

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Notice of Price Adjustment

Docket No. R2009-2

**MOTION OF PLATINUM COALITION
TO ALLOW ITS OUTSIDE COUNSEL TO REVIEW
USPS-R2009-2/NP1 AS FILED WITH THE COMMISSION
AND
MOTION TO SHORTEN PERIOD FOR RESPONSE**

(March 10, 2009)

The Platinum Coalition hereby moves for the Commission to issue an order authorizing disclosure to outside counsel for The Platinum Coalition of the same version of the Postal Service's USPS-R2009-2/NP1 – Materials Relating to Confirm Filed In Response to ChIR No. 3, Q. 7, filed with the Commission on March 2, 2009.¹ Review of these materials is necessary to (i) evaluate the Postal Service's broad claim in its public response that "[m]ailing agent subscribers use more scans than do mail owner subscribers,"² and the Postal Service's justification for its ten-to-one price disparity between mailing agents and mail owners, and (ii) evaluate the basis for the Postal Service's remapping of the FY2008 billing determinant data into the new pricing structure.

¹ We do not seek disclosure of the names of Confirm customers.

² Response of USPS to ChIR No. 3, Q. 5.c (March 2, 2009).

Because the Commission has not issued protective conditions governing access to this protected material, we request that the Presiding Officer enter an order requiring appropriate protective conditions, such as those appended to this motion as Attachment 1 to this motion. The suggested conditions are substantially identical to the illustrative conditions issued by the Commission in Docket No. RM2008-1 (September 18, 2008).

Counsel for the Platinum Coalition agrees to abide these protective conditions. Attached this motion as Attachment 2 are copies of such standard protective conditions executed by counsel (David M. Levy, Rita L. Brickman and Matthew D. Field).

Platinum Coalition further moves for answers this motion to be due within three days of the filing of this motion, consistent with proposed Commission Rule 3007.24. See Commission Order No. 96 (August 13, 2008).

Respectfully submitted,

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Counsel to the Platinum Coalition

March 10, 2009

Attachment 1

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The Postal Service has filed non-public materials identified as USPS-R2009-2/NP1. The Postal Service requests confidential treatment of the materials (hereinafter “these materials”).

The following protective conditions limit access to these materials identified as USPS-R2009-2/NP1 by the Postal Service. Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to these materials is limited to:
 - (a) An employee of the Postal Regulatory Commission with a need-to-know; or
 - (b) A person, as defined in rule 5(f), 39 C.F.R. § 3001.5(f), or an individual employed by such person, or acting as agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as PRC Docket No. R2009-2. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. “Involved in competitive decision-making” includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any person’s access shall be the earlier of:
 - (a) The date on which the Postal Regulatory Commission issues an order determining that access to these materials is no longer warranted.

- (b) The last date on which the individual who obtains access is under contract or retained or otherwise affiliated with the person on whose behalf access was authorized. The person on whose behalf the individual obtains access shall immediately notify the Postal Regulatory Commission and Postal Service counsel of the termination of any such business or consulting arrangement or retainer or affiliation.
- 4. Immediately after the Commission issues an order determining that access to these materials is no longer warranted, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:
 - (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.
- 5. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
- 6. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
- 7. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as PRC Docket No. R2009-2.
- 8. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 10 through 14, below.
- 9. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.
- 10. The Postal Service shall clearly mark each page, or portion thereof, that it seeks to protect under this agreement in a manner

reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the Postal Service, or as hereinafter provided, no protected information may be disclosed to any person.

11. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
12. Notwithstanding the foregoing, protected material covered by paragraph 11 may be disclosed to the following persons without their execution of a compliance certificate. Such disclosure shall not exceed the extent necessary to assist in prosecuting this proceeding or any appeals or reconsideration thereof.
 - (a) Members of the Commission.
 - (b) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.
 - (c) Any other person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.
 - (d) Reviewing courts and their staffs. Any person seeking to disclose protected information to a reviewing court shall make a good faith effort to obtain protective conditions at least as effective as those set forth in this document. Moreover, the protective conditions set forth herein shall remain in effect throughout any subsequent review unless overridden by the action of a reviewing court.

13. A person may apply to the Commission for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The Postal Service shall be given notice of the application and an opportunity to respond. Determinations on whether to revoke confidential status will be made in accordance with Commission regulations for the treatment of confidential materials.
14. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.

Attachment 2

CERTIFICATION

The undersigned represents that:

Access to these materials, identified as USPS-R2009-2/NP1, provided in the matter identified as PRC Docket No. R2009-2 by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as PRC Docket No. R2009-2. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____