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OFFICE OF THE SECRETARY

PRESIDING OFFICER'S  
RULING NO. R2000-1/97

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

Postal Rate and Fee Changes

Docket No. R2000-1

**RULING PARTIALLY GRANTING MOTIONS OF THE UNITED STATES  
POSTAL SERVICE TO COMPEL ANSWERS TO INTERROGATORIES  
CONCERNING CUSTOMER DEMOGRAPHIC INFORMATION  
REQUESTED FROM STAMPS.COM AND E-STAMP**

(Issued July 25, 2000)

On June 8, 2000, the Postal Service directed interrogatories to witnesses sponsored by Stamps.com and E-Stamp, vendors of PC postage products. Both companies have proposed establishing new rate discounts for mail bearing information based indicia program (IBIP) postage. Interrogatories USPS/E-STAMP-T1-1, USPS/STAMPS.COM-T1-2(c), and USPS/STAMPS.COM-T3-1 requesting customer demographic information are the subject of this ruling.<sup>1</sup>

*Objections to Interrogatories.* Both E-Stamp and Stamps.com have filed objections to answering interrogatories concerning customer demographic information. E-Stamp's objection to answering interrogatory USPS/E-STAMP-T1-1 is based on the confidential and proprietary nature of the demographic information requested and the

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<sup>1</sup> Interrogatories USPS/E-STAMP-T1-1, USPS/STAMPS.COM-T1-2(c), and USPS/STAMPS.COM-T3-1 are included in:

- a. United States Postal Service Interrogatories and Requests for Production of Documents to E-Stamp Witness Jones (USPS/E-STAMP-T-1-1-9) (filed June 8, 2000).
- b. United States Postal Service Interrogatories and Requests for Production of Documents to Stamps.com Witness Heselton (USPS/STAMPS.COM-T-1-1-12) (filed June 8, 2000).
- c. United States Postal Service Interrogatories and Requests for Production of Documents to Stamps.com Witness Lawton (USPS/STAMPS.COM-T-3-1-3) (filed June 8, 2000).

potential impact that release of the information could have on its competitive position.<sup>2</sup> Furthermore, E-Stamp states that it is a publicly traded company, and the release of this sensitive information could impact the [stock] markets.

Stamps.com's objection to answering interrogatory USPS/STAMPS.COM-T3-1 (witness Lawton) also is based on the confidentiality of the demographic information—the release of which could cause competitive harm.<sup>3</sup> It is further alleged that the requested information is unlikely to lead to relevant data and is irrelevant for determining the cost avoidance and proper discount to be provided for IBIP mail. Stamps.com objects to interrogatory USPS/STAMPS.COM-T1-2(c) by filing an answer that redirects the question to witness Lawton that notes an objection is pending on a similar question, i.e., USPS/STAMPS.COM-T3-1.<sup>4</sup>

*Postal Service Motions to Compel.* The Postal Service filed separate motions to compel responses to each of the interrogatories discussed above.<sup>5</sup> The motions to compel answers to interrogatories USPS/E-STAMP-T1-1 and USPS/STAMPS.COM-T3-1 mirror each other to a great extent. The motion to compel an answer to interrogatory USPS/STAMPS.COM-T1-2(c) incorporates by reference the arguments made in the motion to compel an answer to interrogatory USPS/STAMPS.COM-T3-1. Because of the similarity of the arguments, the motions shall be discussed in parallel.

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<sup>2</sup> E-Stamp's Objection to USPS Interrogatory to Witness Jones (USPS/E-STAMP-T-1-1), Filed June 8, 2000, and Served June 14, 2000 (filed June 26, 2000).

<sup>3</sup> Stamps.com's Partial Objection to USPS Interrogatory to Witness Lawton (USPS/STAMPS.COM-T3-1) (filed June 19, 2000).

<sup>4</sup> Stamps.com's Answers to the USPS Interrogatories Directed to Frank Heselton (USPS/STAMPS.COM-T1-1-12) (filed June 26, 2000).

<sup>5</sup> The three Postal Service motions to compel are:

- a. United States Postal Service Motion to Compel E-Stamp to Respond to Interrogatory USPS/E-STAMP-T-1-1 (filed July 7, 2000).
- b. United States Postal Service Motion to Compel Stamps.com to Respond to Interrogatory USPS/STAMPS.COM-T1-2(c) (filed June 30, 2000).
- c. United States Postal Service Motion to Compel Stamps.com to Respond to Interrogatory USPS/STAMPS.COM-T3-1 (filed June 23, 2000).

The Postal Service cites the first two factors of § 3623(c), from Title 39 of the United States Code, in support of its motions to compel. These factors are used by the Commission in evaluating mail classification proposals and provide:

The Commission shall make a recommended decision on establishing or changing the schedule in accordance with the policies of this title and the following factors: (1) the establishment and maintenance of a fair and equitable classification system for all mail; (2) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

The Service alleges the demographic information is relevant to evaluate the first factor, fairness and equity, as well as the desirability and justification of the new classification proposed by Stamps.com and E-Stamp. The demographic information may also provide insight to the relative value of the classification. The Service alleges both parties rely on the demographic information in developing their proposals. Therefore other parties are entitled to examine the extent and nature of that reliance. In this same context, the Service also disagrees with the Stamps.com allegation that demographic data is irrelevant to determining cost avoidance and a proper discount for IBIP mail.

The Postal Service also seeks demographic information to assess the claim made by both parties that an IBIP discount will increase the attractiveness of using PC postage. The Service alleges this will be difficult to accomplish without information on the current and projected markets.

The proper benchmark for determining an IBIP discount is an issue in determining cost avoidance. The Postal Service states that E-Stamp witness Prescott claims Bulk Metered Mail, adjusted for non-presortation, is the appropriate benchmark for measuring cost avoidance, but Stamps.com witness Heselton claims handwritten letters as the appropriate benchmark. It further contends that witness Boggs, who is sponsored jointly by E-Stamp and Stamps.com, asserts volume will come from small businesses suggesting metered or machine printed mail is the appropriate benchmark. Therefore, the Postal Service suggests that demographic information may shed light on what is the more appropriate benchmark.

The Stamps.com objection to interrogatory USPS/STAMPS.COM-T3-1 includes a qualitative response answering that interrogatory.<sup>6</sup> It states that Stamps.com has a “substantial” number of customers in each of four demographic categories, but objects to providing further detail. The Postal Service alleges a quantitative response is necessary to evaluate the qualitative response provided.

Finally, the Postal Service argues that objections based on commercial sensitivity should be dismissed. As support, the Postal Service cites P.O. Ruling No. R2000-1/53 (issued April 27, 2000) which states:

[T]here is ample Commission precedent to indicate that the mere fact that a document may contain sensitive business information does not of itself preclude its production in a proceeding, although it may be subject to protective conditions.

The Postal Service does not object to the demographic information being released under protective conditions.

*Stamps.com Responses to Motions.* Stamps.com provides a three-part response to the Postal Service motion to compel an answer to USPS/STAMPS.COM-T3-1 based on relevance, information presently available to the Postal Service, and the sensitive nature of this material.<sup>7</sup>

Stamps.com alleges that demographic information is not relevant to any issue in this proceeding. Demographic information will have no bearing on the analysis of the fairness and equity factor because Stamps.com has a “substantial” number of customers in each of the proposed demographic categories. Furthermore, demographic data will not shed light on an appropriate benchmark. For example, Stamps.com states that handwritten mail is used as a benchmark for QBRM—even though few of these mailpieces would have been handwritten if there were no QBRM discount. Thus, Stamps.com concludes the actual volume of handwritten mail prior to the discount is not

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<sup>6</sup> Stamps.com's Answer to the Interrogatories of Leora Lawton (USPS/STAMPS.COM-T3-1-3) (filed June 26, 2000).

<sup>7</sup> Stamps.com's Opposition to USPS's Motion to Compel Response to Interrogatory USPS/STAMPS.COM-T3-1 (filed July 5, 2000).

a relevant factor in setting rates. Even if the volumes converting from either handwritten or printed mail is relevant in determining a benchmark, Stamps.com alleges that the demographics for IBIP postage customers will not give insight into the percentages of handwritten vs. printed mail for each of the demographic groups.

Stamps.com alleges that the Postal Service already possess similar demographic information of PC postage users on a broader base than just Stamps.com customers. The Postal Service requires PC postage users to submit a meter license application that contains some demographic information. In addition, the Postal Service IBIP group possesses historical Stamps.com customer purchase and printing information. Stamps.com alleges the Postal Service can correlate this data on its own to determine customer demographic information.

Finally, Stamps.com makes a multi-part confidentiality argument. It alleges that confidentiality concerns outweigh any probative value the information may provide. Stamps.com asserts that disclosure of detailed customer demographic information would cause it competitive harm. It notes that P.O. Ruling No. R2000-1/53, cited by the Postal Service in support of applying protective conditions, also states that the Commission decides commercial sensitivity issues on a case-by-case basis. There is not a presumption of disclosure.

Stamps.com also contends that the Service fails to show specifically how Stamps.com's confidential demographic information will be used. It argues that the Service similarly failed to show how the probative value of the requested information outweighs the interest in protecting confidential information in the previous rate case, and therefore a similar motion to compel was denied, citing P.O. Ruling No. R97-1/106.

Stamps.com argues that private enterprises are not held to the same disclosure standards at the Postal Service. P.O. Ruling No. R97-1/104 resolved a discovery dispute between Parcel Shippers Association and United Parcel Service. That ruling implies that the obligations imposed for disclosure upon the Postal Service due to its monopoly status are different than the obligations imposed on a competing private sector firm.

Stamps.com is aware of the Commission procedures for protective conditions. However, because the materials are not relevant and pale in their relevance compared to their confidentiality, Stamps.com asserts that the material should not be provided even with protective conditions, and the motion to compel should be denied.

Thomas Kuhr, Vice President of Technology Operations at Stamps.com has filed a declaration in support of the Stamps.com position.<sup>8</sup> Mr. Kuhr explains the confidential nature of the material and why disclosure of the information in this highly competitive industry may cause substantial competitive harm and place Stamps.com at a competitive disadvantage. He states that the discount proposed is based on savings to the Postal Service, and not based on customer composition. There is a limit of \$500 that may be kept on account with PC Postage. Mr. Kuhr's opinion is that this limit will make it unlikely that PC Postage will attract large volume mailers. Furthermore, he states that the Postal Service already possesses much of the same information through meter license applications and historical data delivered to the Postal Service by Stamps.com. In conclusion, Mr. Kuhr requests that the motion to compel not be granted, even under a protective order, given the irrelevance of the information in determining cost avoidance and the discount, and because of the competitive harm that could be caused by release of this information.

Stamps.com filed a separate response in opposition to the motion to compel concerning USPS/STAMPS.COM-T1-2(c).<sup>9</sup> The response states that witness Heselton does not possess the requested information. Thus, the interrogatory was redirected to witness Lawton, who developed responsive data. Stamps.com states that it has objected to the release of the data developed by witness Lawton and that the data is the subject of a separate discovery dispute.<sup>10</sup>

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<sup>8</sup> Declaration of Thomas Kuhr in Support of Stamps.com Response to USPS Motion to Compel Response to USPS/STAMPS.COM-T3-1 (filed July 5, 2000).

<sup>9</sup> Stamps.com's Opposition to USPS's Motion to Compel Response to Interrogatory USPS/STAMPS.COM-T1-2(c) (filed July 12, 2000).

<sup>10</sup> The separate discovery dispute refers to the issues surrounding USPS/STAMPS.COM-T3-1 discussed in the preceding paragraphs of this ruling.

*E-Stamp Response to Motion.* E-Stamp's response in opposition to the Postal Service motion adopts the grounds cited in the Stamps.com response and presents further reasons for opposition.<sup>11</sup>

E-Stamp alleges that it has customers in each of the demographic groups considered, but it does not keep data on the numbers in each category. A special study would be required to gather this information that would be disproportionately burdensome in relation to the minimally small value the data would provide.

The E-Stamp marketing effort is targeted towards home offices and small offices. Therefore, E-Stamp believes that most of its customers are home offices and small offices, but not households. If there was data to show a significant number of household users, E-Stamp would find this relevant to make an argument about extending the benefits of automation to small users of the mail. E-Stamp claims it would be burdensome to poll its customers to obtain a further breakdown between the home office and small office users. In any case, the Postal Service already knows who the E-Stamp customers are and can produce the precise numbers on its own.

E-Stamp alleges the Postal Service presents a spurious argument that demographic information is necessary to reconcile a conflict between E-Stamp and Stamps.com proposals for a benchmark. E-Stamp witness Prescott did not testify that bulk metered mail was the "appropriate" benchmark. It was simply the benchmark that he used. He uses bulk metered mail because it is a conservative approach and it avoids the issue of how much of the converted mail would have been handwritten. What is significant is that both the E-Stamp and the Stamps.com analyses, using different methodologies, measured roughly the same cost avoidance.

In response to the Postal Service allegation that the Service cannot assess the claim that an IBIP discount will increase the attractiveness of IBIP postage, E-Stamp states that it has filed direct testimony and responses to interrogatories defining its market as small offices and home offices. E-Stamp does not see how providing exact

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<sup>11</sup> E-Stamp Corporation's Opposition to United States Postal Service Motion to Compel Response to Interrogatory USPS/E-STAMP-T1-1 (filed July 14, 2000).

numbers will advance the record in light of the burden of conducting a survey to collect this information.

Finally, E-Stamp alleges that the detailed demographic information requested by the Postal Service, as opposed to the E-Stamp statements on its beliefs of who its customer base is, amounts to nothing more than harassment, and the motion should be denied.

*Analysis.* Motions to compel answers to interrogatories, particularly when allegations are made that the information requested is proprietary and confidential, must be considered on a case-by-case basis. The relationship of the parties and the requisite burdens placed upon each party factor into this ruling. For example, the burden for disclosure on the Postal Service is sometimes higher because of its monopoly status. Likewise, the proponent of a new rate or classification sometimes has a higher burden for disclosure to assure there is sufficient evidence on the record in support of their proposals. Furthermore, disclosure of sensitive information when direct competitors in the marketplace are parties must be given careful consideration to protect the interests of each party. The Commission eventually utilizes interrogatories submitted into record evidence by the parties to determine if a new classification is warranted and if a proposed rate is justified. Without sufficient, clear supporting evidence on which to base a decision, there is the risk of precluding the Commission from making an informed decision, or the Commission drawing an erroneous conclusion.

Stamps.com and E-Stamp are direct competitors in the PC postage business. Both competitors view customer demographic information as sensitive to their business operations. Stamps.com and E-Stamp are the proponents of similar proposals submitted to the Postal Rate Commission requesting that the Commission recommend a new classification and rate discount to the Postal Service Governors for IBIP postage. The party requesting disclosure, the Postal Service, is not a direct competitor in the PC postage business. The Service has not formally stated its position as to the IBIP proposals, but will be affected by a recommendation to implement an IBIP discount.



There are at least two potential uses for the demographic information requested. The information may be relevant to determining an appropriate benchmark for analyzing potential cost avoidance, and it may be relevant to analyzing the factors of the act. Once a relevant need for the use of this information is established, the subsequent legal arguments that would otherwise bar disclosure can be examined.

Determining an appropriate benchmark is a starting point for analyzing cost avoidance issues. The distinction, made by E-Stamp, of witness Prescott just "using" a particular benchmark versus testifying that a particular benchmark is the "appropriate" benchmark does not resolve the issue that an appropriate benchmark must be chosen in the instant case when analyzing cost avoidance. However, most of the detailed demographic information being requested (for example on geographic dispersion or income level) is not relevant to determining an appropriate benchmark. In this case it is relevant, at most, as potentially corroborative evidence on which to base an informed decision.

The Postal Service argues that demographic information is relevant to analyzing the first two classification factors of § 3623(c). To some extent, demographic factors can be useful in analyzing most of the rate and classification factors of § 3622(b) and § 3623(c). Demographic data helps convert a proposal from the abstract to the concrete. It allows the Commission, or another party, to place the classification or rate into perspective and allows comparisons with other services. This type of concrete data could aid in determining if it is beneficial, or not, for the Commission to take the major step of adding a new classification to the first class rate structure. As such, demographic information is relevant to discussing the factors of the act.

The Postal Service makes two further arguments for the relevant need of this information that are indirectly related to analyzing the factors of the act. The Service alleges that demographic information will aid in assessing the claim that an IBIP discount will increase the attractiveness for using IBIP postage. Again demographic information is only marginally relevant to this issue. Who the customers are without

substantial additional information, will not shed light on their elasticity of demand for IBIP postage.

The Postal Service also claims it would like quantitative data to evaluate the qualitative Stamps.com statement that it has a "substantial" number of customers in each of four demographic categories. Without a reference point, the meaning of the word substantial is elusive at best. The Service is correct in stating that it needs more information to evaluate the statement made by Stamps.com as it relates to the desirability of creating a new classification for IBIP postage.

In sum, demographic information is relevant to analyzing the E-Stamp and Stamps.com proposals. The relevance of the information in determining an appropriate benchmark may be limited, but the information is certainly relevant and useful in analyzing the factors of the act. Since the information is relevant and useful, the further legal arguments on the request being burdensome, the Postal Service already possessing the information, the request being a form of harassment, and the proprietary and confidential nature of the material may be reviewed.

E-Stamp states that it would be overly burdensome to conduct a customer survey to obtain the data requested. A new study or survey is not required to answer these interrogatories. The parenthetical groupings of demographic information provided by the Postal Service are interpreted as examples of possible groupings. Responses are only required in sufficient detail to answer the interrogatory from the information currently in the possession of E-Stamp and Stamps.com.

Stamps.com contends that the Postal Service has demographic data that it can compile on its own, on a broader basis than could be supplied by Stamps.com, through meter license information, and information already supplied to the Postal Service IBI program. It has not been demonstrated that the Postal Service possesses this information. The focus of this ruling must be information in the possession of Stamps.com and E-Stamp that is relevant to their proposals.

E-Stamp alleges that requesting detailed demographic information somehow amounts to nothing more than harassment by the Postal Service. This claim is

unsubstantiated. The limited amount of business information requested in this docket does not rise to the level of harassment.

E-stamp and Stamps.com both argue that demographic information is confidential and proprietary. The Postal Service does not disagree with this point and does not oppose instituting protective conditions. This ruling finds no reason to dispute the confidential and proprietary nature of the material. Frequently, the Commission imposes protective conditions for confidential and proprietary information. E-Stamp and Stamps.com argue that the Postal Service motions should be denied regardless of the possibility of protective conditions. P.O. Ruling No.'s R97-1/104 and R97-1/106 are cited in support of this proposition.

The issue in P.O. Ruling No. R97-1/104 involved the Parcel Shippers Association (PSA) requesting confidential information concerning a United Parcel Service (UPS) product that was in direct competition with the Postal Service. PSA suggested that because the Postal Service provided this information on its product, UPS should also be required to provide similar information. In denying the motion, the ruling provides a distinction between the burden of the Postal Service versus a competing private enterprise in providing sensitive business information. This distinction still exists, but is not persuasive in the instant ruling. Both parties, as opposed to the Postal Service, are the proponents of proposals that change rates and classifications. Certain types of demographic information may help determine proper rates and classifications. The probative value of this information outweighs the confidentiality concerns.

The factual context of the issues involved in P.O. Ruling No. R97-1/106 does not support Stamps.com's argument that the Postal Service has not shown the probative value of the information outweighs the confidentiality of the information. In that ruling, the Postal Service had obtained much of the quantitative data. What was being protected, and what did not meet the probative value test, was the release of the identity of survey respondents. The instant Postal Service motions request quantitative data, not the identity of PC Postage customers.

Protective conditions are appropriate in the instant case. Some of the demographic information requested, although sensitive, is relevant to the Postal Service's and the Commission's analysis of the IBIP proposals. The relevance of the material outweighs any burden of providing the information and the confidential and proprietary nature of the material. The sensitive nature of the material has also been weighed against the increased risk that without the material it would be more difficult for the Commission to fairly and accurately analyze the IBIP discount proposals.

The Postal Service interrogatories in question are similar in that they request demographic information, but each question is worded differently. The term "demographic(s)" is open to interpretation. The Postal Service provides parenthetical examples including the term "etc." to describe what type of demographic information it is requesting. In an attempt to narrow the scope of the interrogatories and at the same time provide useful data that will further the record, the following guidelines may be appropriate in answering the interrogatories. First, new customer surveys or customer studies are not required. Data shall be collected and presented from information presently available. Customer identity, regional geographic location, or revenue/income level are of very limited relevance and also are not required.

The Stamps.com suggested categories of households (interpreted as including individuals), home office, small office (1-9 employees), and large office (10+ employees) are acceptable. If E-Stamp does not categorize its customers on this basis, it may utilize appropriate similar categories. The number of customers in each category, or a total number of customers with a percentage contained in each category is desirable. Average cost of postage and volume per month or quarter is relevant to the analysis and should be provided. To avoid confusion, answers should carefully explain if the averages and numbers used relate to the total customer list, or the "active" customers list, and what time periods are used. Finally, information on particular types of business or occupations that tend to use PC postage more than others is relevant and helpful in understanding the customer base.

In conclusion, the demographic information specified above is relevant to analyzing the factors of the act to determine the desirability of implementing an IBIP discount. There is a risk that absent this information the Postal Service and the Commission would not be able to fairly and accurately analyze the IBIP proposals. The information is considered confidential and proprietary and if submitted should be submitted under protective conditions. The relevance of the material, along with E-Stamp and Stamps.com being the proponents of the discount proposal, outweigh the arguments in favor of non-disclosure. Stamps.com and E-Stamp are to provide the requested information under protective conditions within 10 days of this ruling. Separate copies of the protective conditions to be used with Stamps.com and E-Stamp material are attached.

P.O. Ruling No. 20 (issued March 27, 2000) requires participants to file, at least a day prior to seeking access, a brief notice with the Commission containing the name, title, and position of each person nominated to obtain access to material placed under protection. Service of the notice on the participant requesting the protective conditions is also required. Participants are reminded that this notice requirement applies in this situation.

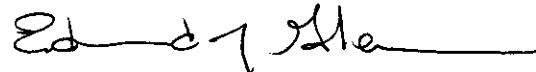
## RULING

1. The following Motions to Compel are granted in accordance with the body of this ruling:

- a. United States Postal Service Motion to Compel E-Stamp to Respond to Interrogatory USPS/E-STAMP-T-1-1 (filed July 7, 2000).
- b. United States Postal Service Motion to Compel Stamps.com to Respond to Interrogatory USPS/STAMPS.COM-T1-2(c) (filed June 6, 2000).
- c. United States Postal Service Motion to Compel Stamps.com to Respond to Interrogatory USPS/STAMPS.COM-T3-1 (filed June 23, 2000).

The answers to the interrogatories may be provided under protective conditions. Answers shall be compiled from the demographic information presently available to E-Stamp and Stamps.com in sufficient detail to answer the interrogatories. New customer surveys or studies are not required.

2. The applicable protective conditions are included as an attachment to this ruling. Protective conditions must be completed and filed separately for access to E-Stamp (Attachment A) and to Stamps.com (Attachment B) material.
3. The advance notice provisions set out in P.O. Ruling No. 20 relating to the identity and affiliation of those filing certifications for access to protected material apply here.



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 E-Stamp in response to Presiding Officer's Ruling No. R2000-1/96 (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, or as specified in paragraphs 10 through 15, below.
- 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.



10. E-Stamp shall clearly mark the following legend on each page, or portion thereof, that the Service seeks to protect under this agreement: "Confidential—Subject To Protective Conditions In Docket No. R2000-1 Before The Postal Rate Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of E-Stamp, or as hereinafter provided, no protected information may be disclosed to any person.
11. Any written materials—including but not limited to discovery requests and responses, requests for admission and responses, deposition transcripts and exhibits, pleadings, motions, affidavits, written testimony and briefs—that quote, summarize, or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
12. Any oral testimony, argument or other statements that quote, summarize or otherwise disclose materials protected under these protective conditions shall be received only in hearing sessions limited to E-Stamp representatives and other persons who have complied with the terms of the protective order and have signed the attached certifications. The transcript pages containing such protected testimony shall be filed under seal and treated as protected materials under paragraph 11.
13. Notwithstanding the foregoing, protected material covered by paragraphs 11 or 12 may be disclosed to the following persons without their execution of a compliance certificate. Such disclosure shall not exceed the extent necessary to assist in prosecuting this proceeding or any appeals or reconsideration thereof.
  - (a) Members of the Commission.
  - (b) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.
  - (c) Any other person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

- (d) Reviewing courts and their staffs. Any person seeking to disclose protected information to a reviewing court shall make a good faith effort to obtain protective conditions at least as effective as those set forth in this document. Moreover, the protective conditions set forth herein shall remaining in effect throughout any subsequent review unless overridden by the action of a reviewing court.
14. A participant may apply to the Commission for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. E-Stamp or other person that designated the document or testimony as confidential shall be given notice of the application and an opportunity to respond. To revoke confidential status, the proponent of declassification must show by a preponderance of the evidence that public disclosure of the materials is consistent with the standards of the Freedom of Information Act, 5 U.S.C. §552(b)(1)-(9), and Commission precedent.
15. Subpoena by Courts or Other Agencies. If a court or other administrative agency subpoenas or orders production of confidential information which a participant has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within two business days) notify E-Stamp (or other person who designated the document as confidential) of the pendency of the subpoena or order to allow the designating party time to object to that production or seek a protective order.

### CERTIFICATION

The undersigned represents that:

Access to materials provided in Docket No. R2000-1 by E-Stamp in response to Presiding Officer's Ruling No. R2000-1/96 (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. 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 E-Stamp in response to Presiding Officer's Ruling No. R2000-1/96 (hereinafter, "these materials" or "the information"), 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 \_\_\_\_\_

**STATEMENT OF COMPLIANCE  
WITH PROTECTIVE CONDITIONS**

The following protective conditions limit access to materials provided in Docket No. R2000-1 by Stamps.com in response to Presiding Officer's Ruling No. R2000-1/96 (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
  - (d) the date on which that participant formally withdraws from Docket No. R2000-1; or

- (e) 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, or as specified in paragraphs 10 through 15, below.
- 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.

10. Stamps.com shall clearly mark the following legend on each page, or portion thereof, that the Service seeks to protect under this agreement: "Confidential—Subject To Protective Conditions In Docket No. R2000-1 Before The Postal Rate Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of Stamps.com, or as hereinafter provided, no protected information may be disclosed to any person.
11. Any written materials—including but not limited to discovery requests and responses, requests for admission and responses, deposition transcripts and exhibits, pleadings, motions, affidavits, written testimony and briefs—that quote, summarize, or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
12. Any oral testimony, argument or other statements that quote, summarize or otherwise disclose materials protected under these protective conditions shall be received only in hearing sessions limited to Stamps.com representatives and other persons who have complied with the terms of the protective order and have signed the attached certifications. The transcript pages containing such protected testimony shall be filed under seal and treated as protected materials under paragraph 11.
13. Notwithstanding the foregoing, protected material covered by paragraphs 11 or 12 may be disclosed to the following persons without their execution of a compliance certificate. Such disclosure shall not exceed the extent necessary to assist in prosecuting this proceeding or any appeals or reconsideration thereof.
  - (a) Members of the Commission.
  - (b) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.
  - (c) Any other person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

- (d) Reviewing courts and their staffs. Any person seeking to disclose protected information to a reviewing court shall make a good faith effort to obtain protective conditions at least as effective as those set forth in this document. Moreover, the protective conditions set forth herein shall remain in effect throughout any subsequent review unless overridden by the action of a reviewing court.
14. A participant may apply to the Commission for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. Stamps.com or other person that designated the document or testimony as confidential shall be given notice of the application and an opportunity to respond. To revoke confidential status, the proponent of declassification must show by a preponderance of the evidence that public disclosure of the materials is consistent with the standards of the Freedom of Information Act, 5 U.S.C. §552(b)(1)-(9), and Commission precedent.
15. Subpoena by Courts or Other Agencies. If a court or other administrative agency subpoenas or orders production of confidential information which a participant has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within two business days) notify Stamps.com (or other person who designated the document as confidential) of the pendency of the subpoena or order to allow the designating party time to object to that production or seek a protective order.



### CERTIFICATION

The undersigned represents that:

Access to materials provided in Docket No. R2000-1 by Stamps.com in response to Presiding Officer's Ruling No. R2000-1/96 (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. 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 Stamps.com in response to Presiding Officer's Ruling No. R2000-1/96 (hereinafter, "these materials" or "the information"), received on behalf of myself and/or the party which I represent (as indicated below), I now affirm as follows:

5. 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.
6. I have used the information only for purposes of analyzing matters at issue in Docket No. R2000-1.
7. I have returned the information to the Postal Rate Commission.
8. 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 \_\_\_\_\_