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POSTAL RATE COMMISSION
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PRESIDING OFFICER'S
RULING NO. R2000-1/83

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING ON
MCGRAW-HILL MOTION TO COMPEL RESPONSES
TO MH/USPS-T5 and MH/USPS-T10-26

(Issued June 29, 2000)

This ruling addresses discovery disputes arising out of an interrogatory directed to the Postal Service (MH/USPS-T5) and an interrogatory directed to witness Kingsley (MH/USPS-T10-26).¹

MH/USPS-5. Subpart a of this interrogatory asks for log sheets prepared during a national survey underlying USPS-LR-87, the Periodicals Mail Characteristics Study.² In lieu of the log sheets, subpart b asks for the number of pieces associated with each transaction listed thereon and the kind of mail or mailing involved (Nonprofit Periodicals, Regular Periodicals, or commingled Nonprofit and Regular Periodicals).

Subpart c asks for similar information on flat mailings in bulk First-Class, Standard A Regular, and Standard A Nonprofit for base year 1998 and/or fiscal year 1999. Subpart d asks for information, for the same years, on density for flats in bulk

¹ Along with the standard documents allowed by the Commission rules in discovery disputes, McGraw-Hill has filed a motion for leave to file a reply in support of its motion to compel. The accompanying document is captioned "Reply to Opposition of the Postal Service to Motion of the McGraw-Hill Companies to Compel Responses to Interrogatories [MH/USPS-5 and MH/USPS-T10-26]. Both documents were filed June 8, 2000.

² The introduction to the library reference states that it contains packaging and containerization characteristics for Regular Rate, Science of Agriculture, and Nonprofit Periodicals flat-shaped mail. It further notes that these data are used in the flats mail processing cost models presented by witness Yacobucci (USPS-T-25) in USPS-LR-I-90. USPS-LR-I-87 at 3.

First-Class Mail, Standard A Regular and Nonprofit mail, and Periodicals Regular and Nonprofit mail.

Postal Service objection. The Service objects to providing an answer on grounds that McGraw-Hill's question is untimely. Specifically, it notes that USPS-LR-I-87 was filed with the Postal Service's direct case in January, and was clearly listed as associated with witness Yacobucci's direct testimony. Accordingly, the Service contends that the question should have been filed by the March 23, 2000 deadline for discovery on the Postal Service's direct case. Objection of the United States Postal Service to the McGraw-Hill Companies, Inc., Interrogatory (MH/USPS-5) at 1, May 15, 2000.

McGraw-Hill's motion to compel. McGraw-Hill disputes the untimeliness charge by asserting that the predicate for the interrogatory is the portion of witness Unger's April 17th testimony that identifies relative size of Periodicals mailings as a factor reducing the likelihood of automated processing. Motion of the McGraw-Hill Companies, Inc. to Compel Responses to Interrogatories MH/USPS-5 and MH/USPS-T10-26 at 1 (May 30, 2000), citing USPS-ST-43 at 2-10. In particular, McGraw-Hill claims the question is designed to test witness Unger's assertion based on information available to the Postal Service. *Id.* at 2.

Postal Service opposition. The Service's opposition to the motion to compel contends that McGraw-Hill has not put forth any valid justification for its late, detailed questions concerning the library reference. It again notes that USPS-LR-I-87 was filed in January with the Service's case and identified as support for Yacobucci's testimony. It dismisses the invocation of witness Unger's testimony as a predicate, and asserts that this only casts further doubt on McGraw-Hill's position, as this would then mean that the interrogatory should have been directed to him by the April 26, 2000 deadline. 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 at 1-2, filed June 6, 2000.

In addition, the Service takes issue with McGraw-Hill's assertion that witness Unger's testimony first surfaced the issue. It notes that this matter — namely concern that relatively smaller Periodicals mailings are not being processed on automated equipment — has been discussed for sometime. In particular, the Service notes that the Report of the Periodicals Operations Review Team (USPS-LR-I-193) was available on February 23, 2000, a full month before the end of discovery on the Service's case. It also notes that several of witness Kingsley's interrogatory responses addressed the issue well before the filing of MH/USPS-5 on May 5, 2000. *Id.* at 2-3.

McGraw-Hill's reply to the Service's opposition. In this additional filing, McGraw-Hill maintains that there is no merit to the Service's position that MH/USPS-5 should have been filed earlier. It says that this interrogatory should not have been directed to witness Unger, as it calls for data in the possession of the Postal Service as an institution. Reply to Opposition of the Postal Service to Motion of the McGraw-Hill Companies to Compel Responses to Interrogatories (June 8, 2000) at 1. McGraw-Hill also says the Service is off the mark in asserting that the Report of the Periodicals Review Team should have led McGraw-Hill to file MH/USPS-5 by March 23, 2000. *Id.* at 2.

Decision. Review of the situation presented here leads to the conclusion that the interrogatory in question was not timely filed, and that there are no equitable considerations that otherwise militate in favor of requiring an answer. The data in question were clearly flagged at the outset of the proceeding, as they were referred to in the initial filing as support for witness Yacobucci's presentation. As such, in line with standard practice in Commission proceedings, the data generally would be associated with witness Yacobucci, and not regarded as "institutional" in the usual sense.

In addition, the larger Periodicals processing issue that McGraw-Hill raises as justification for asking the question at this time was not of first impression in witness Unger's testimony; instead, it has, as the Service indicates, been a concern for some time. Finally, the interrogatory goes far beyond simply asking for supporting Periodicals

data; it also asks for similar data for flats in other classes. Barring a far more significant showing, a request entailing the potential of considerable burden and delay cannot be sanctioned at this late date in the proceeding. Accordingly, the motion for a compelled response to MH/USPS-5 is not granted.

MH/USPS-T-10-26 (witness Kingsley). The preamble to this question cites a number of other interrogatories, including one in which witness Kingsley refers to a chart she has produced that shows the percentages, over time, of flats that were handled manually, excluding incoming secondary volumes. Subpart a then asks witness Kingsley to produce a chart that reflects incoming secondary processing in both plants and delivery units. Subpart b asks for a full explanation of how the Service keeps track of and counts over time the number of flat mail pieces that are handled manually, and the number of flat mail pieces that are handled in mechanized or automated operations.

Postal Service objection. The Service asserts that this question is an untimely follow-up to ANM/USPS-T10-33, rather than a timely follow-up to MH/USPS-T10-16. Specifically, it says these questions were "clearly prompted" by the chart attached to witness Kingsley's response to question 33 (filed on March 24, 2000) and not the later-noted responses identified in the preamble. It therefore contends that any follow-up should have been filed more than a month ago. *Objection of the United States Postal Service to the McGraw-Hill Companies, Inc. Interrogatories to Witness Kingsley (MH/USSP-T10-23(b) and 26) at 2, May 15, 2000.*

McGraw-Hill motion to compel. McGraw-Hill contends that this interrogatory is a follow-up to MH/USPS-T10-3(d), which asked witness Kingsley to provide an estimate of the portion of machinable, prebarcoded non-carrier route Periodicals processed in manual operations rather than on flat sorting machines (FSMs) in FY 1998. It notes that witness Kingsley said that class-specific information was not available, but offered information on the portion of flat mail processed in manual operations.

McGraw-Hill says it was only in witness Kingsley's April 28th response that she indicated that the most responsive data was the type depicted in the graph provided in response to ANM/USPS-T10-33. Thus, McGraw-Hill says it was at that point that it requested a version that did not exclude relevant data. It asserts that under these circumstances, it has diligently and timely pursued relevant follow-up discovery.

Postal Service opposition. The Postal Service indicates that notwithstanding the interrogatories McGraw-Hill refers to, the fact is that the response to ANM/USPS-T10-33, with its accompanying chart, which is "the clear basis" for MH/USPS-T10-26, was filed on March 24, 2000. Postal Service Opposition at 4. It says, among other things, that McGraw-Hill's argument that it did not know, until later, that the most responsive information was contained in ANM/USPS-T10-33 is "disingenuous at best, and threatens to derail the discovery process at worst." *Id.*

McGraw-Hill reply to opposition. In a reply to the Service's opposition, McGraw-Hill argues that the focus of question 33 to witness Kingsley was "plainly quite distinct" from the focus of MH/USPS-T10-3(d) and MH/USPS-10-16. It contends that the former question focused on the percentage of all flats volumes that was handled manually (although the response excluded incoming secondary manual flat volumes.) Reply to Opposition of the Postal Service to Motion of the McGraw-Hill Companies to Compel Responses to Interrogatories at 2, June 8, 2000. By contrast, McGraw-Hill says that the other questions focused on the portion of the machinable, prebarcoded, non-carrier route Periodicals mail that was handled manually.

McGraw-Hill therefore says that in responding to MH/USPS-T10-16 on April 28, witness Kingsley made clear that the specific data requested was not available, but referred to her response in ANM/USPS-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. *Id.* at 3. It says it could not reasonably have been expected to file question

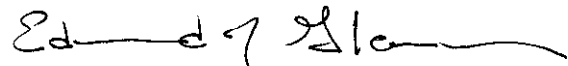
26 earlier, while it was still awaiting a response to No. 3(d) seeking data much more specific than that filed in response to question 33.

McGraw-Hill says the Service simply ignores this controlling point, 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. It says there is no basis for this argument. *Id.* at 3.

Decision. Although the path leading to the filing of question 26 is not as clear or as straightforward as it could be, it is within the bounds of reason to accept McGraw-Hill's version of its development and timing. Accordingly, the witness is directed to provide an answer.

RULING

1. The Motion of McGraw-Hill Companies, Inc. to Compel Responses to Interrogatories MH/USPS-5 and MH/USPS-T10-26 is disposed of as follows: as to MH/USPS-5, the motion is denied; as to MH/USPS-T10-26, the motion is granted.
2. The Motion of the McGraw-Hill Companies, Inc. for Leave to File a Reply in Support of its [May 30, 2000] Motion to Compel, filed June 8, 2000, is granted.



Edward J. Gleiman
Presiding Officer