

ORDER NO. 36

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

Before Commissioners:

Dan G. Blair, Chairman;
Dawn A. Tisdale, Vice Chairman;
Mark Action; Ruth Y. Goldway; and
Tony L. Hammond

Rate and Service Changes to Implement
Baseline Negotiated Service Agreement
With Life Line Screening

Docket No. MC2007-5

ORDER GRANTING IN PART AND DENYING IN PART MOTION OF
LIFE LINE SCREENING FOR A PROTECTIVE ORDER REGARDING
RESPONSES OF WITNESS GREENBERG TO CERTAIN INTERROGATORIES
(OCA/LLS-T1-4(a), 4(c), 5, 6, 8, 9, 11(d), 11(f), 11(h) through 11(k))

(Issued September 14, 2007)

Life Line Screening (Life Line) has filed a motion for leave to file its responses to certain interrogatories from the Office of the Consumer Advocate under protective conditions.¹ These interrogatories can be divided into four categories: (1) questions relating to Life Line's relationship with potential and existing affinity partners; (2) questions aimed at exploring what is meant by the term "ultrasound team;" (3) questions regarding Life Line's employees; and (4) questions related to data confirmation.

Life Line asserts that the information responsive to these interrogatories is highly confidential and commercially sensitive and that "[p]ublicly revealing this information

¹ Motion of Life Line Services [sic] for Protective Order Regarding Response of Witness Greenberg to Interrogatories of the Office of the Consumer Advocate (OCA/LLS-T1-4(a), 4(c), 5, 6, 8, 9, 11(d), 11(f), 11(h), 11(i), 11(j), 11(k)), September 7, 2007 (Motion).

could damage Life Line's competitive position and cause irreparable harm to Life Line's business interests." Motion at 1.

The motion for protective conditions is granted in part and denied in part as addressed in this Order without prejudice to Life Line's right to renew its request with additional supporting detail on how the information sought is highly confidential and commercially sensitive. Each category of interrogatories for which protective conditions are sought is discussed below.

1. Questions Relating to Affinity Partners

This first category of interrogatories deals with Life Line's relationship with other entities.² Life Line submits that the interrogatories that ask for details about Life Line's relationship with affinity partners could jeopardize current and future partner relationships. *Id.* at 2. In a ruling in the Bookspan NSA case, Docket No. MC2005-3, the Presiding Officer faced a similar question regarding Bookspan's business partners. The Presiding Officer noted that:

These requests ask for information to determine the scope of Proposed DMCS section 620.11. Proposed section 620.11 sets forth the entities that are eligible to share the benefits of the discount with Bookspan. Accordingly, a clear understanding of this section is very important to the public and the Commission, and may weigh on whether the proposed language is appropriate. Since this NSA is essentially a contract with a government entity, just as it would have been inappropriate for Bookspan's identity to be kept confidential as a party to this NSA, it is inappropriate for other beneficiaries of this NSA's identities to be kept confidential. Put another way, these entities could not obtain separate 'secret' NSAs with the Postal Service, and should not be permitted to do so indirectly through Bookspan. Nonetheless, it is obvious that publicly revealing the specific names of these entities may harm Bookspan's business. Accordingly, to the extent that answers to the interrogatories call for a listing of specific entities, those lists are protected under the

² These interrogatories are: OCA/LLS-T1-4 (introductory sentence), 4(a), 4(c), 5 (introductory sentence), 5(a), 5(c) and 6.

conditions set forth in Appendix A. However, any responses or partial responses to these interrogatories that do not require the listing of specific entities are to be answered publicly, or a more explicit explanation of why protective conditions are warranted must be supplied.

P.O. Ruling MC2005-3/5 at 7-8. The proposed DMCS section 640.11 for the Life Line NSA has similar language and the same reasoning applies here. Accordingly, to the extent that answers to these interrogatories seek information about specific entities, disclosure of the relationship with those specific entities is protected under the conditions set forth in the Attachment to this Order. However, any responses or partial responses to these interrogatories that do not require revealing the relationships with specific entities are to be answered publicly, or a more explicit explanation of why protective conditions are warranted must be supplied.

Two other interrogatories in this category need to be addressed specifically. Interrogatory OCA/LLS-T1-6 (first sentence) asks Life Line “how many affinity partners does Life Line Screening of America Ltd expect to acquire” while interrogatory OCA/LLS-T1-5(c) requests information on Life Line’s affinity partnership plans for 2008-2010. These requests deal with future business plans which, in a competitor’s hands, could harm Life Line. Accordingly, this information will be subject to the protective conditions in the Attachment to this Order.

2. Questions Aimed at Describing Life Line’s Ultrasound Teams

This second category of interrogatories deals with exploring what is meant by the term “ultrasound team” and the number of ultrasound teams that Life Line uses overall and in specific markets.³ Life Line argues that these interrogatories ask about the extent of Life Line’s operations in specific markets and the relationship between those operations and growth opportunities. As such, Life Line believes that publicly revealing

³ These interrogatories are: OCA/LLS-T1-8 (introductory sentence), 8(a), 8(b), 9(a), 9(b), 9(d), 9(f), 9(g), 11(d), 11(f) and 11(h)-(k).

this information would be harmful to it because it would allow competitors insight into Life Line's business strategy. To the extent that the interrogatories seek information regarding the number of ultrasound teams it uses in specific markets, the Commission agrees that publicly revealing this information could allow competitors to gain insight into Life Line's business strategies and plans. Accordingly, this information will be subject to the protective conditions in the Attachment to this Order.⁴

However, the Commission does not find a sufficient nexus between Life Line's business strategy and information asking for definition of terms used in a witness's testimony or information on Life Line's number of ultrasound teams in existence at fixed periods of time in the company's history.⁵ It is especially difficult to see why information relating to the number of ultrasound teams in existence at fixed periods of time in the company's history should be protected when witness Greenberg lists the number of ultrasound teams in existence today publicly. See LLS-T-1 at 2. Thus, without more detail from Life Line as to how historical information will cause competitive harm while similar current information does not cause competitive harm, it is not clear why the responses to these interrogatories deserve protection. Accordingly, because Life Line has not met its burden here, the responses to these interrogatories must be provided publicly, or a more explicit explanation of why protective conditions are warranted must be supplied.

Additionally, interrogatory OCA/LLS-T1-11(k) seeks an explanation as to why a difference in ratios does not signal growth opportunities for Life Line. Life Line does not explain, nor is it inherently obvious, how publicly revealing how the absence of business growth opportunities could allow competitors to gain information into Life Line's actual business strategies and plans. Nonetheless, if Life Line is able to provide a more explicit explanation of why protective conditions are warranted, the Commission will thoroughly consider and weigh the competing factors.

⁴ These interrogatories are: OCA/LLS-T1-9(a), 9(b), 9(d), 9(f), 9(g), 11(d), 11(f) and 11(h)-(j).

⁵ These interrogatories are: OCA/LLS-T1-8 (introductory sentence), 8(a) and 8(b).

3. Questions Regarding Life Line's Employees

This third category of interrogatories deals with questions regarding Life Line's relationships with its employees.⁶ Life Line believes that publicly revealing this information would be harmful because it would allow competitors insight into Life Line's business strategy. Maintaining the confidentiality of the number of employees working for a business as well as internal communications between management and employees can be important to the success of certain private sector businesses. Accordingly, this information will be subject to the protective conditions in the Attachment to this Order.

4. Questions Related to Data Confirmation

This final category of interrogatories deals with questions seeking data confirmation on various topics.⁷ Life Line does not address these questions specifically in its Motion, but generally states that all the interrogatories subject to its Motion relate to Life Line's plans for future growth in specific markets and would subject it to competitive harm. Life Line does not explain how confirming data on various publicly available websites would subject Life Line to competitive harm. Accordingly, unless Life Line is able to provide a sufficient nexus between answering these interrogatories publicly and a competitive harm through a more explicit explanation of why protective conditions are warranted, the responses to these interrogatories must be provided publicly.

Conclusion. As discussed above, the Motion is granted in part and denied in part subject to any future demonstration that this material is not entitled to protective status and without prejudice to Life Line's right to renew its request with additional supporting detail on how the information sought is highly confidential and commercially sensitive.

⁶ These interrogatories are: OCA/LLS-T1-8(c)-(f).

⁷ These interrogatories are: OCA/LLS-T1-5(b), 9(c) and 9(e).

See Statement of Compliance with Protective Conditions, ¶ 14. The protective conditions attached to this Order govern access to the protected materials. At the prehearing conference, Life Line counsel emphasized the desirability to proceeding expeditiously. Tr. 1 at 7. If Life Line is seeking further protective conditions to those interrogatories addressed in this Order, it shall make such a request to the Commission within seven days of the issuance of this Order.

It is ordered:

1. Motion of Life Line Services for Protective Order Regarding Response of Witness Greenberg to Interrogatories of the Office of the Consumer Advocate (OCA/LLS-T1-4(a), 4(c), 5, 6, 8, 9, 11(d), 11(f), 11(h), 11(i), 11(j), 11(k)), filed September 7, 2007, is granted in part and denied in part as outlined in the body of this Order.
2. The attached protective conditions govern access to materials provided in response to this Order.
3. If Life Line Screening seeks further protective conditions with respect to those interrogatories addressed in this Order, it shall make a request to the Commission no later than September 20, 2007.

By the Commission.

Steven W. Williams
Secretary

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to materials provided in Docket No. MC2007-5 by Life Line Screening in response to Commission Order No. 36 (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 Regulatory Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) a participant in Postal Regulatory Commission Docket No. MC2007-5, 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. MC2007-5, 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 Regulatory Commission issues its final recommended decision or otherwise closes Docket No. MC2007-5;

- (b) the date on which that participant formally withdraws from Docket No. MC2007-5; or
 - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. MC2007-5 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Regulatory 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. MC2007-5, 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 Life Line Screening to extend the obligation to destroy or return copies until a date certain or until the occurrence of some other event specified by Life Line Screening.
- 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. MC2007-5.

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. MC2007-5 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. Life Line Screening shall clearly mark the following legend on each page, or portion thereof, that Life Line Screening seeks to protect under this agreement: "Confidential—Subject To Protective Conditions In Docket No. MC2007-5 Before the Postal Regulatory 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 Life Line Screening, 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 Life Line Screening 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; and
 - (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. Life Line Screening 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 Life Line Screening (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. MC2007-5 by Life Line Screening in response to Commission Order No. 36 (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. MC2007-5.

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. MC2007-5 by Life Line Screening in response to Commission Order No. 36 (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. MC2007-5.
3. I have returned the information to the Postal Regulatory Commission.
4. I have either surrendered to the Postal Regulatory 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 _____