

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 NEWSPAPER ASSOCIATION OF AMERICA TO COMPEL THE UNITED
STATES POSTAL SERVICE TO RESPOND TO INTERROGATORY
NAA/USPS-1(A) AND (D)**

On March 23, Newspaper Association of America (NAA) filed interrogatories NAA/USPS-1-10. Subpart (a) of interrogatory 1 asks whether the Postal Service still uses the 1998 Marketing Plans, prepared in October 1997. Subpart (d) asks whether the Postal Service has produced a more recent marketing plan comparable to the one prepared in October 1997. On April 3, the Postal Service filed an Objection to subparts (a) and (d) of interrogatory NAA/USPS-1 on grounds of relevance, commercial sensitivity, and privilege.¹ On April 10, NAA filed its Motion to Compel the United States Postal Service to Respond to Interrogatory NAA/USPS-1(a) & (d) (hereinafter "Motion"). The Postal Service hereby responds to NAA's Motion.

NAA's Motion draws heavily upon the chain of events in Docket No. R97-1 concerning a 1998 Postal Service marketing plan as a basis for establishing the relevance of the discovery request at issue here. The Docket No. R97-1 controversy, however, does not establish general principles regarding relevance

¹ On April 6, the Postal Service filed its response to interrogatories NAA/USPS-1(b-c), 2(a), and 3-10. On April 10, the Postal Service filed its response to subparts (b-d) of interrogatory NAA/USPS-2.

of marketing plans.² To the contrary, the Postal Service's objection, and the ruling thereon, concerned procedural and timing issues related to discovery, not relevance. See P.O. Ruling, Docket No. R97-1, Tr. 33/17361-62. Moreover, it is important to bear in mind that in Docket No. R97-1, NAA had obtained a copy of Postal Service marketing plans through unknown channels, and NAA, not the Postal Service, undertook to file the document with the Commission. See P.O. Ruling, Docket No. R97-1, Tr. 33/17361-62.³ Thus, NAA can take little from the R97-1 controversy, as it did not establish general principles regarding the discoverability of marketing plans. Indeed, past Commission precedent clearly reveals sensitivity to the Postal Service's concerns regarding the disclosure of marketing plans and competitive information.

For example, in Docket No. R90-1, the Presiding Officer withdrew a Presiding Officer's Information Request seeking the production of a copy of a Postal Service study on the expedited market. The report at issue in that docket contained, *inter alia*, information on customer needs, usage patterns, and "marketing strategies that could be undermined if competitors learned about them." P.O. Ruling No. R90-1/37 at 1. The Presiding Officer declined to require

² The Postal Service's objection in that case was based on procedural grounds. See Objection of United States Postal Service to Request for Admissions of the Newspaper Association of America (NAA/USPS-RFA-1-6) (February 27, 1998). See also P.O. Ruling, Docket No. R97-1, Tr. 33/17361-62; P.O. Ruling No. R97-1/123.

³ In its Motion, NAA sought to compel a response to NAA/USPS-RFA-1 which asked, "[p]lease admit the existence of a document entitled 'United States Postal Service 1998 Marketing Plans' of which the attached is a copy of the cover page. If you cannot completely confirm, please explain."

production of the report, noting that “disclosure of the report’s detailed analysis and findings could serve to undermine strategies based on them.” *Id.* at 2.

Similarly, in Docket No. R97-1, the Presiding Officer shielded from disclosure outside researchers’ analysis and information on the alternative delivery industry. The Presiding Officer explained:

The Postal Service’s argument with regard to competitive harm has merit, as [the party conducting discovery] represents firms which compete directly with the Service for the delivery of mail matter other than letters. The Service’s analysis and interpretation of the SAI research, along with the SAI researchers’ recommendations, may be regarded as privileged information not subject to disclosure.

P.O. Ruling No. R97-1/46 at 5. This holding was reaffirmed in P.O. Ruling No. R97-1/60, where the Presiding Officer rejected the contention that the researchers’ analysis, interpretation and conclusions were merely “factual information and a mere “input” into the Postal Service’s deliberative process” P.O. Ruling No. R97-1/60 at 5. The Ruling further accorded privileged status to an analysis of a reaction to a prospective price change. P.O. Ruling No. R97-1/60 at 5.

Information concerning marketing plans deserves the same level of protection in this context as well. Hence, NAA’s discovery request, which presumably attempts to lay the groundwork for requesting copies of marketing plans, is patently objectionable on grounds of relevance in that it requests information that ultimately will not lead to the discovery of admissible evidence, since, under prior Commission precedent, similar types of information have been accorded privileged treatment.

NAA's Motion also incorrectly characterizes the Postal Service's commercial sensitivity and deliberative process privilege objections. The Postal Service made clear in its Objection that these grounds were intended to "preserve [the Postal Service's] rights with respect to any follow-up and related discovery." The Postal Service raised this objection at this stage so as to avoid arguments (to which it does not now wish to give credence) that it had somehow waived these grounds by not having raised them in connection with the pending discovery dispute.

Finally, NAA's contention that the Postal Service "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" cannot be taken seriously. The Postal Service is not omniscient. It is rare indeed when a competitor attributes its success on any given competitive venture to intelligence gained through surreptitious means, and the Postal Service has no mechanism in place to attribute any given outcome in the markets in which it participates to the intelligence gained by competitors. In any event, there has been no occasion for the Postal Service to demonstrate harm caused to it by NAA's public disclosure of the USPS Marketing Plans, and indeed there is no need for it to attempt to do so now.

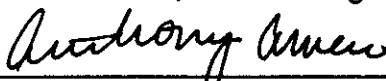
WHEREFORE, the Postal Service requests that NAA's Motion be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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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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