

PRESIDING OFFICER'S RULING
NOS. MC99-1/1 and MC99-2/1

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Renewal of Experimental Classification and Fees
for Weight-Averaged Nonletter-Size Business Reply Mail

Docket No. MC99-1

Classification and Fees for Weight-Averaged
Nonletter-Size Business Reply Mail

Docket No. MC99-2

RULING ON OCA MOTION SEEKING EXPEDITED ACCESS TO
PROTECTIVE CONDITIONS FOR SCHENK WORKPAPER

(March 29, 1999)

Order No. 1233, issued March 16, 1999, noted the Service's request that the Commission apply protective conditions to witness Schenk's workpaper 1 (filed *in camera* in Docket No. MC99-2) and set April 5, 1999 — one day prior to the prehearing conference in Docket No. MC99-1 — as the deadline for answers. Conditions suggested by the Service would restrict access to, and prohibit public disclosure of, the workpaper's contents. See March 10, 1999 Motion of the United States Postal Service [in Docket No. MC99-2] Requesting Protective Conditions for Workpaper 1 of Witness Leslie Schenk at 2, citing P.O. Ruling No. MC97-1/1, Appendix C (issued January 24, 1997).

In a combined filing, the OCA answers the Postal Service's motion and moves for expedited access to the Schenk workpaper. March 26, 1999 Motion of the Office of the Consumer Advocate to Obtain Expedited Access to Schenk Workpaper 1 and Response to Motion for Protective Conditions. Therein, OCA states that it has no objection to adoption of the protective conditions referred to in the Postal Service's

motion, and agrees to abide by them. *Id.* at 3. Nevertheless, OCA asks that it be allowed to obtain access to the workpaper sooner than the established deadline for answers to the motion otherwise would allow so it can prepare for the upcoming conference. In support of its position, OCA asserts that it needs immediate access to the workpaper to properly review the Service's request for an extension of the experiment. In particular, it says it needs to consider data on the volume of mail at the experimental sites to determine certain revenue and cost effects. *Id.* at 1-2. The OCA also notes actions it has taken to facilitate issuance of a ruling by close of business on Monday, March 29, 1999, such as serving the motion by e-mail, facsimile or other expedited means of service, and suggesting that objections to the requested access be communicated to the Commission by telephone or other expedited means no later than 3 p.m. on March 29th. *Id.* at 3-4.

Given the proximity of the dates for responses to the Service's motion in Docket No. MC99-2 and the prehearing conference in the companion docket, obtaining access to the workpaper in question is understandably problematic for participants concerned that the data submitted *in camera* may have a significant bearing on settlement issues. The OCA's timetable provides a limited opportunity for participants to object to expedited access, but its request is narrow and straightforward. Moreover, the OCA agrees, without exception, to the conditions the Service has proposed.

Given this situation and the absence, as of mid-afternoon today, of any communication indicating opposition to the OCA's request, I will grant the OCA's motion. Access is conditioned on the terms set out in the appendix to this ruling. Apart from inserting the designations for both captioned dockets at appropriate points, these terms are the same as those used successfully in the predecessor docket (MC97-1) in response to the Service's request for conditional access to another Schenk workpaper.

RULING

1. The March 26, 1999 OCA Motion to Obtain Expedited Access to Schenk Workpaper 1 is granted on the terms set out in the appendix to this ruling.

George A. Omas
Presiding Officer

Statement of Compliance with Protective Conditions
Established in P.O. Ruling MC97-1/1

The following protective conditions limit access to Postal Service witness Schenk's Workpaper 1. Individuals seeking to obtain access to this workpaper must agree to comply with these conditions, and to complete the certifications provided in this appendix.

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. participants in Postal Rate Commission Docket Nos. MC99-1 and MC99-2; or
 - c. 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 Nos. MC99-1 and MC99-2;shall be granted access to Schenk Workpaper 1.
2. Any Docket No. MC99-1 or Docket No. MC99-2 participant or person engaged in, or with an ownership or management interest in, any business which is a film processor or which is otherwise engaged in competition with Nashua Photo, Mystic Color Lab, or Seattle FilmWorks, is prohibited from obtaining access to Schenk Workpaper 1.
3. A person who is an independent analyst, agent, consultant, contractor, or legal counsel retained on behalf of a Docket No. MC99-1 or Docket No. MC99-2 (otherwise disqualified from access to Schenk Workpaper 1 under the terms of paragraph 2 is eligible to obtain access to that Workpaper.
4. No person granted access to Schenk Workpaper 1 is permitted to disclose any mailer-specific incoming BRM volume data (or data from which such volume may be derived or inferred) from that Workpaper to
 - a. any person engaged in or employed by, or with an ownership or management interest in, any business which is a film processor or

otherwise engaged in competition with Nashua Photo, Mystic Color Lab, or Seattle FilmWorks; or

b. any person not authorized to obtain access under these or other such conditions approved by the Commission;

5. 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. MC99-1 or Docket No. MC99-2, as applicable; or

b. the date on which that participant formally withdraws from Docket No. MC99-1 or Docket No. MC99-2, as applicable;

c. the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. MC99-1 or Docket No. MC99-2 participant on whose behalf that person obtains access;

6. Immediately after the Commission issues its recommended decision in Docket No. MC99-2, a participant (and any person working on behalf of that participant) who has obtained a copy of Schenk Workpaper 1 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.

7. The duties of any persons obtaining access to Schenk Workpaper 1 shall apply to data 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 documents or files, as well as

to

fully disclosed documents or files.

8. All persons who obtain access to Schenk Workpaper 1 are required to protect any volume data (or information from which such volumes may be derived or inferred) by using the same degree of care, but no less than a reasonable degree of care, to prevent unauthorized disclosure of these

data as those persons, in the ordinary course of business, would be expected to use to protect their own trade secrets and other internal, confidential, commercially-sensitive, and privileged data.

9. These conditions shall apply to any revised, amended, or supplemental versions of Schenk Workpaper filed in Docket No. MC99-2.
10. No confidential data contained in or derived from Schenk Workpaper 1 will be transmitted by unencrypted e-mail.
11. Data obtained through access to Schenk Workpaper 1 will not be disclosed in statements made and/or documents filed in this proceeding or elsewhere without first obtaining permission from the Commission, by motion, with notice to all participants. Participants will have seven days to comment on whether and why disclosure should be denied before a decision will be made on any such motion.
12. The duty of nondisclosure of anyone obtaining access to the confidential information contained in Schenk Workpaper 1 is continuing, terminable only by specific order of the Commission obtained using the procedure described in paragraph 11.
13. Any Docket No. MC99-1 or Docket No. MC99-2 participant or other person seeking access to Schenk Workpaper 1, by requesting access, consents, consents these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to Schenk Workpaper 1 in Docket No. MC99-2 has been authorized by the Commission in response to a Postal Service motion served upon all participants, and ruled on following a period during which participants could object if they believed access was inappropriate.

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. MC99-1 or MC99-2.

I will maintain in strict confidence the information obtained from the Commission in accordance with Presiding Officer's Ruling No. MC99-1/1.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

CERTIFICATION UPON RETURN OF PROTECTED MATERIALS

Pursuant to the Certification I filed with the Commission regarding information received in accordance with Presiding Officer's Ruling MC99-1/1, I affirm, on behalf of myself and/or the party I represent, as follows:

1. I have maintained in strict confidence the information provided by the Commission in accordance with Presiding Officer's Ruling MC99-1/1.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. MC99-1 or Docket No. MC99-1.
3. I have returned the information to the Postal Rate Commission.
4. I have surrendered to the Postal Rate Commission or destroyed all copies or duplicates of the information I obtained.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____