

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

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WASHINGTON, D.C. 20268-0001

Postal Rate and Fee Changes, 2000

Docket No. R2000-1

**NEWSPAPER ASSOCIATION OF AMERICA AND
ASSOCIATION OF ALTERNATE POSTAL SYSTEMS JOINT
MOTION TO LIFT CONFIDENTIALITY RESTRICTIONS FROM
LIBRARY REFERENCE USPS LR-I-268
August 22, 2000**

The Newspaper Association of America and the Association of Alternate Postal Systems hereby jointly move for removal of the confidential treatment currently accorded United States Postal Service Library Reference LR-I-268, known as the SAI Report.

The SAI Report document contains information regarding the alternate delivery industry that is relevant to the rebuttal testimony of several witnesses in this proceeding (including SMC witnesses Bradpiece and Guiliano), none of whom have signed the confidentiality agreement. The undersigned counsel would like the ability to use the SAI Report and its update in cross-examination of certain rebuttal witnesses.

Furthermore, removal of the confidentiality restriction from that redacted document is appropriate because, as redacted, the Library Reference cannot reasonably be considered to contain sensitive or confidential information.

AAPS first sought production of the updated SAI Report on February 23, 2000. After the Postal Service objected, the Presiding Officer ordered production of the

Report on March 28, 2000.¹ As the Presiding Officer noted in that ruling, although the Postal Service initially objected on the grounds of “relevance, deliberative process privilege, and commercial sensitivity,”² the Postal Service did not press those objections, instead stipulating to production of the information subject to protective conditions and “without prejudice to its right to object to the production of any other proprietary market research.”³ The Postal Service subsequently filed, as USPS Library Reference LR-I-268, a version of the Report redacted to exclude “the Service’s and SAI researchers’ comments and conclusions on, and analysis and/or interpretation of, the underlying factual data.”

In May, the Postal Service refused an informal request by AAPS that AAPS be allowed to use a number of identified assertions of fact contained in the SAI Report in the direct testimony of AAPS witness White. Thus, Mr. White was unable to review that material and accordingly was not in a position to make any reference to that material.

As a result, neither AAPS nor any other party (except, presumably, the Postal Service had it chosen to do so) has been able to use the content of the SAI Report in testimony or in cross-examination. Accordingly, AAPS and NAA believe that they have no choice but to ask the Commission to remove the confidentiality from LR-I-268.

In doing so, the Presiding Officer will be required to act upon the objections by the Postal Service to production of the document. These objections were, in effect, not

¹ Presiding Officer’s Ruling No. R2000-1/21.

² United States Postal Service Objection to Interrogatories of Association of Alternate Postal Systems Directed to Witness Moeller at 1 (AAPS/USPS-T35-9-10), filed March 6, 2000.

addressed by the Presiding Officer's Ruling because the Ruling merely accepted the Postal Service's willingness to produce a redacted version of the SAI Report under confidentiality. The Postal Service has previously objected on the grounds of: relevance, proprietary and commercial sensitivity, and deliberate process. None of *these objections withstands analysis*.

First, there can be little serious doubt as to the relevance of this material. The SAI Report contains numerous factual assertions concerning the condition of the alternate delivery industry as described in the Report, including the effects on the alternate delivery industry of the mail reclassification in Docket No. MC95-1. These data are directly relevant to, among other things, the testimony of AAPS witness John White and the rebuttal testimony of certain witnesses regarding the proposed reduction of the pound rate in Standard A Enhanced Carrier Route mail in this proceeding.

The Postal Service's objections on the basis of proprietary and commercial sensitivity should not be credited. The Postal Service has so thoroughly redacted Library Reference LR-I-268 that it is difficult to imagine what of the remaining information could reasonably be read to be proprietary or commercially sensitive. As redacted, the document merely presents an array of factual assertions regarding the alternate delivery industry's volumes and market opportunities, and does not contain any comments by the USPS or SAI researchers reflecting USPS planning. Indeed, if any industry has a proprietary or commercially sensitive interest in these matters, it would appear to be the alternate delivery industry itself, not the USPS.

(...Continued)

³ Presiding Officer's Ruling No. R2000-1/21.

Finally, the Postal Service's "deliberative privilege" objection should be overruled. Whatever the merits of that objection to the full, unredacted SAI Report,⁴ its bearing on the redacted version of that report is hardly self-evident. The Postal Service has not explained how the factual information in the SAI Report was "an input to the decisionmaking process" and therefore "subject to protection under the deliberate process privilege."

Although the contours of the "deliberate privilege" are vague at best, surely the privilege does not extend to assertions of fact where there is no showing that the Postal Service has ever used the information in material deliberations. The record is indisputably clear that the factual information was not an input to the Postal Service's pricing witnesses in this proceeding.⁵ Nor has the Postal Service even suggested, much less shown, that the factual information in the SAI Report were considered by the Board of Governors or senior management or played any other role in shaping the rate change proposals now before this Commission. Nor are the factual assertions related to the Postal Service's own operations – the information relates to the operations of private firms. Nothing about this information raises concerns analogous to deliberate matters such as, say, internal projections supporting decisions of the Governors to approve investments in additional barcode sorter equipment, flats processing machinery, or real estate sales and acquisitions.

⁴ Undersigned counsel have not had access to the unredacted original of the document filed in USPS Library Reference LR-I-268.

⁵ Neither Postal Service witness Mayes nor witness Moeller bothered to read, or were even aware of, the updated version of the SAI Report in preparing their testimony. See Tr. 4206 (Mayes); Tr. 3838 (Moeller).

For the foregoing reasons, the Association of Alternate Postal Systems and the Newspaper Association of America respectfully request the Commission to remove the confidentiality attached to the redacted version of the SAI Report contained in Postal Service Library Reference LR-I-268.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the instant document on all participants requesting such service in this proceeding in accordance with section 12 of the Rules of Practice.

August 22, 2000

William B. Baker
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