

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

NOTICE OF RULEMAKING

Docket No. RM2010-9

NOTICE OF THE UNITED STATES POSTAL SERVICE
OF FILING OF USPS-RM2010-9/NP2
(October 25, 2010)

The Postal Service hereby gives notice of filing of the material indicated below as part of the **Non-Public Annex** in this proceeding:

USPS-RM2010-9/NP2 **Nonpublic Materials Provided in
Response to CHIR No. 1, Question 2a**

As indicated, USPS-RM2010-9/NP2 consists of a Word Delimited file that contains nonpublic material filed in response to Question 2a of CHIR No. 1. Specifically, the response provides a revised spreadsheet with the name of each Mail Service Provider and (MSP) its volume for each month, consistent with Docket No. R2009-5, data collection report, filed on July 26, 2010, including the volume for intervening months.

The data do not contain the comingled volumes of the MSPs because the Postal Service could not gain access to such data. Because it includes commercially sensitive information, mailer-specific names, it is being filed under seal.

UNITED STATES POSTAL SERVICE

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ATTACHMENT 1

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 certain materials filed under seal with the Commission. The material sought to be protected consists a revised spreadsheet with the name of each Mail Service Provider (MSP) along with its volume for each month, consistent with Docket No. R2009-5, data collection report, filed on July 26, 2010, in addition to its volume for the intervening months. It is being provided in response to Question 2a of CHIR No. 1, and is being filed under seal as USPS-RM2010-9/NP2. The public response to this question was filed with generic identification numbers on September 10, 2010 in Docket No. RM2010-9, Response of the United States Postal Service to Chairman's Information Request No. 1, p. 4.

(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);

The materials designated as non-public consist of information of a commercial nature that under good business practice would not be publicly disclosed. 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).² Because the portions of the

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

² 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

materials that the Postal Service is applying to file only under seal 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;

Because the number of parties that would have to be contacted is so large, the Commission granted the Postal Service's Motion for waiver of sections 3007.20(b) and 3007.21(c)(2) of the Commission's rules for purposes of filing a revised response to Question 2a of Chairman's Information Request No.1 on September 27, 2010.

(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;

The public version of the data collection report, filed in Docket No. R2009-5 on July 26, 2010 and revised on July 29, 2010, included a "loyalty growth" analysis on page 3. Specifically, the table showed the "average loyalty percentage" as calculated based on volume trends for winter (Jan—Mar), spring (Apr—June), and summer (July—Sept). In the spreadsheet containing individual mailer volumes (First-Class Mail Incentive—Order 299—20100504.xls), the individual tabs stated in a footnote that "MSP volume data was collected for the following months: Oct—Dec. 2007, Sept. 2008—Jan. 2009, Sept.

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.

2009—Jan. 2010” contained a spreadsheet detailing rebate calculations for the First-Class Incentive Program. The non-public document provides a revised spreadsheet with information detailing the specific name of each Mail Service Provider (MSP) and its volume for each month, consistent with the data collection plan, in addition to volume for the intervening months.

(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 it quite likely that the mailers whose identities were revealed 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. The ability to link the identity of each MSP with the amount of volume they have tendered to the Postal Service would allow current or potential competitors of those mailers to become aware of the mailing patterns of individual mailers. Competitors could use the information to analyze those mailers’ possible market strengths and weaknesses to the detriment of the third party mailers. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the material filed non-publicly.

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

Harm: Competitors could use the First-Class monthly volume information of each of the third-parties to assess vulnerabilities and focus sales and marketing efforts to the third-parties’ detriment.

Hypothetical: In essence, if the actual MSP identities were made public, First-Class monthly volume information for each of these third-parties would be released to the

public. A competitor of the third-party monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor assesses the monthly volume trends of the third-party. The competitor then targets its advertising and sales efforts at actual or potential customers of the third-party for that type of product or offering, hindering the third-parties' ability to reach out effectively to these customers. For these reasons, release of any of the non-public information would pose actual commercial harm to each of these third-parties, regardless of the information's present favorability.

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

The Postal Service maintains that the portions of the materials filed non-publicly and relating to market-dominant products should be withheld from persons involved in decision-making in the relevant markets for market-dominant delivery products, as well as their consultants and attorneys. Additionally, the Postal Service believes that the competitors of the third-parties for these 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 covered by this application.

(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.