

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Repositionable Notes Market Test)
) Docket No. MC2004-5
)
)

**DIRECT MARKETING ASSOCIATION
MOTION FOR PERMISSION TO CONDUCT LIMITED CROSS-EXAMINATION
OF POSTAL SERVICE WITNESSES HOLLAND AND KANEER**

For the reasons stated below, the Direct Marketing Association (“the DMA”) respectfully moves that the Commission permit the DMA to conduct limited cross-examination of USPS witnesses Holland and Kaneer.

As the Commission is aware, the DMA has not filed a request for a hearing in this case. The DMA’s initial assessment of the Postal Service’s proposal led the DMA to conclude that all the relevant facts were apparent on the face of the USPS testimony and that, based on these facts, the proposal was fatally flawed under applicable law and well-established Commission principles. Accordingly, the DMA joined with the Association for Postal Commerce and the Mailing & Fulfillment Service Association in moving (the “Joint Motion”) for an order dismissing this case on a summary basis.¹

On August 30, 2004, the Commission issued Order No. 1417 in which it denied the Joint Motion, stating:

“Accordingly, whether PRN mail has ‘value’ or ‘desirability’ that should be reflected in classifications and rates is something that should be examined in a proceeding where there is an opportunity to make a record, rather than be determined in summary fashion at the outset. For this reason, the motion for summary dismissal filed by the mailer’s coalition is denied.”²

The DMA has reviewed the USPS testimony in light of Order No. 1417 and has concluded that the Commission’s consideration of the USPS proposal would benefit from an elucidation of some of the key aspects of the Postal Service’s testimony. Under ordinary circumstances, the DMA would expect to go through the normal discovery process, seeking

¹ Joint Motion to Dismiss of Association of Postal Commerce, Mailing & Fulfillment Association, and Direct Marketing Association (August 11, 2004).

² PRC Order No. 1417 (August 30, 2004) at p. 5.

additional information in written form before deciding whether to engage in oral cross-examination. The DMA is more than willing to pursue this approach if the Commission prefers. However, the DMA is aware that discovery can be time-consuming and is conscious of the fast-track status of this case. The DMA believes that moving directly to oral cross-examination is likely to lead to the creation of a reasonably complete record in the shortest possible time.

Moreover, the DMA does not believe that written discovery is needed to limit the issues on which oral cross-examination is appropriate. The DMA has already identified the issues on which it seeks to cross-examine the USPS witnesses, and they are rather narrow. The DMA wishes to cross-examine USPS witness Holland on the portion of this testimony, USPS-T-1, that describes the market test the Postal Service wishes to undertake and the data collection efforts that will accompany it. Similarly, the DMA wishes to cross-examine USPS witness Kaneer on the portion of his testimony, USPS-T-2, that addresses pricing considerations and, in particular, the reasons for choosing the specific rates being proposed in this case. The DMA's proposed cross-examination would also elicit the views of the USPS witnesses on several critical portions of the testimony filed yesterday by the National Newspaper Association.

The DMA expects that the cross-examination of each witness will last no more than one hour.

Respectfully submitted,

Dana T. Ackerly II
Counsel for the Direct Marketing Association

September 22, 2004

CERTIFICATE OF SERVICE

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

Dana T. Ackerly II

September 22, 2004