

BEFORE THE  
POSTAL REGULATORY COMMISSION

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USPS REQUEST TO ADD PRIORITY MAIL & :  
FIRST-CLASS PACKAGE SERVICE CONTRACT 200 :  
TO COMPETITIVE PRODUCT LIST : Docket No. CP2021–117  
(Governor’s Decision and :  
Shipping Services Contract) :  
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STRATEGIC ORGANIZING CENTER’S MOTION REQUESTING  
ACCESS TO NON-PUBLIC MATERIALS  
UNDER PROTECTIVE CONDITIONS  
(May 12, 2022)

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The Strategic Organizing Center (SOC) respectfully submits this Motion pursuant to 39 C.F.R. § 3011.301, requesting access to unredacted versions of documents which it understands were filed under seal by the Postal Service in Docket CP2021–117 on July 21, 2021.

Specifically, SOC requests access to the full, unredacted versions of the negotiated service agreement currently in effect between the Postal Service and Amazon, and of the supporting Governor’s Decision. Upon information and belief, this agreement is Shipping Services Priority Mail & First-Class Package Service Contract 200, filed as Appendix B to the Postal Service’s Request that the PRC add the contract to the Competitive Product List, Docket No. CP2021–117 (hereafter “Contract 200”).

SOC seeks access to these document “for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) or aiding the initiation of a proceeding before the Commission.” 39 C.F.R. § 3011.300(c).

In particular, SOC seeks access to these documents for its counsel so that SOC may investigate and initiate a complaint before the Commission pursuant to 39 USC § 3662. The SOC anticipates the complaint will allege that in its performance of Contract 200 the Postal Service is giving undue preference to the counterparty to the contract, in violation of 39 USC § 403(c), is causing delays to the delivery of equivalent service categories of “important letter mail,” in violation of 39 USC § 101(e), and is undermining “effective and regular postal services to rural areas,” in violation of 39 USC § 101(b).

SOC’s individual counsel are identified in Exhibit 1 to this motion and each has executed a copy of the Commission’s protective order conditions.<sup>1</sup>

### **Justification for the Request**

In determining whether to grant access to non-public materials, 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).” 39 C.F.R. § 3011.301(e). SOC’s request meets this test.

SOC has an urgent interest in the issue to which this material is relevant. SOC is a not-for-profit, democratic union federation whose affiliated unions represent more than four million working people. Members of our affiliates are also users of the Postal Service with a vital interest in the fairness, legality, and efficiency of its operations. SOC has an extensive record of advocacy on behalf of American workers and consumers, and to this end, inter alia,

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<sup>1</sup> SOC specifies that it did not provide notice of its Motion for Access prior to this filing to each person identified in the Postal Service’s application for nonpublic treatment pursuant to 39 C.F.R. § 3011.201(b)(2).

publishes research-based policy reports and files complaints in the public interest with relevant government agencies. In order to effectively conduct these advocacy activities, SOC requires accurate information from reliable sources. Examples of SOC research and advocacy reports can be found [here](#).

SOC is in possession of preliminary but troubling evidence that suggests that USPS's Contract 200 is causing the Service to violate these legal obligations under 39 USC 403(c) not to "in providing services ... make any undue or unreasonable discrimination among users of the mails, nor grant ... any undue or unreasonable preferences to any user [of the mails];" under 39 USC 101(e) to "give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail;" and under 39 USC 101(b) to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns."

In an online survey of USPS employees which SOC conducted during the 2021-2022 holiday season, a substantial majority of respondents reported that they had been instructed by managers to prioritize Amazon packages over every other kind of mail.

According to SOC's follow-up interviews with survey respondents, USPS management consistently pressures USPS employees to sort and deliver Amazon packages as fast as possible, but does not exert the same pressure regarding other types of mail. And as a predictable result, respondents reported that when, as often happened, it was necessary to choose whether to process and deliver Amazon packages or other mail, they would prioritize Amazon's.

In addition, respondents also reported that USPS does not seek recourse for physical damage caused by Amazon deliveries to USPS facilities, and that Amazon may cancel its use of a particular post offices without giving meaningful notice.

This evidence indicates that USPS's negotiated service agreement with Amazon likely includes terms that violate or have the effect of causing the Postal Service to violate its core legal obligations not to discriminate between users, to prioritize letter mail, and to the extent that the agreement has these impacts primarily in low-population-density areas, to provide effective services to rural communities.

SOC therefore requires access to the unredacted text of Contract 200 and the supporting Governor's Decision to assess whether there are valid grounds for a complaint to the PRC regarding the Contract. Specifically we require access to the materials in order to determine:

- The precise service classes within which Amazon mail is to be delivered under the Contract (the redacted version indicates only the broad classes of First Class Package and Priority Mail) because this information would clarify whether the conduct reported by our respondents is caused by undue preferencing of Amazon within service classes or by Amazon's use of particular service classes.
- Whether the contract includes terms on its face or as applied that could induce USPS management to unduly preference Amazon against other users within these classes such as terms that commit USPS to faster delivery standards than those for the applicable service class as a whole, or that provide inducements or penalties that incentivize USPS to deliver Amazon mail faster than other mail within the same class.

- The particular locations where Amazon mail is to be delivered under Contract 200, and the terms applicable to those locations, in order to understand whether the Contract causes USPS to compromise services to rural communities.
- Whether the contract contains any other terms that on their face, or as applied, unduly preference Amazon by incentivizing or causing USPS not to enforce Amazon’s obligations under the contract, for instance, regarding damage to USPS property or providing notice before terminating its use of particular post offices.

SOC anticipates initiating a complaint proceeding before the PRC within 60 days of receiving access to the materials.

#### SOC’s Affiliation

SOC is a non-profit research and advocacy organization supported by a coalition of labor unions. Its individual counsel are solely employed by SOC. Neither SOC as an organization nor its individual counsel have any affiliation with the delivery services, communications, or mailing industries, and neither SOC nor its individual counsel are in any way involved in “competitive decision-making” within those industries.

Respectfully submitted,

DATED: May 12, 2022

THE STRATEGIC ORGANIZING CENTER

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## EXHIBIT 1

### Protective Conditions Statement

The Postal Service requested confidential treatment of non-public materials identified as Governor's Decision 19-1 and Shipping Services Contract 200. SOC ("the movant") requests access to these materials that have been filed in Docket No. CP2021-117.

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

- o this Protective Conditions Statement,
- o the Certification to Comply with Protective Conditions,
- o the Certification of Compliance with Protective Conditions and Termination of Access; and
- o 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:

1. 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:
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- 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.

DATED: May 11, 2022

Respectfully submitted



STRATEGIC ORGANIZING CENTER

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### **Certification To Comply With Protective Conditions**

The United States Postal Service requests confidential treatment of non-public materials identified as Governor’s Decision 19-1 and Shipping Services Contract 200 (hereinafter “these materials”) filed in Commission Docket No. CP2021–117 in which these materials were filed).

The Strategic Organizing Center requests that the Commission grant me access to these materials to use related to initiation of a complaint to the Commission alleging violations of 39 USC 101(b), 101(e), and 403(c) (hereinafter “this matter”).

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/ Marka Peterson

Legal Director and Associate General Counsel

The Strategic Organizing Center

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/s/ George Faraday

Assistant General Counsel

The Strategic Organizing Center