

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
ANSWER IN OPPOSITION TO MOTION OF ASSOCIATION OF ALTERNATE
POSTAL SYSTEMS TO COMPEL PRODUCTION OF DOCUMENTS
REQUESTED IN INTERROGATORIES AAPS/USPS-T35—9-10**

On February 23, the Association of Alternate Postal Systems (AAPS) filed interrogatories AAPS/USPS-T32—2-3 and AAPS/USPS-T35—9-10. These consist of essentially the same discovery requests to witnesses Mayes and Moeller. On March 6, the Postal Service filed separate objections to these interrogatories (Objections). On March 16, AAPS filed its Motion to Compel Production of Documents Requested in Interrogatories AAPS/USPS-T35—9-10 (Motion). On March 17, the Postal Service filed its Initial Response to Motion of AAPS to Compel production of Documents Requested in Interrogatories AAPS/USPS-T35—9 and 10 (Initial Response). In the Initial Response, the Postal Service contested the Motion's characterization of the Objection to interrogatories AAPS/USPS-T32—2-3 and stated its intent to file the instant Answer in Opposition. The Postal Service hereby responds to AAPS's Motion with respect to interrogatory AAPS/USPS-T35—9 and opposes AAPS's Motion with respect to interrogatory AAPS/USPS-T35—10.

Interrogatory AAPS/USPS-T35-9. Interrogatory 9 asks witness Moeller for copies of updates of the Strategic Analysis, Inc. (SAI) study conducted on alternative delivery since the close of the record in the last omnibus rate

proceeding. The Postal Service objected to this interrogatory on grounds of relevance, deliberative process privilege, and commercial sensitivity. As the Postal Service pointed out in its Objection, discovery related to prior versions of this report led to protracted motions practice in Docket Nos. MC95-1 and R97-1. In Docket No. R97-1, the Presiding Officer directed the Postal Service to produce a copy of a prior version of the SAI report under the protective conditions attached to P.O. Ruling No. R97-1/46. The Postal Service sought clarification of that motion, and in P.O. Ruling No. R97-1/52, the Presiding Officer amended the certifications accompanying the protective conditions and also made clear that the Postal Service could redact SAI researchers' comments and conclusions on, and analysis and/or interpretation of, the underlying factual data, and company and product names of alternative delivery providers. AAPS sought reconsideration of P.O. Ruling No. R97-1/52, which was denied in P.O. Ruling No. R97-1/60.

As the Postal Service stated in its Objection, it does not wish to engage in needless motions practice in this instance, particularly given that Commission precedent in P.O. Ruling Nos. R97-1/46 and -1/52 provided that a prior version of the SAI report was relevant to the issues at stake in the last omnibus rate proceeding. Thus, without prejudice to its right to object to the production of any other proprietary market research, the Postal Service does not contest AAPS's Motion to the extent AAPS requests the production of the most recent version of the SAI report on alternative delivery responsive to interrogatory AAPS/USPS-T35—9 under protective conditions specified in, and in redacted form under, a

ruling of the Presiding Officer identical to P.O. Ruling No. R97-1/52.¹ AAPS's Motion asks that the SAI report be produced under the same terms and conditions, and the Postal Service is accordingly prepared to make redactions and file the document upon issuance of the requested ruling.

Interrogatory AAPS/USPS-T35—10. Interrogatory 10 asks the Postal Service for any studies of competition from the private sector for carriage of saturation advertising matter. The Postal Service objected to this interrogatory on grounds of overbreadth, relevance, deliberative process privilege, and commercial sensitivity. In its Objections, the Postal Service identified one document responsive to this request. It consists of a short assessment prepared by SAI of a single private alternative delivery firm operating in two local geographic markets in the United States. The contents of the 8 page document, most of which is presented in abbreviated and bulletized form, include: (i) a brief summary of the Postal Service's pilot and promotional efforts, (ii) a brief description of current activity of a private firm operating in two urban markets; (iii) a brief description of the firm's areas of concentration, and (iv) a brief summary of the opportunities for the Postal Service in the relevant markets.

AAPS's Motion at page 2 seeks to exploit purported inconsistencies in the Postal Service's Objections regarding the relevancy of the document. As the Postal Service explained in its Initial Response, however, the Postal Service has made clear that it "does not concede that the document has any measure of relevance to any issues in the proceeding." Initial Response at 2. The contents

¹ The Postal Service opposes, however, disclosure of the contents of the SAI

of the report do nothing to inform the rate and classification proposals at issue here, particularly given the report's narrow purpose and geographic- and company-specific focus. AAPS, moreover, cites absolutely no precedent in support of its claim of relevance. AAPS can take no comfort in P.O. Ruling Nos. R97-1/46, -52, and -60, which pertain to the SAI research report on alternative delivery. These rulings are distinguishable, as the SAI research report at issue in Docket No. R97-1 contained *aggregated* statistics and, although specific companies and products were mentioned, the report addressed the nationwide market for alternative delivery, rather than focusing on any particular company or urban market. In addition, the Presiding Officer's observations about the contents of the SAI report at issue in Docket No. R97-1 suggest that only information about the nationwide market for alternative delivery is relevant in the context of analyzing the effect on competition under 39 U.S.C. § 3622(b)(4):

Careful review of the SAI research at issue, in its redacted library reference version, indicates sufficient information to draw conclusions on a number of salient points, including: (1) the number of alternate delivery competitors; (2) the amount of advertising and product samples comprising the market; (3) the market shares of the Postal Service and its competitors (although it is acknowledged that an analyst would have to combine information from the SAI report with data from RPW or the billing determinants to determine the respective market shares); and (4) the reaction of competitors to Postal Service rate changes.

P.O. Ruling No. R97-1/60 at 4-5. All of the characteristics described by the Presiding Officer are related to quantitative and qualitative information about the nationwide market, rather than any specific geographic market, company, or product. The irrelevance of company and product-specific information is

report under terms more liberal than those granted in P.O. Ruling No. R97-1/52.

demonstrated further by the Presiding Officer's instruction in Docket No. R97-1 that the Postal Service be permitted to redact company and product names from the SAI report. P.O. Ruling No. R97-1/52 at 3. This further suggests that information about a single private firm operating in two limited geographic markets is far too attenuated from the issues at stake in an omnibus rate proceeding.

AAPS, moreover, does little to address the Postal Service's objections on grounds of commercial sensitivity and deliberative process privilege, except to state its willingness to accept the filing of the document under the protective conditions of P.O. Ruling No. R97-1/52. That AAPS supports the filing of the document under protective conditions does not, however, make the document relevant. As discussed above, it is not, and therefore should not be disclosed under any circumstances.

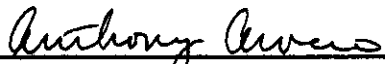
WHEREFORE, the Postal Service requests that the Presiding Officer issue a ruling permitting it to file the SAI Report responsive to interrogatory AAPS/USPS—T35—9 under protective conditions identical to P.O. Ruling No. R97-1/52, and that AAPS's Motion to Compel a response to interrogatory AAPS/USPS-T35—10 be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

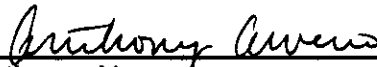
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Anthony Alverno
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CERTIFICATE OF SERVICE

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.



Anthony Alverno

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