



December 9, 2014

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), the Postal Service is providing a copy of an EMS Pay-for-Performance Partners' Agreement form between the Postal Service and a foreign postal operator. The Postal Service has marked the non-public version of the document as "Confidential" and "Non-Public" because the document contains information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of the document 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 document contains the commercial information of the affected postal operator, and as such, certain portions of the instrument is subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of the document 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 document becomes 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 blue ink that reads "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 Pay-for-Performance Partners' Agreement form ("Agreement"). The Postal Service is transmitting the Agreement to the Postal Regulatory Commission ("Commission") in accordance with 39 U.S.C. § 407(d). The unredacted Agreement is being filed under seal, while a redacted copy is 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).¹ Because the portions of materials filed non-publicly fall within the scope of information not

¹ 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.

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 foreign postal operators that is party to the Agreement is 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 operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operators.² The Postal Service identifies as an appropriate contact person Haley McKittrick, International Postal Affairs, United States Postal Service. Ms. Eubanks' phone number is (202) 268-4315, and her email address is Haley.N.McKittrick@usps.gov. The Postal Service has already informed the postal operator, in compliance with 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.

² 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.

(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 a foreign postal operator that is an agency of a foreign governments. The document transmitted consist of an Agreement that define the terms on which the Postal Service and the foreign postal operator exchange Express Mail Service (EMS) items under the EMS Cooperative Pay-for-Performance Plan, including delivery performance thresholds and 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 assess the offers and representations made to customers by the Postal Service and other EMS providers that partner with the Postal Service for any possible comparative vulnerabilities and to focus sales and marketing efforts on those areas, to the detriment of the Postal Service and other EMS providers. Competitors could also use the identity of the foreign postal operators that have signed Agreements 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: Competitors could use performance thresholds to assess vulnerabilities and focus sales and marketing efforts to the postal operators' detriment.

Hypothetical: The information about EMS performance thresholds in the document 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 competitor then uses the postal performance level as a concrete comparison point, advertising itself to potential customers as offering performance better than the postal operators engaged in the exchange of EMS.

Harm: Competitors could use the knowledge that the Postal Service has signed Agreements 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 signed Pay-For-Performance agreements 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 competitor then uses this information to deduce that the Postal Service provides discounted rates to those countries. 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.

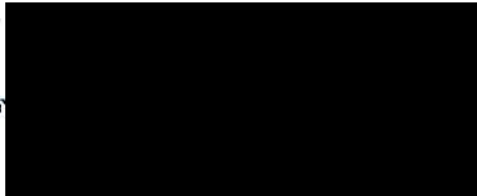
None.

Conclusion

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



Pay-for-performance Partners' Agreement F



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	Threshold
2015/1 onwards		

I, as a representative of of Administration will participate in the EMS Pay for performance

Signature:

Print Name:

Date:

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: October 9, 2014

Please return to the EMS Unit:
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