

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3011.201, the Postal Service hereby applies for non-public treatment of portions of the Postal Service's responses to Chairman's Information Request No. 1. The material filed under seal pertains to the identification of specific negotiated service agreement (NSA) customers and data related to those possible NSAs. The Postal Service hereby furnishes below the justification for this Application as required by each subsection of 39 C.F.R. § 3011.201(b). For the reasons discussed, the Postal Service asks that the Commission grant its Application for non-public treatment of the identified materials.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

The materials designated as non-public consist of information of a commercial nature that, under good business practice, would not be disclosed to the public. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (b)(4).¹ Additionally, customer-identifying information in any NSA is typically covered in the confidentiality term of the NSA, as well as non-disclosure agreements. Because the portions of the materials filed non-publicly in this docket by the Postal Service fall within the scope of information not required to be publicly disclosed, the Postal Service asks the

¹ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

Commission to support its determination that these materials are exempt from public disclosure and grant the Postal Service's Application for their non-public treatment.

- (2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.²**

The Postal Service believes that any customer(s) with whom a contract is made would have a proprietary interest in the non-public materials and that customer-identifying information is sensitive and should be withheld from public disclosure.

Therefore, rather than identifying any such customer(s) that have a contract, the Postal Service gives notice that it has already informed the customer(s), in compliance with 39 C.F.R. § 3007.200(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth A. Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is Elizabeth.A.Reed@usps.gov and whose telephone number is 202-268-3179.

² Section 3011.201(b)(2) further states the following:

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

- (3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.**

The material filed under seal pertains to the identification of specific negotiated service agreement (NSA) customers and data related to those possible NSAs.

Customer-identifying information in any NSA is typically covered in the confidentiality term of the NSA, as well as non-disclosure agreements.

- (4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.**

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

(6) The extent of the protection from public disclosure alleged to be necessary.

The Postal Service maintains that the material filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products as well as their consultants and attorneys. Additionally, suppliers of transportation or other services to the Postal Service that affect costs for competitive services should not have access to these materials; this restriction should include their consultants and attorneys.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3011.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b-c).

(8) Any other relevant factors or reasons to support the application.

None.

Conclusion

For the reasons discussed in this Application, the Postal Service asks that the Commission grant its Application for non-public treatment of the identified materials.