

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

DISCOVER NSA

Docket No. MC2011-19

DISCOVER NSA

Docket No. R2011-3

**NOTICE OF THE UNITED STATES POSTAL SERVICE  
OF FILING OF USPS-MC2011-19/R2011-3/NP1**

(March 26, 2013)

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

**USPS-MC2011-19/R2011-3/NP1 Nonpublic Materials Provided in  
Response to Chairman's Information  
Request No. 3, Question 8**

As indicated, USPS-MC2011-19/R2011-3/NP1 contains the monthly volumes for Discover Financial Services, Inc.'s (DFS) Priority Mail for (1) the Baseline Year (the 12-month period ending on the implementation date) of the DFS, (2) Contract year 1, and (3) Contract Year 2 (to the extent practicable). Because it includes commercially sensitive information, it is being filed under seal.

Respectfully submitted,

UNITED STATES POSTAL  
SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Pricing and Product  
Support

Brandy Osimokun

475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2982, Fax -6187  
[Brandy.A.Osimokun@usps.gov](mailto:Brandy.A.Osimokun@usps.gov)  
March 26, 2013

## 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 Postal Service hereby applies for non-public treatment of the unredacted answer to Question 8 of the Response of the United States Postal Service to Chairman's Information Request No. 3. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified material. The Postal Service further requests that the Commission order that the duration of such treatment of customer identifying information be extended indefinitely.

**(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, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, 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), (b)(4).<sup>1</sup> Because the portions of the materials which the Postal

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<sup>1</sup> 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 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.

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.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are 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).<sup>2</sup> 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 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;**

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-

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<sup>2</sup> 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.

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 responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Brandy A. Osimokun, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is [brandy.a.osimokun@usps.gov](mailto:brandy.a.osimokun@usps.gov) and whose telephone number is 202-268-2982.

**(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 Postal Service has provided the monthly volumes for DFS Priority Mail for the baseline year of the DFS NSA, Contract Year 1 and Contract Year 2.

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

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm. The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result.

The response to CHIR No. 3, Question 8 includes specific information such as volume and mailer profile information. This information is highly confidential in

the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information.

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

Harm: Competitors could use DFS' Priority Mail monthly volume information to assess its vulnerabilities and focus sales and marketing efforts to DFS' detriment.

Hypothetical: In essence, if DFS' Priority Mail monthly volumes for the past three years were made public, a competitor of DFS could pass this information along to its sales and marketing functions. The competitor could assess DFS' monthly volume trends and then target its advertising and sales efforts at actual or potential customers of DFS for that type of product or offering, hindering DFS' ability to reach out effectively to these customers. For these reasons, release of any of the non-public information contained in CHIR No. 3, Question 8 would pose actual commercial harm to DFS, 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 redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such 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 it determined should be withheld due to commercial sensitivity, other than customer identifying information. The Postal Service believes that customer-identifying information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. Disclosure of customer identifying information leaves the Postal Service vulnerable to competitive "cherry-picking." Customers may seek to extend or renew their contracts, but the implementation of a new 10-year period of non-public treatment with each renewed contract does not affect the expiration of non-public treatment of the same information under the original contract. Therefore, the Postal Service seeks indefinite non-public treatment of the customer's name, address and other identifying information in the non-public materials.

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

None.