

ORDER NO. 155

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Dan G. Blair, Chairman;  
Nanci E. Langley, Vice Chairman  
Mark Acton  
Ruth Y. Goldway; and  
Tony L. Hammond

Annual Compliance Report

Docket No. ACR2008

ORDER DENYING, IN PART, POSTAL SERVICE MOTION  
REQUESTING ESTABLISHMENT OF PROTECTIVE CONDITIONS

(Issued December 23, 2008)

I. BACKGROUND AND INTRODUCTION

The Postal Service requests the Commission to establish protective conditions for certain core costing documentation to be filed as part of its Annual Compliance Report (ACR).<sup>1</sup> The Motion states the Postal Service's intent to file certain costing documentation for the ACR in a nonpublic annex. Motion at 1-5. The Postal Service petitions the Commission to adopt restrictive protective conditions, attached to the Motion, for persons granted access to the materials. *Id.* at 6-9. The Motion was filed December 12, 2008, 17 days prior to the Postal Service's statutory deadline for filing its ACR.<sup>2</sup>

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<sup>1</sup> Motion of the United States Postal Service Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation, December 12, 2008 (Motion).

<sup>2</sup> See Postal Accountability and Enhancement Act, 39 U.S.C. § 3652(a).

The costing documentation at issue is characterized as “core costing materials” that contain costs distributed to both market dominant and competitive products. *Id.* at 4. The Postal Service recognizes that interested persons may seek to focus only on information related to market dominant products. *Id.* at 3.

A number of persons commented, including Time Warner Inc.; Pitney Bowes Inc.; United Parcel Service; Parcel Shippers Association and Direct Marketing Association; and Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc., and National Association of Presort Mailers.<sup>3</sup> The Postal Service replied to Time Warner’s Comments.<sup>4</sup> In general, the comments indicate that the proposal is overly broad and raises issues that should be considered in a separate proceeding, not in the abbreviated timeframe of motions practice. *See, e.g.,* Valpak Comments at 1-3; and PSA Comments at 3-4. Several comments oppose the Postal Service’s Motion. *See* Pitney Bowes Comments at 1; UPS Comments at 4; and PSA Comments at 4. Comments were sensitive to the need of the Postal Service to protect confidential competitive products information. *See* PSA Comments at 3; and Time Warner Comments at 2. Comments also stated that there was no Public Representative for this docket. *See* Valpak Comments at 2-3.

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<sup>3</sup> Answer of Time Warner Inc. to Motion of the United States Postal Service Requesting Establishment of Protective Conditions (Time Warner Comments); Pitney Bowes Inc. Response to the Motion of the United States Postal Service Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation (Pitney Bowes Comments); Response of United Parcel Service to Motion of the United States Postal Service Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation (UPS Comments); Response of the Parcel Shippers Association and Direct Marketing Association, Inc. to Motion of the United States Postal Service Requesting the Establishment of Protective Conditions (PSA Comments); Answer of Valpak Direct Marketing Systems, Inc., Valpak Dealers’ Association, Inc., and National Association of Presort Mailers to Motion of the United States Postal Service Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation (Valpak Comments), all filed on December 19, 2008.

<sup>4</sup> Reply of the United States Postal Service to the Time Warner Response to the Postal Service Motion on Protective Conditions, December 19, 2008 (Postal Service Reply Comments). On the same date, the Postal Service also filed Request of the United States Postal Service for Leave to Reply to the Time Warner Response to the Postal Service Motion on Protective Conditions. The request is granted.

## II. COMMISSION ANALYSIS

Section 504(g) provides, in part, as follows:

(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

(A) use such information for purposes other than the purpose for which it is supplied; or

(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

39 U.S.C. 504(g)(1) and (g)(2).

The Commission has existing rules for confidentiality which may be applicable to the Motion, but are not directly on point.<sup>5</sup> The Postal Service's Motion does not purport to instruct the Commission that it may not permit anyone who is not an officer or employee of the Commission to have access to the core costing documentation; rather,

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<sup>5</sup> See 39 CFR 3001.31, 3001.42.

it proposes a set of protective conditions the Commission could adopt to allow access to the materials.<sup>6</sup>

The Commission, on reading the Postal Service's Motion and the subsequent comments, finds that the protective conditions proposed by the Postal Service are broader than the standard protective conditions used by the Commission for similar confidential material. The Postal Service's proposed protective conditions are not adequately justified.

In the Motion, the Postal Service explains that multiple data systems would be subject to the proposed protective conditions without specific information on how the procedure should work. The comments contend that there is not sufficient information in the Motion to justify the enhanced protective conditions. *See, e.g.*, PSA Comments at 3-4.

The request for protective conditions might well be appropriate for information filed in this proceeding pertaining only to competitive products, since a heightened need for protection exists for that business segment. However, the Postal Service has failed to explain why it could not segregate market dominant and competitive product data. Several comments claim that the Postal Service should be able to make such a segregation. *See* PSA Comments. The Postal Service seeks to apply a stringent standard across the board, which is not appropriate for market dominant products.

As a remedy, the Postal Service should file a public version of the data systems at issue, which displays market dominant product information. The information for competitive products could either be shown as an aggregated figure for competitive products,<sup>7</sup> or redacted from existing reports.

When the Postal Service files the ACR, it should provide all the core costing documentation materials for market dominant products. If such information is not yet

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<sup>6</sup> By virtue of this Motion, the Postal Service recognizes the legitimate interest in public review of the core costing documentation at issue since it seeks release of the material with protective conditions.

<sup>7</sup> *See, e.g.*, United States Postal Service Revenue, Pieces and Weight Reports (RPW Reports), FY 2000-2008, Q4 2008.

compiled or available, the Postal Service should indicate when it will be submitted. The Postal Service should file, along with any material claimed as sensitive, sufficient detailed reasons for the proposed protection.<sup>8</sup>

The Commission will evaluate requests for access to sensitive commercial information in light of the forgoing discussion. The Commission will be inclined to grant protective conditions as proposed by the Postal Service for materials pertaining only to competitive products.<sup>9</sup>

*It is Ordered:*

The Motion of the United States Postal Service Requesting Establishment of Protective Conditions to Govern Access to Certain Core Costing Documentation, filed December 12, 2008, is denied, in part, as discussed in the body of this Order.

By the Commission.

Judith M. Grady  
Acting Secretary

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<sup>8</sup> See 39 U.S.C. 504(g)(1).

<sup>9</sup> The Commission cannot, of course, prejudge arguments related to special situations presented in support of variations from the conditions suggested by the Postal Service.