

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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

Docket No. N2010-1

**APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC  
TREATMENT OF LIBRARY REFERENCE USPS-LR-N2010-1/NP10**  
(August 20, 2010)

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service hereby submits the attached request for non-public treatment of library reference USPS-LR-N2010-1/NP10, filed today in this proceeding.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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**APPLICATION OF THE UNITED STATES POSTAL SERVICE  
FOR NONPUBLIC TREATMENT OF LIBRARY REFERENCE**

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 data filed under seal with the Commission.

The materials covered by this application consist of data responsive to the following question posed by Chairman Goldway during hearings in this docket at Transcript Volume II, page 238, line 10:

*What percentage of Express Mail is not delivered on Sundays now?*

Responsive data reflecting the percentage of fiscal year 2009 Express Mail not delivered on Sundays (or the percentage delivered Mondays through Saturdays) is filed in USPS Library Reference N2010-1/NP10.

By operation of 39 U.S.C. § 410(c)(2), information of a commercial nature, which under good business practice would not be publicly disclosed is not required to be disclosed to the public. 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). Because the requested information filed non-publicly in this docket falls within the scope of information not required to be disclosed publicly, the Postal Service asks the Commission to support its

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

determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

No useful public version of the response to this question could be produced.

**(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 data designated as nonpublic consist of commercial information revealing the portion of Express Mail volume delivered on a specific day of the week (in this case, Sunday) which, under good business practice, would not be disclosed publicly. Based on its long-standing and deep familiarity with postal and communications business and markets generally, and its knowledge of many firms, including competitors, the Postal Service does not believe that any commercial enterprise would voluntarily publish disaggregated volume data reflecting day-of-week delivery patterns. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).<sup>2</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;**

None.

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<sup>2</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.

**(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 responsive data consist of the aggregate percentage of FY 2009 volume of Express Mail delivered on every day of the week except Sunday.

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

If the redacted information or information of a similar character or level of disaggregation were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is clearly commercially sensitive to the Postal Service as a competitor in the expedited delivery market.

Revelation of the percentage of Express Mail delivered on any specific day of the week would unfairly, to the economic detriment of the Postal Service, permit competitors to:

- gain specific insight into Postal Service customer behavior;
- better gauge the size of expedited delivery weekend market,
- develop strategies for determining what marketing resources to devote to further penetration of that market; and
- more keenly determine the direction in which to adjust the prices for their products that compete with weekend Express Mail delivery.

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

**Identified harm:** Public disclosure of the data in USPS Library Reference N2010-1/NP10 would be used by competitors of the Postal Service to the detriment of the Postal Service.

**Hypothetical:** A competitor's representative obtains access to the data in Library Reference USPS-LR-N2010-1/NP10. It analyzes the data to assess the nature

and scale of that portion of the Postal Service's expedited delivery business that consists of Express Mail packages accepted on Saturday with a Sunday delivery expectation. Based upon these data, the competitor assesses the extent to which it wishes to adjust its product offerings, prices, operations and marketing activities to compete for the volume represented by these data. That competitor gains valuable market intelligence without having to make an investment in research. The competitor then can tailor marketing and/or pricing campaigns to acquire customers' business with the consequent loss of volume, revenue and market share to the Postal Service, which has no similar ability to access to data regarding its competitors packages delivered on Sundays or any other day of the week.

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

The Postal Service maintains that the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for competitive delivery products, 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.

**(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.

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

None.

***Conclusion***

For the foregoing reasons, the Postal Service requests that the Postal Regulatory Commission grant its application for nonpublic treatment of the materials appearing in USPS-LR-N2010-1/NP10.