



October 14, 2009

Honorable Shoshana Grove
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Ms. Grove:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service is providing copies of the enclosed documents, which concern EMS Pay-for-Performance agreements for traffic between the Postal Service and the following agencies of foreign governments: the Post and Telecommunications Department of Jamaica; the Belgian Post International; and the Department of Posts, India. As information, the Postal Service has marked the non-public versions of these documents as "Confidential" and "Non-Public" because the documents contain information considered confidential and commercially sensitive by the affected postal operator and the Postal Service. The Postal Service considers certain portions of the documents to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the documents contain the commercial information of the affected postal operator, and as such, certain portions of the instrument are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of these documents under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the documents become subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony F. Alverno".

Anthony F. Alverno

Enclosures

LEA EMERSON
EXECUTIVE DIRECTOR
INTERNATIONAL POSTAL AFFAIRS
GLOBAL BUSINESS



June 26, 2009

Mrs. Owena Beepot Pryce
Deputy Postmaster General – Operations
Post and Telecommunications Department of Jamaica
P.O. Box 7000
6-10 South Camp Road
Kingston
JAMAICA

Fax: +1 876 922 9439

Dear Mrs. Pryce:

Owena

Thank you for letter of May 11, which we only received recently. We are pleased you have agreed to begin to implement the EMS Pay-for-performance Plan with the United States. Due to the timing of the response, we would be able to start only from July 1, 2009, at the [REDACTED] performance threshold with an [REDACTED] payment for items below this threshold.

I have enclosed a counter signed version of the Partner's Agreement Form.

If you have any questions about this, please contact Brian Hutchins at brian.hutchins@usps.gov.

Sincerely,

A handwritten signature in cursive script that reads "Lea Emerson".

Lea Emerson

Enclosure

UNIVERSAL POSTAL UNION
International Bureau

EMS COOPERATIVE
Date received by EMS Unit: _____

Pay-for-performance Partners' Agreement Form

Administration entering the agreement:

Jamaica Post _____

United States Postal Service _____

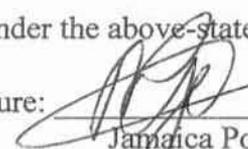
Date of Implementation:

2nd Quarter 2009

Year / Quarter	% delivery charge paid for Penalized items below threshold	Threshold
2 nd Quarter 2009	■	■

We, as representatives of Jamaica Post & United States Postal Service,

hereby agree that both Administrations will participate in the EMS Pay-for performance Plan under the above-stated condition.

Signature: 
Jamaica Post
Name: Michael Gentles
Postmaster General

Signature: 
United States Postal Service
Name: Lea Emerson
Executive Director
International Postal Affairs

Date: May 11, 2009

Please return to the EMS Unit:
International Bureau of the UPU
EMS Unit
Case postale
3000 Berne 15
Switzerland
Fax: + 41 31 351 52 00
E-Mail: EMSUnit@upu.int

LEA EMERSON
EXECUTIVE DIRECTOR
INTERNATIONAL POSTAL AFFAIRS
GLOBAL BUSINESS



June 26, 2009

Ms. Nadine Devisch
International Parcels Manager
Operations
Belgian Post International
E.M.C. – Building 829 C
B-1931 Brucargo-Zaventem
BELGIUM

Fax: +32 2 276 25 30

Dear Ms. Devisch:

We are pleased you have agreed to begin to implement the EMS Pay-for-performance Plan with the United States. We agree to start from July 1, 2009, at the [REDACTED] threshold with an [REDACTED] payment for items below this threshold.

We also agree to continue using the flat rates we have agreed to for the rest of the calendar year.

If you have any questions about this, please contact Brian Hutchins at brian.hutchins@usps.gov.

Sincerely,

A handwritten signature in cursive script that reads "Lea Emerson".

Lea Emerson

LEA EMERSON
EXECUTIVE DIRECTOR
INTERNATIONAL POSTAL AFFAIRS
GLOBAL BUSINESS



June 26, 2009

Mr. Faiz-Ur-Rehman
Deputy Director General – International Relations
Department of Posts, India
Dak Bhawan, Sansaad Marg,
New Delhi 110 001
INDIA

Fax: +91 11 2309 6104

Dear Mr. Rehman:

Thank you for letter of May 20 regarding the implementation of the EMS Pay-for-performance agreement. We are pleased you have agreed to begin to implement the EMS Pay-for-performance Plan with the United States. We will start from July 1, 2009, at the [REDACTED] performance threshold with an [REDACTED] payment for items below this threshold. I have enclosed a signed version of the Partner's Agreement Form.

We accept the area offered to begin the plan and hope to increase the area served in the future. We are working with the International Post Corporation to ensure that the proper reports will be ready for the July 1 start date. We are also working with them to ensure that the normal reports and information are also available so that you may have the information necessary to continue to work to improve service throughout India.

For items outside of the area provided, we will pay [REDACTED]

If you have any questions about this, please contact Brian Hutchins at brian.hutchins@usps.gov.

Sincerely,

A handwritten signature in cursive script that reads "Lea Emerson".

Lea Emerson

Enclosure

cc: Mr. Shah



Pay-for-performance Partners' Agreement Form

EMS Operators entering the agreement:

USPS
India Post

Date of Implementation:

July 1, 2009

Year/ Quarter	% delivery charge paid for penalized items below threshold	Threshold
2009 - 3	[REDACTED]	[REDACTED]

I, as a representative of U.S. Postal Service, hereby agree that
(EMS Operator)
my Administration will participate in the EMS Pay-for-performance Plan under
the above-stated conditions.

Signature: Lea Emerson

Date: June 19, 2009

Please return to the EMS Unit:
International Bureau of the UPU
EMS Unit
Case postale
3000 Berne 15
Switzerland
FAX: + 41 31 351 52 00
E-mail: EMS.Unit@upu.int

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

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed commercial and operational contracts with agencies of foreign governments, which the Postal Service is transmitting to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). A redacted version of these contracts is enclosed with the instant transmittal. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). 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).² Because the

¹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

² 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

portions of materials filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of contracts such as those transmitted here, the Postal Service believes that the postal operators that are parties to the contracts are the only third parties with a proprietary interest in the materials. Due to language differences, cultural sensitivities, and the intricacies of the Postal Service's relationship with the affected foreign postal operators, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operators.³ The Postal Service identifies as an appropriate contact person Brian Hutchins, Manager, International Postal Relations. Mr. Hutchins' phone number is (703) 292-3591, and his email address is brian.hutchins@usps.gov. The Postal Service has already informed each postal operator, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal

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.

³ The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

operator's ability to address any confidentiality concerns directly with the Commission.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting certain contracts with foreign postal operators that are agencies of foreign governments. These contracts consist of letters that define the terms on which the Postal Service and the relevant operator exchange Express Mail Service (EMS) items under the EMS Cooperative Pay-for-performance Plan, including delivery performance thresholds and payment information. The Postal Service maintains that the redacted portions of these documents should remain confidential.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Competitors could use the information to assess the offers and representations made to customers by the Postal Service and other EMS providers that contract with the Postal Service for any possible comparative vulnerabilities and to focus sales and marketing efforts on those areas, to the detriment of the Postal Service and other EMS providers. Additionally, foreign postal operators or other potential

customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. 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;

Harm: Competitors could use performance and penalty thresholds to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's detriment.

Hypothetical: The information about EMS performance and penalty thresholds in the contracts is released to the public. Another expedited delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the Postal Service's performance level as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's.

Harm: Public disclosure of price information in the enclosed contracts would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: A foreign postal operator's negotiated EMS pricing information is disclosed publicly on the Commission's website. Another postal operator sees the information and uses the publicly available rate information to the Postal Service's detriment in pricing negotiations.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive

decision-making in the relevant market for international expedited and parcels products (including private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operators that already have access to this information, actual or potential customers of the Postal Service for products related to Inbound International Expedited Services 2, Outbound Express Mail International, or similar products should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

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 the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity.

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

None.

Conclusion

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