

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

ANNUAL COMPLIANCE REPORT, 2010

Docket No. ACR2010

NOTICE OF THE UNITED STATES POSTAL SERVICE
OF FILING OF USPS-FY10-NP31
(February 4, 2011)

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

USPS-FY10-NP31 Nonpublic Material Provided in Response to
Chairman's Information Request No. 2

As indicated, this material relates to requests for information posed on January 27, 2011, in Chairman's Information Request No. 2. The requested materials include commercially sensitive information regarding detailed cost, volume, revenue, and service information for competitive products, and accordingly are submitted as part of the nonpublic annex in this proceeding.

Attached to the Postal Service's ACR, filed December 29, 2010, was the application for non-public treatment of the non-public annex, including identification of third parties with potential proprietary interests, which is hereby incorporated by reference. Because that application for non-public treatment does not explicitly cover the materials filed in response to question 7, the Postal Service has attached to this

filing a supplementary application for non-public treatment solely with respect to those materials.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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February 4, 2011

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 requested by the Commission in this docket. The requested EMS Cooperative Report Card materials respond to question 7 of Chairman's Information Request No. 2, and are filed under seal in USPS-FY10-NP31. 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 portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service

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 enforcement

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 EMS Cooperative Report Cards, the Postal Service believes that it is the only party with a proprietary interest in the materials.

(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;

In connection with the Response to Question 7 of ChIR No. 2 submitted in this docket, the Postal Service has, under seal, filed USPS-FY10-NP31, within which are included the EMS Cooperative Report Cards for calendar year 2009 and the first, second, and third quarters of 2010. Non-public treatment of the EMS Cooperative Report Cards protects commercially sensitive information about delivery, scanning, tracking, and call center performance. The Postal Service maintains that these materials 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 their 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

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.

information to assess the offers and representations made by the Postal Service to its customers for any possible comparative vulnerabilities and to focus sales and marketing efforts on those areas, to the detriment of 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 information to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's detriment.

Hypothetical: The delivery performance information in the EMS Cooperative Report Cards 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 reported performance as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's.

Alternatively, a potential customer is considering issuing a solicitation for inbound expedited delivery service. The Postal Service and its relevant EMS partners might be interested in collaborating on a response to the solicitation. Because the competitor is already providing other services to the potential customer, the competitor's sales representatives advise the potential customer to set performance criteria that the Postal Service cannot meet. For example, assume that the Postal Service's EMS Cooperative Report Card were to show on-time delivery of 98 percent for a certain period. Because this information would have been disclosed, the competitor is aware of it. Although this level of performance might be sufficient for the potential customer's needs, the competitor successfully convinces the customer to accept nothing less than a

demonstrated performance record of 99 percent on-time delivery for that period. As a result, the Postal Service and its partners are fenced out of this business, notwithstanding the fact that the potential customer might otherwise have considered their bid acceptable.

The above scenarios can apply with equal force to other elements of the information submitted here. For example, a competitor could target its sales and marketing efforts on the basis of comparisons to the Postal Service's customer service, as evidenced by the call center information in the EMS Cooperative Report Cards. A competitor could also make comparisons to the Postal Service's ability to offer item tracking and visibility, based on the scanning and RESDES/RESCON messaging information in the EMS Cooperative Report Cards.

To the extent that the EMS Cooperative Report Cards show perfect performance in one or more areas, even this information could result in eventual, yet real, harm to the Postal Service. Release of this information could create a precedent for release of similar information in periods when performance is less than perfect. Moreover, even if the Postal Service were successful in withholding future indicators of less-than-perfect performance, release of the perfect scores now and non-release of corresponding information in the future would signal to competitors that the future information is sub-par and therefore ripe for marketing comparisons. For that reason, release of any of the redacted information would pose actual commercial harm to the Postal Service, 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 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 this 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.

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

None.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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