

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-NP34
(March 7, 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-NP34 Nonpublic Material Provided in Response to
Question 27 of Chairman's Information Request
No. 4

As indicated, this material relates to requests for information posed on February 18, 2011, in Chairman's Information Request No. 4. As further explained in the response to Question 27, the requested materials include commercially sensitive information post office suspensions, and accordingly are submitted as part of the nonpublic annex in this proceeding. Attached is an application for non-public treatment of this material.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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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) applies for non-public treatment of certain materials filed under seal with the Commission. The materials consist of a compilation and listing of information identifying retail facilities whose operations have been suspended, including Post Offices, stations and branches. The material is provided under seal as USPS-FY10-NP34.²

(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 form compiled, they also create a tool that could be used in formulating a future administrative procedure. In light of this status as an element of the deliberative process leading to such a procedure, premature disclosure could inhibit or complicate the decision-making process in the future. 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) (4) and (5).³ Because portions of the materials that the Postal

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

² Elaboration of Postal Service reasoning for keeping USPS-FY10-NP34 from public release at this time appears in the body of its response to Chairman's Information Request No. 4, question 27, also filed today.

³ 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

Service applies to file 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 qualify as 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;

The Postal Service does not believe that any third party has a proprietary interest in these 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;

The non-public material includes a compilation of information regarding suspended retail postal facilities. The Postal Service is in the process of changing its Post Office discontinuance process. The status of these retail facilities not only has commercial value but, if made public prematurely in the form presented, the information could interfere with or complicate the deliberative process leading to changes in and development of future discontinuance procedures. The Postal Service maintains that these materials should remain confidential by virtue of 39 U.S.C. § 504(g)(1), and 39 U.S.C. § 410(c)(2), and 5 U.S.C. §§ 552(b)(3), (4), and (5).

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

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.

Disclosure of USPS-FY10-NP34, in its existing form, would make public a key tool that will be utilized in evaluating and formulating future discontinuance procedures. Accordingly, public disclosure, at this stage of the decision-making process, would expose prematurely internal and pre-decisional deliberations for improving Postal Service operations. While, separately, the information pertaining to each facility is essentially factual, as an aggregate record of suspended facilities, it assumes a role in the process of formulating new procedures that may or may not signal the direction and objectives of subsequent deliberations. In this regard, it must be emphasized that the ultimate role of the individual and collective status of the suspended facilities in establishing future procedures has not been decided. It is likely that the disclosure of this document, including attendant publicity, would complicate the decision-making process and discourage open and frank discussion internally. Furthermore, publication of the document prematurely could send false signals to the Postal Service's customers and create potentially unwarranted apprehension and confusion. Such reactions could give rise to controversy that would complicate the Postal Service's deliberations.

The resulting uncertainty and potentially false signals would also undermine the confidence of the Postal Service's customer base and would harm the Postal Service's business. The potential for these consequences would be amplified by any errors that might exist in the list of retail facilities due to imperfection and gaps in existing data sources. The Postal Service submits that no rational commercial business considering changes in its operating network or retail locations would prematurely disclose such information, especially if the information is of a provisional or possibly temporary status or suspension might not mirror a final determination of its operating network and retail

presence. Beyond a general erosion of confidence and allegiance that premature disclosure would create, publication of the information would provide a roadmap for existing and future competitors, particularly in the provision of various retail services, such as post office box service. The Postal Service believes that the information in its present form would have significant commercial value to competitors and should not be disclosed.

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

Harm: Revealing the current list of suspended retail facilities, which does not reflect the new Post Office discontinuance procedures, would cause confusion among customers of the listed retail facilities, complicate internal, pre-decisional deliberations for improving Postal Service operations, and discourage open and frank discussion..

Hypothetical: The list of suspended retail facilities is revealed to the public. Because the Postal Service is in the process of developing new discontinuance procedures for retail facilities, it is not clear whether the list reflects potential criteria that will be incorporated into the new procedures, whether the suspended status of the facilities on the list will play a role under the new procedures, or whether the list accurately signals a future determination of the operating network or retail configuration. Customers might incorrectly assume that a suspended facility on the list is the retail facility they currently use and that that facility will be closed after implementation of the new Post Office discontinuance procedures. This could cause widespread confusion similar to the public reaction after publication of a list in connection with Docket No. N2009-1. As our experience with Docket No. N2009-1 shows, the publication of an incomplete and pre-decisional list does not serve the public interest. To the extent the current list of suspended retail facilities reveals criteria to be incorporated into the new discontinuance procedures, it reflects pre-decisional and deliberative processes protected under 5

U.S.C. § 552(b)(5). Premature disclosure would complicate and impede those processes.

Harm: Revealing the current list of suspended retail facilities would enable competitors to target certain locations for sales and marketing and other competitive purposes.

Hypothetical: The list of suspended retail facilities is revealed to the public. A nearby private mailbox provider reviews the information, and determines that a suspension will affect enough potential customers at the postal location to justify an advertising campaign or perhaps the establishment of competing facilities. The private company directs advertising for its mailbox service to the postal customers, perhaps using a billboard near the postal location and offering to match postal prices for a three-month trial. Moreover, the private mailbox provider would be entering the market at a crucial time before the Postal Service is able to adopt its new discontinuance procedures that might extend expanded access options those procedures would encompass. An aggregated list, rather than the identification of an individual facility, provides more valuable information for competitive purposes, as it offers a roadmap for structuring a business to compete with the Postal Service. Such information would be especially valuable to nascent competitors or to persons interested in starting up businesses that would compete directly for retail services (e.g., private mailbox service), or that would offer alternatives to traditional postal services.

(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 the public at least until the Postal Service has had the opportunity to

implement its new Post Office discontinuance procedures, and file the anticipated section 3661 case with the Commission.

(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 anticipates that the full ten-year period of non-public treatment will not be necessary, and that implementation of the new Post Office discontinuance procedures, the anticipated § 3661 case, and materials made available in that proceeding will overtake and make moot the need for nonpublic status, thereby allowing for a shorter period.

(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 this application for non-public treatment of the identified materials.

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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