

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

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OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

NOTICE OF THE UNITED STATES POSTAL SERVICE
WITH RESPECT TO CATEGORY 4 LIBRARY REFERENCES
(February 3, 2000)

Under the new provisions of Commission Rule 31(b)(2) regarding library references, Category 4 material consists of library references filed in response to discovery requests. In anticipation of the inevitability that it will be filing a substantial number of Category 4 library references over the discovery period, the Postal Service files this notice to inform parties and the Commission of how it plans to comply with the new rules as they relate to Category 4. To the extent necessary when reviewing the Postal Service's subsequent Category 4 notices in this case, parties may find it useful to refer to this document to aid in the interpretation of such notices. The Postal Service hopes that providing this type of general background discussion in this document will allow it to streamline some elements of its Category 4 notices, thereby enabling the devotion of more time and effort to other aspects of the discovery process.

The intended primary purposes of the revisions to Rule 31(b)(2) are to limit library references to appropriate circumstances and categories of material, and to insure that adequate information is provided to identify the contents of library references and to indicate how they relate to the case. See Order No. 1263 at 3. With respect to library references in Categories 1, 2, 3, and 5, the Postal Service with its case filed motions for waiver, primarily (although not exclusively) to be relieved of the burden of filing individual notices for each library reference in those categories. Because Category 4

materials are filed individually and on an ongoing basis, rather than with the sizeable body of material included with the filing, the Postal Service would have had to, even prior to the revision of the rules, file separate notices with each library reference (or, on some occasions, with each set of library references filed concurrently). Therefore, there is no pressing need to file a categorical request for waiver of the rules, since notices will be filed with each library reference anyway.

Nonetheless, the Postal Service believes that it may be useful to review the new rules and explain what the Postal Service perceives will be necessary to comply in the context of Category 4 material. First of all, Rule 31(b)(2)(ii) allows any material filed in response to a discovery request to be filed as a library reference if its physical characteristics render it unsuitable for attachment to the response served on all parties. In compliance with this rule, as it has in the past, the Postal Service will file as library references discovery responses that include material in an electronic medium, or that consist of too many pages to reasonably attach to the response. Therefore, if the notice does not indicate that the contents include an electronic component, it is reasonable to infer that the reason why the material is filed as a library reference is because of excessive length. If there is any factor involved other than these two usual ones, it will be explicitly addressed in the notice.

Each Category 4 notice will identify the discovery request relating to the library reference, and give a brief description of the contents. (Implicit in this information, if not explicit, will be the testimony and interrogatory to which the material relates.) This should be a significant improvement over past cases, in which the Postal Service often did nothing more in its notices than provide the title of the library reference. In most

instances, parties interested in how the library reference relates to the rest of the case should be able to discern this information from the discovery request itself. If not, they may need to seek more information from the party initiating the discovery request, not the party responding.

When a library reference is filed in response to a discovery request, it is reasonable to assume that the individuals who prepared the material are the same as those who prepare similar responses which, because of their physical features, are not filed as a library reference. More simply stated, when a discovery request is directed to a postal witness asking for something like an electronic spreadsheet, and the witness files a response that says the requested material has been provided as Library Reference X, there is no apparent need within the notice accompanying Library Reference X to focus on the identity of persons who might have assisted in the preparation of that material. The link with the witness has already been established by the response. Moreover, the same logic applies to library references which accompany institutional responses. If an institutional response suffices to provide requested information, the mere fact that the bulk or format of the material necessitates a library reference should not necessarily trigger a need to associate the response with a named individual. Of course, this is not to suggest that an institutional response will always suffice, but that is a separate issue from whether information is provided directly in the institutional response, or in a library reference accompanying the institutional response.

Category 4 library references are unusual in that the decision to enter the material into the record rests with parties other than the party filing the library reference. More precisely, other parties choose (or not) to enter the response accompanying the library

reference into the record. The Postal Service anticipates that, in general, its Category 4 notices will not address expectations with regard to the evidentiary record. Of course, other than institutional responses, to the extent that other parties designate the underlying discovery response, the "sponsor" will be the witness who provided that response.

The Postal Service urges the parties to be pragmatic in their approach to the new library reference rules. The purpose of those rules is to ensure that **necessary** information is provided, not to establish an extensive checklist that must be adhered to rigidly even in situations in which provision of additional information would provide no practical benefit to anyone. The Postal Service submits that Category 4 notices which conform to the discussion in this notice will provide ample information and will, when combined with the information contained herein, comply with the new rules. Moreover, trying to limit individual Category 4 notices to the relevant information pertaining to the associated library reference will better enable the Postal Service to keep up with the flow of discovery.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:



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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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