

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

**UNITED STATES POSTAL SERVICE OBJECTION
TO INTERROGATORIES OF ALLIANCE OF NONPROFIT MAILERS
DIRECTED TO WITNESS MOELLER
(ANM/USPS-T35—1, 3, 5, AND 6)**

The Postal Service hereby objects to interrogatories ANM/USPS-T35—1 and -3, -5, and 6 filed on February 16, 2000.

Interrogatories ANM/USPS-T35—1 and 3. Interrogatory 1 asks witness Moeller to confirm that the Commission cannot accept the Postal Service's proposed rates under applicable Revenue Forgone Reform Act provisions. Interrogatory 3 asks witness Moeller whether he contends that the record provides "an adequate basis for the Commission to recommend rates for nonprofit ECR Standard (A) mail" if there is no legislative change regarding preferred rates. Interrogatory 3 also asks witness Moeller either to show the rates that the Postal Service "believes could be lawfully recommended by the Commission" or to explain how the Postal Service's filing must be adjusted in order for the Commission to "lawfully recommend rates under the existing statutory constraints."

These questions essentially ask witness Moeller to comment upon (i) the Commission's authority to make rate recommendations under the Revenue Forgone Reform Act and (ii) the sufficiency of record evidence in this case to support an alternative rate proposal. These interrogatories are patently

objectionable on grounds that they request legal opinions. To require a response to these interrogatories would be clearly contrary to well-established Commission precedent. See, e.g., P.O. Ruling No. R97-1/39. The Postal Service notes, moreover, that witness Moeller is today providing a thorough response to question 1 of Presiding Officer's Information Request No. 2, which asks witness Moeller to provide purely factual information, *i.e.*, the rates the Postal Service would propose in the absence of anticipated legislative changes to the Revenue Forgone Reform Act. This should provide an understanding of what the Nonprofit ECR rates could be in the absence of anticipated legislative changes, without having witness Moeller comment on topics that should be reserved exclusively for legal argument.

Interrogatories ANM/USPS-T35—5-6. The Postal Service also partially objects to interrogatories ANM/USPS-T35—5 and 6. Interrogatory ANM/USPS-T35-5 requests that each characteristic of nonprofit ECR Standard (A) mail that has been studied since Docket No. R97-1 as a possible cause of the subclass cost increases be identified and that "all documents relating to each such study, investigation or analysis" be produced. The Postal Service intends to conduct a good-faith search for responsive information and provide all documents responsive to this interrogatory, unless an applicable privilege applies. The request as phrased, however, is overbroad. "All documents relating to" any studies, investigations or analyses could cover any email or Post-It note which simply referred to or forwarded another document pertaining to the subject. To even attempt to conduct a search for all such documents would be extremely

burdensome at the least; it is more likely that such a search would be impossible. Moreover, it is possible that some documents located in such a search may consist of materials protected by either the attorney-client privilege or the attorney work product privilege doctrine, or both.

Similarly, interrogatory ANM/USPS-T35—6 requests “all memoranda, correspondence or other communications” by in-house or outside cost analysts since July 1, 1998, concerning possible cause of the cost increases for nonprofit ECR Standard (A) mail. As stated above, the Postal Service intends to conduct a good-faith search for documents and provide all responsive documents unless an applicable privilege applies. Again, however, the Postal Service objects that the request is overbroad as phrased, and that searching for all potentially responsive materials would be extremely burdensome. Also, any potentially responsive materials may well be subject to protection under the attorney-client privilege, the attorney work product doctrine, or both.

ANM will obtain materials in answer to these interrogatories that the Postal Service believes constitute if not all, then virtually all, of the responsive materials. The Postal Service should not be required to commence any further burdensome searches to satisfy what is nothing more than a fishing expedition on the part of ANM.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Susan Duchek
Anthony Alverno
Attorneys

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 Alverno

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2997; Fax -6187
February 28, 2000