

ORIGINAL

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

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SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

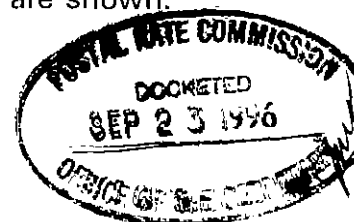
OBJECTION OF THE UNITED STATES POSTAL SERVICE TO NASHUA
PHOTO, INC., MYSTIC COLOR LAB, AND SEATTLE FILMWORKS INC.
INTERROGATORIES NMS/USPS-73-76 TO WITNESS PATELUNAS
(September 23, 1996)

The United States Postal Service hereby objects in full to Nashua Photo, Inc., Mystic Color Lab, and Seattle Filmworks Inc. interrogatories NMS/USPS-73-76 to witness Patelunas.¹ These interrogatories are objected to on the basis that they are not proper follow-up interrogatories and are not relevant to the bulk, non-automatable, non-barcoded Business Reply Mail ("BRM") issue that NMS is pursuing in this docket.

The interrogatories purport to follow up on witness Patelunas's responses to Presiding Officer's Information Request ("POIR") No. 3, questions 7 and 8. The Special Rule which allows follow-up interrogatories, rule 2.D, provides:

Follow-up interrogatories to *clarify or elaborate on the answer to an earlier discovery request* may be filed after the initial discovery period ends. They must be served within seven days of receipt of the *answer to the previous interrogatory* unless extraordinary circumstances are shown.

[Emphasis added.]



¹ Proper numbering conventions for interrogatories provide that these interrogatories should be numbered "NMS/USPS-T5-1-4," indicating the witness to whom they are directed and the sequential discovery request number(s) for that testimony. Perhaps NMS failed to follow the proper numbering conventions because even it realizes that these are not proper follow up interrogatories to witness Patelunas's POIR responses.

First, the rule specifically refers to answers to previous interrogatories, not answers to POIR's. This does not appear to be an accident, given that POIR's and interrogatories serve different purposes. The impetus behind a POIR, as stated by the Presiding Officer, is "to assist in developing the record for consideration of [the Postal Service's] request for classification and rate changes." *Presiding Officer's Information Request No. 3, August 29, 1996, at 1*. On the other hand, participants in a case ask interrogatories for the purpose of developing testimony or positions, in support of or in opposition to, the Postal Service's case.

Further, POIRs can be issued at any time, whereas discovery by participants—both intervenors and the Postal Service—must be conducted in accord with established deadlines. If follow-ups to POIRs are allowed, then discovery against the Postal Service and its witnesses will never end. To allow participants to conduct ongoing discovery on the Postal Service and its witnesses, while requiring the Postal Service to abide by established deadlines in its discovery on the testimony of other participants, would negate the principles of fairness which underlie the Postal Service's rights to due process. Thus, NMS/USPS-73-76 are not authorized under rule 2.D.

Moreover, follow-up interrogatories under rule 2.D are supposed to "clarify or elaborate on" previous answers. None of the interrogatories at issue here do any such thing. In fact, each and every question asked could have been filed as an interrogatory during the normal discovery period or asked of the appropriate witness on oral cross-examination. Although allegedly relating to witness Patelunas's responses to POIR No. 3, questions 7 and 8, the issues surfaced in the interrogatories have been evident from the day the case was filed.

Also, the questions are either questions dealing with the return receipt cost study or more general questions dealing with the relationship between special cost studies and the attribution of costs in the Cost and Revenue Analysis report ("CRA"). BRM is not mentioned very frequently in the questions, and where it is mentioned, such as in NMS/USPS-76, it is raised more in the nature of a general hypothetical, rather than as a specific question focused on gaining relevant information about bulk, non-automatable, non-barcode~~d~~ BRM, which is the supposed area of interest to NMS.

NMS/USPS-73 quotes a portion of witness Patelunas's response to POIR No. 3, question 7. NMS begins its quotation in the middle of a sentence, leaving out the crucial opening phrase. The entire sentence reads, "*For this case though, as has been the tradition for previous cases, the level of detail in the special study is meant to capture costs that may not be captured in the CRA as return receipt costs.*" [Emphasis added.] NMS then goes on to ask a series of questions about whether the costs of return receipt captured by the special study are attributable (subpart a), which portions are volume variable or specific fixed (subpart b), how certain costs in the return receipt special study are treated in the CRA (subparts c(i) and (ii)). Both the return receipt cost study and the CRA were filed at the initiation of this case on June 7, 1996. *See USPS LR-SSR-104 and USPS-T-5, Exhibit 5C.* Moreover, as indicated by witness Patelunas's response to POIR No. 3, question 7, special cost studies for return receipt (or for other special services) are nothing new. NMS's use of the POIR response as a pretext for its questions on the special cost study and its relationship to the CRA reinforces the conclusion that the so-called "follow up" character of the questions is merely an excuse to

circumvent the procedural schedule.² NMS cannot use POIR responses as an excuse to file discovery which it should have filed earlier.

NMS/USPS-74 quotes another portion of witness Patelunas's response to question 7 concerning certain return receipt costs that are not picked up in the city carrier data system. The interrogatory then proceeds to inquire whether those costs are attributable to other postal products (subpart a), and to ask for the identity of the product(s) from which attributable carrier costs should be reassigned *if* a special study reveals that they should be assigned to return receipts (subpart b). The interrogatory also attempts to set up a hypothetical by asking witness Patelunas to first assume that certain unidentified attributable CRA costs should properly be attributed to an unidentified special service, but are not, revealing an understatement of unidentified magnitude in that special service, and then to conclude that, because the attributable costs of the unidentified special service are understated, the attributable costs of other unidentified products must be overstated (subpart c). In fact, this is a tautology, having only the most attenuated connection with witness Patelunas's response. All of the subparts to this interrogatory are questions which could have and should have been explored earlier in this proceeding.

NMS/USPS-75 quotes a portion of witness Patelunas's response to POIR No. 3, question 8, indicating that the Postal Service uses special studies as opposed to costs from the CRA when costs are needed at a more detailed level for pricing particular items. The interrogatory then asks a variety of policy questions concerning whether the Commission should ignore unspecified implications of an

² It should be noted that Nashua, its counsel, and its consultant are certainly not neophytes in proceedings before the Commission.

unspecified special study regarding the attributable cost of other, unspecified postal products (subpart a), whether unspecified double-counting and unspecified over-attribution would be avoided by an approach of ignoring cost implications for other, unspecified products (subpart b), whether an unspecified special study (“such as return receipt”) should provide information regarding unspecified cost implications for other, unspecified products (subpart c), and whether, in a limited classification or rate case, the Commission should take account of unspecified ramifications regarding unspecified, overstated CRA attributable costs of other, unspecified products (subpart d). Again, there is no reason these issues could not have been explored earlier in this proceeding. Moreover, they are so vague, broad, and generic as to be nearly impossible to answer.

NMS/USPS-76 again quotes a portion of witness Patelunas’s response to POIR No. 3, question 8, indicating that additional data collection would be needed for Cost Segment 7 to account for carrier time of receiving pieces of mail with return receipts and obtaining addressee signatures for the return receipts. NMS segues from witness Patelunas’s statement into a sequence of questions based on a hypothetical concerning an undefined cost study (“such as return receipt or business reply mail”), used in an undefined, limited classification or rate case (“such as Docket No. MC96–3”), and an undefined omnibus case where the only costs available are CRA costs. The questions ask whether the Commission should use CRA costs or the most recent special study costs in the undefined omnibus rate case (subpart a), why the Commission should not use CRA costs in this docket (subpart b), and whether the Commission should make undefined “offsetting adjustments” to avoid undefined “double counting of attributable costs”, if the Commission used the most recent special cost study in the undefined

omnibus case (subpart c). Again, these questions, which ask for opinions rather than information, clearly are questions that should have been raised earlier in the proceeding. Further, they do not even relate to the quoted portion of witness Patelunas's POIR response, which specifically discusses carrier time and Cost Segment 7.

It is clear that NMS's interrogatories are in conflict with its disavowal of "any intention to seek a sweeping re-examination of BRM/BPMAS rates." *Nashua Photo Inc. and Mystic Color Lab Opposition to United States Postal Service Motion to Reconsider and All Pending Discovery Motions, and Nashua/Mystic Motion to Compel, August 29, 1996, at 15-16.* In fact, NMS's wide-ranging questions and tortuous hypotheticals would indicate an intent to conduct a "sweeping re-examination" of the relationship between any and all special cost studies and the CRA. NMS must be required to conduct appropriate discovery, strictly limited to its narrow proposal in this case.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Chief Counsel, Ratemaking

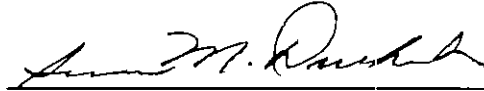


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September 23, 1996

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.



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