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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

PRESIDING OFFICER'S
RULING NO. R97-1/52

Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING ON POSTAL SERVICE MOTION FOR CLARIFICATION AND RECONSIDERATION OF PRESIDING OFFICER'S RULING NO. R97-1/46

(October 23, 1997)

On October 21, the Postal Service filed a motion requesting partial reconsideration and clarification of several portions of Presiding Officer's Ruling No. R97-1/46, which in relevant part granted the Association of Alternate Postal System's (AAPS) motion to compel a response to its Interrogatory AAPS/USPS-6. Motion of United States Postal Service for Partial Reconsideration and Clarification of P.O. Ruling No. R97-1/46, October 21, 1997 (Motion). The interrogatory at issue asks if the Postal Service has "conducted or commissioned a study on alternate delivery since the SAI [Strategic Analysis, Inc.] report revealed during the course of Docket MC95-1," and, if so, to provide a copy of such study or report, or a description of any work in progress. AAPS/USPS-6.

The Postal Service requests clarification of several matters raised by the Presiding Officer's Ruling in order to comply with the mandate to provide the underlying factual data from the ongoing SAI research. Specifically, the Postal Service interprets the Ruling to: (1) restrict the required production of SAI research information to factual materials, including underlying data and collected information but specifically excluding both the Postal Service *and* the SAI researchers' comments and conclusions on, and

analysis and/or interpretation of, the aforementioned data; and (2) allow for Postal Service redaction of the company and product names of alternative delivery providers, while still requiring provision of the identification of the alternative delivery providers by size, areas served (as through a listing of Zip Code areas served), business practices and strategies, pricing,¹ etc. Motion at 1-4.

The Postal Service's Motion also notes that the protective conditions associated with gaining access to the materials at issue do not expressly require the requester to acknowledge his or her understanding of the protective conditions, to certify his or her eligibility to receive access, or to agree to adhere to all other responsibilities attending such access. Motion at 4. Further, the current "Certification upon Return of Protected Materials" does not require that the requester restate his or her eligibility to receive access and offer a representation concerning compliance with all other protective conditions. Motion at 4-5. Accordingly, it is asked that: (1) the certification for access to protected materials be amended to include the following statements:

I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence the materials obtained from the Commission in accordance with all of the protective conditions set out above.

and (2) that paragraph 1 of the certification upon return of protected materials be amended as follows:

I certify that I am, as of the date indicated below, still eligible to receive access to materials under paragraph 1 of the protective conditions. I further certify that I have complied with all conditions, and have maintained in strict confidence the materials obtained from the Commission in accordance with all of the protective conditions set out above.

Id.

¹ In its Motion, the Postal Service, perhaps inadvertently, questions the required provision of alternate delivery providers' prices, but offers no clear argument for their exclusion. Motion at 4. As this information is directly relevant to the proceeding and subject to adequate protective conditions, it remains a part of the materials required for production.

I find the Postal Service's interpretation of the Ruling to exclude provision of the SAI researchers' comments and conclusions on, and analysis and/or interpretation of, the underlying factual data, as described herein, consistent with the intent of the Ruling, as is the Service's understanding that the company and product names of alternative delivery providers may be redacted. The proposed amendments to the protective conditions also are reasonable and acceptable for incorporation. The revised protective conditions are provided in Attachment A to this Ruling.

In addition to the foregoing clarifications requested, the Postal Service asks for reconsideration of the Presiding Officer's Ruling requiring production of the SAI researchers' conclusion about the market's reaction to a price change, arguing that such information is not factual but rather is "confidential, predecisional analysis" within the realm of privileged, nonpublic material and therefore not subject to disclosure. Motion at 2. A ruling on this issue is deferred pending AAPS' Answer. In the interim, the Postal Service may withhold this specific information from disclosure.

RULING

The Motion of the United States Postal Service for Partial Reconsideration and Clarification of P.O. Ruling No. R97-1/46, filed October 21, 1997, is granted in part and deferred in part, as specified above and subject to the conditions prescribed in the body of this ruling.



Edward J. Gleiman
Presiding Officer

**ATTACHMENT A: STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS**

The following protective conditions limit access to materials provided in response to P.O. Rulings R97-1/46 and 52. Individuals seeking to obtain access to that library reference must agree to comply with these conditions, and complete the attached certifications.

1. Only those persons who are either:
 - (a) employees of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) a participant in Postal Rate Commission Docket No. R97-1; or a person employed by such a participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. R97-1; shall be granted access to materials provided in response to P.O. Rulings R97-1/46 and 52. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to this material. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design or the competitive structuring and composition of bids, offers or proposals.
2. No person granted access to materials provided in response to P.O. Rulings R97-1/46 and 52 is permitted to disseminate those materials in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any participant's access shall be
 - (a) the date on which the Postal Rate Commission closes the evidentiary record in Docket No. R97-1; or
 - (b) the date on which that participant formally withdraws from Docket No. R97-1; or
 - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R97-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel

in Docket No. R97-1 of the termination of any such business and consulting arrangement or retainer or affiliation which occurs before the closing of the evidentiary record.

4. Immediately after the Commission issues its recommended decision in Docket No. R97-1, a participant (and any person working on behalf of that participant) who has obtained a copy of materials provided in response to P.O. Rulings R97-1/46 and 52 shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
5. The duties of any persons obtaining access to materials provided in response to P.O. Rulings R97-1/46 and 52 shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
6. All persons who obtain access to materials provided in response to P.O. Rulings R97-1/46 and 52 are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially-sensitive, and privileged information.
7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in response to P.O. Rulings R97-1/46 and 52 filed in Docket No. R97-1.
8. The duty of nondisclosure of anyone obtaining access to materials provided in response to P.O. Rulings R97-1/46 and 52 is continuing, terminable only by specific order of the Commission.
9. Any Docket No. R97-1 participant or other person seeking access to materials provided in response to P.O. Rulings R97-1/46 and 52, by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to materials provided in response to P.O. Rulings R97-1/46 and 52 in Docket No. R97-1 has been authorized by the Commission.

The copy obtained is marked on every page with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. R97-1.

I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence the materials obtained from the Commission in accordance with all of the protective conditions set out above.

Name

Firm

Title

Representing

Signature

Date

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

Pursuant to the Certification which I previously filed with the Commission with respect to information received in accordance with Presiding Officer's Rulings R97-1/46 and 52, on behalf of myself and/or the party which I represent (as indicated below), affirm as follows:

1. I am, as of the date indicated below, still eligible to receive access to materials under paragraph 1 of the protective conditions. Further, I have complied with all conditions, and have maintained in strict confidence the materials obtained from the Commission in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R97-1.
3. I have returned the information to the Postal Rate Commission.
4. I have surrendered to the Postal Rate Commission/destroyed all copies of the information which I obtained or which have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____