

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

OPPOSITION OF THE UNITED STATES POSTAL SERVICE  
TO MAJOR MAILERS ASSOCIATION MOTION TO COMPEL  
ANSWERS TO INTERROGATORIES AND PROVIDE INFORMATION UPDATE  
(August 10, 2000)

The United States Postal Service hereby files this opposition to the Motion to Compel filed on August 7, 2000, by Major Mailers Association. That motion seeks an order from the Presiding Officer directing the Postal Service to provide responses to interrogatories MMA/USPS-T24-23(c) through (l) and to follow up its response to PRC Order No. 1294 with either full or partial updates of the following Library References: USPS-LR-I-137, USPS-LR-I-146, USPS-LR-I-147, USPS-LR-I-160 and USPS-LR-I-162. For the following reasons, the motion should be denied.

MMA/USPS-T24-23(c)-(l)

On July 24, 2000, in subparts (c) through (l) of MMA/USPS-T24-23, MMA asks Postal Service witness Miller (USPS-T-24) to:

(c) confirm that it was (and remains) his testimony that certain cost differences between workshared letters and Bulk Metered Mail are nonworksharing related;

(d) declare whether he considers himself to be an expert about presort mailer operations;

(e-k) express an opinion on the question of whether mailers who engage in certain forms of mail preparation "perform activities that do not affect platform costs;"  
and

(l) declare whether he considers himself qualified to make the judgments

described in subparts (e-k).<sup>1</sup>

Rule 25(a) of the Commission's Rules of Practice and Procedure specifies that, "[g]enerally discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case . . . [, except] when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service."

The direct testimony of Postal Service witness Miller (USPS-T-24) presented the Postal Service's estimates of test year First-Class Mail worksharing-related costs. Presiding Officer's Ruling No. R2000-1/4 (February 25, 2000) established a March 23, 2000, deadline for discovery on the Postal Service's direct testimony. On April 18, 2000, Mr. Miller's testimony was received into evidence and he was subjected to cross-examination, by several parties, including MMA. See Tr. 7/3169-3216. MMA is not entitled to further discovery on USPS-T-24.

In its Motion to Compel, MMA argues that subparts (c) through (l) of MMA/USPS-T24-23:

seek to explore if . . . there may have been a change in Mr. Miller's original position on relevant workshare cost savings in light of subsequent events, including the Postal Service's [PRC Order No. 1294] FY 1999 update filings and new evidence submitted by MMA witness Sharon Harrison.

MMA Motion at 2. MMA adds that it is seeking to explore witness Miller's "current position . . . on . . . [a] vital matter" and that it is "seeking to explore the impact of platform operations of specific mail preparation activities . . . and the extent to which witness Miller is or is not an expert in such matters." *Id.*

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<sup>1</sup>In subpart (a), MMA asked witness Miller to provide FY 1999 unit costs for certain Bulk Metered Mail letters and Automation Presort mail letter cost pools identified in response to MMA/USPS-T24-18 (Tr. 7/3126-27). In subpart (b), MMA asked witness Miller to discuss the reasons for any changes that might result in certain specified cost pools. The Postal Service's August 7, 2000, response to subparts (a) and (b) -- that the requested material is not available and has not been prepared as part of the response to PRC Order No. 1294 -- apparently is not at issue here.

From its intervention in this proceeding through April 18, 2000, MMA was afforded an opportunity to direct questions to Mr. Miller about USPS-T-24 and such matters as workshare mailer preparation activity, its impact on postal mail processing platform costs, and to examine the extent of his expertise on these issues. None of these issues nor any of the questions asked in subparts (c) through (l) of MMA/USPS-T24-23 are inextricably tied to the FY 1999 cost data recently provided by the Postal Service in response to PRC Order No. 1294. The questions are generic in nature, of a sort which could have been asked of witness Miller months ago in relation to his direct testimony. At page 2 of its Motion, MMA claims that it "is seeking to explore if . . . there may have been a change in Mr. Miller's original . . . [testimony] in light of . . . the Postal Service's FY1999 update filings . . . ." MMA's attempt to link the questions to the recent provision of FY 1999 cost data in response to PRC Order No. 1294 is in vain. There is no relationship between those data and the questions asked. If witness Miller's direct testimony is subject to further discovery based on the Postal Service's response to PRC Order No. 1294, then so is all of the testimony filed in support of the Postal Service's request.

These questions seeks no objective or factual information (such as operating procedures or data) available only from the Postal Service, within the meaning of Rule 25(a). As indicated by MMA/USPS-T24-23(l), MMA specifically seeks witness Miller's "judgments" about certain matters related to his direct testimony. The time for such questions came and went long ago. Accordingly, the Postal Service considers that MMA's questions are out of time.

If the purpose of any of these questions is to obtain Mr. Miller's opinion regarding the testimony of MMA witness Harrison (Tr. 26/12235 *et seq.*), such questions also are not permitted by Rule 25(a). The Postal Service's witnesses should not be compelled to respond to interrogatories about subsequently filed intervenor testimony. The Postal

Service is entitled to exercise its right to address witness Harrison's testimony -- should it choose to do so -- either in in any rebuttal testimony it may file on August 14, 2000, or in briefs which are due all too soon thereafter.

As discussed further below, PRC Order No. 1294 requires the Postal Service to provide a wealth of updated information, but not nearly as much as MMA would prefer. In discovery which purports to follow-up on the Postal Service's provision of data in response to that Order, MMA should be required to respect the limits drawn by the Commission and should not be permitted to use the Order as a pretext for re-opening discovery on USPS-T-24.

Information Update Request

MMA has prepared a wish list of library references it would like to see updated. Quite correctly, MMA refrains from any allegation that the Postal Service was obligated under Order No. 1294 to provide the updates it now seeks. MMA instead acknowledges that, over two months ago, it requested the Commission to expand the scope of Order No. 1294 to include the updates which MMA now seeks again, and that, despite that request, the Commission has to date taken no action.

The Postal Service submits that the implicit denial of MMA's original request was tolerable under the circumstances. As a practical matter, the Postal Service has already had to take extraordinary efforts to meet the scope of Order No. 1294 as originally stated. Not only has the Postal Service generated dozens of library references to accomplish the update, but it has additionally answered hundreds of questions about the material already provided. Even now, those efforts are continuing, and the ability of the Postal Service to shift its attention to the necessary preparation of rebuttal testimony has already been seriously compromised.

Order No. 1294 was apparently crafted with full realization that not all aspects of the case could be updated to incorporate FY 1999 data to the maximum extent

possible. A line had to be drawn between those aspects of the case that could usefully and feasibly be updated, and those aspects of the case for which a record based on FY 1998 remains an adequate foundation for test year estimates. The joint demarcation of that line embodied in Order No. 1294 and the Postal Service's responses thereto represents the best practical accommodation of the Commission's desire to incorporate FY 1999 actual data, given the due process concerns that the Postal Service has repeatedly emphasized. The effectiveness of the Commission's future use of this information will depend on the Commission's ability to take account of all critical elements of the updates, if it does not adhere to the foundation of the Postal Service's original filing, as the Postal Service has proposed.

MMA's pleadings (both the earlier request and the instant one) are, in effect, a complaint that MMA would prefer that the revisions it seeks end up on the other side of the line separating necessary updates. At this point in time, however, given the impending filing of rebuttal testimony, and the already tight briefing schedule thereafter, there is simply no practical way to move the line. Any attempt at this date to impose on the Postal Service the exclusive and undue burden of providing the updates which MMA once again seeks could not be reconciled with the Postal Service's due process rights to focus its attention on the same matters which are currently occupying every other party in this case. Moreover, given the unavoidable expectation that MMA would respond to the requested updates, if provided, with nothing less than a blizzard of further requests for the Postal Service to explain every change in any aspect of the results, the one-sidedness and impracticality of MMA's request is obvious.

The Postal Service requested reconsideration of Order No. 1294 because it feared that the full implications of attempting to update had not been recognized. The legitimate basis for those fears has now become even more evident. While the types of complications inherent in the updating exercise are coming into sharper focus, the

appropriate effect of the new information on the rate levels proposed by the Postal Service and the intervenors is becoming more blurred. Nevertheless, while maintaining its position that the case as filed should remain the primary basis for the Commission's recommended decision, the Postal Service would disagree with MMA's apparent view that unless its own particular interests in updating can be accommodated, everything else must remain static. MMA's instant request, to require that specific additional cost study library references be updated, should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Michael T. Tidwell

### 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.



Michael T. Tidwell

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