

#### § 3007.40

by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

(b) In determining whether to publicly disclose non-public materials in which the Commission determines a third party has a proprietary interest, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

#### § 3007.40 Request for access to non-public materials.

(a) During a Commission proceeding, any person may file a motion pursuant to § 3001.21 of this chapter requesting access to non-public materials. The motion shall include:

(1) A detailed statement providing justification for access; and

(2) A list of relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the party requesting access, and whether that party is affiliated with the delivery services, communications or mailing industries.

(b) To expedite the process, each person seeking access to non-public materials may attach to the motion an executed copy of protective conditions such as those provided in Appendix A of this part.

(1) If an executed copy of protective conditions is attached and if actual notice of the motion has been provided by conversation or e-mail exchange to all persons identified by the Postal Service under § 3007.2(c), answers are due within 3 days after such a motion is filed.

(2) In all other circumstances, answers are due within 7 days after such a motion is filed.

(c) Unless the Commission otherwise provides, no reply to an answer filed pursuant to paragraph (b)(1) or paragraph (b)(2) of this section shall be filed.

(d) Following the filing of answers, if any:

(1) The Commission will issue an order allowing or denying access and setting forth the appropriate protective conditions, if any, to be accorded non-public materials, or

(2) If the Postal Service or third party with a proprietary interest does

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not contest a person's access subject to agreed protective conditions, the Commission or its authorized representative may issue an order allowing access subject to the agreed protective conditions.

#### § 3007.41 Termination of access to non-public materials.

(a) Except as provided in paragraph (b) of this section, access to non-public materials obtained under § 3007.40 terminates either when the Commission issues a final order or report in the relevant proceeding or the person withdraws or is otherwise no longer involved in the proceeding, whichever occurs first. For purposes of this section, an order or report is not considered final until after the possibility of judicial review expires.

(b) Access to non-public materials shall continue for persons seeking continued access under § 3007.50.

(c) Upon termination of access under paragraph (a) of this section, all non-public materials in a person's possession must be destroyed, and the form attached to the protective conditions certifying destruction must be executed and filed with the Commission.

#### § 3007.42 Standard for decision for request for access to non-public materials.

In determining whether to grant a request for access to non-public materials, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

#### § 3007.50 Request for access to non-public materials relevant to compliance.

(a) Any person may file a motion pursuant to § 3001.21 of this chapter requesting access to, or continued access to, non-public materials relevant to compliance under 39 U.S.C. 3653. The motion shall include:

(1) A detailed statement providing justification for access, including reference to the materials' relevance to compliance under chapter 36 of title 39 of the U.S. Code; and

(2) A list of relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the party requesting