

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 RESPONSE TO MOTION OF ALLIANCE
OF NONPROFIT MAILERS AND AMERICAN LIBRARY ASSOCIATION TO
COMPEL ANSWERS TO ANM/USPS-T35-5 & 6; AND T38-5 & 6; AND
ALA/USPS-T37-5 & 6.**

On February 16, 2000, the Alliance of Nonprofit Mailers (ANM) filed interrogatories ANM/USPS-T35—5 & 6 directed to witness Moeller and ANM/USPS-T38—5 & 6 directed to witness Taufique. On that same date, the American Library Association (ALA) filed interrogatories ALA/USPS-T37—5 & 6 directed to witness Kiefer. On February 28, the Postal Service filed three separate objections to these interrogatories,¹ although it stated in its objections that it would conduct a “good-faith search” for responsive documents and intended to provide responsive information. On March 2, the Postal Service filed responses to these interrogatories.² As indicated in the responses to the interrogatories, documents responsive to the interrogatories were placed in

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); United States Postal Service Objection to Interrogatories of Alliance of Nonprofit Mailers Directed to Witness Taufique (ANM/USPS-T38—1, 3, 5, and 6); and Objection of United States Postal Service to Interrogatories of the American Library Association (ALA/USPS-T37—1, 3, 5, and 6).

² Response of United States Postal Service to Interrogatories of Alliance of Nonprofit Mailers Redirected from Witness Moeller (ANM/USPS-T35-4-6); Response of United States Postal Service to Interrogatories of the Alliance of Nonprofit Mailers Redirected from Witness Taufique (ANM/USPS-T38-5-6); Response of United States Postal Service to Interrogatories of the American Library Association Redirected from Witness Kiefer (ALA/USPS-T37-4-6).

USPS LR-I-217, filed on March 3.³ On March 13, ANM and ALA filed their joint Motion of Alliance of Nonprofit Mailers and American Library Association to Compel Answers to ANM/USPS-T35-5 & 6; and T38-5 & 6; and ALA/USPS-T37-5 & 6 ("Motion"). The Postal Service hereby responds to the Motion.⁴

First, the Postal Service notes that, although it has objected to these interrogatories on grounds of burden, it has conducted a good-faith search for responsive information and provided the results of that search. In particular, employees who were likely to have responsive documents were contacted, their files were searched, and, with one exception discussed below, all responsive documents were provided in USPS LR-I-217. Thus, the Postal Service submits that the controversy regarding its objection based on grounds of burden has been mooted. By its actions, however, the Postal Service does not intend to waive its right to object to interrogatories framed in the same manner as those of ALA and ANM, which require exhaustive, broad-based searches that are not confined to narrow topics or responsible organizational units within the Postal Service.

In the course of searching its records, one privileged document was identified as being potentially responsive to the ANM/ALA discovery request. The document analyzes statistical variance in the costs of two subclasses⁵ and

³ Additional documents inadvertently omitted from that library reference were filed on March 17. See United States Postal Service Notice of Filing Additional Pages to Library Reference USPS LR-I-217.

⁴ The arguments presented in this pleading supplement those presented in the Postal Service's Objections.

⁵ One of the subclasses falls within the scope of the ANM/ALA discovery request. The other subclass does not.

considers the benefits and drawbacks of an alternative proposal to deal with the variance in costs of these subclasses. The document is clearly predecisional, as the proposal it considers was not adopted. Protection of such predecisional deliberations would accordingly further the interests served by the deliberative process privilege, namely, "encouraging candor among those advising decisionmakers, with open discussion of legal and policy issues." P.O. Ruling No. R97-1/60 (citing and quoting *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975); *In re Sealed Case*, 116 F.3d 550, 557-58 (D.C. Cir. 1997); *Mapother v. Department of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993); *Wolfe v. Department of Health and Human Services*, 839 F.2d 768, 773-74 (D.C. Cir. 1988)). Furthermore, the document was prepared in anticipation of litigation by employees in Finance in collaboration with attorneys and is therefore protected by the work product doctrine, which "protect[s] against disclosure of the mental impressions, conclusions opinions, or legal theories of an attorney or other representative of a party concerning the litigation." P.O. Ruling No. R97-1/121 at 17 (quoting FED. R. CIV. P. 26(b)(3)). As the document contains deliberations of the benefits and drawbacks of adopting an alternative approach to costing for purposes of presenting the Postal Service's case-in-chief, the document "contains mental impressions, conclusions, [and] opinions." Cf. P.O. Ruling No. R97-1/121 at 8. It must accordingly be shielded from disclosure under both the deliberative process privilege and the work product doctrine.

WHEREFORE, the Postal Service requests that the Motion be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Anthony Alverno
Attorney

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
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