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

COMPETITIVE PRODUCT PRICES GLOBAL EXPEDITED PACKAGE SERVICES 3 (MC 2010-28) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2011-10

NOTICE OF UNITED STATES POSTAL SERVICE RESPONSE
TO COMMISSION REQUEST
(January 27, 2012)

On October 20, 2010, the Postal Regulatory Commission (Commission) issued Order No. 565, adding the specific agreement that is the subject of the instant docket to the Global Expedited Package Services 3 product (MC2010-28).[1] In Order No. 565, the Commission requested that the Postal Service provide cost, volume and revenue data associated with the agreement that is the subject of this docket,[2] which has recently expired.[3]

In response to Order No. 565, the Postal Service hereby provides cost, volume and revenue data associated with the terminated agreement that is the subject of this docket. The Postal Service files this response to that request in accordance with 39 C.F.R. § 3007.20, and asks, for the reasons set forth in the attached Application, that the Commission treat the reported information as non-public.

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[1] PRC Order No. 565, Order Approving Eight Additional Global Expedited Package Services 3 Negotiated Service Agreements, Docket Nos. CP2011-5, CP2011-6, CP2011-7, CP2011-8, CP2011-9, CP2011-10, CP2011-11, and CP2011-12, October 20, 2010, at 6.
[2] *Id.*
[3] *See* United States Postal Service Response to Order No. 565 Concerning Effective Dates of Eight Additional Global Expedited Package Services 3 Negotiated Service Agreements, Docket Nos. CP2011-5, CP2011-6, CP2011-7, CP2011-8, CP2011-9, CP2011-10, CP2011-11 and CP2011-12, October 27, 2010.

Respectfully submitted,

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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, the United States Postal Service ("Postal Service") hereby applies for non-public treatment of a report of cost, volume, and revenue data requested by the Commission. The report is being filed separately under seal with the Commission, although a redacted copy as required by 39 C.F.R. § 3007.10(b) is filed with the Notice.[1]

The Postal Service 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) and 5 U.S.C. § 552(b)(3) and (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 the materials filed non-publicly in this docket fall

[1] The Postal Service informed the customer prior to filing its notice that the Postal Service would be seeking non-public treatment of this report and that the customer could file its own application for non-public treatment of these materials in accordance with 39 C.F.R. § 3007.22.

[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

within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support the Postal Service's determination that these materials are exempt from public disclosure and to grant the Postal Service's application for non-public treatment of the materials.

(2) Identification, including name, phone number, and e-mail 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 reports concerning GEPS contracts, the Postal Service believes that the third parties with a proprietary interest in the materials are the customer with whom the contract was made, and the PC Postage Provider(s) that the customer used.[3] The Postal Service maintains that customer identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee

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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] Other postal operators can be considered to have a proprietary interest in some rate information in the financial workpapers included with this filing. The Postal Service maintains that such information should be withheld from public disclosure. In view of the practical difficulties, the Postal Service has not undertaken to inform all affected postal operators about the nature and scope of this filing and about the ability to address any confidentiality concerns directly with the Commission as provided in 39 C.F.R. § 3007.20(b). Due to language and cultural differences as well as the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operators, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operators. The Postal Service identifies as an appropriate contact person Guadalupe Contreras, Manager, International Postal Relations. Ms. Contreras's phone number is (202) 268-4598, and her e-mail address is guadalupe.n.contreras@usps.gov. The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing in the absence of actual notice might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver that would allow it to forgo providing a notice to each postal operator, and to designate a Postal Service employee as the contact person under these circumstances, since it is impractical to communicate with dozens of operators in multiple languages about this matter.

responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Mr. James J. Crawford, Business Development Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza, SW, Room 2P020, Washington, DC 20260-0020, whose e-mail address is james.j.crawford@usps.gov, and whose telephone number is 202-268-7714.

In addition, in compliance with 39 C.F.R. § 3007.20(b), the Postal Service gives notice that it has already informed the PC Postage Provider selected by the customer of the nature and scope of this filing, and that the PC Postage Provider may address its confidentiality concerns directly with the Commission. The appropriate contact person for the PC Postage Provider that the Mailer used for this contract is Candi A. Booth, National Sales Manager, Endicia.com, 247 High Street, Palo Alto, CA 94301. Ms. Booth's phone number is 650-321-2640 x183, and her e-mail address is candi.booth@endicia.com.

(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 materials at issue are portions of the performance report associated with the now-expired GEPS agreement reviewed by the Commission in PRC Docket No. CP2011-10. The financial model submitted under seal in that docket provided projected cost, volume, and revenue information. In response to the Commission's request, the model has been updated to demonstrate actual volume and revenue information along with estimated cost information, for the Commission's use. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information which the Postal Service has determined to be exempt from disclosure under 5 U.S.C. §

552(b). However, in a limited number of cases, narrative passages, such as words or numbers in text, were replaced with general terms describing the redacted material. For example, where the mailer's name appears in the spreadsheet within a cell, it has been replaced by the word "Mailer." Likewise, where an actual number appears as a percentage discount as a column header, in the public filing the number is replaced by the word "Discount" and followed by the percentage symbol (e.g., Discount%).

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

If the reported information were made public, the Postal Service anticipates that the information could be used against the Postal Service by potential customers in rate negotiations and by competitors in pricing and marketing efforts. Public disclosure of the information would also present a serious risk of commercial harm to the customer if its competitors were able to acquire market intelligence about the customer's underlying costs, mailing patterns and customer base. The Postal Service considers the likelihood of these harms to be great, since this is information that would be readily accessible and relatively easy to interpret and apply.

The reported information also includes sensitive commercial information related to an agreement between the Postal Service and a PC Postage Provider. Such information would be extremely valuable to competitors of both the Postal Service and the PC Postage Provider. Using detailed information about such an agreement, competitors would be able to better understand the costs of the postage programs used, and identify areas where they could adapt their own operations to be more competitive. In addition, competitors of the PC Postage Provider could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service.

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

Identified harm: Making cost, volume, and revenue data associated with expired GEPS agreements public could weaken the Postal Service's bargaining position with its customers.

Hypothetical: The Widget Factory negotiates a GEPS contract for incentive-based pricing for Express Mail International and Priority Mail International (Contract 1). When the term of that contract is nearing its one-year period, the customer seeks to enter into a new contract (Contract 2), with greater incentives based on a more aggressive commitment to revenue and/or volume. The terms of Contract 2 are agreed upon, and it is provided to the Commission for review prior to the expiration of Contract 1. The Commission reviews Contract 2 and finds it to be functionally equivalent to other GEPS agreements and adds it to the competitive products list. Simultaneously, the Commission asks that a data collection report be filed with regard to Contract 1. The Postal Service provides the cost, volume, and revenue data associated with Contract 1 as ordered, and the data is made public on the Commission's website. The Widget Factory reviews the data and determines that the Postal Service has additional margin for profit that could be undercut without its cost coverage declining below statutorily required levels. The Widget Factory then contacts the Postal Service, threatening to cancel Contract 2 and seek another expedited delivery service to meet its mailing needs, unless the Postal Service agrees to further reductions in the rates.

Identified harm: Postal Service competitors could use the information to the detriment of the Postal Service.

Hypothetical: The information in the performance report is disclosed publicly on the Postal Regulatory Commission's website. Other expedited delivery service providers

review the information. By applying the statutory limits below which the Postal Service is not authorized to provide competitive products, the competitors are able to fairly accurately determine the lowest price at which the Postal Service can offer international expedited delivery services. The competitors then offer similar services at lower prices until the Postal Service's market share declines. Additionally, the competitors would be able to identify GEPS customers, identify them as high-volume mailers of expedited packages and target them for sales and marketing efforts, essentially "cherry-picking" from the Postal Service's customer base.

Identified harm: Public disclosure of information in the report would be used by competitors of the customer to its detriment.

Hypothetical: A competitor of the Postal Service's customer obtains a copy of the unredacted version of the report from the Postal Regulatory Commission's website. The competitor analyzes the workpapers to assess the customer's underlying costs, and uses that information to identify lower cost alternatives to compete against the Postal Service's customer. The competitor could also use the disaggregated mailing profile information in the workpapers, which includes distribution by weight and country group, to acquire intelligence about the Postal Service's customer's mailing patterns, customer base, and market strengths. The competitor then uses this intelligence to direct its marketing and sales efforts to the regions, products, or target markets revealed by the information in the workpapers, to the detriment of the Postal Service's customer.

Identified harm: Public disclosure of information in the report, which concerns a GEPS contract involving postage payment through a PC Postage Provider, would be used by the competitors of the PC Postage Provider, to the Postal Service's and/or the PC Postage Provider's detriment.

Hypothetical: A firm competing with the customer's PC Postage Provider obtains a copy from the Commission's website of the unredacted version of a report concerning a GEPS contract involving postage payment through a PC Postage Provider. The firm uses the information to assess the PC Postage Provider's revenue sources and growth opportunities, and thereby develop benchmarks for competitive alternatives. In addition, disclosure of such information could provide leverage to other PC Postage Providers in their future negotiations with the Postal Service.

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

The Postal Service maintains that the redacted portions of 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 both private sector integrators and foreign postal administrations), as well as their consultants and attorneys. Additionally, the Postal Service believes that 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.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials in all respects.