

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE  
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE  
CONTRACT 200

Docket No. MC2021-115

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE  
CONTRACT 200 (MC2021-115)  
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2021-117

**RESPONSE OF THE UNITED STATES POSTAL SERVICE  
IN OPPOSITION TO MOTION FOR ACCESS TO NON-PUBLIC MATERIALS**  
(May 18, 2022)

The United States Postal Service hereby responds in opposition to the Motion of the Strategic Organizing Center Requesting Access to Non-Public Materials (hereinafter “Motion”), filed May 12, 2022.<sup>1</sup> There are sound policy reasons—beyond those addressed by protective conditions—for the Commission to deny the Motion with prejudice.

The Motion is nothing more than an attempt to circumvent well-established channels and safeguards for obtaining information for the purposes alleged in the Motion. Importantly, the motion is presented not for purposes of the oversight conducted in the instant docket, which concluded several months ago, or in any other docket that might pertain to the alleged negotiated service agreement (NSA) customer named in the Motion. Rather, the Strategic Organizing Center (SOC) articulates merely

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<sup>1</sup> The movant did not provide actual notice in advance of filing, as required by Rule 3011.301(b)(4), and so Rule 3011.301(c) provides for a seven-day response period.

an interest in informing potential collateral litigation: a sort of pre-lawsuit discovery.<sup>2</sup> Discovery, of course, requires a litigant to file a complaint, submit to a Commission or judicial determination of whether the complaint is justified, and contend with well-established limits on discovery practice. Outside of discovery, a party seeking information from the Postal Service would ordinarily file a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The materials sought here, such as negotiated prices and other key contract terms, are highly confidential and commercially sensitive, however, as outlined in the Postal Service's Application for Non-Public Treatment initially filed in this docket.<sup>3</sup> Because this commercial information would not be disclosed under good business practice, it would be exempt from mandatory disclosure to public requesters—including those evaluating potential litigation strategies—pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3)–(4). *See, e.g., Wickwire Gavin, P.C. v. U.S. Postal Serv.*, 356 F.3d 588 (4th Cir. 2004). Rather than contend with these well-established and carefully constructed limitations on access in discovery and FOIA practice, SOC is attempting to use the Commission's rules to circumvent those limits and launch a fishing expedition. The Commission has previously denied a similarly collateral request for access. Docket Nos. MC2014-1 & CP2014-1, Order Denying Motion Requesting Access to Non-Public Materials, Feb. 7, 2014, at 7 (Order No. 1985).

In that light, granting the Motion would set a dangerous precedent. Any party with an axe to grind against a known or suspected Postal Service NSA customer could

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<sup>2</sup> The Postal Service reserves its right to contest any and all allegations in any complaint filed by SOC.

<sup>3</sup> The Postal Service herein incorporates by reference its arguments, and the identified harms that would come from disclosure of these materials, that are contained in the Postal Service's Application for Non-Public Treatment in this docket.

come before the Commission, hint at potential litigation, and pry into certain of the NSA customer's trade secrets.<sup>4</sup> Because every commercial entity has *someone* who might want to sue them, it is easy to see how such a prospect would chill mailers' willingness to contract with the Postal Service. Instead, the Commission would effectively tilt the playing field in favor of the Postal Service's unregulated competitors, whose contracts are not filed with the Commission and who therefore could offer relative freedom from critics' prying eyes. This tilting of the playing field would fly in the face of Congress's expressed intent in encouraging the Postal Service to offer customer-responsive arrangements on a basis comparable to private competitors. See 39 U.S.C. § 3632(b)(3)–(4); see *also* H.R. Rep. No. 109-66, pt. 1, at 46 (2005); S. Rep. No. 108–318, at 14–15 (2004).

Not only would denial of the Motion with prejudice be appropriate in this instance, it would also bar any further fishing in other dockets predicated on the same rationale. Denial with prejudice would send a clear signal that, notwithstanding Rule 3030.301's utility in appropriate cases, it is not a basis for parties with interests collateral to an immediate or pending proceeding to circumvent the FOIA, discovery practice under

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<sup>4</sup> In this case, SOC appears to be less than fully candid about its nature and aims. SOC describes itself as “a non-profit research and advocacy organization supported by a coalition of labor unions” and disclaims “any affiliation with the delivery services, communications, or mailing industries.” Motion at 5. However, SOC's website contains no description of itself as an “organization” separate from and merely “supported by a coalition of labor unions.” Rather, SOC *is* a coalition of four unions, and its leadership includes executives of the International Brotherhood of Teamsters (IBT) and the Communication Workers of America. Strategic Organizing Center, About, <https://thesoc.org/about> (last visited May 16, 2022). The IBT currently represents a sizeable chunk of UPS's workforce and is actively engaged in an organizing campaign, lobbying efforts, and litigation focused on Amazon delivery workers. See Int'l Bhd. of Teamsters, Campaigns, <https://teamster.org/campaigns> (last visited May 16, 2022); Joseph Pisani, *Teamsters Aims to Step Up Efforts to Unionize Amazon Workers*, ABC News, June 23, 2021, <https://abcnews.go.com/Technology/wireStory/teamsters-aims-step-efforts-unionize-amazon-workers-78448334>. A survey of SOC's achievements reveals that the common thread is not a sincere interest in postal regulation, but on imposing pressure on Amazon through negative reporting and advocacy in multiple regulatory venues. SOC, News, <https://thesoc.org/news> (last visited May 16, 2022); SOC, What We Do, <https://thesoc.org/what-we-do> (last visited May 16, 2022).

Rules 3010.310–.313 and 3022.30, or civil discovery practice under the Federal Rules of Civil Procedure.

As it happens, a further, more specific ground for denial is apparent from review of the public materials in this docket: none of the public or redacted terms have any bearing on the service-related allegations in the Motion. Redacted versions of the contract and Governors' Decision No. 19-1 were filed with the Postal Service's original Request in this docket. USPS Request to Add Priority Mail & First-Class Package Service Contract 200 to Competitive Product List and Notice of Filing Materials Under Seal, July 21, 2021, App. B. As required by Rule 3011.201(b)(3), the Postal Service's application for nonpublic treatment described the redacted content as including the "name, address, signature block, and other information that could identify the customer[,] the negotiated price structure and the terms directly related to implementation of the price structure," and, with respect to the Governors' Decision, "the costs authorizing Domestic Competitive contracts[ ] and the analysis of those costs." *Id.*, App. F at 3; *see generally* Docket No. CP2020-120, Order Granting in Part Motion to Unseal, June 17, 2020 (Order No. 5553) (describing the redacted portions of the same Governors' Decision and affirming their commercial sensitivity). This information is a far cry from the matters discussed in the Motion. Because the Motion fails to carry its burden as to "how the materials sought are relevant to th[e contemplated] proceeding," 39 C.F.R. § 3011.301(b)(2)(ii), it should be denied.

As detailed above, however, the Motion should not merely be denied without prejudice due to its immediately inapposite nature, it should be denied with prejudice due to the significant policy problems that it raises. Entertaining such a motion in these

dockets or any other would signal to would-be third-party litigants that the Commission offers an available avenue for an end-run around normal discovery and FOIA processes. This would damage the integrity of those carefully constructed frameworks, and it would have a significant chilling effect on the Postal Service's ability to interact with its business customers and to compete in the shipping services market as Congress intended.

Respectfully submitted,

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