



January 30, 2015

Honorable Shoshana Grove  
Secretary  
Postal Regulatory Commission  
901 New York Avenue, NW, Suite 200  
Washington, DC 20268-0001

Dear Ms. Grove:

Pursuant to 39 U.S.C. § 407(d)(2), and consistent with Order No. 1865 granting the Postal Service's Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, the Postal Service is providing copies of correspondence between the Postal Service and multiple foreign postal operators regarding certain EMS rates. The Postal Service has marked the non-public versions of the documents as "Confidential" and "Non-Public" because the documents contain information considered confidential and commercially sensitive by the affected postal operators and the Postal Service.

The Postal Service considers certain portions of the documents to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the documents contain the commercial information of the affected postal operators, and as such, certain portions of the instruments are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of the documents under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that any of the documents become subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operators.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anthony Alverno".

Anthony Alverno  
Chief Counsel  
Global Business & Service Development

Enclosures

## **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 the enclosed EMS correspondence between the Postal Service and multiple foreign postal operators regarding certain EMS rates (the “Letters”). The Postal Service is transmitting the Letters to the Postal Regulatory Commission (“Commission”) in accordance with 39 U.S.C. § 407(d) and consistent with Order No. 1865 granting the Postal Service’s Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, filed on September 19, 2013. The unredacted Letters are being filed under seal, while redacted copies are included as an enclosure to this transmittal. The Postal Service hereby 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); 5 U.S.C. § 552(b)(3); 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>1</sup> Because the portions of materials filed non-publicly 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 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;**

The Postal Service believes that the postal operators that are senders or receivers of the Letters are the only third parties with a proprietary interest in the materials. Due to language differences, cultural sensitivities, and intricacies of the Postal Service's relationships 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.<sup>2</sup> The Postal Service identifies as an appropriate contact person Haley Eubanks, International Postal Affairs, United States Postal Service. Ms. Eubanks' phone number is (202) 268-4315, and her email address is Haley.N.Eubanks@usps.gov. The Postal Service has already informed each postal operator, in compliance with

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<sup>1</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.

<sup>2</sup> 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 response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

39 C.F.R. § 3007.20(b) about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

**(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;**

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting documents concerning EMS service with foreign postal operators that are agencies of foreign governments. The documents transmitted consist of Letters that define the terms on which the Postal Service and the relevant operators exchange Express Mail Service (EMS) items under the EMS Cooperative Pay-for-Performance Plan, including rate information. The Postal Service maintains that the redacted portions of the documents should remain confidential.

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

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Competitors could use the information to undermine the Postal Service's position in negotiations, as well as the position of the foreign postal operators that are senders or receivers of the Letters. Competitors could also use the identity of the relevant foreign postal operators to target those countries for business to the detriment of the Postal Service. The Postal Service considers these to be highly

probable outcomes that would result from public disclosure of the redacted material.

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

Harm: Foreign postal operators could use the rate and discount information to undermine the Postal Service's position in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the Postal Service in an effort to lower the rates charged for delivery of EMS in the United States.

Harm: Foreign postal operators could use the rate and discount information to undermine the position of the foreign postal operators that are senders or receivers of the Letters in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the foreign postal operators that are senders or receivers of the Letters in an effort to lower the rates charged for delivery of EMS in the those countries. Alternatively, competitors use the pricing information to develop competing products.

Harm: Competitors could use the knowledge that the Postal Service has entered into arrangements for discounted EMS rates with certain foreign postal operators to the Postal Service's detriment when negotiating business arrangements with shippers in those countries.

Hypothetical: The identity of the countries with which the Postal Service has entered into arrangements for discounted EMS rates is released to the Public.

Another expedited delivery service's employee monitors the filing of this

information and passes the information along to its sales and marketing functions. The expedited delivery service determines that those countries provide a strategic market for increased competition, and then advertises itself to those countries' postal operators as offering better rates and performance thresholds than 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 private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operators that already have access to this information, actual or potential customers of the Postal Service for products related to inbound EMS and Outbound Express Mail International, 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.

LEA EMERSON  
EXECUTIVE DIRECTOR  
INTERNATIONAL POSTAL AFFAIRS



December 12, 2014



Dear [REDACTED]

I am writing to inform you of our inbound EMS rates under the EMS Cooperative Pay-for-Performance (PfP) program for calendar year 2015. These rates were notified to UPU EMS operators via UPU Circular number 163 (see enclosure) and will go into effect on January 1, 2015. The EMS PfP rates of [REDACTED] SDR per item and [REDACTED] SDR per kilogram are the preferred rates available to [REDACTED] as a valuable EMS PfP participating operator.

As announced in the enclosure (UPU Circular in footnote 4), USPS will charge "a reciprocal rate if a designated operator charges more than our published PFP or non-PFP rates." As your rate notified is higher than the USPS calculated EMS PfP rate, we will implement a reciprocal flat rate of [REDACTED] SDR per item for the delivery of EMS to the United States effective January 1, 2015.

As a preferred partner and in the interest of promoting growth in our mutual EMS service, we are willing to offer [REDACTED] percent discount off the preferred EMS PfP rates on a reciprocal basis. This would reduce the reciprocal flat rate from [REDACTED] SDR to [REDACTED] SDR per item.

Based on past practice, we assume that [REDACTED] will also apply a reciprocal rate with USPS for calendar year 2015. Assuming that [REDACTED] follows such past practice, the following rates will apply for calendar year 2015:



475 L'ENFANT PLAZA SW RM 5136  
WASHINGTON, DC 20260-0004  
202-268-2574  
FAX: 202-268-4321  
WWW.USPS.COM

Please confirm your acceptance of these rates for 2015 by counter signature below and return a copy of the signed letter to Ms. Modi Delgado, email: [modi.s.delgado@usps.gov](mailto:modi.s.delgado@usps.gov).

We look forward to continuing to grow the important EMS business between us.

Sincerely,



Lea Emerson



**Pay-for-performance partners agreement form**

EMS operators entering into the agreement:

[Redacted]

Year/quarter	Percentage of delivery charge pad for penalized items below threshold	Threshold
2015 Q1	[Redacted]	[Redacted]

Partner 1

I, as a representative of (EMS operator) [Redacted], hereby agree that my organization will participate in the EMS Pay-for-performance [Redacted] tions.

Date: 7-11-2014 Signature: [Redacted]

Partner 2

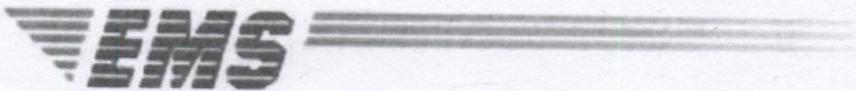
I, as a representative of (EMS operator) U.S. Postal Service, hereby agree that my organization will participate in the EMS Pay-for-performance Plan under the above-stated conditions.

Date: JAN 15, 2015 Signature: Lea Emerson

Please return to:

EMS Unit  
International Bureau  
Universal Postal Union  
Weltpoststrasse 4  
P.O. Box 312  
3000 BERNE 15  
SWITZERLAND

Fax: +41 31 351 52 00  
E-mail: EMS.Unit@upu.int



Pay-for-performance Partners' Agreement Form

EMS Operators entering the agreement:

United States Postal Service, USA

Date of Implementation: January 1, 2015

Year/ Quarter	% delivery charge paid for penalized items below threshold	2015 Threshold and then in accordance with the EMS PFP Plan
2015 / 1 onwards	[REDACTED]	[REDACTED]

I, as a representative of \_\_\_\_\_, hereby agree that my Administration will participate in the EMS Pay-for-performance Plan under the above-stated conditions.

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Date: 2015-01-08

I, as a representative of United States Postal Service, hereby agree that my Administration will participate in the EMS Pay-for-performance Plan under the above-stated conditions.

Signature: Lea Emerson  
LEA EMERSON  
Executive Director, International Postal Affairs

Date: December 30, 2014

Please return to the EMS Unit:  
International Bureau of the UPU  
EMS Unit  
Case postale  
3000 Berne 15  
Switzerland  
FAX: + 41 31 351 52 00  
E-mail: EMSUnit@upu.int