



December 7, 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 (Postal Service) is providing a copy of the enclosed correspondence concerning an agreement for EMS traffic between Österreichische Post AG and the Postal Service. 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 document becomes 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 cursive script, appearing to read "Anthony F. Alverno".

Anthony F. Alverno

Enclosure

Mr. Brian Hutchins
Manager International Relations
United States Postal Service
1735 North Lynn Street, Room 6043
Arlington, VA 22209-6111
USA

Österreichische Post AG
Steinheilgasse 1
1210 Vienna
Austria

Phone +43 (0) 577 67 - 25922
Fax +43 (1) 400 220 555
Initials
E-mail siegfried.voelkl@post.at

Subject Austria – Price adjustment of the EMS delivery rates 2010

Date 28 October 2009

Dear Sir/Madam,

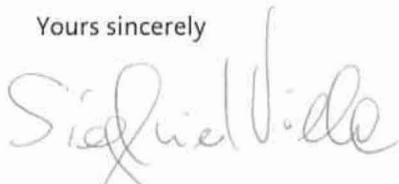
Österreichische Post AG, EMS delivery agent in Austria, would like to inform you about the adjusted rates for the receipt, customs clearance, sortation and delivery of EMS items in Austria for the year 2010. According to Article 13, paragraph B of the EMS contract regarding prices, each calendar year following 2009, the table of rates set forth in paragraph A for items sent to Austria by the EMS Operator which the Contractor tenders for delivery to the addressee in accordance with the Delivery Standards set forth in Article 11 of the Statement of Work or which is excepted from the Delivery Standards shall be the payment amount per item for the previous calendar year adjusted by the change in the level of retail prices in Austria as measured by the [REDACTED]. The price adjustment, taking effect from 1 January 2010, is based upon [REDACTED].

Adjusted EMS delivery rates 2010:

- [REDACTED]
- [REDACTED]

[REDACTED]

Yours sincerely



Siegfried Völkl
International Relations

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 correspondence relating to a commercial and operational contract with an agency of a foreign government, which the Postal Service is transmitting to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d).² A redacted version of this contract 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).³ Because the

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

² For purpose of this filing, the enclosed letter is referred to more generically as a "contract".

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 the one transmitted here, the Postal Service believes that the postal operator that is a party to the contract is the only third party 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 operator.⁴ 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 the postal operator, in compliance with 39 C.F.R. § 3007.20(b),

³ 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.

⁴ 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.

about the nature and scope of this filing and about the postal 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 a contract with a foreign postal operator that is an agency of a foreign government. The letter identifies rates for the exchange of Express Mail Service (EMS) items with the relevant operator. The Postal Service maintains that the redacted portions of the document 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 costs to the USPS of providing international Express Mail service. 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: Public disclosure of price information in the enclosed contract would provide foreign postal operators extraordinary negotiating power in pricing negotiations with 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, in an effort to extract the payment of comparable rates for delivery of EMS items.

Harm: Public disclosure of information in the letter would be used by the Postal Service's competitors, as well as competitors of the foreign postal operator with which EMS items are exchanged.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the contract from the Postal Regulatory Commission's website. The competitor analyzes the contract to assess the foreign postal operator's prices and the Postal Service's underlying foreign delivery costs. The competitor uses that information as a baseline to develop lower-cost alternatives.

(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.