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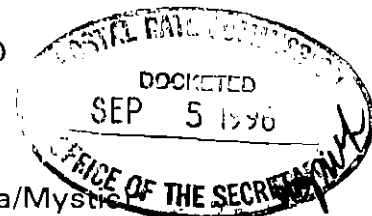
BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
NASHUA/MYSTIC MOTION TO COMPEL
(September 5, 1996)



On August 29, 1996, Nashua Photo and Mystic Color Lab (Nashua/Mystic) filed a Motion To Compel¹ responses to their interrogatories 1-65 directed to the Postal Service. The Postal Service hereby responds to that Motion.²

In pleadings filed on August 19, 1996,³ and August 23, 1996,⁴ respectively, the Postal Service requested that it be relieved of any obligation to respond to interrogatories NM/USPS-8 through 27 and 37 through 65. In addition to the general objections based upon the pendency of the Postal Service's August 19, 1996, Motion For Reconsideration of PRC Order No. 1129, these two pleadings

¹ In the same pleading as their Opposition To United States Postal Service Motion To Reconsider And All Pending Discovery Motions.

² Since the Postal Service filed responses to the Second Set of Nashua/Mystic interrogatories (NM/USPS-28 through 36) on August 30, 1996, the Postal Service considers the Motion To Compel to be moot with respect to these interrogatories.

³ Motion Of The United States Postal Service For Relief From Obligation To Respond To Interrogatories From Nashua/Mystic (NM/USPS-8-27) Pending Resolution Of Motion For Reconsideration Of PRC Order No. 1129 And, In The Alternative, Objections To Interrogatories.

⁴ Motion Of The United States Postal Service For Relief From Obligation To Respond To Interrogatories From Nashua/Mystic (NM/USPS-37-65) Pending Resolution Of Motion For Reconsideration Of PRC Order No. 1129 And, In The Alternative, Objections To Interrogatories.

also raised other specific objections to certain of these Nashua/Mystic interrogatories.

In response to the August 29, 1996, Nashua/Mystic Motion To Compel, the Postal Service incorporates by reference the grounds for its August 19, 1996, and August 23, 1996, Motions For Relief, which are based upon the pending resolution of its Motion for Reconsideration Of PRC Order No. 1129. The Postal Service hereby also incorporates by reference the arguments in its August 23, 1996, Response To PRC Order 1131, which explains why, because of the ongoing work of both the internal management review of Business Reply Mail and the Nashua/Mystic/USPS working group, Docket No. MC96-3 should not include consideration of BRM issues.⁵

Accordingly, the Postal Service considers that it should not be compelled to respond to the following interrogatories enumerated on pages 4 and 8 of the Nashua/Mystic Motion To Compel: NM/USPS-8 through 26. Likewise, it should not be compelled to respond to NM/USPS-27 or 37 through 65.

In addition, the Postal Service responds to specific arguments in the Nashua/Mystic Motion To Compel below.

NM/USPS-12 and 21

As the only basis for their Motion To Compel responses to NM/USPS-12 and 21, Nashua/Mystic argue that because the Postal Service offered rebuttal testimony in Docket No. R94-1 which referred to its management of the Business

⁵ And, by implication, discovery pertaining in all material respects to BRM, such as that propounded by Nashua/Mystic in the interrogatories at issue here: NM/USPS-8-27 and 37-65.

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Reply Mail Automated System (BRMAS), Nashua/Mystic are entitled to discovery on the nature of postal management of BRMAS today.⁶ Nashua has failed to either argue or demonstrate how this topic is relevant to the proposal it intends to have the Commission consider in Docket No. MC96-3. Whatever Business Reply Mail rate or classification proposal Nashua ultimately chooses to advance in this or some other docket will stand or fall on its own merits, and without regard to the degree to which Postal Service management of BRMAS in 1996 mirrors observations offered in 1994 about 1994.

NM/USPS-19(c)

This interrogatory requested that the Postal Service explain "why the . . . Domestic Mail Manual does not require a minimum volume of incoming BRM in order to qualify for the BRMAS rate." In their Motion To Compel, rather than address the Postal Service's objection that the interrogatory calls for a legal conclusion, Nashua/Mystic offer alternative interrogatories:

- has the Postal Service given any thought to the possibility of a minimum volume?
- has it considered the possibility, but not perceived a need to require a minimum volume?
- has it any other operation or marketing basis for not requiring a minimum volume?

The question of why certain words or requirements are not in the DMM goes

⁶ Motion To Compel at 6.

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directly to the heart of the Postal Service's determination of what is legally required by the Domestic Mail Classification Schedule and what is legally permitted in the Postal Service's exercise of its residual authority to implement the DMCS through the DMM. The Postal Service has adopted wording in the DMM which it does not consider to be inconsistent with the requirements of the DMCS. The Postal Service regards discovery to be an inappropriate medium for requiring it to explain how the DMCS should be interpreted and what constitutes a proper and legal exercise of its authority to implement the DMCS.

NM/USPS-49(c)

In their Motion To Compel, Nashua/Mystic clarify that this interrogatory -- which asks the Postal Service to "explain the source of the authorization for the Prepaid Courtesy Reply Mail experiment" -- was, despite its wording, never intended as a request for an explanation of the basis for such authority. That being the case, the Postal Service withdraws that portion of its objection which was motivated by the appearance that the interrogatory requested the statement of a legal conclusion regarding such authority.

NM/USPS-53(a)

This interrogatory requests whether "the Postal Service consider[s] Prepaid Courtesy Reply Mail to be a 'Special Service' similar to BRM" The Postal Service objected because the question, quite plainly, calls for the statement of a conclusion about the legal status of "Prepaid Courtesy Reply Mail," whether it is subject to the jurisdiction of the Commission and, if so, whether it is a class (or

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subclass or rate category) of mail or a special postal service within the meaning of the Postal Reorganization Act. At page 10 of their Motion To Compel, Nashua/Mystic state that they cannot understand the objection and that, in any event, the objection is based upon an improper characterization of the question. With all due respect, the Postal Service considers that Nashua/Mystic have not articulated a basis a Motion To Compel which overcomes the very clear and compelling basis for the objection.

For the foregoing reasons, the Nashua Motion To Compel should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:
Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking,



Michael T. Tidwell

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.



Michael T. Tidwell

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