

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

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Docket No. R2000-1

**REPLY TO OPPOSITION OF THE POSTAL SERVICE
TO MOTION OF THE MCGRAW-HILL COMPANIES
TO COMPEL RESPONSES TO INTERROGATORIES**
(June 8, 2000)

The McGraw-Hill Companies, Inc. ("McGraw-Hill") hereby replies to the Opposition of United States Postal Service to Motion of The McGraw-Hill Companies, Inc. to Compel Responses to Interrogatories MH/USPS-5 and MH/USPS-T10-26, filed June 6, 2000 ("USPS Opposition").¹

MH/USPS-5

There is no merit to the objection of the Postal Service that MH/USPS-5, which was prompted by the April 17, 2000 testimony of witness Unger, should have been filed earlier. Contrary to the assertion of the Postal Service (USPS Opposition, pp. 1-2), MH/USPS-5 would not appropriately have been directed to witness Unger. MH/USPS-5 calls for data in the possession of the Postal Service as an institution rather than within the personal knowledge of witness Unger, who had no apparent involvement with the library reference cited in MH/USPS-5.

¹ The Postal Service erroneously asserts that McGraw-Hill's motion to compel, filed May 30, 2000, was actually due on May 29, 2000. USPS Opposition at p. 1 n.1. Because May 29 was a legal holiday (Memorial Day), McGraw-Hill's motion was not due until May 30 under section 15 of the Commission's rules of practice.

The Postal Service is likewise off the mark in asserting that the March 1999 Report of the Periodicals Review Team should necessarily have led McGraw-Hill to file MH/USPS-5 by March 23, 2000. USPS Opposition, p 2. The purpose of discovery is to probe and rebut testimony filed in a rate case. The Postal Service did not rely upon and support in this proceeding the cited passage from the Report of the Periodicals Review Team until it filed the testimony of witness Unger (which led counsel for McGraw-Hill to revisit library references that might bear on his testimony). Unlike that testimony, the cited interrogatory responses of witness Kingsley (USPS Opposition, pp. 2-3) simply refer in passing to mail volumes generally, and do not focus on Periodicals volumes in particular.²

MH/USPS-T10-26

There is likewise no merit to the objection of the Postal Service that MH/USPS-T10-26, which followed up MH/USPS-T10-16 and MH/USPS-T10-3(d), should have been filed earlier as a follow-up to ANM/USPS-T10-33. The focus of ANM/USPS-T10-33 (response filed March 24, 2000) was plainly quite distinct from the focus of MH/USPS-T10-3(d) (response filed April 5, 2000) and MH/USPS-T10-16 (response filed April 28, 2000). ANM/USPS-T10-33 focused in relevant part on the percentage of all flats volumes that was handled manually (although the response excluded incoming secondary manual flat volumes). By contrast, MH/USPS-T10-3(d) and MH/USPS-T10-16 focused on the portion of “machinable, prebarcoded, non-carrier route Periodicals mail” that was handled manually.

In responding to MH/USPS-T10-16 on April 28, witness Kingsley made clear that the specific data requested thereby was not available, but referred to her response to ANM/USPS-

² Moreover, the cited response of witness Kingsley to MH/USPS-T10-3 was filed on April 5, 2000 — after the March 23 cut-off of discovery. MH/USPS-5 would not appropriately have been directed to witness Kingsley for the same reasons that it would not appropriately have been directed to witness Unger.

T10-33 as providing the best available data. Accordingly, on May 5, 2000, McGraw-Hill filed MH/USPS-T10-26 requesting an expanded response to ANM/USPS-T10-33 that did not exclude a large portion of flats volumes (i.e., incoming secondary volumes) that was handled manually. McGraw-Hill could not reasonably have been expected to file MH/USPS-T10-26 by March 31, when it was still awaiting a response to MH/USPS-T10-3(d) seeking data much more specific than that filed in response to ANM/USPS-T10-33 on March 24.

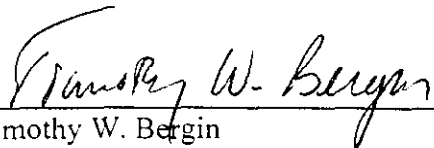
The Postal Service simply ignores this controlling point. Instead, the Postal Service wrongly implies that the latter two interrogatories requested essentially the same data, and gratuitously suggests that counsel for McGraw-Hill simply failed to review ANM/USPS-T10-33 promptly. USPS Opposition at 4-5. There is no basis for any such argument.³

Nor does it avail the Postal Service to assert that it “now must be allowed to engage in discovery on intervenors’ cases.” USPS Opposition, p. 5. A substantive response to MH/USPS-T10-26 and MH/USPS-5 was due by May 19, prior to the filing of intervenors’ cases on May 22. A good-faith response thereto would hardly cause any undue burden on the Postal Service, and any added burden at this juncture is of the Postal Service’s own making. The delay caused by

³ Counsel for McGraw-Hill recalls carefully reviewing witness Kingsley’s responses to all interrogatories within a day or two of their filing, a recollection confirmed by counsel’s time records for March 24-27.

unfounded objections to discovery cannot itself become a valid reason for sustaining such objections.

Respectfully submitted

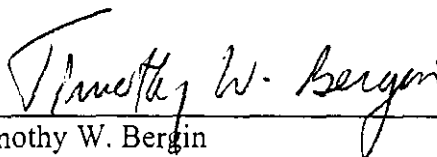


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CERTIFICATE OF SERVICE

I hereby certify that I have on this 8th day of June 2000 served the foregoing document in accordance with section 12 of the rules of practice.



Timothy W. Bergin