

RECEIVED

MAR 31 12 44 PM '00

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. R2000-1/27

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING GRANTING IN PART MPA MOTION TO
COMPEL ANSWERS TO INTERROGATORIES MPA/USPS-T13-6, 7,
10, 12, 14, 17, 19, 45-47, 50 AND 56 TO WITNESS RAYMOND

(Issued March 31, 2000)

On February 17, 2000, the Magazine Publishers Association of America, Inc., (MPA) filed interrogatories MPA/USPS-T13-6, 7, 10, 12, 14, 17, 19, 45-47, 50 and 56 to witness Raymond. These interrogatories seek the records generated by the Engineered Standards/Delivery Redesign (ES) project headed by witness Raymond. The records requested include those that reflect his efforts collecting, editing, analyzing, and reporting data on city carrier activities; records that reflect the time standards and engineered methods developed from those data; and records that reflect the results of tests of recommended time standards and engineered methods that the Postal Service conducted. The Postal Service filed objections on February 28, 2000.¹ MPA filed its motion to compel on March 10, 2000.² The Postal Service filed its opposition to the motion on March 17, 2000.³

¹ Objection of United States Postal Service to MPA Interrogatories MPA/USPS-T13-6, 7, 10, 12, 14, 17, 19, 45-47, 50 and 56 to witness Raymond, filed February 28, 2000 (Objections).

² Motion of Magazine Publishers of America, Inc. to Compel Answers to Interrogatories MPA/USPS-T13-6, 7, 10, 12, 14, 17, 19, 45-47, 50 and 56 to witness Raymond, filed March 19, 2000 (Motion).

³ Opposition of United States Postal Service to MPA Motion to Compel Answers to Interrogatories MPA/USPS-T13-6, 7, 10, 12, 14, 17, 19, 45-47, 50 and 56 to witness Raymond, filed March 17, 2000 (Opposition).

The Postal Service has withdrawn its objections to interrogatories MPA/USPS-T13-6, 10, 12, 19, and 56. Opposition at 6, 8, 12, 13. Accordingly, MPA's motion to compel will be granted as to those interrogatories.

Interrogatory 14 asks witness Raymond to identify any data that he used to prepare his testimony that were not collected by full-time employees of his firm, the identity of the individuals who collected such data, and the company or organization with which they were affiliated. The Postal Service objected that the names of such individuals is irrelevant, and that their employment status is not directly relevant to their qualifications as data collectors. Objections at 3. MPA responds that part time employees might lack sufficient training to perform accurate work. Motion at 12.

The motion to compel an answer to Interrogatory 14 will be granted in part. The training and background of the data collectors used by witness Raymond in the ES project potentially reflects on the accuracy with which the data has been collected, especially where the collection involves a substantial element of judgment on the part of the data collector, as it appears to here. MPA's apparent desire to correlate data collected with specific data collectors is also potentially relevant to the accuracy of particular data. Such information is likely to lead to the discovery of admissible evidence under Rule 25(a) of our Rules. In responding to interrogatory 14, the Postal Service need only describe the training and experience of each data collector that was not a full-time employee of Resource & Process Metrics, Inc., at the time that the data collector worked on the ES project. If it can provide an identifying code for each such data collector that would enable MPA to associate the data collector with the data that he or she collected, the Postal Service need not identify that employee by name.

Interrogatory 7 asks the Postal Service to "provide a copy of the methods analysis and time values for standards developed during the study described in your testimony at page 5, lines 3-5, and indicate which method(s) was/were used to determine them. " It is not entirely clear what this interrogatory seeks. The referenced

lines in witness Raymond's testimony say that he collected city carrier activity data with the objective of developing "engineered methods and time standards to establish a workload managing system." Presumably, interrogatory 7 seeks the time standards and the engineered methods developed by witness Raymond, and an explanation of what they are based on.

The Postal Service notes that interrogatory UPS/USPS-T13-2 already asked for the final report (or the nearest thing that the Postal Service has to a final report) on the time standards and engineered methods that were developed as a result of the ES project, and that P.O. Ruling No. R2000-1/15 has already directed the Postal Service to provide it under protective conditions. It also notes that in response to interrogatory ADVO/USPS-T13-2, it has offered to produce, under protective conditions, a list of all reports and analyses that witness Raymond prepared as a result of the ES project. The Postal Service says that "in its ongoing examination of existing ES documentation" it has identified 13 binders holding hundreds of interim reports, as well as other "loose reports" that could arguably contain information responsive to interrogatory 7. The Postal Service expresses the hope that to respond to interrogatory 7 it will not be necessary for it to make a detailed cataloguing the contents of these reports and the specific portions to which it believes a host of privileges might apply, and then file voluminous library references. It suggests that MPA narrow the apparent scope of its interrogatory 7 by first examining the final report that will be provided in response to Ruling 15, and the list that it expects to provide in response to ADVO interrogatory 2, and then deciding which reports it wants produced. Opposition at 7-8.

Interrogatory 7 does not appear to be as broad in scope as the Postal Service fears. It requests only "a copy" of the time standards and engineered methods that were developed as a result of the ES project. It appears to be seeking only a final report on recommended time standards and engineered methods. If so, MPA interrogatory 7 goes beyond the report that UPS/USPS-T13-2 sought only to the extent

that it asks the Postal Service to "indicate which method(s) was/were used to determine" the time standards and engineered methods that it developed. Interrogatory 7 will be construed in this manner. MPA's motion to compel an answer to interrogatory 7 will be granted to the extent that the Postal Service must "indicate which method(s) was/were used to determine" the final (or most recent) time standards and engineered methods that were developed from the ES project. Its response to interrogatory 7 will be subject to the protective conditions that are attached to this ruling.

Interrogatory 17 asks witness Raymond to provide "all work plans, data collection sheets, approach/methods, and process review documents or reports prepared for, or in connection with, both Phase 1 and Phase 2" of the ES project. The Postal Service objects that this request is overbroad and unduly burdensome. It identifies several hundred volumes of records that are potentially responsive to the interrogatory. These include 93 binders of field data reports, and 89 binders of management reports printed in the field that compile each day's observations. It also includes 120 binders of final edited study data, as well as route-, facility-, and state-specific management reports. Finally, it includes 35 boxes and 47 binders of reports pertaining to test implementation of future work improvement methods. It asserts that it might take three to four weeks, and from one hundred to two hundred thousand dollars simply to copy all of the potentially relevant documents and file them as library references with the Commission.

The Postal Service contends that these documents are likely to contain information that would interfere with future labor negotiations if disclosed, to contain geographically specific data on carrier operations that is commercially sensitive, and to contain data that reveals how the mail of specific mailers is handled by carriers.

Citing Rule 31(k)(2) of the Commission's Rules, MPA argues that much of the information requested in interrogatory 17 is the kind of foundational information that the Commission's rules intend the Postal Service to provide when testimony based on statistical studies is initially filed. It argues that without this information, it cannot

independently evaluate the validity of the data collection procedures or their results, and it cannot develop an independent proposal in response. As a result, MPA argues, it will have been denied due process if such data are not produced. Opposition at 11-12, 17.

The Postal Service concedes that at the time it filed its generalized objections to these interrogatories, it had not inventoried all of the documents that are potentially responsive, and could not identify which specific documents were irrelevant, and which were commercially sensitive, or otherwise be privileged. It explained that the ES project was designed to yield a system for managing city carrier workloads, rather than yield an estimate of carrier costs. It says that it subsequently decided to use the ES data to update the city carrier Street Time Survey (STS) results at the urging of the authors of the Data Quality Study. Because the ES project was abruptly terminated, it states, the prodigious quantity of records that it generated was warehoused offsite, uncatalogued. Opposition at 2-6.

As the Postal Service explained, it made witness Raymond available to describe the ES data collection project and its documentation in an early technical conference. Witness Raymond, however, was not in a position to fully describe how the ES project records were organized and what they contained because he had not finished his own inventory of the records that were retained. As the Postal Service acknowledges, it still had not completed its effort to catalogue these records as of the time that it objected to MPA's interrogatories. *Id.* Consequently, as of the time that it filed its Motion, MPA had not been able to determine what documentation exists of the ES data collection process, or of the results of that process. Given the relatively thin statistical documentation that has been provided thus far, MPA persuasively argues that it is difficult for it to independently evaluate the process or the results of the ES data collection effort until it knows what additional documentation exists.

On the other hand, the Postal Service validly observes that if it were to follow normal discovery procedures in answering interrogatory 17, it would require it and the Commission to invest an enormous amount of time and resources in copying and warehousing this mass of potentially relevant documents under protective conditions. If most of these documents are ultimately determined not to be useful in evaluating the costs of city carrier street time operations, it argues, this investment of time and resources would be largely wasted. The Postal Service says that it tried to mitigate some of this burden by suggesting to opposing counsel that it accept a random sample of some of the relevant categories of documents, such as the field data reports. It notes that MPA rejected this suggestion on the ground that it would have to take the validity of such samples on faith. Opposition at 9-12. The Postal Service says that it is willing to make the mass of documents that are potentially responsive to interrogatory 17 available for in-camera inspection, but it hopes that a reasonable alternative to total production can be devised. Opposition at 9-12.

It would require an extraordinary investment of time and resources by the Postal Service and the Commission if the usual discovery procedures were followed in providing a response to interrogatory 17. It may be possible to avoid this burden and delay by fashioning extraordinary discovery procedures that are better suited to the unusual circumstance surrounding the documentation and use of the ES data in this docket. Traditional technical conferences and discovery tools have not provided MPA with an understanding of either the organization or the content of the mass of documentation that exists that is potentially relevant to city carrier costs. This is because the Postal Service itself had not finished cataloguing the documentation that exists at the time that it opposed MPA's motion.

Under these circumstances, the Postal Service is obliged to make every effort to facilitate MPA's efforts to gain an understanding of what documentation exists of the ES data collection project, and the results of that project. The Postal Service's efforts to

catalogue this mass of material should be well on its way to completion, particularly since it has already filed a response to interrogatory ADVO/USPS-T13-2 to witness Raymond. After MPA has had time to review this response, the Postal Service should hold another technical conference designed to answer participants' questions about how the ES project documentation is organized and what it contains. The primary objective of the technical conference is to allow MPA to identify categories of documents that do not appear to MPA to be useful in evaluating city carrier costs from those that it is requesting under interrogatory 17. This should help minimize the amount of ES records that need to be copied and library references that need to be filed.

The most efficient means of promoting this objective appears to be to hold the technical conference at the location where this mass of documents is archived. The Postal Service should make witness Raymond or other appropriate experts on the archiving and content of the ES records available to help MPA and other interested parties identify the documentation that is relevant to ES data collection procedures, results, and analysis, including the time standards and engineered work methods ultimately derived from the ES project. In its Opposition, the Postal Service described what is in the ES archives without mentioning electronic files that may be responsive to interrogatory 17. Library Reference LR-I-252, which it filed on March 29, 2000, in response to ADVO interrogatory 2 to witness Raymond, includes an extensive list of diskettes that also appears to be responsive to interrogatory 17. At the technical conference, MPA and interested parties should also be given access to, and guidance through, electronic files that appear to be responsive to interrogatory 17. If the data processing equipment necessary to gain access to these files is not available at the site where the hardcopy ES archives are stored, the technical conference should be continued at a location that has the necessary equipment.

Because the Postal Service has not been able to catalogue and adequately describe the documentation of the ES project that exists until now, participants' efforts to obtain discovery of this documentation have been significantly handicapped. To offset this handicap, they should be given a somewhat wider latitude in asking questions than is customary under the technical conference format. The Postal Service should answer fully questions not only about what records exist, what they contain, but questions about why records are organized and grouped as they are. Participants should be allowed to sample and otherwise inspect ES records, and to take notes.

To address the Postal Service's concerns that potentially privileged matter may be dispersed throughout the ES archives, participants will be required to subscribe to the protective conditions attached to this ruling in order to participate in the technical conference. After they have had a chance to familiarize themselves with the organization and contents of the ES archives, participants will have an opportunity under standard discovery procedures to request information concerning the ES project and copies of specific documents. They will also have an opportunity to argue that documents that are useful in evaluating city carrier cost estimates should be made public.

MPA's motion to compel a response to interrogatory 17 will be granted to the extent that it will be given access to the ES archives in the context of the technical conference described above. The Postal Service is directed to immediately contact counsel for MPA and arrange a convenient time within seven days of the issuance of this Ruling, to give MPA access to its ES archives under the technical conference format outlined above. As soon as the conference is scheduled, the Postal Service is directed to file a notice announcing the conference. After obtaining access to the ES archives, MPA should be in a position to narrow interrogatory 17 to those records that it believes are needed to evaluate the Postal Service's city carrier cost estimates, or to

prepare its own estimates. Discovery will be allowed until ten days prior to the scheduled oral cross-examination of witness Raymond.

Interrogatories 45, 46, 47 and 59 request any records relating to changes in data that were requested or made in the course of the ES study. According to the Postal Service, these interrogatories seek a subset of the records that MPA requested in interrogatory 17. MPA's motion to compel answers to these interrogatories is granted to the extent that it will be given an opportunity to participate in the technical conference to be held in response to interrogatory 17.

RULING

1. The Motion of Magazine Publishers of America, Inc. to Compel Answers to Interrogatories MPA/USPS-T13-6, 7, 10, 12, 14, 17, 19, 45-47, 50 and 56 to witness Raymond, filed March 19, 2000, is granted with respect to interrogatories 6, 10, 12, 19, and 56.
2. The Motion of Magazine Publishers of America, Inc. to Compel Answers to Interrogatories MPA/USPS-T13-6, 7, 10, 12, 14, 17, 19, 45-47, 50 and 56 to witness Raymond, filed March 19, 2000, is granted with respect to interrogatory 14, as narrowed in the body of this ruling.
3. The Motion of Magazine Publishers of America, Inc. to Compel Answers to Interrogatories MPA/USPS-T13-6, 7, 10, 12, 14, 17, 19, 45-47, 50 and 56 to witness Raymond, filed March 19, 2000, is granted with respect to interrogatory 7, as construed in the body of this ruling. The answer will be subject to the protective conditions attached to this ruling.
4. The Motion of Magazine Publishers of America, Inc. to Compel Answers to Interrogatories MPA/USPS-T13-6, 7, 10, 12, 14, 17, 19, 45-47, 50 and 56 to witness Raymond, filed March 19, 2000, is granted with respect to interrogatories 17, 45, 46, 47, and 50, to the extent that MPA will be given access to the ES archives under the technical conference format described in the body of this ruling.

5. The Postal Service is directed to expeditiously schedule and file notice of a technical conference to be held within seven days of the issuance of this ruling, providing access to the ES archives under the format described in the body of this ruling, under the protective conditions attached to this ruling.

6. Discovery that is relevant to interrogatory 17 will be available until ten days before witness Raymond is scheduled to appear for oral cross-examination.



Edward J. Gleiman
Presiding Officer

**STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS**

The following protective conditions limit access to materials made available for inspection in Docket No. R2000-1 by the Postal Service in response to Presiding Officer's Ruling No. R2000-1/27 (hereinafter, "these materials"). Individuals seeking to obtain access to such material must agree to comply with these conditions, complete the attached certifications, provide the completed certifications to the Commission, and serve them upon counsel for the party submitting the confidential material.

1. Only a person who is either:
 - (a) an employee of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) a participant in Postal Rate Commission Docket No. R2000-1; or a person employed by such participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. R2000-1; shall be granted access to these materials. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any participant's access shall be:
 - (a) the date on which the Postal Rate Commission issues its recommended decision or otherwise closes Docket No. R2000-1; or
 - (b) the date on which that participant formally withdraws from Docket No. R2000-1; or

- (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R2000-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and counsel for the party who provided the protected material of the termination of any such business and consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.
- 4. Immediately after the Commission issues its last recommended decision in Docket No. R2000-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
- 5. The duties of any persons obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
- 6. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially-sensitive, and privileged information.
- 7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. R2000-1.
- 8. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission.
- 9. Any Docket No. R2000-1 participant or other person seeking access to these materials by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to materials provided in Docket No. R2000-1 by the Postal Service in response to Presiding Officer's Ruling No. R2000-1/27 (hereinafter, "these materials" or "the information") has been authorized by the Commission.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. R2000-1.

I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence these materials in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

Pursuant to the Certification which I previously filed with the Commission regarding information provided in Docket No. R2000-1 by the Postal Service in response to Presiding Officer's Ruling No. R2000-1/27 (hereinafter, "these materials" or "the information"), received on behalf of myself and/or the party which I represent (as indicated below), I now affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period those materials have been in my possession. Further, I have complied with all conditions, and have maintained these materials in strict confidence in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R2000-1.
3. I have returned the information to the Postal Rate Commission.
4. I have either surrendered to the Postal Rate Commission or destroyed all copies of the information that I obtained or that have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____