

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

**NEWSPAPER ASSOCIATION OF AMERICA
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORY NAA/USPS-1(a) & (d)**

April 10, 2000

Pursuant to section 3001.21 of the Commission's rules of practice, the Newspaper Association of America ("NAA") hereby moves to compel the Postal Service to response to subparts (a) and (d) to interrogatory to NAA/USPS-1.

The interrogatory in dispute is directly relevant to the Postal Service's proposed reduction in the pound rate for Enhanced Carrier Route mail, which comes at the same time that USPS is proposing very substantial increases for other mail. In particular, the interrogatory seeks to discover evidence indicating whether this selective reduction of ECR pound-rated mail is motivated, as was a similar proposed rate reduction in Docket No. R97-1, by a desire to undercut America's print media—considerations inappropriate for a government agency with the special mission, privileges and immunities of the Postal Service.

The interrogatories refer to the Postal Service's 1998 Marketing Plans¹ and ask:

- a. Does Postal Service management currently use this document?
- d. Has the Postal Service produced a more recent marketing plan, comparable to this one, since October 1997?

The Postal Service objects on the grounds of relevance and commercial sensitivity.

The Postal Service is an arm of the federal government, not a private sector business. As such, it has no right to try deliberately to undercut America's media, and any attempt to do so through Standard Mail pricing should be halted rapidly by this Commission. For this reason, NAA/USPS-1 (a) and (d) are both relevant to this proceeding and non-privileged.

During Docket No. R97-1, the NAA came into possession of a copy of the Postal Service's 1998 Marketing Plans. Those plans (which were admitted in the record in Docket No. R97-1), described the Postal Service's expressed intent to gain advertising mail market share by redirecting substantial advertising revenue from newspapers to mail. In particular, the 1998 Marketing Plans stated:

- Newspapers are the major, direct competitors for advertising mail dollars. Newspapers derive about 80 percent of their total revenue from advertising, the majority of which is local (retail) advertising. This segment of newspaper advertising is highly adaptable to mail. . . . Pre-printed inserts have been and will continue to be the single newspaper application which is most vulnerable to diversion to Ad Mail. NAA/R97-1 LR2 at AD11.
- An indication of the potential opportunity in this [retail] segment comes from auto dealers, which as a category grew 68 percent, mostly in newspapers. . . . Ad Mail could shift a substantial portion of this mail from newspapers *Id.* at AD16.
- **Ad Mail Vision** USPS Ad Mail Service will make direct mail the advertising medium of choice, overtaking both newspaper and TV advertising by 2005. *Id.* at AD26.
- **Objectives**
Ultimately to establish "day certain" delivery for selected categories of Ad Mail, and create the platform for moving substantial revenues from pre-printed newspaper inserts to mail. *Id.* At AD40.

While newspapers themselves are very substantial users of direct mail, this does not change the fact that the Postal Service has no business pursuing an undertaking such as that described immediately above in this Marketing Plan.

In Docket No. R97-1, the Postal Service attempted to prevent the Marketing Plan from being admitted into the record. Its attempt failed, and the Commission ultimately rejected the Postal Service's proposed reduction in the ECR pound rate, noting evidence suggesting that the Postal Service had improperly targeted advertising mail rates for competitive reasons. *See United States Postal Rate Commission Opinion and Recommended Decision*, Docket No. R97-1, ¶5425 (1997).

In the current proceeding, the Postal Service is again proposing to reduce the Standard (A) ECR pound rate, and we suspect for much the same reasons. The interrogatories simply seek to ascertain whether the 1998 Marketing Plans (or an updated version of the document), are still being used by the USPS to shape this selective rate reduction in the ECR pound rate. As such, the interrogatories are reasonably calculated to lead to the discovery of admissible evidence, for exactly the same reason as the underlying 1998 Marketing Plans were held to be relevant in Docket No. R97-1. *See also Presiding Officer Ruling No. 2000-1/21* (March 28, 2000) (ordering disclosure of SAI analysis).

Despite this history, the Postal Service objects on the grounds of relevance, arguing that "the 1998 marketing plan, as well as any existing marketing plans, is well beyond the scope of this proceeding" and NAA inquiries are "nothing more than fishing expeditions." This argument is nonsense and should be summarily dismissed.

First, the exact same materials were properly found admissible in Docket No. R97-1, and the same reasoning applies to this proceeding. If Postal Service

management is still using the 1998 plans (as subpart (a) asks), or an updated version (as subpart (b) asks) then the plans are plainly relevant for the same reasons as in Docket No. R97-1.

Second, the USPS, through its witness Virginia Mayes, has placed into issue the Postal Service's motivations in proposing to reduce the pound rate. *See Response of Postal Service Witness Mayes to AAPS Interrogatories*, AAPS/USPS-T32-17 ("it would not be desirable for the rationale or *motivation* of ratemaking choices to be to intentionally and unfairly harm competitors" [emphasis supplied]). By this standard, discovery as to the Postal Service's marketing plans are plainly relevant to an assessment of the Postal Service's motivations.

The Postal Service also claims that the information requested is of a commercially sensitive nature and its disclosure "would seriously impair the Postal Service's ability to compete effectively and chill agency subordinates' ability to candidly express opinions and recommendations." Such an argument stands reasoning on its head. If the Postal Service is indeed engaged in an activity for inappropriate public policy reasons, then it follows that there is no proper commercial interest to protect. It also follows that the public interest lies in knowing the bureaucracy's intentions and not covering it up.²

In evaluating this objection, the Presiding Officer "must balance the potential competitive harm of disclosure against the strong public interest in favor of empowering

² The Postal Service has made no attempt to show that the disclosure of the 1998 Marketing Plans in Docket No. R97-1 caused it even an iota of injury in the years since. This silence in the face of actual experience speaks volumes.

each participant to obtain all of the evidence needed to prove his case." See *Presiding Officer Ruling No. R97-1/62*, at 8. "Because of the strong public policy favoring public disclosure, the burden of establishing the applicability of an evidentiary privilege is on the party asserting it." *Id.*, quoting *Commission Order No. 1025* (August 17, 1994) at 14. There is an overwhelming public interest in knowing whether the federal government is consciously seeking to undercut the financial viability of the American press. NAA sees no counter-balancing interest at stake here, much less a compelling one. The Postal Service's objection on the grounds of commercial sensitivity should be overruled.³

For all these reasons, the Presiding Officer should compel the Postal Service to respond to interrogatories NAA/USPS-1(a) and (d).

Respectfully submitted,

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³ Similarly, the Postal Service's privilege claim fails. Indeed, the point of the interrogatory is to find out whether such improper motivations were, in fact, part of the decision. Thus, the Postal Service's objection on the grounds of privilege should be overruled.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the instant document on all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

April 10, 2000



William B. Baker