

**BEFORE THE
POSTAL REGULATORY COMMISSION**

**REGULATIONS TO ESTABLISH PROCEDURE
FOR ACCORDING APPROPRIATE CONFIDENTIALITY :** **DOCKET NO. RM2008-1**
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**COMMENTS OF UNITED PARCEL SERVICE ON
NOTICE OF PROPOSED RULEMAKING
TO ESTABLISH A PROCEDURE FOR
ACCORDING APPROPRIATE CONFIDENTIALITY
(September 25, 2008)**

Pursuant to Commission Order No. 96 (August 13, 2008), United Parcel Service (“UPS”) hereby comments on the Commission’s proposed rules to establish procedures for acting on Postal Service requests that information relevant to the Commission’s regulatory responsibilities should not be disclosed to the public.

The Postal Accountability and Enhancement Act (“PAEA”) has fundamentally altered the postal regulatory landscape. Congress has increased the Postal Service’s freedom to “operate in a more business-like manner,” H.R. Rep. No. 108-672, pt. 1, at 3 (2004), by eliminating the break-even mandate that existed under the prior law and giving the Postal Service more flexibility to set both market-dominant and competitive rates within certain statutory criteria. See, e.g., 39 U.S.C. §§ 3622, 3632, and 3633.

In doing so, however, Congress recognized that the Postal Service’s increased flexibility must be tempered by increased public transparency and accountability. Along with increased Postal Service autonomy comes PAEA’s “guarantee[] [of] a higher

degree of transparency to ensure fair treatment of customers of the Postal Service's and those companies competing with the Postal Service's competitive products."

S. Rep. No. 108-318, at 1 (2004).

Public transparency and accountability are integral to the successful operation of PAEA. See also Docket No. RM2008-3, Commission Order No. 101 (August 21, 2008), at 4 ("Th[e] enhancement of the Commission's complaint authority reflects Congress' intent for complaints to become one of the major tools to achieve the PAEA goal of increased accountability and transparency of the Postal Service to the public it serves.") This is especially true with respect to the four key safeguards applicable to competitive products: (1) the prohibition of subsidy of competitive products by market-dominant products, (2) the mandate that each competitive product cover its attributable costs, (3) the requirement that competitive products cover an appropriate share of institutional costs, and (4) the proscription against undue and unreasonable discrimination and preferences. See 39 U.S.C. §§ 403(c) and 3633(a).

UPS believes that the use of protective conditions like those issued by the Commission in this docket on September 18, 2008, is one way to balance PAEA's accountability and transparency requirements with the Postal Service's interest in protecting truly sensitive commercial information.

However, while protective conditions can be an effective tool for balancing these interests, they can be overused. We strongly urge the Commission to avoid applying *any* restrictions -- including restrictions similar to the illustrative protective conditions provided by the Commission -- on access to the key Postal Service information that should be available to the public at-large. Overuse of protective conditions would

impose improper, unnecessary, and burdensome barriers to the interested public's ability to exercise its right to effectively participate in PAEA's processes. They should not be used as a convenient substitute for achieving the transparency required by PAEA.

Respectfully submitted,

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