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POSTAL RATE COMMISSION
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PRESIDING OFFICER'S
RULING NO. R2000-1/21

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

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING GRANTING MOTION OF ASSOCIATION OF
ALTERNATE POSTAL SYSTEMS TO COMPEL PRODUCTION OF DOCUMENTS
REQUESTED IN INTERROGATORIES AAPS/USPS-T35-9 AND 10

March 28, 2000

The Association of Alternate Postal Systems (AAPS) filed interrogatories AAPS/USPS-T35-9 and 10 to Postal Service witness Moeller on February 23, 2000. The Postal Service filed objections on March 6, 2000.¹ On March 16, 2000, AAPS filed a motion to compel the Postal Service to provide the documents requested in interrogatories AAPS/USPS-T35-9 and 10.² The Postal Service filed its initial response to the AAPS Motion on March 17, 2000,³ and its partial opposition on March 23, 2000.⁴

¹ United States Postal Service Objection to Interrogatories of Association of Alternate Postal Systems Directed to Witness Moeller (AAPS/USPS-T35-9-10), filed March 6, 2000 (Postal Service Objection).

² Motion of Association of Alternate Postal Systems to Compel Production of Documents Requested in Interrogatories AAPS/USPS-T-35-9 and 10, filed March 16, 2000 (AAPS Motion).

³ Initial Response of the United States Postal Service to Motion of AAPS to Compel Production of Documents Requested in Interrogatories AAPS/USPS-T35-9 and 10, filed March 17, 2000 (Postal Service Initial Response).

⁴ United States Postal Service Answer in Opposition to Motion of Association of Alternate Postal Systems to Compel Production of Documents Requested in Interrogatories AAPS/USPS-T-35-9-10, filed March 23, 2000 (Postal Service Opposition).

AAPS/USPS-T35-9 requests an update of the Strategic Analysis, Inc. (SAI) study conducted on alternate delivery since the close of Docket No. R97-1. In that case, the SAI study was the subject of protracted motions practice, which ultimately resulted in the Presiding Officer directing the Postal Service to produce a copy of the report under protective conditions (P.O. Ruling No. R97-1/46). In a later ruling responding to a Postal Service request for clarification, the Presiding Officer modified the certifications attached to the protective conditions, and further defined what information from the study the Postal Service was not required to provide. Specifically, it was clarified that the underlying factual data from the SAI study should be provided but that the Postal Service could exclude provision of both the Service's and SAI researchers' comments and conclusions on, and analysis and/or interpretation of, the underlying factual data. Also, the Service was permitted to redact the company and product names of the alternate delivery providers comprising the study.⁵

In the instant case, the Postal Service raises an initial objection to interrogatory AAPS/USPS-T35-9 on the ground that the factual information in the SAI reports on alternative delivery is not relevant to the rate and classification proposals now at issue.

⁵ P.O. Ruling No. R97-1/52 at 3. SAI information on the following topics was not to be withheld:

- definition of alternate delivery and categorization of alternate delivery providers;
- identification of alternate delivery providers by size, areas served, business practices and strategies, pricing, etc.;
- methods of collection of information;
- a summary of changes in the alternate delivery industry, including failures, consolidations, mergers and acquisitions, and public offerings;
- annual volume by market segment (*e.g.*, catalog or magazine) and by provided type for the years available;
- market delivery rates offered by alternate delivery;
- reaction to price change.

The Service further argues that “[t]he information is proprietary and commercially sensitive, and the information is an input to the decisionmaking process and is therefore subject to protection under the deliberative process privilege.”⁶ However, in light of the Commission precedent on the matter, the Postal Service will stipulate to production of the information sought subject to the aforementioned protective conditions specified by the Commission in Docket No. R97-1, and “without prejudice to its right to object to the production of any other proprietary market research.”⁷

According to the AAPS Motion to Compel, the Postal Service insisted that AAPS file a motion for provision of the updated SAI study, to which the Service would raise no objection.⁸ And in fact, the Postal Service Opposition indicates that the Service does not contest AAPS’s request for production of the most recent version of the SAI report on alternate delivery service, subject to the same terms and protective conditions specified in P.O. Ruling No. R97-1/52.⁹

The participants are commended for their successful effort to resolve the issue of Postal Service production of the current SAI report. I find their request for protective conditions to be applied to the SAI report reasonable. The protective conditions found in attachment A of this ruling reflect those conditions imposed on the SAI report at issue in Docket No. R97-1. As in that docket, the Postal Service is hereby instructed to provide the study, but *not* including the Service’s and SAI researchers’ comments and conclusions on, and analysis and/or interpretation of, the underlying factual data. The Postal Service also may redact the company and product names of the alternate delivery providers comprising the study.

⁶ Postal Service Objection at 2.

⁷ *Ibid.*

⁸ AAPS Motion at 1.

⁹ Postal Service Opposition at 2-3.

Interrogatory AAPS/USPS-T-35-10 requests that the Postal Service produce any studies on competition from the private sector for the carriage of saturation advertising material. AAPS maintains that the Service has identified an SAI "assessment" of a private delivery service which is responsive to its request, but has been unwilling to produce the report subject to protective conditions. According to AAPS, the assessment is relevant because the effect of rates on competitors in the private sector is a factor which must be considered when rates are set.¹⁰

The Postal Service counters that the document at issue is not relevant to the proceeding, and further objects to its production on the grounds of overbreadth, deliberative process privilege and commercial sensitivity. The Service describes the document as a "short assessment prepared by SAI of a single private alternate delivery firm operating in two local geographic markets in the United States."¹¹ The assessment includes a summary of the Service's pilot and promotional efforts, a description of the current activity and areas of concentration of the private firm operating in two urban markets, and a summary of Postal Service opportunities in the relevant markets.¹²

The Service argues that the Docket No. R97-1 rulings which support production of the current SAI study do not apply to this short assessment. The SAI research report at issue in Docket No. R97-1 contained aggregated statistics and addressed the nationwide market for alternate delivery. Company and product-specific information were considered irrelevant, as indicated by the Presiding Officer's permission for the redaction of company and product names from the SAI report. In contrast, the document now requested contains information about a single private business

¹⁰ *Ibid.*, citing 39 U.S.C. § 3622(b)(4).

¹¹ *Ibid.*

¹² *Ibid.*


operating in two limited geographic markets, and is “far too attenuated from the issues at stake in an omnibus rate proceeding.”¹³

I am not persuaded by the Postal Service’s argument that the document responsive to AAPS/USPS-T35-10 is too limited in scope and too “attenuated” from relevant issues in Docket No. R2000-1 to merit production. By the Service’s own admission, the assessment concerns the current activity and areas of concentration of a private firm offering alternate delivery service. The underlying facts of the document thus are germane to 39 U.S.C. §3622(b)(4), which mandates consideration of the effects of rate increases upon private sector enterprises engaged in the delivery of mail other than letters. However, information on the Postal Service’s pilot and promotional efforts and its summary of opportunities in the relevant market may reasonably be considered as commercially sensitive and subject to deliberative process privilege. That information need not be produced. Moreover, as in the case of interrogatory AAPS/USPS-T35-9, the Postal Service may redact the SAI document to conceal the company’s identity and its localities. Subject to the aforementioned considerations and attached protective conditions, I direct that the Postal Service provide the SAI assessment responsive to interrogatory AAPS/USPS-T-35-10.

¹³ *Id.* at 5.

RULING

The Motion of the Association of Alternate Postal Systems to Compel Production of Documents Requested in Interrogatories AAPS/USPS-T-35-9 and 10, filed March 16, 2000, is granted in part, as specified above and subject to the conditions prescribed in the body of this ruling.

A handwritten signature in black ink, appearing to read "Ed J. Gleiman", with a long horizontal flourish extending to the right.

Edward J. Gleiman
Presiding Officer

**STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS**

The following protective conditions limit access to materials provided in Docket No. R2000-1 by the Postal Service in response to Presiding Officer Ruling No. R2000-1/21 (hereinafter, "these materials"). 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. R2000-1; or a person employed by such participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. R2000-1; 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. 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.
3. 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. R2000-1; or
 - (b) the date on which that participant formally withdraws from Docket No. R2000-1; or

- (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R2000-1 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.
- 4. Immediately after the Commission issues its last recommended decision in Docket No. R2000-1, 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.
- 5. 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.
- 6. 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.
- 7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. R2000-1.
- 8. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission.
- 9. Any Docket No. R2000-1 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. R2000-1 by the Postal Service in response to Presiding Officer Ruling No. R2000-1/21 (hereinafter, "these materials") has been authorized by the Commission.

The cover or label of the copy obtained is marked with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. R2000-1.

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**

Pursuant to the Certification which I previously filed with the Commission regarding information provided in Docket No. R2000-1 by the Postal Service in response to Presiding Officer Ruling No. R2000-1/21 (hereinafter, "these materials"), received on behalf of myself and/or the party which I represent (as indicated below), 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. R2000-1.
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 _____