

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

DOCKET NO. R97-1

**MOTION OF UNITED PARCEL SERVICE TO COMPEL
PRODUCTION OF INFORMATION AND MATERIALS REQUESTED IN
INTERROGATORIES UPS/USPS-T33-1(c) AND UPS/USPS-T33-2(a)-(c)
TO POSTAL SERVICE WITNESS SHARKEY**

(August 15, 1997)

Pursuant to the Special Rules of Practice in this proceeding, United Parcel Service ("UPS") hereby moves that the Presiding Officer overrule the objections filed by the United States Postal Service ("Postal Service") to interrogatories UPS/USPS-T33-1(c) and UPS/USPS-T33-2(a)-(c) to Postal Service witness Sharkey (the "Interrogatories") and order the Postal Service to produce the information and materials requested in those Interrogatories.

Statement of Facts

On July 24, 1997, UPS filed interrogatory UPS/USPS-T33-1 to Postal Service witness Sharkey (attached at Tab 1). The interrogatory focuses on the Postal Service's new Priority Mail Processing Center ("PMPC") network. Subpart (c) of the interrogatory requests a copy of the complete PMPC contract (or contracts) between the Postal Service and its contractors, and subpart (d) asks for all materials presented

in response to the Postal Service's request for proposals leading up to that contract. As a follow-up to that interrogatory, UPS filed interrogatory UPS/USPS-T33-2 to Postal Service witness Sharkey on July 28, 1997 (attached at Tab 2), which contains additional, more specific requests for information and materials concerning the PMPC network's operations and costs.

On August 4, 1997, the Postal Service objected to subparts (c) and (d) of interrogatory UPS/USPS-T33-1.¹ The primary thrust of its objection appears to be that the pre-contract award information filed in response to the Postal Service's request for proposals is "confidential business information containing trade secrets of the Postal Service, of Emery Worldwide Airlines . . . and of all other business entities submitting proposals for the PMPC bid." Postal Service Objection at 1. On August 7, 1997, the Postal Service objected to interrogatory UPS/USPS-T33-2, adopting the confidential business information ground asserted in its objection to subparts (c) and (d) of interrogatory UPS/USPS-T33-1. The Postal Service has not raised a relevance objection with respect to the actual contract or post-contract award information, but rather has limited its relevance objection to the request for materials furnished in response to its request for proposals.

Counsel for the parties have discussed the Interrogatories and the Postal Service's objections. Based on those discussions, UPS has withdrawn its request for

1. The Postal Service's objection states at one point (on page 2) that the Postal Service was objecting to the full interrogatory. However, the Postal Service has since answered subparts (a) and (b).

the pre-contract award materials requested in subparts (d) of UPS/USPS-T33-1 and of UPS/USPS-T33-2, and therefore those subparts are not at issue here.

However, the parties have been unable to reach agreement concerning production of the PMPC contract and related documents concerning actual Priority Mail operations in, and the costs of, the PMPC network.² Because the information requested in Interrogatories UPS/USPS-T33-1(c) and UPS/USPS-T33-2(a)-(c) is unquestionably relevant to this proceeding – indeed, the Postal Service has explicitly recognized in Mr. Sharkey's testimony the relevance of that information to its rate proposals (see USPS-T-33 at 31) and has failed to raise a relevance objection with respect to that information – UPS submits that the Presiding Officer should order the Postal Service to produce the information and materials requested in those Interrogatories.

Argument

The Need for Information Concerning the PMPC Network and Its Costs Outweighs the Postal Service's Unsupported Claim of Confidentiality.

When a party objects to the production of relevant information on the ground that the information is confidential, the objecting party's interest in confidentiality must be weighed against the requesting party's need for that information. See Mojave

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2. Counsel for the parties continue to discuss their remaining disagreements. UPS has filed this motion in order to achieve a prompt resolution of the dispute and to permit UPS to meet the deadline for filing motions to compel established by the Special Rules.

Pipeline Co., No. CP85-437-005, 1987 FERC LEXIS 2665, at *9-10, 38 Fed. Energy Reg. Comm'n Rep. (CCH) ¶ 61,249 (FERC 1987); see also Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995). Even confidential material must be produced if it is highly relevant so that its relevance outweighs the confidentiality interest of the objecting party.

Here, the Postal Service's apparent claim of confidentiality with respect to the PMPC contract itself and related post-contract documents concerning the costs and operations actually resulting from the PMPC network is unsubstantiated. Assuming such information were arguably confidential – and UPS does not agree that it is – that concern is more than offset by the unquestioned relevance of the information and the need of the parties to be able to scrutinize the impact of the PMPC network on the Postal Service's costs and rates for Priority Mail.

In the past, Priority Mail costing has been of special concern to the Commission. In Docket No. R94-1, the Commission found that Parcel Post transportation costs exceeded those of Priority Mail in certain zones, leading to the “astonishing” conclusion that it cost the Postal Service more to transport parcels by surface transportation than to transport the same parcels by air. Opinion and Recommended Decision, Docket No. R94-1, at V-119-121. The Commission was forced to adjust the rates for certain Parcel Post rate cells to prevent those rates from exceeding Priority Mail rates. This led the Commission to question the reliability of the Postal Service's cost calculations and assumptions. Due to the inexplicable Priority

Mail data, the Commission requested that the Postal Service study the subject of Priority Mail and Parcel Post transportation costs prior to the next general rate or reclassification case. The Postal Service has not complied with that request, and as a result, the issue still needs to be addressed.

In addition, the drastic change in the way Priority Mail will be processed in the new PMPC network justifies heightened scrutiny of the Priority Mail costs resulting from the PMPC contract. The PMPC network represents a significant departure from the Postal Service's current system for processing Priority Mail, and it will undoubtedly have a substantial impact on the costs of Priority Mail. The contract is significant both in terms of sheer dollar amount (reportedly \$1.7 billion dollars over 58 months), and in substantive terms; under the contract, a completely new service network -- involving, among other things, the creation of ten Priority Mail processing centers, the use of a dedicated fleet of aircraft, an extensive trucking system, and sophisticated satellite tracking devices -- is being established to process Priority Mail.³ This new network is expected to be completed by early 1998 and therefore will affect Test Year 1998 costs, as Mr. Sharkey's testimony and attachment 3 hereto both indicate. That a totally new network for Priority Mail will be in place during the test year only heightens the need for particularly close scrutiny of the operation and costs of the Priority Mail network. The implementation of the new network will most likely affect Express Mail costs as well,

3. See Ann Saccomano, CNE Puts it All Together, trafficWORLD, May 5, 1997, at 34, a copy of which is attached hereto at Tab 3.

since at least some Priority Mail volume will move in the new PMPC network rather than in the Eagle network.

The Commission and the parties to this proceeding should have access to the information and materials relating to the operation and costs of this new network so that they may have the opportunity to analyze and determine the costs of Priority Mail under that system. The Postal Service has made no showing of confidentiality, and it is the only source from which the parties can obtain this information. The Postal Service should not be permitted to withhold clearly relevant information on the basis of its unilateral and unsupported notion of confidentiality. Without access to the PMPC contract, there is no means for the parties to test the Priority Mail cost figures presented by the Postal Service, no way to confirm the accuracy of those figures, and no way to determine the reliability of the Postal Service's calculations of Priority Mail costs and its proposed rates.

Moreover, there is a clear public interest in disclosure of the terms of the PMPC contract. Section 5005(b)(3) of the Postal Reorganization Act requires the Postal Service to make available for inspection "[a]ny contract between the Postal Service and any carrier or person for the transportation of mail." 39 U.S.C. § 5005(b)(3). Similarly, under Section 410(b)(5)(B) of the Postal Reorganization Act, Postal Service contracts involving services, for example, must comply with the requirements imposed by the Service Contract Act of 1965, 41 U.S.C. § 351 et seq.

See 39 U.S.C. § 410(b)(5)(B). See also 39 U.S.C. §§ 410(b)(4), (5). These statutory provisions undercut the Postal Service's unexplained claim of confidentiality.

The PMPC contract and the other requested materials relating to the actual operation and costs of the PMPC network by the Postal Service's contractor is no different from information on other Postal Service operations that is discussed in postal testimony or that has been provided in discovery in prior cases. The mere fact that the PMPC network operations involve the use of an outside contractor does not make those operations and their costs confidential. On the contrary, when a company enters into a contract with a public body it should expect that the contract will be subject to public scrutiny when the contract is relevant to a matter at issue before a public forum such as the Commission.⁴

The information sought in the Interrogatories (and contained in the contract and related documents) is clearly relevant to one of the core issues in this proceeding, is of obvious importance to UPS and the other parties, and is not obtainable from any source other than the Postal Service. The Postal Service should be ordered to produce the requested information.⁵

4. On June 27, 1997, UPS requested a copy of the PMPC contract in a Freedom of Information Act ("FOIA") request. Although the Postal Service should have responded to the FOIA request within ten days, 39 C.F.R. § 265.7(b)(2), to date it has failed to respond to that request.

5. If the Presiding Officer were to find that the requested information sought by UPS is confidential in nature -- and, as we have stated, no showing of confidentiality has been made -- the information should be produced subject to a protective order similar to the Order issued by the Presiding Officer in Ruling No. (continued...)

Conclusion

For the foregoing reasons, United Parcel Service respectfully submits that the Postal Service's objection to interrogatories UPS/USPS-T33-1(c) and UPS/USPS-T33-2(a)-(c) to Postal Service witness Sharkey should be overruled, and the Postal Service should be ordered to produce the information and materials requested in those interrogatories.

Respectfully submitted,



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Of Counsel.

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5. (...continued)
R97-1/5. An adapted version of that Order is attached hereto at Tab 4.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in
accordance with section 12 of the Commission's Rules of Practice.



Albert P. Parker, II

Dated: August 15, 1997
Philadelphia, PA

BEFORE THE
POSTAL RATE COMMISSION

POSTAL RATE AND FEE CHANGES, 1997

DOCKET NO. R97-1

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS FROM UNITED PARCEL SERVICE
TO UNITED STATES POSTAL SERVICE WITNESS SHARKEY
(UPS/USPS-T33-1)**

(July 24, 1997)

Pursuant to the Commission's Rules of Practice, United Parcel Service hereby serves the following interrogatories and requests for production of documents directed to United States Postal Service witness Sharkey (UPS/USPS-T33-1).

Respectfully submitted,



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Of Counsel.

**INTERROGATORIES OF UNITED PARCEL SERVICE
TO UNITED STATES POSTAL SERVICE WITNESS SHARKEY**

UPS/USPS-T33-1. On page 31 of your testimony, you state that "presorting will have a diminished workshare value in the Priority Mail Processing Center (PMPC) mail processing environment."

(a) Please describe in detail the flow of Priority Mail, beginning with entry into the postal system all the way to final delivery, in the new PMPC environment.

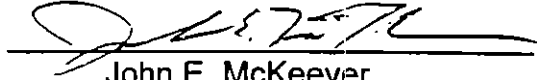
(b) Please describe in detail the flow of Priority Mail, beginning with entry into the postal system all the way to final delivery, for pieces that will not be in the new PMPC environment.

(c) Please provide a complete copy of the PMPC contract.

(d) Please provide all materials that were presented in response to the request for proposals for the PMPC bid.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with section 12 of the Commission's Rules of Practice.


John E. McKeever

Dated: July 24, 1997
Philadelphia, Pa.

BEFORE THE
POSTAL RATE COMMISSION

POSTAL RATE AND FEE CHANGES, 1997

DOCKET NO. R97-1

SECOND SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS FROM UNITED PARCEL SERVICE
TO UNITED STATES POSTAL SERVICE WITNESS SHARKEY
(UPS/USPS-T33-2)

(July 28, 1997)

Pursuant to the Commission's Rules of Practice, United Parcel Service hereby serves the following interrogatory and request for production of documents directed to United States Postal Service witness Sharkey (UPS/USPS-T33-2).

Respectfully submitted,



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Of Counsel.

**INTERROGATORY OF UNITED PARCEL SERVICE
TO UNITED STATES POSTAL SERVICE WITNESS SHARKEY**

UPS/USPS-T33-2. Please provide:

(a) All contracts between the United States Postal Service and CNF Transportation, Inc., Emery Worldwide Airlines, Conway Transportation, and/or Menlo Logistics, and/or any entity associated with them, concerning the handling of Priority Mail (see Traffic World, May 5, 1997, at pages 34-35);

(b) All agreements, memoranda of understanding, correspondence, and other arrangements between the Postal Service and any of the entities identified in paragraph (a), above, specifying or establishing services to be performed by either party for the other, or the costs of such services, under any of the contracts referred to in paragraph (a), above;

(c) All documents which establish, set, state, or form the basis for determining the costs, both in the test year and, by year, in total, to the Postal Service of any of the services performed for or on behalf of the Postal Service under the contracts referred to in paragraph (a), above;

(d) All pre-award documents provided by any of the entities identified in paragraph (a), above, to the Postal Service in connection with the Postal Service's Request for Proposals.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in
accordance with section 12 of the Commission's Rules of Practice.


Stephanie Richman

Dated: July 28, 1997
Philadelphia, Pa.

Logistics

OUTSOURCING

CNF Puts It All Together

BY ANN SACCOMANO

USPS contract gives third-party provider chance to prove one company can do it all

San Francisco

Massive but manageable. That's the transportation industry's reaction to the news that CNF Transportation Inc. has snagged the U.S. Postal Service's \$1.7 billion contract for priority mail sortation and transportation.

"The CNF people know how to conduct a network. You get into the details and it's very well defined — this will be a discrete network," said Richard Hallal, president of Logistics Development Corp., a logistics and finance management company in Cleveland.

Hallal praised CNF's "methodical" roll-out of the project, which puts the CNF family — Emery Worldwide Airlines, Con-Way Transportation and Menlo Logistics — in the same sandbox.

As for the Postal Service, "It's a sign that USPS is stepping out beyond its traditional services. It's a pretty dramatic step because it appears as if all the operating elements of the service went to CNF."

CNF and the Postal Service announced the contract April 24, the largest in CNF's history. (See related story, page 10.) It stipulates that CNF will set up and staff 10 Priority Mail processing centers along the East Coast to handle all of USPS's two-day mail service. CNF must meet an on-time performance benchmark of 96.5 percent. The contract includes incentives to better that mark and penalties for falling short. CNF will handle 300 million pieces of Priority Mail annually with an average weight of two to three pounds. Priority Mail service already is a business magnet for USPS, generating \$3.4 billion in revenue last year for a total of 959 million pieces.

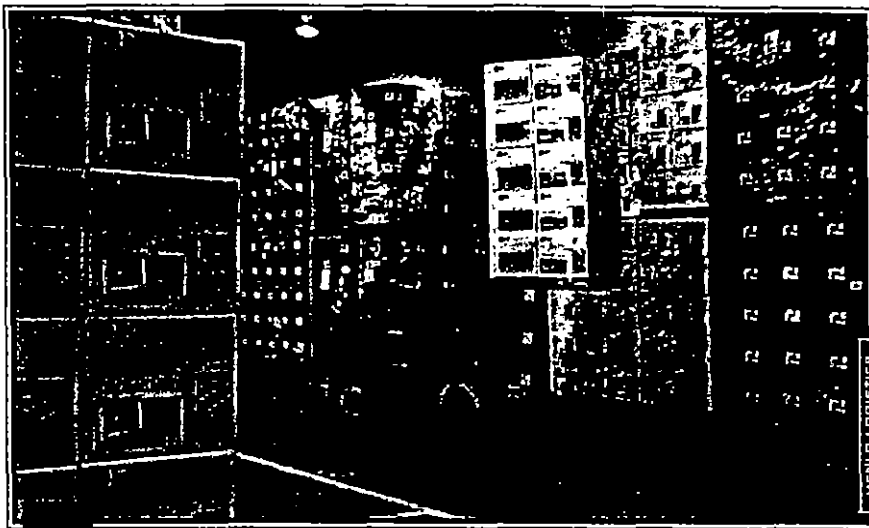
Jon Pavloff, who was vice president of corporate planning with the old Roadway Services company, describes the project as "a formidable challenge for anyone to put

this together on pretty short order. But having said that, they (CNF) do have the individual operating expertise."

CNF will have just 10 months to create the service network, starting in July. Menlo Logistics will take charge of the total operation, using 1,400 of its own staff, while Emery Worldwide subsidiary will supply a dedicated fleet of 18 aircraft to deliver mail within the Eastern states and for mail that originates within the Eastern corri-

ring to Emery's existing USPS contract for overnight Express Mail service. Although Emery handles sortation and transportation for that service, it has no role in planning or management. "They would have had to partner with someone. But CNF has all the elements that make this a logical extension of their business," he said.

In this case, the deciding element was air. Although CNF still will draw on the services of commercial air carriers, it was the only bidder with its own fleet, courtesy of Emery's 18 aircraft. The contract drew bids from the big guns of third-party logistics,



CNF will have just 10 months to create the service network, starting in July. Menlo Logistics will take charge of the total operation, using 1,400 of its own staff. Emery Worldwide will provide a fleet of 18 aircraft to deliver the mail. Conway Truckload will get the linehaul honors, equipping 400 trucks with satellite tracking.

dors with destinations outside those corridors. Con-Way Truckload will get the linehaul honors for packages that can travel over the road, equipping 400 of its trucks with satellite tracking devices supplied by CNF's own equipment manufacturer, Road Systems Inc.

"There are very few other providers that could have done this because they don't have the material-handling expertise relative to sortation facilities," Hallal said, refer-

among them Ryder Integrated Logistics, GATX Logistics, USCO Distribution Services, CTC Distribution Services and Logix.

"We didn't have the air portion. We tried to get the commercial airlines to quote a seven-year rate, but none of them would commit to more than a one-year contract," explained Vincent Gulisano, vice president of business development and logistics solutions for USCO Distribution Services Inc. USCO had submitted a joint bid with CTC

Distribution Services Ltd. and placed second to CNF.

The difficulty in securing a long-term air contract left them more dependent on surface transportation, he said. "We were going to have to commit to very high levels of service since postal contracts take priority over all other commercial freight," he said. "I'll be interested to see how Emery pulls it off."

Emery and the rest of CNF began planning for the bid nearly a year ago, when Donald E. Moffitt, chairman, president and CEO of CNF Transportation, first read an inconspicuous news item that said USPS was thinking about putting Priority Mail out for bid, recalled Gregory L. Quesnel, executive vice president and chief financial officer for CNF Transportation Inc.

Once the request for bids did go out,

in their system would have been considered a two-day product within our system."

Quesnel said he expects Emery will be able to double the use of its aircraft through this contract, which will help keep costs down for everyone. "To the extent we are incurring the ownership cost of the planes, there is a good amount of cost deflection."

The same can be said of CNF as a whole. Sharing the same parent company means that Emery, Menlo Logistics and Con-Way all have a role to play. John Williford, president and CEO of Menlo Logistics, credits the family ties for providing an advantage which the other bidders didn't have. "We have the same shareholder interest. And we've all known each other for a long time. We were able to put aside our loyalty to a component company and bid as CNF," he said.



Menlo supplied many of the design elements of the bid. It took responsibility for ironing out ground transportation routes, designing the layout of the sortation centers and planning for systems automation within them.

CNF was ready to piece together financial and operating models of the various tasks. "This was definitely done in a disaggregated, activity-based manner," Quesnel said of how the company went about breaking down the various operational pieces. Fortunately, USPS was able to supply good data for the task. "They can definitely get their arms around the freight flows," he said. "What fluctuated was exactly how much could be considered a two-day product. What was only a marginal two-day product

For its part, Menlo supplied many of the design elements of the bid. It took responsibility for ironing out ground transportation routes, designing the layout of the sortation centers and planning for systems automation within them.

By February, "We thought we had a good chance to get the contract, so we leaned into the start-up phase as much as we could," Williford said. That entailed scouting locations, making leasehold improvements, documenting procedures

and drawing up staffing requirements.

"There was a lot we could do with minimal investment," while waiting for USPS to select a provider, explained Steve Huggins, Menlo's director of logistics-engineering. "We did only what we could do at minimal cost, by investing in human resources without investing in capital." Only when the award looked "reasonably imminent" did Huggins begin considering securing property.

And how would CNF have viewed all that work if it had not been awarded the contract? "We would have chalked it up to a learning experience," Huggins said.

As it is, Menlo is putting what it has learned from this experience to use to recruit other customers, primarily those looking for worldwide logistics services, Williford said. "This shows how well we can work with our sister companies and it shows our ability to design and operate on a large scale, with a lot of complexity, particularly on the design side."

Now that CNF has the contract, it's a chance for a third-party provider to prove that one company can do it all. "It's an opportunity to bring everything together," Pavloff, formerly of ROLS, said. "It's a stretch in terms of the volume and magnitude of operation but not in terms of management."

He doesn't believe CNF was the only company that could do the job, however. "None of CNF's traditional competitors could do this, but UPS and FedEx could do it," he said.

Which is just why this three-legged race is going to be fun to watch. To Hallal, what will be most tantalizing to watch as the CNF operation unfolds is whether it will drive down the cost of expedited service — not to mention how much more business the Postal Service can get if it can leverage the CNF network to squeeze the time window even more. "If would be awesome if they can pull it off for one-day delivery. That will pose an issue for FedEx and UPS," Hallal said.

Yes, but only if it works, as CNF's Quesnel is the first to make clear. "Whether CNF gets any more business as a result of this win I can't say," said Quesnel. "Future opportunities will come about only if we execute this perfectly. And even then, we will be only another bidder." ●

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to the Postal Service's Priority Mail Processing Center contract or contracts and other documents produced pursuant to interrogatories UPS/USPS-T33-1(c) and UPS/USPS-T33-2(a)-(c) ("the Protected Materials"). Individuals seeking to obtain access to the Protected Materials must agree to comply with these conditions, and complete the attached certifications.

- (1) Only those persons who are either:
 - (a) employees of the Postal Rate Commission (including the Office of the Consumer Advocate) or participants in Postal Rate Commission Docket No. R97-1; or
 - (b) employed by such a participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. R97-1

shall be granted access to the Protected Materials.

- (2) No person granted access to the Protected Materials is permitted to disseminate those materials in whole or in part to any person not authorized to obtain access under these conditions.
- (3) The final date of any participant's access shall be
 - (a) the date on which Docket No. R97-1 is terminated (including all appeals); or
 - (b) the date on which that participant formally withdraws from Docket No. R97-1; or
 - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R97-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel in Docket No. R97-1 of the termination of any such business and consulting arrangement or retainer or affiliation which occurs before the closing of the evidentiary record.

- (4) Immediately after the termination of Docket No. R97-1 (including all appeals), a participant (and any person working on behalf of that participant) who has obtained a copy of the Protected Materials shall certify to the Commission:
 - (a) that the materials were maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the materials (and any duplicates) either have been destroyed or returned to the Commission.
- (5) The duties of any person obtaining access to the Protected 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 the Protected Materials are required to protect the Protected Materials by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the Protected Materials 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 the Protected Materials filed in Docket No. R97-1.
- (8) The duty of nondisclosure of anyone obtaining access to the Protected Materials is continuing, terminable only by specific order of the Commission.
- (9) Any Docket No. R97-1 participant or other person seeking access to the Protected Materials, by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to the Protected Materials covered by Presiding Officer's Ruling No. R97-1/___ in Docket No. R97-1 has been authorized by the Commission.

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

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

I will maintain in strict confidence the information obtained from the Commission in accordance with the conditions as set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

Pursuant to the Certification which I previously filed with the Commission with respect to information received in accordance with Presiding Officer's Ruling No. R97-1/__, on behalf of myself and/or the party which I represent (as indicated below), I affirm as follows:

1. I have maintained in strict confidence the information provided by the Postal Service in accordance with Presiding Officer's Ruling No. R97-1/___.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R97-1.
3. I have surrendered to the Postal Rate Commission or destroyed all copies of the information which I obtained or which have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____