

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE AND FEE CHANGES

POSTAL RATE COMMISSION  
Docket No. R2000-1

**Motion Of Major Mailers Association To Compel  
Responsive Answers To Interrogatories  
And Request For Shortened Answer Period**

To: Hon. Edward J. Gleiman  
Presiding Officer

Pursuant to Rule 26 (d) of the Commission's Rules of Practice, Major Mailers Association ("MMA") requests that the Presiding Officer direct the Postal Service to provide full, *responsive* answers to Interrogatory MMA/USPS-T32-2 that USPS witness Mayes redirected to the Postal Service for an institutional response. A copy of the interrogatory is attached hereto as Appendix "A."

For the reasons stated below, MMA respectfully requests that the time for the Postal Service to file an answer to this motion be shortened to May 8, 2000.

**Background And Relevant Timeline**

MMA filed Interrogatory MMA/USPS-T32-2 on April 4, 2000. The Postal Service did not lodge any objection to the interrogatory. Instead, on April 20, 2000, *two days out of time*, the Postal Service filed the institutional response that is the subject of this motion to compel.

Interrogatory MMA/USPS-T32-2 (a) requested confirmation of the total cost figures and a \$162.357 million difference between the Test Year Before Rates ("TY BR") costs using the Postal Service's costing methodology and the TY BR costs using the Commission's costing methodology. Similarly, Interrogatory MMA/USPS-T32-2 (c) requested confirmation of the total cost figures and a \$100.843 million difference between the Test Year After Rates ("TY AR") costs using the Postal Service's costing methodology and the TY AR costs using the Commission's costing methodology.

On April 17, 2000, after MMA's interrogatory was filed but before the Postal Service submitted its institutional response, USPS witness Fronk modified First Class revenues and costs due to problems with additional ounce units. See e.g. Response to

OCA/USPS-106. As a result, relevant portions of Library Reference LR-I-131,<sup>1</sup> which provides test year costs under the Commission's R97-1 costing methodology, should have, but still have not, been updated to reflect these changes. On April 21, 2000, after the Postal Service submitted its untimely response to Interrogatory MMA/USPS-T32-2, USPS witness Mayes filed related corrections to her Exhibits 32 A and 32 B, which presents the test year costs under the Postal Service's costing methodology.

As a result of the changes made by USPS witness Fronk on April 17, the USPS TY BR and USPS TY AR cost figures shown in Column 2, respectively, of the tables contained in parts (a) and (c) of Interrogatory MMA/USPS-T32-2 were no longer correct on April 20 when the Postal Service filed its institutional response. Accordingly, instead of confirming the accuracy of the cost figures presented in MMA's interrogatory, the Postal Service should have furnished the correct, updated cost figures.

Nevertheless, the Postal Service's April 20 institutional response proceeds either from the contrary-to-fact assumption that the changes made by witness Fronk were never made or the illogical premise that witness Fronk's changes had no impact on the cost differences noted in the tables contained in parts (a) and (c) of MMA's interrogatory.

For similar reasons, the PRC TY BR and PRC TY AR cost figures shown in Column 1, respectively, of the tables contained in parts (a) and (c) of Interrogatory MMA/USPS-T32-2 were no longer correct when the institutional response was filed on April 20. Accordingly, instead of confirming the accuracy of the cost figures presented in MMA's interrogatory, the Postal Service should have provided correct, updated cost figures. Nevertheless, once again the Postal Service's April 20 institutional response proceeds either from the contrary-to-fact assumption that the changes made by witness Fronk were never made or the illogical premise that witness Fronk's changes had no impact on the cost differences noted in the tables contained in parts (a) and (c) of MMA's interrogatory.

Prior to April 20 when the Postal Service's institutional response was filed, MMA

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<sup>1</sup> MMA's interrogatory relied upon cost figures taken from Volume H, Table E and Volume J, Table E of Library Reference USPS LR-I-131. Presumably, it would not be necessary to revise the entire library reference in order to derive the cost figures contained in the two tables relied upon by MMA.

contacted counsel for the Postal Service to find out when appropriate revisions would be made to Library Reference LR-I-131 and USPS witness Mayes' Exhibits 32A and 32B and to point out the fact that Interrogatory MMA/USPS-T32-2 was based on cost figures that were being revised. MMA was informed that USPS witness Mayes' Exhibits would be updated shortly but that the Postal Service did not plan to make any revisions to Library Reference LR-I-131.

### **Argument**

There are two basic problems with the Postal Service's institutional response to Interrogatory MMA/USPS-T32-2:

First, the Postal Service's responses to parts (a) and (c) were not correct when the Service's institutional response was filed on April 20, the Postal Service knew they were not correct, and the Postal Service is obligated to provide updated, correct information.

Second, the Postal Service's responses to parts (b) and (d) of MMA's interrogatory are totally non-responsive, even if the Postal Service had made no changes in the underlying cost figures.

#### **A. The Service's Response Improperly Ignored Intervening Developments**

In parts (a) and (c) of Interrogatory MMA/USPS-T32-2, MMA asked USPS witness Mayes to confirm that MMA's total cost figures and cost difference calculations were correct and specifically stated "[I]f you cannot confirm the cost figures, please provide the correct cost figures and the derivation and/or source thereof." The ineluctable fact is that intervening changes made by USPS witness Fronk on April 17 had changed the cost figures set forth in the tables appearing in MMA's questions. Therefore, when the Postal Service filed its institutional response on April 20, the Service *should* have noted Mr. Fronk's changes and provided the correct total cost figures and cost difference calculations, as well as the derivation/source information requested by MMA.<sup>2</sup> Indeed, under elementary principles of reasoning and the specific terms of MMA's interrogatory, it was inconceivable that the Postal Service could confirm

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<sup>2</sup> Similarly, after witness Mayes revised her exhibit, an erratum to the Service's institutional response should have been filed, if necessary.

MMA's cost figures and cost difference calculations after Mr. Fronk's April 17 changes.

By failing to follow basic, commonsense procedures for responding to discovery requests, the Postal Service has unnecessarily confused the cost comparisons MMA sought to highlight and have explained and delayed significantly MMA's efforts to obtain reasonable cost figures and an understanding of why there are material differences in the cost figures using the Commission's and the Service's cost methodologies.

The Service must not be allowed to block MMA's access to this vital information any further. The Service is under an obligation to furnish discovery responses that are accurate when they are filed. Moreover, the Service is under an ongoing duty to provide updated responses whenever it becomes aware that answers already furnished are no longer correct. In this regard, Rule 26 (f) of the Commission's Rules of Practice provides, in pertinent part,

The individual or participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true.

In this case, the Postal Service knew *before* its institutional response to MMA/USPS-T32-2 was filed on April 20 that the cost information MMA used to formulate its questions was no longer accurate as a direct result of the changes USPS witness Fronk filed on April 17. Even if that fact had not sunk in to the Postal Service's institutional consciousness before April 20, it should have by this time, since USPS witness Mayes filed corrections to Exhibits USPS-32A and USPS-32B on April 21. Those corrections triggered another opportunity and indeed an obligation for the Postal Service to correct its erroneous response to MMA's Interrogatory.

To the extent that, by confirming the indisputably incorrect numbers furnished by MMA, the Postal Service is seeking to avoid updating appropriate portions of Library Reference USPS LR-I-131, it should not be allowed to do so. First, as already noted, MMA is not seeking to have the Postal Service prepare a wholesale restatement of the entire Library Reference. MMA's questions rely upon the information contained in just two tables of that library reference and, we believe, witness Fronk's changes only affect

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the First Class portions of the library reference. Second, if the Service had a legitimate objection based on a claim of undue burden or some other colorable basis, the time for interposing such an objection has long since run. Finally, the information and explanations that MMA is seeking through its interrogatory are necessary for MMA's expert witness to accurately understand, portray, compare and contrast the differences resulting from applications of the Service's and the Commission's cost attribution methods as part of the presentation of MMA's evidence in this case.

**B. The Postal Service's Answer Was Non-Responsive**

As noted above, Interrogatory MMA/USPS-T32-2 (a) requested confirmation of the total cost figures and a \$162.357 million difference between the TY BR costs using the Postal Service's costing methodology and the TY BR costs using the Commission's costing methodology. Similarly, Interrogatory MMA/USPS-T32-2 (c) requested confirmation of the total cost figures and a \$100.843 million difference between the TY AR costs using the Postal Service's costing methodology and the TY AR costs using the Commission's costing methodology. The Postal Service confirmed the accuracy of all MMA's cost figures in both cases.<sup>3</sup>

Parts (b) and (d) of Interrogatory MMA/USPS-T32-2 then asked for an *explanation* why such differences in total costs existed. For example, in Interrogatory MMA/USPS-T32-2 (b), MMA requested "please explain why the total costs reported using the Commission's costing methodology are \$162.357 million higher using the Commission's costing methodology than the total costs reported using the Postal Service's methodology." See Attachment A. Instead of providing a succinct explanation as MMA had requested, the Postal Service offhandedly referred MMA to the Commission's Recommended Decision and 3 library references in R97-1 "[t]o *understand* the Commission's costing methodology" and to the prefiled testimony of *ten* Postal Service witnesses, "*among others*" in this case "[t]o *understand* the Postal Service's costing methodology". See Attachment A (emphasis added). The Postal Service well knows that the choice of the cost methodology does not change the level

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<sup>3</sup> Separately, MMA has submitted follow up interrogatories in order to elicit further information and an explanation of the cost differences. See Interrogatories MMA/USPS-2, filed

of total costs.<sup>4</sup>

In the cavalier responses to parts (b) and (d) of Interrogatory MMA/USPS-T32-2, the Service effectively thumbs its nose at the Commission's rules regarding the orderly conduct of discovery. MMA diligently examined and compared *the Postal Service's* presentations of total costs using the Commission's and the Service's costing methodologies. In the course of its examination and analysis of the Postal Service's presentations, MMA identified material differences in the total costs resulting from application of the two cost methodologies.

To obtain an explanation for these unexpected differences, MMA timely filed the interrogatory in issue, which MMA designed to elicit *specific* information.

It is obvious from the questions MMA formulated in parts (a) and (c) of the interrogatory at issue that MMA sufficiently *understands* the Postal Service's and the Commission's cost methodologies. What MMA does not yet know or understand, *but clearly is entitled to learn directly from the Postal Service*, the entity that produced both sets of cost figures, is why there are material, unexplained differences in the total costs resulting from the application of those two methodologies. It is not fair or consistent with the basic purposes and intent of the Commission's discovery rules for the Postal Service to send MMA on a highly generalized and patently incomplete odyssey through the voluminous prepared testimony and exhibits of numerous Postal Service witnesses, "among others."

#### **Request For Shortened Response Period**

MMA's testimony must be filed in less than three weeks. In order to file evidence that makes sense, MMA's expert witness must have and understand reasonably accurate cost information from the Postal Service. Under the circumstances, fairness requires shortening the time for a response to MMA's motion to compel. Accordingly, MMA requests that Postal Service counsel be directed to file the Service's answer to this motion to compel by Monday, May 8, 2000.

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April 25, 2000, and MMA/USPS-3, dated April 28, 2000.

<sup>4</sup> Based on MMA's information and belief, there is no logical reason why there should be a

In order to expedite a meaningful response to the referenced interrogatory, MMA will fax a copy of this motion to compel to Postal Service counsel. Accordingly, the Postal Service should not be prejudiced by a modest shortening of the normal response period.

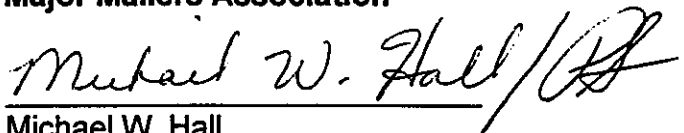
**CONCLUSION**

For all of the foregoing reasons, MMA respectfully requests that the Presiding Officer issue a ruling directing the Postal Service to provide complete, responsive answers to parts (b) and (d) of the referenced interrogatory. In addition, MMA respectfully requests that the date for the Postal Service to file an answer to this motion to compel be shortened to May 8, 2000.

Respectfully submitted,

**Major Mailers Association**

By:



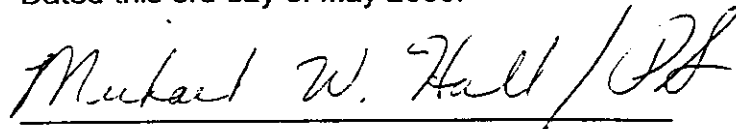
Michael W. Hall  
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Round Hill, Virginia 20141  
540-554-8880  
Counsel for  
Major Mailers Association

Dated: Round Hill, VA  
May 3, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing discovery request upon the United States Postal Service, Ted P. Gerarden, the Designated Officer of the Commission, and participants who requested service of all discovery documents, in compliance with Rules 12 (b) of the Commission's Rules of Practice.

Dated this 3rd day of May 2000.



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difference in the total costs regardless of which costing methodology is used.

## Appendix A

### RESPONSE OF UNITED STATES POSTAL SERVICE TO MMA INTERROGATORIES REDIRECTED FROM WITNESS MAYES

MMA/USPS-T32-2 Please refer to your response to interrogatory MMA/USPS-T32-1. There you explain where to find postal costs under the Commission's cost methodology for the test year.

- (a) Please confirm the following cost figures (in \$000's) including contingency (but not prior year losses) for the test year before rates. If you cannot confirm these cost figures, please provide the correct cost figures and the derivation and/or source thereof.

	(1) PRC TY BR LR-I-131, Vol H, Table E	(2) USPS TY BR Exhibit USPS-32A	(3) Difference (1) - (2)
Variable Costs	\$ 45,317,267	\$ 41,754,751	\$ 3,562,516
Institutional Costs	\$ 24,592,811	\$ 27,992,970	\$ (3,400,159)
Total Costs	\$ 69,910,078	\$ 69,747,721	\$ 162,357

- (b) If you confirm the cost figures in part (a), please explain why the total costs reported using the Commission's cost methodology are \$162.357 million higher than the total costs reported using the Postal Service's costing methodology. If you did not confirm the cost figures in part (a), please explain any difference in the total costs for your corrected cost figures, if there is a difference.
- (c) Please confirm the following cost figures (in \$000's) including contingency (but not prior year losses) for the test year after rates. If you cannot confirm these cost figures, please provide the correct cost figures and the derivation and/or source thereof.

	(1) PRC TY AR LR-I-131, Vol J, Table E	(2) USPS TY AR Exhibit USPS-32B	(3) Difference (1) - (2)
Variable Costs	\$ 44,387,115	\$ 40,891,695	\$ 3,495,420
Institutional Costs	\$ 24,584,124	\$ 27,978,701	\$ (3,394,577)
Total Costs	\$ 68,971,239	\$ 68,870,396	\$ 100,843

- (d) If you confirm the cost figures in part (c), please explain why the total costs incurred reported by using the Commission's cost methodology are \$100.843 million higher than if reported by using the Postal Service's costing methodology. If you did not confirm the cost figures in part (c), please explain any difference in the total costs for your corrected cost figures, if there is a difference.



**RESPONSE OF UNITED STATES POSTAL SERVICE TO MMA INTERROGATORIES  
REDIRECTED FROM WITNESS MAYES**

**Response to MMA/USPS-T32-2:**

- (a) Confirmed for "Volume Variable Total Including Contingency." The "Institutional Costs" in the USPS version includes specific fixed costs as well.
- (b) To understand the Commission's costing methodology, please refer to the Opinion and Recommended Decision, Docket No. R97-1 and PRC library references PRC LR-4, LR-5 and LR-19 from Docket No. R97-1.

To understand the Postal Service's costing methodology in the R2000-1 proposal, please refer to the testimonies of postal witnesses Meehan (USPS-T-11), Kashani (USPS-T-14), Bozzo (USPS-T-15), Degen (USPS-T-16), Baron (USPS-T-12), Pickett (USPS-T-19), Bradley (USPS-T-18), Stevens (USPS-T-20), Smith (USPS-T-21), Raymond (USPS-T-13), among others.

- (c) Confirmed for "Volume Variable Total Including Contingency." The "Institutional Costs" in the USPS methodology include specific fixed costs.
- (d) Please refer to the response to subpart (b) above.