

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

POSTAL RATE AND FEE CHANGES, 1997 )

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Docket No. R97-1  
POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

NASHUA PHOTO INC., DISTRICT PHOTO INC.,  
MYSTIC COLOR LAB, AND SEATTLE FILMWORKS, INC.  
MOTION TO COMPEL RESPONSE  
OF UNITED STATES POSTAL SERVICE  
WITNESS DAVID R. FRONK TO NDMS/USPS-T32-16  
(August 22, 1997)

Pursuant to sections 21(a) and 25(d) of the Postal Rate Commission rules of practice and Rule 2.B. of the Special Rules of Practice in this docket, Nashua Photo Inc. ("Nashua"), District Photo Inc. ("District"), Mystic Color Lab ("Mystic"), and Seattle FilmWorks, Inc. ("Seattle") (hereinafter collectively referred to as "NDMS"), proceeding jointly herein through their undersigned counsel, hereby request the Postal Rate Commission to enter an order compelling the Postal Service's witness, David R. Fronk (USPS T-32) to respond to interrogatory number 16 of the interrogatories propounded to him by NDMS in this matter (NDMS/USPS-T32-16.).

STATEMENT

On August 1, 1997, NDMS filed and served by hand-delivery Interrogatory and Request to Produce T32-16 to Postal Service Witness Fronk, *inter alia*, which asked the following question:

NDMS/USPS-T32-16.

- a. Was the study in LR-H-112 prepared by Postal Service employee(s) or by an outside consultant?
- b. If the latter, please supply the name of the consultant or consultant organization that conducted the study and provide a copy of the contact specifications.
- c. Please provide the name, title and current position of the primary author(s) of the study.

Obviously, the interrogatory simply seeks information concerning the authorship of Library Reference H-112 (a study in which Witness Fronk has conceded he did not participate; see response to NDMS/USPS-T32-1a), and the Postal Service does not wish to divulge such information. The Postal Service has objected to the interrogatory, and Witness Fronk has failed to answer it, on the theory that the interrogatory "asks for information which is irrelevant to this proceeding" and which is "not reasonably calculated to lead to the discovery of admissible evidence."

NDMS would respectfully submit that the relevance argument raised by the Postal Service is clearly wrong, as a matter of logic as well as a matter of law.

The Postal Service has simply made the remarkable assertion, without any substantive rationale whatsoever, that the identity of the author of a study, and the bases on which the author pursued such a study, are irrelevant and impermissible subjects of inquiry for a party seeking to understand support and/or challenge certain aspects of the study (including certain of the study's premises). If the Postal Service's contention were true, it would mean that the authors and sources of studies could be withheld, precluding any understanding of the author's credentials, background, credibility, and understandings with respect to the purposes and foundations of such studies, as well as their actual methods and experiences in pursuing such studies. It may be, for example, that the author of a particular study has previously published something inconsistent, or even at odds, with a particular study under examination. It might also be that a particular study was conducted by a person or firm without proper training or experience to undertake such a study. Such an approach could effectively shield the authors of studies as well as the Postal Service from cross-examination on information essential to evaluate the basic underpinnings of those studies. Surely, such results would make a mockery of the discovery provisions governing

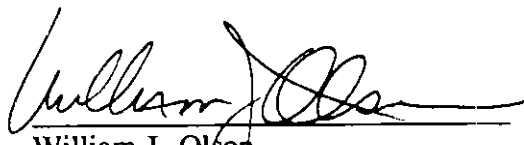
this docket and, if countenanced, would render impossible the requirement of a fair and open hearing before the Commission. These points, and many more could be made, seem so obvious that the Postal Service's relevance objection is almost incomprehensible.

Witness Fronk has relied on Library Reference H-112 as the exclusive foundation for certain aspects of his direct testimony in this matter. Indeed, his reliance on that study appears to be the exclusive support for his recommendation for the nonstandard surcharge proposed by the Postal Service in this proceeding. *See* USPS T-32, p. 24. By refusing to disclose the information sought by NDMS regarding the authorship of Library Reference H-112, the Postal Service would be insulating the study's author(s) from meaningful inquiry into the bases for the study. This should not be permitted.

Lastly, we would submit, if the Postal Service wanted to object to what would ordinarily be considered a routine discovery request, an effort should have been made to substantiate the objection with a significant showing and legal argument.

For the foregoing reasons, NDMS submit that an order should be entered directing Witness Fronk (and/or, if necessary, other appropriate Postal Service witness(es) with knowledge of the matter) to respond in full to NDMS-USPS-T-32-16.

Respectfully submitted,

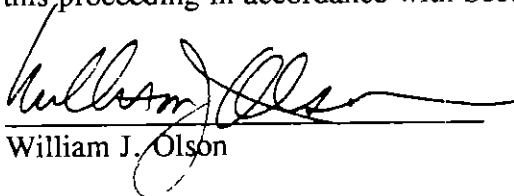


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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by hand delivery or mail the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.



William J. Olson

August 22, 1997