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

COMPETITIVE PRODUCT PRICES PARCEL SELECT CONTRACT 44	Docket No. MC2021–42
COMPETITIVE PRODUCT PRICES PARCEL SELECT CONTRACT 44 (MC2021-42) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2021–43

USPS RESPONSE IN OPPOSITION TO MOTION
REQUESTING ACCESS TO NON-PUBLIC MATERIALS
(August 22, 2022)

The United States Postal Service hereby responds in opposition to the Strategic Organizing Center's ("SOC") Motion Requesting Access to Non-Public Materials (hereinafter "Motion"), filed August 15, 2022, and revised on August 17, 2022. As an initial matter, SOC has failed to meet the basic threshold legal requirements for access. Additionally, denying the motion is necessary to protect both the Postal Service and other third parties' critical business interests. Most importantly, by denying the Motion, the Commission will send an appropriate signal consistent with its rules to dissuade future parties from attempting to abuse the Commission's procedural processes for the principal purpose of acquiring highly sensitive commercial information of Postal Service customers in whatever venue might be available, for purposes which appear to be unrelated to postal regulation and policy. As such, the Postal Service again respectfully requests that the Commission deny the Motion with prejudice.

Legal Sufficiency

Pursuant to 39 C.F.R. § 3011.301(b)(2)(ii), to obtain access to non-public materials the movant must show "how the materials sought are relevant to [its] proposed proceeding." In this regard, SOC makes numerous conclusory allegations regarding preferential treatment and discriminatory service standards extended to particular customers, to the detriment of others, as the basis for a potential violation of 39 U.S.C. § 403(c).[1] Even if such claims were true, the non-public portions of the requested documents, contracts which the Commission itself has already reviewed and approved as legally compliant, would not speak to such. Nothing in the non-public materials in the present docket, or any other negotiated services agreement (NSA), would have memorialized terms which amount to an illegally preferential arrangement between the Postal Service and its customers – again, an arrangement reviewed and approved by the Commission. In essence, SOC asks for access so that it may second guess the Commission's determination that the contract is legally compliant.

Despite this untenable position, SOC insists that it is entitled to "see for itself," to determine if the non-public terms are relevant to its potential complaint. This is incorrect – procedurally backwards, in fact. SOC is required to make a baseline showing that the information is relevant *before* it receives access. Instead, SOC is effectively arguing that access should be granted to allow it to determine relevancy, where frankly - none exists. Again, the non-public information that SOC seeks has no bearing on the vague allegations they have made. In reality, SOC is attempting to use its threat of a

[1] SOC's claims regarding 39 U.S.C. §§ 101(b) and 101(e), lack any jurisdictional predicate at all and should be dismissed out of hand.

hypothetical complaint to execute an unjustified fishing expedition in the hopes it might find something it can use, in this venue or others. This falls far short of what is required to establish relevancy here. To the extent that SOC believes that the Postal Service is not complying with 39 U.S.C. § 403(c), it may file a complaint. Granting access to the highly sensitive business information SOC seeks here would not aid their ability to file a complaint, nor would denying access prejudice such.

In addition, 39 C.F.R. § 3011.301(b)(3) requires that the movant "list all relevant affiliations… with the delivery services, communications or mailing industries[.]" In this regard, SOC has again failed to meet a threshold requirement. SOC states that it does not "have any affiliation with the delivery services, communications, or mailing industries…" Motion at 22. However, on SOC's website it describes itself as "a democratic coalition of four labor unions," among them, the International Brotherhood of Teamsters (IBT) and the Communication Workers of America (CWA). SOC's leadership includes executives of both the IBT and the CWA. Strategic Organizing Center, About, https://thesoc.org/about (last visited August 19, 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 August 19, 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 August 19, 2022); SOC, What We Do, https://thesoc.org/what-we-do (last visited August 19, 2022). In claiming that it does not "have any affiliation with the delivery services, communications, or mailing industries," SOC has failed the threshold requirement of disclosing its relevant affiliations.

Precedential Implications and Commercial Harm

Granting SOC's Motion would set a troublesome precedent to the clear detriment of the Postal Service and its NSA customers. Any party with a disagreement, postal or nonpostal, against a known or suspected Postal Service NSA customer could come before the Commission, hint at a potential complaint, and seek to pry into certain of the alleged NSA customer's trade secrets. 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. Granting this Motion 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).

Entertaining such a motion in these dockets or any other would signal to would-be third-party complainants that the Commission offers an available avenue for an end-

run around normal discovery 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 compete in the shipping services market as Congress intended.

Regarding the disclosure of the unredacted contract in this docket, SOC's Motion blithely dismisses the commercial sensitivity of the Postal Service's NSAs and the very real and significant harm that disclosure would bring to the Postal Service, its business, and its NSA customers. SOC argues that because the Postal Service's NSA customers are "on notice" of the possibility of disclosure, they have somehow accepted the risk that confidential contract terms may be disclosed. This argument, quite frankly, is divorced from the reality of how business works in the highly competitive shipping services market, where customers regularly shift their business among the Postal Service and other competing carriers. Surely, if postal customers knew that a movant could gain access to a customer's NSA based on a speculative inquiry that *may someday* lead to a complaint case, it would cause many of these customers to simply choose to ship with a competitor rather than with the Postal Service. This would result in not just a chilling effect on the Postal Service's NSA business in the short run, but a clear loss of volume and revenue to the Postal Service in the long run.

Finally, SOC argues that the Postal Service has somehow "waived" its right to object to SOC's Motion and is attempting to "circumvent the regulatory process," because the Postal Service has asserted that it has valid confidentiality obligations in this matter. Interestingly, SOC does not cite any legal authority for this abstract proposition, which is unfounded; and as such, it should be rejected out of hand. To be

clear, the Postal Service has non-disclosure agreements with most, if not all, of its NSA customers which place limits on the Postal Service's ability to disclose certain aspects of its contracts and supporting materials. These legal obligations cannot simply be ignored, as SOC attempts to do. And these legal obligations certainly do not amount to a "waiver" of any right to oppose SOC's Motion in the instant proceeding.

For these reasons, as well as the harms from disclosure identified in the Postal Service's Application for Non-Public Treatment in this docket, herein incorporated by reference, the Postal Service respectfully urges the Commission to consider the significant harm to its business that would result from this disclosure and deny SOC's Motion with prejudice.

Respectfully submitted,

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