D. Field, partner, Venable LLP

Michael Plunkett, President and CEO, PostCom

PostCom seeks access to this information to understand the likely impact on mailers and the Postal Service of transferring BPM Parcels to the competitive product list and to inform comments on whether such a transfer accords with 39 U.S.C. § 3642(b) and applicable regulations and precedent. The projected volume and revenue impacts under various pricing scenarios are central to the Commission's inquiry, and PostCom cannot provide informed comment without access to this information.

PostCom submits that there are no competitive concerns associated with providing access to the material to the individuals listed above. One of the individuals is outside counsel to PostCom with no role in competitive decision-making for any competitor or BPM Parcels customer of the Postal Service. The second individual is the President and CEO of PostCom, an organization that is not itself a competitor of the Postal Service and has no role in the competitive decision-making for any Postal Service competitor. Attached are executed declarations by the two individuals committing to their compliance with the terms of the protective conditions established by the Commission to limit the disclosure and use of the sealed material.

Pursuant to 39 C.F.R. §3011.301(b)(4), actual notice of this motion has not been provided to the Postal Service, which is the only entity identified by the Postal Service as having a proprietary interest in the information.

Attached to this motion are the Protective Conditions Statement and Certifications to Comply with Protective Conditions signed by Mr. Plunkett and Mr. Field.

Respectfully submitted,

/s/ Matthew D. Field

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Protective Conditions Statement

The United States Postal Service requests confidential treatment of non-public materials identified as:

- Attachment A to the USPS Responses to CHIR No. 2 Questions 3b and 4a

(hereinafter “these materials”) in Commission Docket No MC2021-78.

The Association for Postal Commerce (“PostCom”) (hereinafter “the movant”) requests access to these materials related to MT2019-1 (hereinafter “this matter”).

The movant has provided to each person seeking access to these materials:

- This Protective Conditions Statement;
- the Certification to Comply with Protective Conditions;
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission's rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing/s/before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

In accordance with [39 CFR 3011.303](#), the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with [39 CFR 3011.300\(b\)](#), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development,

product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with [39 CFR 3011.302\(a\)](#), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to [39 CFR 3011.300\(a\)](#) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

a. Specific Commission order,

b. Subpart B of [39 CFR 3011](#) (procedure for filing these materials in Commission proceedings), or

c. [39 CFR 3011.305](#) (production of these materials in a court or other administrative proceeding).

4. In accordance with [39 CFR 3011.302\(b\)](#) and (c), all persons granted access to these materials:

a. Must use these materials only related to this matter; and

b. must protect these materials from any person not authorized to obtain access under [39 CFR 3011.300](#) or [3011.301](#) by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;

b. Excerpts from, parts of, or the entirety of these materials;

c. Written materials that quote or contain these materials; and

d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as “Confidential” and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to [39 CFR 3011.304\(a\)\(1\)](#), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with [39 CFR 3011.304\(a\)\(2\)](#), the movant will attach the executed

Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

/s/ Matthew D. Field

Matthew D. Field

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Attorney for Association for Postal Commerce

April 28, 2021

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Certification To Comply With Protective Conditions

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(hereinafter “these materials”) filed in Commission Docket No. MC2021-78.

The Association for Postal Commerce requests that the Commission grant me access to these materials to use related to MC2021-78.

I certify that:

- I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;
- I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and
- I will comply with all protective conditions established by the Commission.

/s/ Michael K. Plunkett

Michael K. Plunkett
President and CEO
Association for Postal Commerce
April 28, 2021

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- I will comply with all protective conditions established by the Commission.

/s/ Matthew D. Field

Matthew D. Field
Partner
Venable LLP
Attorney for Association for Postal Commerce
April 28, 2021