

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268B0001

SIX-DAY TO FIVE DAY STREET DELIVERY  
AND RELATED SERVICE CHANGES, 2010

Docket No. N2010-1

UNITED STATES POSTAL SERVICE NOTICE OF  
FILING LIBRARY REFERENCES  
USPS-LR-N2010-1/12 and USPS-LR-N2010-1/NP3  
(April 27, 2010)

In accordance with Rule 25, 26 and 31(b)(2), the United States Postal Service hereby provides notice that today it is filing a pair of Category 3 library references promised in witness Elmore-Yalch's response to interrogatory DFC/USPS-T8-1, filed April 15, 2010. The nonpublic version of the library reference (USPS-LR-N2010-1/NP3) contains unredacted transcripts of focus group and in depth interview discussions. Redacted from the public version (USPS-LR-N2010-1/12) is information that would enable identification of respondents/participants, specific mailers, and discussion of Postal Service competitive products and commercial providers of related products; also available in the public version are other materials responsive to the interrogatory. Attached to this Notice is an Application for Nonpublic Treatment.

**PUBLIC LIBRARY REFERENCE**

N2010-1/12 Market Research Materials Responsive to DFC/USPS-T8-1.

**NON-PUBLIC LIBRARY REFERENCE**

N2010-1/NP3 Market Research Materials Responsive to DFC/USPS-T8-1 (Elmore-Yalch (USPS-T-8)) (Non-Public Version)

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NONPUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,<sup>1</sup> the United States Postal Service (Postal Service) hereby applies for nonpublic treatment of certain materials filed under seal with the Commission. The materials covered by this application consist of:

Complete, unredacted transcripts of focus group and in depth interview discussion conducted by witness Elmore\_Yalch's firm, Opinion Research Corporation, in the qualitative research reported in USPS-T-8, including personally identifying information such as individual names, addresses, and firm names, together with commercially sensitive information such as reported and expected mail volumes, descriptions of certain business activities and why / how business decision are made; and discussion of Postal Service competitive products and those with whom such products also compete.

Fundamentally, these materials were collected pursuant to business standard promises of confidentiality, which encourage respondents/participants to be honest about the information each supplies. Some of this information is closely related to information already a part of a nonpublic library reference, USPS-LR-N2010-1/NP2, although that tends to be more quantitative while the information here is more qualitative.

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

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

The materials designated as nonpublic consist of complete, unredacted transcripts of focus group and in depth interview discussion conducted pursuant to a promise of confidentiality.<sup>2</sup> Such promises are an industry standard practice for survey research companies such as Opinion Research Corporation (ORC); failure to extend such promises would be considered unprofessional and would accordingly undercut the perceived merit of the research methods and utility of any findings. Discussion of how specific firms conduct business, and the causative factors that drive business decisions, is the kind of information substantially all businesses would prefer to maintain in confidence. On behalf of the Postal Service itself, discussion of its competitive products and markets in the transcripts has also been redacted. In this instance, a parallel set of redacted transcripts has been prepared that strips out information that might identify respective respondents/participants, or explain their use of and decisions about competitive markets; the resultant public versions remain quite informative regarding the discussion in focus groups and in depth interviews.

Protection of the materials included in USPS-LR-N2010-1/NP3 (Market Research Materials Responsive to DFC/USPS-T8-1 (Elmore-Yalch (USPS-T-8)) (Non-Public Version)) is also informed by the Code of Standards and Ethics of the Council of American Survey Research Organizations (see [www.CASRO.org/codeofstandards.cfm](http://www.CASRO.org/codeofstandards.cfm)). Section I, Responsibilities to Respondents, subsection (A)(3)(a) provides, in pertinent part:

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<sup>2</sup> As discussed, *infra*, additional redactions may have been performed by Opinion Research Corporation before the transcripts were first provided to the Postal Service.

The use of survey results in a legal proceeding does not relieve the Survey Research Organization of its ethical obligation to maintain in confidence all Respondent-identifiable information or lessen the importance of Respondent anonymity. Consequently, Survey Research firms confronted with a subpoena or other legal process requesting the disclosure of Respondent-identifiable information should take all reasonable steps to oppose such requests, including informing the court or other decision-maker involved of the factors justifying confidentiality and Respondent anonymity and interposing all appropriate defenses to the request for disclosure.

Commission practice has long supported maintenance of confidentiality of survey respondents' specific information, and this occasion brings no justification to any change in that practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. §§ 410(c)(2, 4-5) and 412; and 5 U.S.C. § 552(b)(3) and (4).<sup>3</sup>

**(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;**

The Postal Service believes that the only third parties that have a proprietary interest in the information redacted from Library Reference USPS-LR-N2010-1/12 but included in non-public Library Reference USPS-LR-N2010-1/NP3 are the individuals and firms who served as respondents/participants in the qualitative and quantitative market research conducted by witness Elmore-Yalch on behalf of the Postal Service. Identifying those individuals and firms for the purpose of this Application would violate

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<sup>3</sup> In appropriate circumstances, 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). 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.

the CASRO provisions quoted, in part, above. The Postal Service does not have access to the identifying information of respondents (beyond what is present in the nonpublic version) and can accordingly give no notice to those parties, whose full details of personally identifying information have been retained by ORC. The redaction of transcripts was conducted pursuant to direction provided by ORC with the result that the public version redacts all sensitive information. The compromise position taken by the Postal Service in this instance has been discussed with witness Elmore-Yalch, who has provided assurance that the filing of public and nonpublic versions comports with its own standards and obligations. So in that sense, the Postal Service has already informed ORC, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. Witness Elmore-Yalch herself is the contact with ORC with whom the Postal Service has discussed this Application, which accommodates both title 39 and CASRO standards. In the meantime, the Postal Service attorney whose contact information is provided in this pleading can serve as the Postal Service employee responsible for provision of notice to ORC.

**(3) A description of the materials claimed to be nonpublic 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 nonpublic;**

The materials consist of transcripts identifying speakers in focus groups and in depth interviews, and discussion of how such respondents/participants use competitive postal products, and commercial products that compete with Postal Service competitive products. Therefore, examination of the corresponding public library reference should allow a person to understand the nature and content of the nonpublic library reference,

and evaluate accordingly. These library references are filed in connection with Douglas Carlson's interest, found in interrogatory DFC/USPS-T8—1, that relates to collection boxes; none of that information required redaction so for his purposes use of the publicly available transcripts should suffice.

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

The redacted information protects several interests. Public release of discussion about the Postal Service's own competitive products, and the circumstances under which customers choose to use Postal Service products or those of its competitors, could harm the Postal Service's commercial interests in its competitive products. Commercial harm could flow from the release of participant/respondent information in the form of harm to the business of ORC, given what would appear to be action in violation of its CASRO obligations.

Similarly, volume-related information—both quantitative and qualitative—pertaining to respective customers, or customer segments, could provide insight to Postal Service competitors who seek to attract the business of those same customers. Postal Service competitors could use such information to transport or otherwise position their products in such a way as to compete unfairly against the Postal Service. Competitors able to view the market research materials would gain specific insight into Postal Service customer behavior, both past and future, enabling them both to capture the benefit of market research in which the Postal Service has invested, and to follow up with customer acquisition by targeting postal customers using exquisitely well targeted marketing campaigns.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

**Hypothetical:** A competitor or its representative obtains a copy of the unredacted version of Library Reference USPS-LR-N2010-1/NP3. It analyzes the data to determine the attributes of customers who make use of Postal Service products under particular circumstances. The competitor then targets members of that customer segment with an advertising program that emphasizes the positive vectors of its own products with enhanced foreknowledge of what is important to the target customer segment, and succeeds in winning that business.

**Hypothetical:** A large mailer discusses its advertising and direct mailing strategies. By reading through the unredacted version of Library Reference USPS-LR-N2010-1/NP3, a competitor of that large mailer gains enough clues to identify that customer.

**Identified Harm:** Public disclosure of opportunities for advertising strategies allows the competitor of a large mailer to disrupt the large mailer's strategies or instead to focus on areas it knows the large mailer is not currently emphasizing. Either way, the net result is that the competitor gains what was previously some of that large mailer's business.

**Identified Harm:** Fed Ex or UPS representatives review the transcripts and learn how each customer segment understands the strengths and weaknesses of respective competitive products. Fed Ex and UPS create marketing campaigns that target the respective strengths and weaknesses for its competitors' products, by customer segment. The net result is acquisition by Fed Ex and UPS of volume that once traveled as mail.

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

The Postal Service maintains that the portions of the market research materials filed nonpublicly should be withheld from persons involved in competitive decision-making. The research involves all customer segments (consumers, small business, and Preferred, Premier and National accounts) served by the mailing and shipping industries, so access to the materials should not be available to those responsible for, or on behalf of, competitive decision makers as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for competitive products should not be provided access to the nonpublic materials., as that would present the potential for one existing postal customer to take volume from another.

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

The Commission's regulations provide that nonpublic materials shall lose nonpublic 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. If the Postal Service is informed that CASRO has any longer applicable time periods, it will so advise Commission staff.

**(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 nonpublic treatment of the materials appearing in USPS-LR-N2010-1/NP3, but redacted from USPS-LR-N2010-1/12.