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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

ORDER NO. 1283

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Before Commissioners: Edward J. Gleiman, Chairman;
George A. Omas, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway;
and W.H. "Trey" LeBlanc III

Complaint on Post E.C.S.

Docket No. C99-1

ORDER ON PROTECTIVE CONDITIONS
APPROPRIATE FOR APPLICATION TO
SENSITIVE INFORMATION PRODUCED
IN THIS PROCEEDING

(January 28, 2000)

In Ruling No. C99-1/13, the Presiding Officer certified a procedural question to the Commission for its determination. Noting a significant disagreement among the parties regarding what protective conditions should be adopted to protect sensitive Postal Service information that might be produced in this case, and the necessity of ruling on the production of purportedly privileged material to advance evidentiary proceedings, the Presiding Officer ruled that:

The question of conditions necessary and appropriate for protection of sensitive information to be provided by the Postal Service at the direction of the Presiding Officer or of the Commission in this proceeding is certified to the Commission.

The current controversy was initiated by Complainant's Motion for Protective Order,¹ which it filed contemporaneously with a number of discovery requests directed to the Postal Service. The Service opposed the motion in a Response filed May 25, arguing generally that production of information sought by UPS would not be warranted under any set of conditions, and more particularly that Complainant's proposed conditions "are far more lax than those applied against UPS and other participants in Docket No. R97-1."² In view of this opposition, Presiding Officer's Ruling No. C99-1/2 afforded the Service and other participants an opportunity to proffer alternative proposed protective conditions.

The Postal Service submitted its preferred language for protective conditions—which differ from those proposed by Complainant in most respects and also incorporate additional procedures—in a Response filed on June 8, 1999.³ The Office of the Consumer Advocate also filed a response, expressing the view that protective conditions should apply to release of Postal Service information only where the Service has shouldered its burden of clearly documenting the likelihood of competitive harm.⁴

In Ruling No. C99-1/4, the Presiding Officer summarized the parties' responses, and observed that they concurred on one point: that it would be premature to establish a single set of protective conditions at that time with the expectation that it would be appropriate for application in every instance. Based on his anticipation that protective conditions might have to vary, depending on the nature of the information at issue, the Presiding Officer deferred action on Complainant's motion until such time as the adoption of protective conditions became necessary.

¹ Motion of United Parcel Service for a Protective Order, May 14, 1999.

² United States Postal Service Response to Motion of United Parcel Service for a Protective Order, May 25, 1999, at 2.

³ Response of the United States Postal Service to P.O. Ruling No. C99-1/2 with Respect to Protective Conditions, June 8, 1999.

⁴ Office of the Consumer Advocate Comments in Response to P.O. Ruling No. C99-1/2, June 8, 1999, at 3-4.

Proper application of protective conditions in formal proceedings. With the filing of the Postal Service's Descriptive List of Responsive Documents and Associated Privileges,⁵ it became possible to begin assessing the range and character of materials responsive to some of Complainant's interrogatories, as well as the grounds on which the Service has asserted claims of commercial sensitivity and other privileges. As the Commission has established in its formal proceedings in the past, this process consists of:

Balanc[ing] the potential competitive harm of disclosure against the strong public interest in favor of empowering each participant to obtain all the evidence needed to prove its case. As the Commission has recognized in past controversies, in accordance with long-established principles governing discovery in civil litigation, evidentiary privileges are exceptions to the general rule that proceedings must be conducted in public view.

Docket No. R97-1, Presiding Officer's Ruling No. R97-1/62, November 17, 1997, at 8.

A variety of tools are available for making, and acting upon, this assessment without compromising the sensitive aspects of the controversial information. The Presiding Officer may direct that responsive documents or other materials be produced for *in camera* inspection.⁶ Depending on the nature of the material found to be privileged, he may rule that it qualifies for full protection against disclosure.⁷ Alternatively, he may order its disclosure in redacted form, "allowing access only to that information necessary to serve the purpose for which release was granted."⁸ The Presiding Officer may also prescribe other terms tailored to the release of specific forms of sensitive information.⁹ Thus, if the range of controversial materials sought in Complainant's discovery requests, and the varying number and seriousness of the Service's claims of privilege for different items, warrant disclosure under different terms,

⁵ United States Postal Service Provision of Descriptive List of Responsive Documents and Associated Privileges Pursuant to Presiding Officer's Ruling No. C99-1/9, August 30, 1999.

⁶ See § 31a of the Commission's rules of practice (39 C.F.R. § 3001.31a); see also Manual for Complex Litigation § 21.431 (3rd ed. 1995).

⁷ Manual for Complex Litigation, *ibid.*

⁸ *Id.*, § 21.432

⁹ *Ibid.*

as the Presiding Officer anticipates, the means are available to implement such an approach.

Need for a set of uniform conditions governing access. At the same time, however, it is necessary to establish regular procedures that will define the terms of access to sensitive information which the Presiding Officer or the Commission orders to be disclosed. Adopting a set of such procedures in advance of compelled disclosure is the approach that has evolved in the Commission's proceedings. Illustratively, in the last omnibus rate case, beginning with Ruling No. R97-1/46, the Presiding Officer directed the production of several types of sensitive Postal Service information under a set of conditions adopted in that ruling.¹⁰ While they were clarified and amended to a limited extent,¹¹ this uniform set of conditions governed the production of sensitive information throughout the case.

Similarly, in Docket No. MC98-1—a proceeding that also involved an electronically-based Postal Service innovation facing an array of potential competitors, Mailing Online Service—a uniform set of protective conditions was adopted to govern access to a commercially sensitive marketing plan and proprietary software. The Postal Service explicitly requested adoption of the same protective conditions approved in Presiding Officer's Ruling No. R97-1/52 in the preceding omnibus rate case. The Presiding Officer in MC98-1 granted the Service's motion in Presiding Officer's Ruling No. MC98-1/11, November 3, 1998.

In the Commission's institutional experience, uniform protective conditions of this type have worked well, allowing participants in proceedings controlled access to relevant information without compromising the commercial sensitivity or other privileged aspects of that information. For this reason, the Commission is inclined to regard the

¹⁰ Presiding Officer's Ruling No. R97-1/46, October 15, 1997. The protective conditions adopted in that ruling were clarified and amended slightly in Presiding Officer's Ruling No. R97-1/52, October 23, 1997. The conditions as amended were also applied in Presiding Officer's Ruling No. R97-1/62, November 17, 1997, which directed the Postal Service to provide sensitive contract information.

set of conditions used in the R97-1 and MC98-1 cases as a benchmark whenever the Postal Service or another party requests protection of relevant but demonstrably privileged information in formal proceedings. Of course, variations or departures from their terms may be justified, depending on the circumstances presented in a particular case.

One additional experience in a prior proceeding is instructive in this controversy. In Docket No. MC97-5, intervenor CAUUC sought to submit evidence in its direct case under a protective order. The Presiding Officer in that docket granted CAUUC's motion, over the Postal Service's objection, noting that CAUUC was requesting relief almost identical to that sought by the Service in Docket No. MC97-1. He also noted that in MC97-1 the Service had sought "far more restrictive conditions to assure that competitors...did not obtain access to each other's proprietary information." Presiding Officer's Ruling No. MC97-5/6, October 24, 1997, at 2.

Subsequently, during discovery, CAUUC also sought to submit certain commercially sensitive information responsive to a Postal Service interrogatory under a protective order. The Postal Service did not oppose CAUUC's motion, and the Presiding Officer granted it. Tr. 6/1518-26. Following adoption of the protective conditions—which were identical to those being used in the contemporaneous R97-1 proceeding—the Postal Service filed a motion for reconsideration of the ruling. Based on its assessment that the adopted protective conditions "could be interpreted to deny access to the handful of postal employees and consultants who are intimately familiar with the subject matter of this proceeding[.]"¹² the Service asked that four named Postal Service employees or consultants nonetheless be granted access to the protected materials, arguing "that its employees' and consultants' respective roles in competitive

¹¹ Presiding Officer's Ruling No. R97-1/52, *supra*. A special amendment was also adopted in Presiding Officer's Ruling No. R97-1/93, February 4, 1998, to allow counsel for a participant to continue to render legal advice on the applicability of the "double postage" rule to his client's prices.

¹² *Id.*, Motion of United States Postal Service for Partial Reconsideration of Presiding Officer's Ruling Granting Protective Conditions, December 18, 1997, at 3.

decision-making should not serve as a basis to deny access in the context of the information at issue here.”¹³

The Presiding Officer denied the Service’s motion, stating that the governing protective conditions “are being used to protect Postal Service information in Docket R97-1, and I expect the Postal Service to strictly adhere to them in this case.” Tr. 7/1649. While he deemed the Service’s denial of any competitive motivation for seeking access to be “reassuring,” he also found the proposed disclosure to individuals with some potential input into competitive decisionmaking to be “simply not good enough.” *Id.* at 1648, 1649.

Thus, consistent application of protective conditions to relevant but sensitive information may prove to be inconvenient, not only for the party called upon to produce the information, but also for participants seeking access through them. In view of this experience, one significant criterion to be considered in fashioning a set of conditions for a particular proceeding is their practicality. While the conditions should be devised to ensure effective protection, adopting unnecessarily stringent conditions in an overabundance of caution would interpose unjustifiable barriers to other parties’ rights of access to relevant information in the proceeding, and therefore should be avoided. Further, the procedural process should not permit parties to engage in dilatory practices, such as requesting protective conditions merely to impose delays. To that end, the entire process should not only accord participants their full due process rights, but be swift, for expeditious access to information permits participants the fullest opportunity to prepare their cases.

With these considerations in mind, the Commission will address the competing sets of protective conditions advanced by Complainant and the Postal Service below, grouped according to their major features.

Persons eligible for access. Complainant proposes provisions that would grant access to PRC employees on a need-to-know basis, and to this proceeding’s

¹³ *Ibid.*

participants, their counsel, and their witnesses or potential witnesses. The Postal Service opposes these terms of eligibility as far too lax, in view of Complainant's status as a competitor and the routine use of more restrictive conditions in recent Commission proceedings. According to the Service, the protective conditions should be a tightened version of the terms applied to PMPC contract materials in Docket No. R97-1. Specifically, the Service proposes conditions that would restrict access to participants in the proceeding and their independent outside counsel and consultants who are not involved in the party's competitive decisionmaking, as defined in its proposed provisions. Employees of the requesting party would not be eligible for access, regardless of their participation in competitive decisionmaking. However, the Service's proposed conditions contain a proviso that would allow counsel to continue to advise clients on the application of the "double postage" rule without disqualification, as in the amended protective conditions ultimately developed in Docket No. R97-1.

In pleadings responsive to the Postal Service's proposal,¹⁴ Complainant states that it agrees, reluctantly and only for purposes of this case, to restrict access to confidential information to its outside counsel and consultants, thereby voluntarily excluding UPS employees. However, UPS opposes the "involved in competitive decisionmaking" restriction incorporated in the Postal Service's alternative conditions on several grounds. Complainant claims the wording of the condition is vague, unnecessary, and could easily lead to future misunderstandings and disputes. Additionally, UPS argues that the restriction is excessive in comparison with the standards typically applied in civil litigation, which operate to bar only those who actually participate in the making of pricing, product design, and other competitive decisions. Adoption of the "involved in competitive decisionmaking" exclusion would unfairly tilt the balance in the Postal Service's favor, UPS argues, which would be

¹⁴ Comments of United Parcel Service in Response to Presiding Officer's Ruling No. C99-1/2, June 8, 1999; Reply of United Parcel Service to Response of the United States Postal Service to P.O. Ruling No. C99-1/2 with Respect to Protective Conditions, June 18, 1999.

particularly inappropriate in light of the Service's status as a public agency subject to public scrutiny.

On these grounds, UPS proposes that this exclusionary restriction be omitted from the protective provisions. In its place, Complainant suggests: (1) exclusion of UPS employees from access to sensitive material in this case, as noted above; and (2) the addition of language specifying that: "Materials and information provided in response to Presiding Officer's Ruling No. C99-1/___ shall be used only for purposes of this proceeding, and shall not be used for any other purposes." UPS Comments of June 8, 1999, at 3.

In the Commission's view, protective conditions governing eligibility for access to privileged information should satisfy two criteria: they should be sufficiently restrictive to prevent access by persons whose status or activities may foreseeably create a risk of compromising the commercial sensitivity or other privileged quality of the information; but they should also do so without impeding adequate opportunity for access by participants, their representatives, and Commission personnel who require access to perform their duties. In this proceeding, the Commission believes that these criteria will best be met by adopting the conditions used in recent proceedings, with slight modifications.

As noted above, the Postal Service proposes amending the R97-1 protective conditions by excluding employees of a participant from eligibility for access. Inasmuch as Complainant is willing to accept this restriction, and no other party claims that it would adversely affect its access, the protective conditions appended to this Order incorporate the Service's proposal.

Complainant's argument that the "involved in competitive decisionmaking" restriction is potentially broader in application than the standards commonly applied in civil litigation appears to find support in the authorities it cites. However, it is far from clear that these decisions fully justify Complainant's position that the restriction should preclude access only by those who actively participate in making competitive decisions,

and not by counsel or others whose involvement is limited to rendering advice. There is more than a remote possibility that advice solicited to guide competitive decisionmaking may be shaped by the advisor's knowledge of potentially valuable sensitive information about a competitor. This potential risk would appear to justify precluding access by persons who render at least some forms of advice as an input to a client's competitive decisionmaking.

As noted earlier, the Postal Service proposes to accommodate these considerations by incorporating a provision that retains the "involved in competitive decisionmaking" exclusion as a general rule and specifies activities included in such involvement, but also provides:

that counsel for a party with access to materials provided in response to this ruling may continue to give legal advice concerning the lawfulness of proposed prices under the double postage rule, so long as counsel does not participate in designing or determining the prices actually proposed.

Except for the additional qualification that counsel may not participate in competitive pricing decisions—which would also be proscribed under the UPS proposal—the Service's proposed provision does not differ substantively from the amended condition ultimately adopted by the Commission in Docket No. R97-1. Complainant's counsel, and presumably whatever outside contractors reviewed the sensitive Emery contract materials in the R97-1 proceeding, operated under the amended protective conditions without any reported difficulty, and presumably could do so again in this proceeding.

However, the Postal Service's proposed exclusion of advice concerning applicability of the double postage rule was narrowly tailored to the needs of Complainant and its counsel in Docket No. R97-1, and thus may not accommodate other forms of permissible advice rendered by a participant's representatives. For this reason, the Commission is substituting a more general statement to the effect that involvement in competitive decisionmaking "does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material."

Procedures for access. The Postal Service proposes procedures for participants' access to protected materials that depart from practice in previous cases in several ways. First, under a proposed "notice and possible objection" process, counsel for a party wishing to view protected material would be obliged to serve notice on the Postal Service eight days in advance of access. The Service would have an opportunity to file an objection, which would effectively bar access until the Presiding Officer rules on whether the Service had presented sufficient grounds to deny access. Second, absent a finding of special circumstances in a ruling by the Presiding Officer, access to protected material would be limited to inspection on the Commission's premises. In addition, the Service proposes a provision that would require all applicants for access to its protected materials to disclose any prior work done for entities that compete with the Postal Service.

The Service argues that these provisions are necessary to inform it and other stakeholders in the confidentiality of protected materials—such as foreign posts or software suppliers—when a particular person, who may be known to be ineligible for access by only one of the stakeholders, intends to seek access. Additionally, the Service notes that this kind of procedure is currently in use by GAO, and has been proposed by the FCC in one of its dockets, and by the Department of Justice for use in federal court litigation.

Complainant responds that the "notice and possible objection" procedure is unnecessary and would create additional delay in making relevant material available to the parties and the Commission. UPS also observes that the Presiding Officer explicitly declined to implement the procedure in Docket No. R97-1. Similarly, Complainant notes that in the same docket the Presiding Officer rejected a Postal Service proposal to require persons applying for access to disclose clients for whom they had worked in the past.

As the parties have noted, the Presiding Officer in Docket No. R97-1 denied a request to implement a "notice and possible objection" procedure in that proceeding.

He did so for two reasons: that it "would be ill-suited to the requirements of an expedited proceeding[,] and that it appeared to be unnecessary to protect the proprietary interests that had been asserted. Presiding Officer's Notice Concerning Emery's Request for Clarification of Presiding Officer's Ruling No. R97-1/62, December 3, 1997.

The Commission agrees with the assessment of the Presiding Officer in R97-1 that the potential for delay in implementing a "notice and possible objection" procedure casts considerable doubt on its appropriateness for use in an omnibus rate case or other proceeding subject to a statutory deadline. This consideration remains applicable, but is less crucial, in a complaint proceeding. In the instant case, a tardy resolution could harm complainants if the Commission ultimately finds jurisdiction. A prompt ruling will aid the Service, since it will add certainty to its ultimate business plans. The Commission is uncertain whether the interests of participants—and perhaps those of other interested parties as yet unidentified—render the proposed procedure necessary in this docket. However, in view of the multi-national origins of the Post E.C.S. service and the possible existence of commercial interests not yet identified, the Commission is willing to implement an additional procedure of this type for the purposes of this case that avoid the danger of unnecessary delays.

The Commission declines to introduce one feature of the procedure proposed by the Service, however. Under the Service's version of the "notice and possible objection" mechanism, an objection lodged against an individual's intended examination of protected material would bar access "until the Presiding Officer rules on whether the objecting party has presented sufficient grounds to deny access." This provision explicitly makes a party's access contingent on issuance of an additional Presiding Officer's Ruling in its favor, without specifically providing an opportunity for reply to the objection. While it is not clear whether the Service intends the procedure to operate in an *ex parte* fashion, the Commission believes such a mechanism would be procedurally inappropriate, as the action required of the Presiding Officer could effectively deprive a

party of access to material that has already been found to be relevant. For this reason, the attached protective conditions include substitute language that provides for a response by the party desiring to examine protected materials. The Commission will view any continuing disputes of this nature as requiring expeditious resolution.

The Commission also declines to adopt paragraph 4 of the protective conditions proposed by the Service, which would restrict parties' access to protected materials to inspection on Commission premises absent a ruling by the Presiding Officer that special circumstances have been shown to exist with respect to a specific document. This restriction would depart from the established Commission practice of allowing controlled temporary possession of a limited number of copies of protected materials. As Complainant observes, the proposed limitation could inconvenience multiple parties seeking access to the material at the same time, and past experience with the established method does not suggest that any such restriction is necessary. In the event the Postal Service, or another party with a proprietary interest in protected material, believes that this restricted form of access is needed to ensure its integrity, a motion requesting the Presiding Officer to grant that relief may be filed.

Finally, the Commission declines to adopt the Service's proposal to require that those seeking access to its protected materials disclose any prior work they have performed for its competitors. Responding to a similar proposal in Docket No. R97-1, the Presiding Officer rejected it, in part because he found the requirement unnecessary.¹⁵ The Commission concurs with this assessment; as UPS notes, the identity of *past* clients has no direct bearing on whether an individual should be precluded from examining protected material on the ground of potential *future* disclosure to competitors. Rather, the relevant consideration is whether any aspect of an individual's current status and activities creates a foreseeable risk of compromising the protected material, as the general discussion earlier in this Order indicates.

¹⁵ Presiding Officer's Ruling No. R97-1/62, *supra*, at 12-13.

Need to specify sanctions for violations. The Postal Service proposes that the set of protective conditions adopted for use in this docket include a paragraph stating the sanctions potentially applicable to persons who violate the duty of nondisclosure. Penalties specified in the Service's proposed paragraph 12 include dismissal of the Complaint with prejudice in the case of violations by persons acting on behalf of Complainant; disqualification from participation in further proceedings in the instant case or in future Commission dockets; application of the legal doctrine of collateral estoppel in the event of dismissal of the Complaint; and any other sanctions the Presiding Officer may deem appropriate.

For licensed professionals, the Service argues that sanctions should include referral to the compliance office of the licensing authority; to facilitate this potential sanction, the Service would require a professional applying for access to identify all relevant licensing authorities in the initial Certification form. The proposed paragraph also states that sanctions may apply whether the act of disclosure is deliberate, negligent, or inadvertent. The Service's rationale for including the proposed paragraph is "to encourage, and create incentives for, compliance, and make clear to parties the consequences of a violation." Postal Service Response of May 25, 1999, at 9.

The Commission has an abiding interest in encouraging participants in its proceedings to comply with the terms of protective conditions, as indeed with all its rules and orders. For this reason, protective conditions used in past proceedings have contained explicit statements of the duty of non-disclosure and the standard of due diligence that persons obtaining access must exercise to prevent any form of dissemination.¹⁶ However, potential sanctions for unauthorized disclosure of protected materials have not been specified in protective orders in past proceedings, and there is no apparent basis for finding that the circumstances of this case require a departure from past Commission practice. As Complainant has observed, in the more than 25 years that protective orders have been used in Commission proceedings, there is no

¹⁶ See, e.g., Presiding Officer's Ruling No. MC98-1/11, *supra*, at 3-4 (paras. 2, 5-9).

known instance of improper disclosure that would indicate the need for an explicit warning of the potential consequences. More generally, the Commission assumes that counsel and other professional agents of parties seeking access to protected materials are well aware of the possible sanctions that any violation may entail. Consequently, the Commission declines to include the Postal Service's proposed provision.

It is ordered:

1. The Motion of United Parcel Service for a Protective Order, filed May 14, 1999, is granted, under the terms specified in the body of this Order and Appendix A thereto.
2. The protective conditions specified in Appendix A to this Order are hereby adopted for use in this proceeding.

By the Commission.

(S E A L)

Margaret P. Crenshaw
Secretary

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to materials provided in Docket No. C99-1 by the Postal Service or other parties that the Presiding Officer or the Commission has directed to be produced and examined under protective conditions. Individuals seeking to obtain access to such material must agree to comply with these conditions, complete the attached certifications, provide the completed certifications to the Commission, and serve them upon counsel for the party submitting the confidential material.

1. Only a person who is either:

(a) an employee 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. C99-1;
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. C99-1; shall be granted access to these materials. 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 these materials. "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. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.

2. Counsel for a person who fully satisfies the qualifications set forth in paragraph 1(b) above shall serve by hand delivery or facsimile transmission a copy of that person's completed certification on counsel for the party that has provided the material to which the person wishes to be granted access. The person shall not be granted access until the eighth day after such service has been made. The party providing the material, or any other party with an interest in the protection of the material, shall have until seven days after receipt of the certification to object to access being granted to such person, by filing an objection with the Commission and serving opposing counsel by hand delivery or facsimile transmission. If such an objection is filed, the participant seeking to examine protective materials may file a response within seven days from the time the objection is filed with the Commission.

Any such response must be served upon filing the objection, by hand delivery or facsimile transmission. If the Presiding Officer determines that the objection is not meritorious on its face, the Presiding Officer may issue a ruling granting access before receiving a response.

1. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.

4. The final date of any participant's access shall be:

- (a) the date on which the Postal Rate Commission issues its recommended decision or otherwise closes Docket No. C99-1; or
- (b) the date on which that participant formally withdraws from Docket No. C99-1; or
- (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. C99-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and counsel for the party who provided the protected material of the termination of any such business and consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.

5. Immediately after the Commission issues its recommended decision or otherwise closes Docket No. C99-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials 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.

6. The duties of any persons obtaining access to these materials 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.

7. All persons who obtain access to these materials 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.

8. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. C99-1.

9. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission.

10. Any Docket No. C99-1 participant or other person seeking access to these materials 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 Docket No. C99-1 by a participant in response to rulings of the Presiding Officer or orders of the Commission and filed under protective conditions (hereinafter, "these materials" or "the information") 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. C99-1.

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 these materials in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

When I obtained materials provided in Docket No. C99-1 by a participant in response to rulings of the Presiding Officer or orders of the Commission and filed under protective conditions, I certified to the Commission that I was eligible to receive it. I now affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period those materials have been in my possession. Further, I have complied with all conditions, and have maintained these materials in strict confidence 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. C99-1.
3. I have returned the information to the Postal Rate Commission.
4. I have either surrendered to the Postal Rate Commission or destroyed all copies of the information that I obtained or that have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____