

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 OF STRATEGIC ORGANIZING
CENTER FOR LEAVE TO REPLY AND RENEWED MOTION FOR CLARIFICATION**
(September 8, 2022)

The United States Postal Service hereby responds in opposition to the September 2 “Motion of Strategic Organizing Center Requesting Leave to Reply to Responses Opposing SOC’s Motion for Access to Non-Public Materials Under Protective Conditions” (the “Motion”), and the related “Proposed Reply of Strategic Organizing Center to Responses in Opposition to SOC Request for Access to Non-Public Materials Under Protective Conditions” (the “Reply”). Additionally, the Postal Service renews its Motion for Clarification, originally included in its August 12, 2022 Response to SOC’s improper and unauthorized Supplemental Submission. Procedural clarity is needed in these proceedings to abate what has become pattern and practice by SOC to continually file unauthorized and duplicative filings in this matter. This has resulted in a disorderly motions practice spread across numerous dockets, with the result of the ongoing fracas obscuring the penultimate issue: SOC has not made a sufficient showing that it is entitled to access the critically sensitive non-public materials it seeks. The next word in these proceedings should come from the Commission.

Thus, the Postal Service again respectfully requests that the Commission clearly establish the next procedural steps, if any, to be taken in these proceedings.

Moreover, SOC's Motion and Reply are both unauthorized filings that should not be considered by the Commission. The Commission's rules clearly state that "no reply to a response shall be filed, unless the Commission otherwise provides." 39 C.F.R. § 3011.301(d). Nowhere in these proceedings has the Commission otherwise provided, and nothing in SOC's Motion provides reason to grant exception.

In essence, SOC posits that they should receive special treatment in these proceedings, contrary to Commission rules and practice, because there is "significant public interest" in the Commission's adjudication of this access rule, and because SOC "has not yet had the opportunity to respond" to the opposition arguments. Motion at 3. These arguments are meritless. As to the supposed "significant public interest," SOC makes this observation, but provides little to support the assertion, other than a conclusory statement that the "PRC's decision will be better informed if the Commission is fully briefed by the interested parties." *Id.* at 3. While this does show that it would be in SOC's interest for the Commission to consider its numerous, duplicative, and unauthorized filings, it does not support the idea that allowing SOC to skirt the rules in this instance serves a "significant public interest."

Regarding SOC's lack of opportunity to respond to opposition arguments, to even entertain this idea as a factual predicate for exception effectively negates the purpose of 39 C.F.R. § 3011.301(d) entirely. Indeed, the Commission has established procedural rules to serve the orderly adjudication and resolution of matters that come before it – an objective that has been upended by SOC's unwieldy practice of continually filing

unauthorized motions. The rule clearly sets limits on motions practice before the Commission, limits that have been exceeded by SOC's current practices, without good cause for doing so.

Even if the Commission were to consider SOC's unauthorized Motion here, the Motion does nothing to advance or clarify the core issue – SOC has not provided an adequate legal justification for the Commission to grant it access to the non-public materials it seeks. 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). 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, 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.

SOC knows this, because the Postal Service has already made the argument multiple times. Now, SOC seeks to use this unauthorized motions practice to change its position, clearly aware that its original arguments are unavailing. Previously, SOC's position was that it needed access to the non-public materials to determine whether the contract contained any facial violations, effectively arguing that it was entitled to

supplant its legal judgment for that of the Commission. Having seen the infirmity of this position, SOC uses the instant unauthorized Motion to change its argument, now claiming that access to the non-public portions of the contract is necessary to determine whether the Postal Service's actual administration of the contract was somehow violative. Reply at 10.

Despite having the opportunity to reconsider its untenable original position in this regard, SOC's new, more-nuanced argument still fails. There is a tacit recognition in SOC's position shift that the contract would not contain evidence of a section 403(c) violation. If SOC has evidence that the Postal Service is unfairly preferencing certain customers, this obviously would be occurring independently and outside of the provisions of the contract the Commission has reviewed and approved as legally sufficient. Frankly, the contract is irrelevant to this and every other previous iteration of unsupportable arguments SOC has made thus far. Either SOC has evidence that a violation has occurred, or it does not. Access to the contract does not aid SOC's endeavors in the slightest; and denying access likewise does not prejudice.

For these reasons, the Commission should deny the Motion.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

James L. Tucker
Chief Counsel, Pricing & Product Support

Elizabeth A. Reed

475 L'Enfant Plaza, SW
Washington, D.C. 20260-1137
(202) 268-3179
Elizabeth.A.Reed@usps.gov
August 22, 2022