

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 OBJECTION TO INTERROGATORY OF
NEWSPAPER ASSOCIATION OF AMERICA (NAA/USPS-12)**

On July 31, 2000, the Newspaper Association of America (NAA) filed interrogatory NAA/USPS-12. The interrogatory asks if the Postal Service has, at any time since 1997, conducted a "study or analysis of preprint advertising in daily newspapers or in newspaper Total Market Coverage [(TMC)] Programs, including, but not limited to volumes of or revenues associated with preprint advertising." If the answer is affirmative, interrogatory 12 requests that the study or analysis be described and produced. The Postal Service objects to Interrogatory 12 on the grounds of timeliness, commercial sensitivity, cumulativeness, deliberative process privilege, overbreadth, burden, and relevance.

Timeliness

The Postal Service objects to interrogatory 12 on the grounds that it is untimely filed under Rule 25 of the Commission's Rules of Practice and Procedure. Interrogatory 12 is a broad-based discovery request covering all studies or analyses in the Postal Service's custody on newspaper and TMC preprint advertising. Interrogatory 12 is clearly a general request for production. Under P.O. Ruling No. R2000-1/4, the deadline for posing such discovery expired over four months ago, on March 23, 2000. NAA, moreover, cannot

concoct an argument that the interrogatory falls within the exception to Rule 25(a) which permits participants to request "information (such as operating procedures or data) available only from the Postal Service." As clearly stated in Rule 25(a), the exception applies to information that is "*available only from the Postal Service*" (emphasis supplied). As the subject matter of the interrogatory ultimately pertains to information about the newspaper industry, it is not "*available only from the Postal Service*" (emphasis supplied). NAA could survey its own members for information about preprint advertising in newspapers or TMC products, as this is precisely the type of commercial activity in which members of NAA are engaged. Thus, NAA's opportunity to pose interrogatory 12 has long expired, and its attempt to conduct discovery at this late stage must be denied, consistent with longstanding Commission precedent. See P.O. Ruling Nos. R2000-1/68 at 4; -1/72 at 13-14; -1/83 at 3-4; -1/96 at 4-5; -1/98 at 2; -1/109 at 1.

Furthermore, it would be highly prejudicial to the Postal Service to permit this late-filed discovery request, particularly since it was strategically filed after the filing of the participants' cases-in-chief. It is too late for the any responsive information to become incorporated into the evidentiary presentations of the participants' cases-in-chief, and, as such, participants will not be able to file rebuttal testimony in relation to any responsive information. The other participants, including the Postal Service, have been deprived of the opportunity to rebut any participant's use of any responsive information during the rebuttal stage of this proceeding. Moreover, the filing of unauthorized discovery at this

stage of the proceeding unfairly diverts the Postal Service's precious resources from preparing its rebuttal, much to the Postal Service's detriment.

Commercial Sensitivity, Cumulativeness, & Deliberative Process Privilege

The Postal Service also objects to Interrogatory 12 on the basis of commercial sensitivity, cumulativeness, and deliberative process privilege. The Postal Service has identified the SAI Report filed as USPS LR-I-268, entitled *SAI Reports Responsive to Interrogatories AAPS/USPS-T35—9-10, Redirected to the Postal Service (Filed Under Protective Conditions)*, as potentially responsive to this request. The library reference contains a study prepared by Strategic Analysis, Inc. for the Postal Service. It was filed under the protective conditions of P.O. Ruling No. C99-1/21, which addressed a motion to compel by the Association of Alternate Postal Systems. Thus, with respect to this document, NAA interrogatory 12 is cumulative. To the extent NAA seeks disclosure of redacted information in USPS LR-I-268, the Postal Service objects on grounds of commercial sensitivity. Furthermore, the redaction issue is *res judicata*, as this issue was settled by P.O. Ruling Nos. R2000-1/21 and R97-1/46, -1/52, and -1/60.

The Postal Service has conducted a good faith search of records at Headquarters and identified a draft update to the SAI report, as well as underlying information gathered for the draft update, as potentially responsive to the request. The Postal Service objects to the production of the draft update, and the accompanying underlying information, on grounds of commercial sensitivity and deliberative process privilege. As it is in draft form, the update,

along with the underlying information, are works in progress and therefore predecisional. Furthermore, these items consist of commercially valuable, proprietary market research, the disclosure of which could result in harm to the Postal Service's commercial interests.

Overbreadth and Burden

The Postal Service furthermore objects to Interrogatory 12 on grounds of overbreadth. The interrogatory is too broad in that it is not confined to responsible organizational units within Headquarters. To the extent interrogatory 12 requires an exhaustive search of postal records throughout the country, the Postal Service objects on grounds of burden, as it would consume countless hours of professional and clerical time to survey and interview all installations nationwide to search files for responsive information. In addition, the scope of the interrogatory predates the base year, and is therefore overinclusive. Finally, the subject matter of the interrogatory is too broad, as it requests any study or analysis on preprint advertising in newspapers or TMC programs, without any demonstration of the relationship of this information to the matters at issue in this proceeding. The interrogatory is nothing more than a fishing expedition to test the depth of the Postal Service's knowledge of the preprint market. Such invasive discovery is clearly impermissible and constitutes an abuse of the Commission's discovery process.

Relevance

On a more general level, Interrogatory 12 requests information that is not reasonably calculated to lead to admissible evidence. As the SAI research does

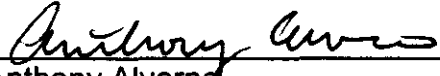
not serve as a factual foundation for the Postal Service's case-in-chief, consideration of this information would only detract from the central issue of this proceeding; that is, the Postal Service's evidentiary support for the proposed rates submitted in this proceeding.

Respectfully submitted,

UNITED STATES POSTAL SERVICE


By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking


Anthony Alverno
Attorney

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

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2997; Fax -6187
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