

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

COMPETITIVE PRODUCT LIST
ADDING ROUND-TRIP MAILER

Docket No. MC2013-57

COMPETITIVE PRODUCT LIST
ADDING ROUND-TRIP MAILER (MC2013-57)

Docket No. CP2013-75

**NOTICE OF FILING OF NONPUBLIC LIBRARY REFERENCE
USPS-LR-MC2013-57/NP7**

(January 17, 2014)

The United States Postal Service hereby provides notice of filing material under seal as a Category 4 nonpublic library reference. The below listed library reference is associated with the Postal Service's response to Chairman's Information Request No. 1, filed today, January 17, 2014:

USPS-LR-MC2013-57/NP7 Updated Netflix and GameFly FCM Volumes

The library reference consists of an Excel workbook containing precise volumes and revenues for both Netflix, Inc. and GameFly, Inc., which under good business practice would not be publically disclosed. Accordingly, an Application for Non-Public Treatment for the protection of the Netflix and GameFly data is being submitted with this pleading as Attachment A.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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**APPLICATION FOR NONPUBLIC TREATMENT
OF LIBRARY REFERENCE USPS-LR-MC2013-57/NP7**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225, the United States Postal Service hereby applies for nonpublic treatment of data filed under seal with the Commission as USPS-LR-MC2013-57/NP7. This material, which has been prepared in response to Chairman's Information Request No.1, contains volume and revenue information for both Netflix, Inc. and GameFly, Inc. through the first quarter of FY2014. It would be impossible to create a redacted version of the workbook without redacting every substantive cell of the workbook.

By operation of 39 U.S.C. § 410(c)(2), information of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public. 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). Because the information covered by this application falls within the scope of information not required to be disclosed publicly, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their nonpublic treatment.

(1) The rationale for claiming that the materials are nonpublic, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The workbook contained in USPS-LR-MC2013-57/NP7 contains commercial information, which under good business practice, would not be publicly disclosed. Therefore, it should be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).¹ The Postal Service believes that no mailer or mail service provider would assent to the very specific customer data contained in USPS-LR-MC2013-57/NP7 being publicly disclosed, and the Postal Service believes that no commercial enterprise would disclose such information regarding its customers.

(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 compliance with 39 C.F.R. § 3007.20(b), the Postal Service gives notice that it will inform counsel for Netflix and GameFly of the nature and scope of this filing, and its ability to address its confidentiality concerns directly with the Commission. The contact information for the counsels for Netflix and GameFly are as follows:

¹ 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.

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The Postal Service employee responsible for providing notice to the third parties with proprietary interest in the materials filed in this docket is John F. Rosato, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is John.F.Rosato@usps.gov and whose telephone number is 202-268-8597.

(3) A description of the materials claimed to be nonpublic 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 nonpublic;

The excel workbook submitted as part of USPS-LR-MC2013-57/NP7 contains volume and revenue information for both Netflix and GameFly through the first quarter of FY2014.

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

If the report contained in USPS-LR-MC2013-57/NP7 were to be disclosed publicly, the Postal Service considers it is quite likely that it, as well as the parties that are identified above, would suffer commercial harm. For each party, competitors could

use the data to draw business away from each affected party, thereby causing the affected party to lose revenue.

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

Harm: A mailer loses revenue to a competitor.

Hypothetical: USPS-LR-MC2013-57/NP7 is disclosed publicly. Mailer A's volumes and revenues are disclosed. Company B, a business in competition with Mailer A, obtains a copy of the unredacted version of the financial work papers. Company B analyzes the work papers to assess Mailer A's underlying shipping costs and market size. Company B uses that information as a baseline to target Mailer A's customer base and undercut Mailer A's prices.

Harm: The Postal Service loses revenue to a competitor.

Hypothetical: USPS-LR-MC2013-57/NP7 is disclosed publicly. A competitor, whether a shipper or streaming business, uses the information to determine the market potential for drawing the business to digital household transmission from the mail.

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

The Postal Service maintains that the materials filed nonpublicly should be withheld from persons in the mailing industries, as well as their consultants and attorneys, and from any customers or potential customers of mailing industry participants.

(7) The length of time deemed necessary for the nonpublic materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that nonpublic materials shall lose nonpublic 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 foregoing reasons, the Postal Service requests that the Postal Regulatory Commission grant its application for nonpublic treatment of the report contained in USPS-LR-MC2013-57/NP7.