

ORIGINAL

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

OBJECTION OF UNITED STATES POSTAL SERVICE
TO INTERROGATORY OF DAVID B. POPKIN
(DBP/USPS-T8-48(i))

The Postal Service hereby objects to interrogatory DBP/USPS-T8-48(i), filed on October 28, 1996. Interrogatory 48(i) requests that the Postal Service provide an institutional response to DBP/USPS-T8-42(n), which asked witness Needham to identify the section of the Postal Reorganization Act that "provides the authority for pricing philatelic card products different[ly] than Postal or Stamped cards." The interrogatory is objectionable on grounds that it seeks information on matters irrelevant to the subject matter of this proceeding and requires the Postal Service to provide a legal opinion. The interrogatory requires the Postal Service to identify statutory sources of its authority to determine prices for philatelic products. This cannot be accomplished without interpreting legal authority, a function which has been traditionally reserved for lawyers and judges and routinely excluded from the evidentiary process. See *F.A.A. v. Landy*, 705 F.2d 624, 632 (2nd Cir. 1983), cert. denied, 464 U.S. 895 (1983) (upholding district court's exclusion of testimony on meaning and applicability of federal regulations); *Marx & Co. v. Diners Club, Inc.*, 550 F.2d 505, 511 (2d Cir.), cert. denied, 434 U.S. 861 (1977) ("[I]t is . . . erroneous for a witness to state his opinion on the law of the forum."); *U. S. v. Phillips*, 478 F.2d 743, 746 n.6 (5th Cir. 1973) (holding that trial court erred in permitting testimony on question of law or mixed question of law and fact). Indeed, rule 5 of the Special

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Rules of Practice expressly prohibits the receipt of legal opinions as evidence:

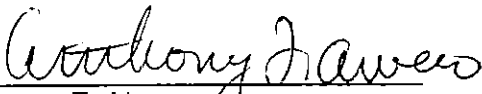
"Argument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda." Thus, while Mr. Popkin is free to raise relevant legal arguments in his brief, he is not entitled to demand a legal opinion from the Postal Service through discovery.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

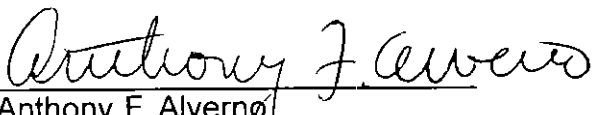
By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking


Anthony F. Alverno

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.


Anthony F. Alverno

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November 1, 1996