

BEFORE THE
POSTAL REGULATORY COMMISSION

Periodic Reporting (Proposal One)

:
:
:

Docket No. RM2022-3

**UNITED PARCEL SERVICE, INC.'S MOTION REQUESTING
ACCESS TO NON-PUBLIC MATERIALS UNDER
PROTECTIVE CONDITIONS
(March 16, 2022)**

United Parcel Service, Inc. ("UPS") respectfully submits this Motion pursuant to 39 C.F.R. § 3007.301 requesting to extend access for UPS's outside counsel and consultants to non-public library reference USPS-RM2022-3-NP1, which the United States Postal Service filed with the Commission on Jan. 5, 2022 and revised on January 21, 2022, for use in Dkt No. RM2022-2 concerning the appropriate share. These outside counsel and consultants are identified in Exhibit 1, attached hereto, and each has executed a copy of the Commission's protective order conditions.

In determining whether to grant access to non-public data, the Commission "shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c)." See 39 C.F.R. § 3011.301(e). As explained below, UPS's request satisfies this test.

The Commission has already granted UPS's outside counsel and consultants access to this library reference for use in this docket. See Order Granting Motion for Access to Non-Public Materials, Dkt. No. RM2022-3 (Jan. 20, 2022). UPS's consultants have conducted analyses using this library reference that UPS believes are relevant to

both the issues in this docket, and also the issues being addressed in the “appropriate share” docket, Dkt. No. RM2022-2. Accordingly, UPS seeks to extend the access previously provided so that UPS may reference and describe those analyses in both dockets.

Among other things, UPS’s consultants have performed analyses using this library reference that bear on the question of whether there are some institutional costs that are associated with competitive products. Because that question is directly posed by the “appropriate share” docket, UPS believes it will facilitate the Commission’s review in that proceeding for those analyses to be presented there, in UPS’s reply comments. For that to happen, however, the Commission must extend the access to this library reference to cover that docket as well.¹

For the foregoing reasons, UPS respectfully requests that this Motion be granted.

¹ Specifically, the requested materials include “cost impact information regarding competitive products of the types provided under seal within several folders in the FY21 Annual Compliance Report, as well as further analysis of that material,” as well as “city carrier data linked to specific ZIP Codes.” Notice of Filing of USPS-RM2022-3-1 and USPS-RM2022-3-NP1 and Application for Nonpublic Treatment, Dkt. No. RM2022-3 (Jan. 5, 2022), at 1.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson

Steig D. Olson

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Ave., 22nd Floor

New York, NY 10010

(212) 849-7152

steigolson@quinnemanuel.com

Attorney for UPS

Exhibit 1

1. Steig Olson
2. David Cooper
3. Christopher Seck
4. David LeRay
5. David Chardack
6. Kevin Neels
7. Nicholas Powers
8. Findley Bowie
9. Elijah LoCicero
10. Eannán Monaghan

Protective Conditions Statement

The Postal Service requested confidential treatment of non-public materials identified as USPS-RM2022-3-NP1 from Docket No. RM2022-3 (hereinafter “these materials”). UPS (hereinafter “the movant”) requests access to these materials related to its potential comments in the RM2022-2 docket.

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 3007 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:

1. In accordance with 39 CFR 3007.303, 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 3007.300(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 3007.302(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 3007.300(a) (Commission and court personnel) or 3007.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3007 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3007.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3007.302(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 3007.300 or 3007.301 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 3007.304(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 3007.304(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,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson

Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

Attorney for UPS

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Commission Docket No. RM2022-3 (City Carrier) has been authorized by the Commission, for use in Commission Docket No. RM2022-2 (Appropriate Share). The cover or label of the copy obtained is marked with my name.

I certify that I have read and understand the protective conditions statement and this certification to comply with protective conditions. I certify that I am eligible to receive access to materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name	<u>Steig D. Olson</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan, LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>March 16, 2022</u>

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Name	<u>David Cooper</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan, LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>David Cooper</i></u>
Date	<u>March 16, 2022</u>

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Name	<u>David LeRay</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	
Date	<u>03/16/2022</u>

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Name	<u>Christopher M. Seck</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan, LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>Mar. 15, 2022</u>

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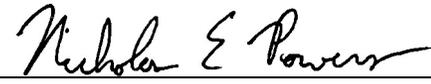
Name	<u>David Chardack</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Law Clerk</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>03/16/2022</u>

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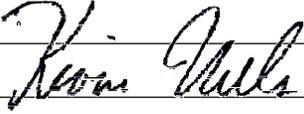
Name	<u>Nicholas Powers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>March 16, 2022</u>

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Name	<u>Kevin Neels</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>March 16, 2022</u>

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Name	<u>Eannán Monaghan</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Eannán Monaghan</u>
Date	<u>16/03/2022</u>

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Name	<u>Findley Bowie</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>C. Findley Bowie A.A.</i></u>
Date	<u>3/16/2022</u>

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Name	<u>Eli LoCicero</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Eli LoCicero</u>
Date	<u>3-16-2022</u>