

Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

EXPERIMENTAL RATE AND SERVICE CHANGES
TO IMPLEMENT NEGOTIATED SERVICE AGREEMENT
WITH CAPITAL ONE SERVICES, INC.

Docket No. MC2002-2

MOTION OF UNITED STATES POSTAL SERVICE FOR LEAVE
TO FILE DECISION ANALYSIS REPORT (DAR)
UNDER PROTECTIVE CONDITIONS
(December 6, 2002)

At the end of the hearing on Tuesday, December 3, 2002 (the close of witness Crum's appearance on the stand¹), Vice Chairman Covington requested that a copy of the Decision Analysis Report (DAR) regarding the PARS program be provided to the Commission:

Chairman Omas, before we move to the next stage of the proceedings, prior to our recessing so to speak Ms. McKenzie, Witness Crum had alluded to a DAR, Division Analysis Report. I was wondering if there is any way that DAR could be made available to us here at the Commission, and if so when. We would be more interested in the overall report as opposed to how it would relate to what's going on with this request from Capital One.

Ms. McKenzie, counsel for the Postal Service thereafter replied:

[W]e'll get back to you on Friday as to what the status of that is. Again, we do have to talk with various people as to how much of it we can release or not release. But at least by Friday [we will report] whether we need protective conditions or not[.]

¹ The Postal Service had yet to receive hearing transcripts with corrected pagination when this pleading was prepared; accordingly, this parenthetical citation is necessitated.

This pleading fulfills that commitment. Protective conditions are necessary if the DAR is to be made available to the Commission, as explained more fully below.

Decision Analysis Reports are internal management documents that play critical roles in the Postal Service's investment and procurement decision-making processes. Typically, they contain highly sensitive information that, if disclosed, could impair a variety of important interests, including labor-management relations, competitive and other business relationships, confidentiality of valuable commercial information, and contract negotiations. Consequently, the Postal Service has always been extremely reluctant to make information contained in DARs publicly available. At a minimum, disclosure of such pre-decisional evaluations could inhibit the free exchange of advice and undermine the integrity and quality of the decision-making process. Furthermore, DARs commonly contain information that could damage Postal Service interests, even after the decisions that the DARs support have already been made.

The PARS DAR shares many of the characteristics that in general create the need to keep DARs confidential. In particular, the DAR for Phase I of PARS contains information that would expose the cost structure of Postal Service operations that parallel and create the basis for the procurement of PARS equipment and services. This information, if made public, would undermine the Postal Service's bargaining position, in the event the contract for Phase I of PARS should need to be renegotiated. Such developments are not uncommon where sophisticated technology is employed in a fluid business environment. The PARS contract also contains a performance-based incentive mechanism that promotes improvement of service provided. Knowledge obtained from the DAR of authorized funding available to implement incentive

adjustments could distort or undermine the contractor's commitment to and efforts toward improving performance. Furthermore, Phase I of PARS will in the future be followed by a Phase II procurement. Public knowledge of cost structure, analytical reasoning, and authorized expenses pertaining to the Phase I procurement could adversely affect the Postal Service's ability to successfully negotiate and award a favorable contract in Phase II.

Accordingly, the Postal Service is willing to provide the PARS DAR only on the condition that its distribution be limited to the Commission and authorized representatives of parties to the instant proceeding, and that the permissible uses of the information in the DAR be restricted to this litigation.² The Postal Service has appended sample protective conditions that should be used to safeguard the sensitive information contained in the DAR. The Postal Service respectfully requests that the Presiding Officer rule in advance that these conditions will apply to the DAR when it is submitted.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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² See Presiding Officer's Ruling Granting Motions for Protective Conditions, No. R2001-3, Docket No. R2001-1 (Oct. 23, 2001).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

Kenneth N. Hollies

475 L'Enfant Plaza West, S.W.
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December 6, 2002

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to materials provided in Docket No. MC2002-2 by the Postal Service in response to Presiding Officer's Ruling No. MC2002-2/xx (hereinafter, "these materials"). Individuals seeking to obtain access to these materials 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. MC2002-2, 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. MC2002-2, 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 the earlier of:
 - (a) the date on which the Postal Rate Commission issues its recommended decision or otherwise closes Docket No. MC2002-2;
 - (b) the date on which that participant formally withdraws from Docket No. MC2002-2; or

- (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. MC2002-2 participant on whose behalf that person obtains. 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. MC2002-2, 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. MC2002-2.
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. MC2002-2 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. The Postal Service 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. MC2002-2 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 the Postal Service, 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 Postal Service 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. The Postal Service 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. 9552(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 the Postal Service (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. MC2002-2 by the Postal Service in response to Presiding Officer's Ruling No. MC2002-2/xx (hereinafter, "these materials" or "the information") 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. MC2002-2. 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. MC2002-2 by the Postal Service in response to Presiding Officer's Ruling No. R2001-I/3 (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. MC2002-2.
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 _____