

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

**Mail Processing Network Rationalization
Service Changes, 2012**

Docket No. N2012-1

**AMERICAN POSTAL WORKERS UNION, AFL-CIO,
MOTION FOR ACCESS TO
NON-PUBLIC INFORMATION IDENTIFIED
AS USPS-LR-N2012-1/NP5
(December 16, 2011)**

Pursuant to 39 CFR 3007.40 and Rule 21 of the Commission's Rules of Practice and Procedure, the American Postal Workers Union, AFL-CIO (APWU) hereby moves for access Postal Service Library Reference USPS-LR-N2012-1/NP5, Outgoing Secondary Workload Data.

The Postal Service submitted Library Reference USPS-LR-N2012-1/NP5 on December 9, 2011, accompanied by an Application for non-public treatment. In its Application, the Postal Service states that Library Reference USPS-LR-N2012-1/NP5 contains "(a) commercial information revealing the volumes of First Class Mail flats originating or delivered within the service areas of specific postal mail processing facilities or (b) operational data revealing the resources associated with First Class Mail flat workload at specific mail processing plants which, under good business practice, would not be disclosed publicly."¹ The Postal Service claims that if this information were publicly disclosed it "would permit competitors to deduce the relative volume levels associated with specific markets or delivery areas if publicly disclosed,"² and requests that these materials "be withheld from persons involved in competitive decision-making in the relevant markets for competitive delivery products, as well as their consultants and

¹ Notice of United States Postal Service of Filing of Library References USPS-LR-N2012-1/38 and USPS-LR-N2012-1/NP5 at 2 (December 9, 2011).

² Id.

attorneys.”³ The Postal Service also seeks to prevent actual or potential customers of the Postal Service for competitive products from accessing the nonpublic materials.⁴

The Postal Service Application provides no rationale for preventing actual or potential customers from accessing this material or identification of the commercial harm that would result. In addition, this category of persons is so broad that it likely excludes all parties participating in this docket from accessing and assessing this information. Furthermore, while it is true that commercially sensitive information, if disclosed to competitors, could result in commercial harm to the Postal Service, the APWU is not a competitor and poses no risk to the commercial success of the Postal Service.

APWU is the exclusive collective bargaining representative of postal employees in the clerk, maintenance, and motor vehicle service crafts nationwide. APWU also mails millions of letters, periodicals, and packages each year and APWU members and retirees make extensive use of postal products and services. The changes proposed in this docket could have a significant impact on APWU represented employees and on the APWU and its members as a large user of the mail. Accordingly, APWU has intervened and will participate actively in this docket. APWU also intends to submit rebuttal testimony. Parties should be entitled to the material relied on by the Postal Service to fully evaluate the Postal Service’s plan in this docket. We believe that the information presented in USPS-LR-N2012-1/NP5 will facilitate preparation of our rebuttal case, possible cross examination of postal witness Frank Neri and our arguments on brief at the conclusion on this case.

In accordance with 39 CFR 3007.40(b), the following APWU representatives, consultants and attorneys have completed a Statement of Compliance with Protective Conditions Certification, found in Appendix A to Part 3007 of Title 39 of the Code of Federal Regulations, for Library Reference USPS-LR-N2012-1/NP5:

Phillip A. Tabbita,
Manager, Negotiation Support and Special Projects
American Postal Workers Union, AFL-CIO

³ Id. at 4.

⁴ Id. at 5.

Kathryn Kobe,
Director of Price, Wage and Productivity Analysis ECS, LLC
Economic Consultant for American Postal Workers Union, AFL-CIO

Darryl J. Anderson, Esq.
O'Donnell, Schwartz & Anderson, PC
Counsel for the American Postal Workers Union, AFL-CIO

Jennifer L. Wood, Esq.
O'Donnell, Schwartz & Anderson, PC
Counsel for the American Postal Workers Union, AFL-CIO

A copy of each Certification is attached hereto. The original Certifications will be promptly filed with the Commission. Persons identified by the Postal Service pursuant to Section 3007.2(c) have also been provided with a copy of this Motion and accompanying certifications today by email.

Conclusion

For the forgoing reasons, APWU respectfully requests that access to Library Reference USPS-LR-N2012-1/NP5 be granted to the above named individuals.

Respectfully submitted,

Jennifer L. Wood
Counsel for American Postal Workers Union, AFL-CIO

Statement of Compliance with Protective Conditions

The Postal Service has filed non-public materials identified as **USPS-LR-N2012-1/NP5** in Commission Docket No. **N2012-1**. The Postal Service requests confidential treatment of the materials (hereinafter “these materials”)

The following protective conditions apply to these materials identified as **USPS-LR-N2012-1/NP5** by the Postal Service. Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to these materials is limited to a person as defined in 5(f), 39 CFR 3001.5(f), or an individual employed by such person, or acting as an agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as **PRC Docket No. N2012-1**. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. “Involved in competitive decision-making” includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. Immediately after access has terminated under 39 CFR 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:
 - (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.
4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium.

These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.

5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
6. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as **PRC Docket No. N2012-1**.
7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.
8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.
9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as **USPS-LR-N2012-1/NP5** by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as **PRC Docket No. N2012-1**. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name	<u>Phillip Tabbita</u>
Firm	<u>American Postal Workers Union, AFL-CIO</u>
Title	<u>Mgr Negotiation Support</u>
Representing	<u>American Postal Workers Union, AFL-CIO</u>
Signature	<u></u>
Date	<u>December 16, 2011</u>

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Name	<u>Kathryn Kobe</u>
Firm	<u>ECS, LLC</u>
Title	<u>Director of Price, Cost, Productivity</u>
Representing	<u>APWU</u>
Signature	<u>Kathryn L Kobe</u>
Date	<u>12-16-11</u>

CERTIFICATION

The undersigned represents that:

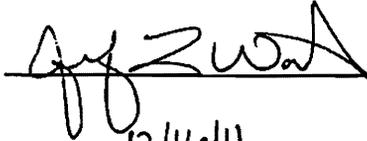
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Name	Darryl J. Anderson
Firm	O'Donnell, Schwartz & Anderson, P.C.
Title	Counsel
Representing	APWU
Signature	
Date	12/16/11

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Name	<u>Jennifer L. Wood</u>
Firm	<u>O'Donnell, Schwartz + Anderson, P.C.</u>
Title	<u>Attorney</u>
Representing	<u>APWD</u>
Signature	<u></u>
Date	<u>12/16/11</u>