

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING GRANTING MOTION OF  
THE UNITED STATES POSTAL SERVICE FOR PROTECTIVE CONDITIONS  
FOR MATERIALS REQUESTED BY INTERROGATORY AAPS/USPS-T36-4

(Issued July 24, 2006)

The Postal Service filed a motion requesting the establishment of protective conditions, as provided for in § 31a of the rules of practice (39 C.F.R. §3001.31a) governing access to the materials responsive to AAPS/USPS-T36-4.<sup>1</sup>

**AAPS/USPS-T36-4.** Has the Postal Service requested or received any studies of the alternate delivery industry since the 1999 update of the SAI report? If so, please describe such studies and provide copies of any reports or updates produced.<sup>2</sup>

The Postal Service states that “[t]he material responsive to the interrogatory is a report by SAI, dated August 2000.”<sup>3</sup> The Postal Service further states that this information is proprietary and commercially sensitive. The Postal Service has not indicated whether it has spoken to the Association of Alternative Postal Systems (AAPS) regarding this interrogatory nor AAPS’s position on the Motion.

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<sup>1</sup> Motion of the United States Postal Service for Protective Conditions for Materials Requested in AAPS/USPS-T36-4, July 20, 2006 (Motion).

<sup>2</sup> First Interrogatories of the Association of Alternate Postal Systems to United States Postal Service Witness Kiefer AAPS/USPS-T36-1-8, July 6, 2006.

<sup>3</sup> Motion at 1.

As the Postal Service notes, the Commission has previously ruled on the discoverability of earlier SAI reports in Dockets Nos. R97-1 and R2000-1 which involved extended motions practice. In both those cases, the Presiding Officer ruled that the Postal Service must produce the SAI reports subject to appropriate protective conditions.<sup>4</sup> The Presiding Officer did, however, allow the Postal Service to redact and withhold certain information regarding those reports. Specifically, the Presiding Officer allowed the Postal Service to “redact the company and product names of the alternate delivery providers comprising the study.”<sup>5</sup> Further, the Presiding Officer did not require the Postal Service provide “the Service’s and SAI researchers’ comments and conclusions on, and analysis and/or interpretation of, the underlying factual data.”<sup>6</sup>

In light of this precedent from Docket Nos. R97-1 and R2000-1 dealing with the production of previous SAI reports, the Postal Service states that it “will stipulate to the production of the report subject to appropriate protective conditions.”<sup>7</sup> The Postal Service points to P.O. Ruling R2006-1/5, June 15, 2006, as supplemented by P.O. Ruling R2006-1/10, June 30, 2006, as appropriate protective conditions for the Postal Service’s production of the updated SAI report. The Postal Service also requests that, as in prior cases, it be allowed to redact the names of the companies studied as well as other information that would identify the company such as product names in the report. Further following the precedent of earlier cases, the Postal Service seeks permission to redact “SAI researchers’ and the Postal Service’s comments and conclusions on, and analysis and/or interpretation of, the underlying factual data.”<sup>8</sup>

The Postal Service’s request for protective conditions shall be granted. As in Docket Nos. R97-1 and R2000-1, prior to production of the updated SAI report, the

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<sup>4</sup> See P.O. Ruling R97-1/46, October 15, 1997; P.O. Ruling R97-1/52, October 23, 1997; P.O. Ruling R2000-1/21, March 28, 2000.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> Motion at 2.

<sup>8</sup> *Id.* at 1.

Postal Service may redact the company and product names of the alternate delivery providers comprising the study. The Postal Service may also refrain from producing the Postal Service's and SAI researchers' comments and conclusions on, and analysis and/or interpretation of, the underlying factual data. The material is to be provided subject to the attached protective conditions, which are identical in all material respects to P.O. Ruling R2006-1/5, June 15, 2006.<sup>9</sup>

Since the response deadline to the Motion has not passed, and AAPS's position on the Motion is uncertain, the Motion is granted subject to opposition being filed. However, any participant that gains access to the protected information shall forfeit its right to challenge the appropriateness of the protective conditions imposed by this Ruling.

#### RULING

1. The Motion of the United States Postal Service for Protective Conditions for Materials Requested in AAPS/USPS-T36-4 filed July 20, 2006, is granted, subject to opposition, as provided in the body of this Ruling.
2. The attached protective conditions govern access to the updated SAI report referenced in this Ruling.

George Omas  
Presiding Officer

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<sup>9</sup> It should be noted that the Commission has established a special rule for materials submitted under protective conditions in this case as outlined in P.O. Ruling R2006-1/10, June 30, 2006.

## STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to materials provided in Docket No. R2006-1 by the Postal Service in response to Presiding Officer's Ruling No. R2006-1/22 (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. R2006-1, 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. R2006-1, 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. Unless otherwise changed pursuant to paragraph 4, the final date of any participant's access shall be the earlier of:
  - (a) the date on which the Postal Rate Commission issues its final recommended decision or otherwise closes Docket No. R2006-1;

- (b) the date on which that participant formally withdraws from Docket No. R2006-1; or
  - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R2006-1 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 final recommended decision in Docket No. R2006-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall:
  - (a) certify to the Commission that the copy was maintained in accordance with these conditions (or others established by the Commission); and
  - (b) either certify that the copy (and any duplicates) either have been destroyed or returned to the Commission, or present written consent from the Postal Service to extend the obligation to destroy or return copies until a date certain or until the occurrence of some other event specified by the Postal Service.
- 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. R2006-1.

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. R2006-1 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. 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. R2006-1 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 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. 552(b)(1)-(9), and Commission precedent. Alternatively, a proponent may show that the final order of a court has directed that the materials be disclosed under the Freedom of Information Act because of an express determination that the information therein is not entitled to exemption from disclosure under 5 U.S.C. 552(b)(1)-(9).

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. R2006-1 by the Postal Service in response to Presiding Officer's Ruling No. R2006-1/22 (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. R2006-1.

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. R2006-1 by the Postal Service in response to Presiding Officer's Ruling No. R2006-1/22 (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. R2006-1.
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 \_\_\_\_\_