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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. R2000-1/53

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
THE NEWSPAPER ASSOCIATION OF AMERICA'S
MOTION TO COMPEL RESPONSES TO
INTERROGATORY NAA/USPS-1(a) and (d)

(Issued April 27, 2000)

On April 10, 2000, the Newspaper Association of America (NAA) submitted a Motion to Compel the United States Postal Service to Respond to Interrogatory NAA/USPS-1(a) and (d).¹ NAA/USPS-1(a) and (d), filed on March 23, 2000, refers to the Postal Service's 1998 Marketing Plans filed as a library reference in Docket No. R97-1, and asks:

- 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?²

The Postal Service objected to the interrogatory on the grounds of commercial sensitivity, relevance and privilege.³

¹ Newspaper Association of America Motion to Compel the United States Postal Service to Respond to Interrogatory NAA/USPS-1(a) & (d) (NAA Motion to Compel), April 10, 2000.

² Newspaper Association of America Interrogatories to the United States Postal Service (NAA/USPS-1-10), March 23, 2000.

³ United States Postal Service Objection to Interrogatory NAA/USPS-1(A) and (D) (Postal Service Objection), April 3, 2000, at 1.

In its Motion to Compel, NAA characterizes the interrogatory as an effort to discover any underlying motive for the Postal Service's proposed reduction of the Standard (A) ECR mail pound rate.⁴ That reduction is in contrast to the "very substantial increases" in the rates for other mail.⁵ NAA notes that in Docket No. R97-1, the Postal Service's 1998 Market Plans revealed the Service's "expressed intent to gain advertising mail market share by redirecting substantial advertising revenue from newspapers to mail."⁶ The plans were determined to be relevant to the proceedings, and ultimately were admitted into evidence, despite the Postal Service's objection.⁷

According to NAA, interrogatory NAA/USPS-1(a) & (d) is similarly relevant in the instant proceeding. As support, NAA cites Postal Service witness Maye's recent response to an intervenor interrogatory, in which she states that "it would not be desirable for the rationale or motivation of ratemaking choices to be to intentionally and unfairly harm competitors."⁸ With regard to the issue of commercial sensitivity, NAA argues that such a claim by the Postal Service's is outweighed by the strong public interest in "knowing whether the federal government is consciously seeking to undercut the financial viability of the American press."⁹

In its Answer in Opposition, the Postal Service contends that the cited Docket No. R97-1 rulings address only procedural and timing concerns related to discovery, not the relevance of the marketing plans.¹⁰ Moreover, in that docket, NAA had acquired a

⁴ NAA Motion to Compel at 1.

⁵ *Ibid.*

⁶ *Id.* at 2.

⁷ See P.O. Ruling No. R97-1/114 at 2; P.O. Ruling No. R97-1/120 at 2-3.

⁸ NAA Motion to Compel at 4, citing AAPS-USPS-T32-17.

⁹ *Id.* at 4-5.

¹⁰ 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) (Postal Service Answer in Opposition), April 17, 2000, at 1-2.

copy of the marketing plans “through unknown channels,” rather than via discovery. As such, the Commission did not directly address the discoverability of marketing plans.¹¹

It is the Postal Service’s position that Commission precedent supports limited disclosure of marketing plans and competitive information on the basis of privilege.¹² For instance, in Docket No. R97-1, the Presiding Officer regarded outside researchers’ analysis and information on the alternate delivery industry which was part of a Service study on that industry as privileged information not subject to disclosure, as such disclosure could cause the Postal Service competitive harm.¹³ Accordingly, as NAA’s current interrogatory appears to be laying the groundwork for the requested provision of Postal Service marketing plans, the Postal Service maintains that it 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.”¹⁴

The Postal Service’s argument is not persuasive. Interrogatory NAA/USPS-1subparts (a) and (d) simply inquire about the Postal Service’s current usage of its 1998 Marketing Plans filed as a library reference in Docket No. R97-1, and whether those plans have been updated. The potential relevance of this information is evident. Section 3622(b)(4) mandates that the Commission consider the effect of proposed rates upon the general public, business mail users and competitive entities. The marketing plans were clearly informative about such Postal Service’s considerations in its proposal to reduce the Standard (A) ECR pound rate in Docket No. R97-1, and that proposal again is on the table in this docket.¹⁵

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Id.* at 3.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

It is reasonable to expect that a Postal Service response to these questions may lead to a request for production of the existing marketing plans. However, it is premature to suggest that the documents would be de facto inadmissible as evidence on the basis of commercial sensitivity and privilege, and that the NAA interrogatory at issue is therefore a fishing expedition and irrelevant. In Docket No. R97-1, the Postal Service's 1998 marketing plans came into NAA's possession indirectly and were made public before Postal Service claims of commercial sensitivity could be fully addressed. But there is ample Commission precedent to indicate that the mere fact that a document may contain sensitive business information does not of itself preclude its production in a proceeding, although it may be subject to protective conditions.¹⁶ Rather, the nature of the information and its manner of use (i.e., as part of a deliberative process, as with the SAI study cited by the Postal Service) must be considered on a case-by-case basis. In light of these considerations, I shall direct that the Postal Service respond to NAA/USPS-1(a) and (d).

RULING

The Newspaper Association of America Motion to Compel the United States Postal Service to Respond to Interrogatory NAA/USPS-1(a) & (d), filed April 10, 2000, is granted. The Postal Service response is due no later than May 4, 2000.


Edward J. Gleiman
Presiding Officer

¹⁶ In this docket alone, a number of "commercially sensitive" documents have been subject to disclosure under protective conditions. See, e.g., P.O. Ruling No. R2000-1/41 at 5-6.