

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

RECEIVED

POSTAL RATE AND FEE CHANGES, 1997 )

Aug 25 4 37 PM '97  
Docket No. R97-17

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 THOMAS M. SHARKEY TO NDMS/USPS-T33-10  
(August 25, 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, Thomas M. Sharkey (USPS T-33) to respond to request number 10 of the interrogatories/requests propounded to him by NDMS in this matter (NDMS/USPS-T33-10).

**STATEMENT**

On August 1, 1997, NDMS filed and served by hand-delivery Interrogatory and Request to Produce T33-10 to Postal Service Witness Sharkey, *inter alia*, which asked the following question:

NDMS/USPS-T33-10

- a. Has the Postal Service developed any data showing the extent of on-time performance as a result of its experiments with confirmation of Priority Mail? Please provide copies of all summary performance data available from the delivery confirmation data base.
- b. Please provide copies of all other data and information (including anecdotal information) in the possession of the Postal Service that are pertinent to actual delivery service received by Priority Mail during the Base Year. This request includes, but is not limited to, data from ODIS and any external data which the Postal Service may have.

The Postal Service has objected to the interrogatory and request to produce, including all parts thereof, and Witness Sharkey has failed to answer them, claiming that “the burden would be excessive” and that “the scope of this interrogatory is such that it could encompass city-pair, facility, customer and market specific information which is proprietary to the Postal Service and is commercially sensitive.” (USPS Objection, p. 1.) The Postal Service has failed to submit an affidavit or any documentary support for its objections, and failed to produce any information or documentation whatsoever in response to the NDMS requests. A copy of the Postal Service’s objection is attached hereto as Exhibit A.

## ARGUMENT

### A. Overall Inadequacy of the Postal Service Objections

The NDMS requests seek a variety of types of service information<sup>1</sup> that is highly relevant to the Postal Service’s proposals in this docket, and the Postal Service has apparently decided to disclose *none* of the requested information. Sections 3001.25(c) and 3001.26(c) of the Commission’s rules of practice expressly require that “the bases for objections shall be clearly and *fully* stated” (emphasis added), that, if objection is made to part of an interrogatory, “*the part shall be specified*” (emphasis added), that a “participant claiming privilege shall identify the specific evidentiary privilege asserted and *state the reasons for its applicability*” (emphasis added), and that a participant claiming undue burden “shall *state with particularity* the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible” (emphasis added). The Postal Service’s objections to NDMS/USPS-T-33-10 do not meet the standards established by these rules. The objections are

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<sup>1</sup> Obviously, such information is directly related to one of the express statutory factors to be considered by the Commission in rate and classification cases, and should be considered critical discovery matter. See 39 U.S.C. sections 3622 (b)(2) and 3623 (c)(4).

vague, ignore parts of the NDMS requests that do not appear to be objected to, and merely skim the surface, rather than state the substance, of any ground of objection. This puts the party propounding the discovery at a disadvantage, of course, and allows the objecting party — in this case the Postal Service — to address the “merits” of the objections for the first time when they are first articulated in the opposition to the motion to compel.

For these reasons, the Postal Service should not be allowed in its opposition to expand its objections beyond those originally stated, and the factual matters in issue should be decided on the basis of the discovery requests and objections, with no supplementation of grounds allowed by the Postal Service in responding to the motion to compel.

**B. NDMS/USPS-T-33-10a**

Initially, NDMS/USPS-T-33-10a simply asks whether certain data have even been developed. Clearly, there would be no valid objection to this question. The interrogatory also seeks copies of “all summary performance data available from the delivery confirmation base.” The Postal Service has chosen to ignore the entire question, preferring to focus its entire objection on part (b) of the interrogatory (NDMS/USPS-T-33-10b), which asks for copies of “all other data and information (including anecdotal information) in the possession of the Postal Service that are pertinent to actual delivery service received by Priority Mail during the Base Year.” The Postal Service claims that that request is too burdensome, and that some unspecified portion of the information sought would be proprietary.

The objections of the Postal Service, which are simply recited in a simple sentence or two, are strained, lack a sufficient factual foundation in this record, and should be denied. Furthermore, the Postal Service has lumped into one category all of the questions and requests embodied in NDMS/USPS-T33-10, attempting to target, in “shotgun” fashion, all of the various

NDMS requests with its two narrow objections, which clearly would not apply to certain of the information sought by NDMS. Thus, the Postal Service has effectively failed to object to either portion of NDMS/USPS-T33-10a, and it should be ordered to answer this interrogatory based on that fact alone.

As far as can be determined from the Postal Service's objections, not even a *theoretically* valid basis exists for failing to answering part (a) of NDMS/USPS-T-33-10. The material sought should be readily available, and it is not apparent why any or all of it would be non-disclosable. Even if a reasonable objection could have been made to this request, none was made, and the time for objecting is long past. Because the Postal Service has not even offered a reason for not providing such information, it is in default, and it should be ordered to respond to NDMS/USPS-T-33-10a forthwith.

There can be no "commercially sensitive" objection applicable to "summary" data, as the Postal Service regularly releases, and in fact publicizes, information obtained from the external First Class measurement system. Although Priority Mail is a subclass of First-Class Mail, and we know of no measurement of Priority Mail through the external First-Class measurement system, no reason exists why actual service rendered to the First-Class subclass of Priority Mail should be held confidential while the actual service rendered to First Class generally is publicized.

### **C. NDMS/USPS-T-33-10b**

With respect to part (b) of NDMS/USPS-T-33-10, the Postal Service's objections are both far-fetched and superficial. First, the Postal Service goes too far in its argument that the NDMS request would require surveys of all Postal Service employees in order to respond to the NDMS request. Indeed, the ridiculousness of such a proposition exposes the weakness of the Postal

Service's opposition. Clearly, what NDMS seeks here is relevant information and documentation with respect to actual Priority Mail delivery service during a particular, limited time frame (the Base Year). Insofar as anecdotal information is available, or is important enough to have assumed some form of institutional recognition, by recordation or otherwise, it should be disclosed, particularly if that is the only type of information available. That is a simple matter, we would submit, and not unduly burdensome in any respect. But even if it were burdensome, the Postal Service has *not offered a single reason* for not complying with that portion of part b (*i.e.*, readily available information, and non-anecdotal information/documentation) that would *not* be burdensome.<sup>2</sup> In addition to violating the normal discovery standards of rules 3001.25(c) and 3001.26(c), this is also at odds with Rule 2. A. of the Special Rules of Practice, which encourages parties "to *identify portions* of discovery requests considered overboard or burdensome" (emphasis added).

The same applies with respect to the Postal Service's claim that some of the requested information would be proprietary. Even if some of the material would be commercially sensitive — and it is virtually impossible to tell from the Postal Service response what that would be — the Postal Service has not advanced anything close to a sufficient showing that would entitle it to withhold such documentation from disclosure. Furthermore, even if some of the material could fairly be subject to non-disclosure, surely the great bulk of it is not.<sup>3</sup> Yet the Postal Service has not provided any information, and has offered no legitimate excuse for such a blanket refusal.

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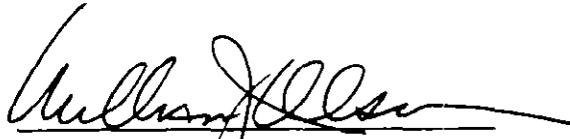
<sup>2</sup> NDMS would be willing to limit the scope of its request to material maintained at Postal Service headquarters.

<sup>3</sup> In the event that the Postal Service should provide in its opposition to this motion some valid reason why confidentiality should be observed for certain types of service performance data, NDMS would be willing to accept this information subject to a non-disclosure agreement.

**CONCLUSION**

For the foregoing reasons, NDMS submit that an order should be entered directing Witness Sharkey (and/or, if necessary, other appropriate Postal Service witness(es) with knowledge of the matter) to respond in full to NDMS-USPS-T-33-10.

Respectfully submitted,



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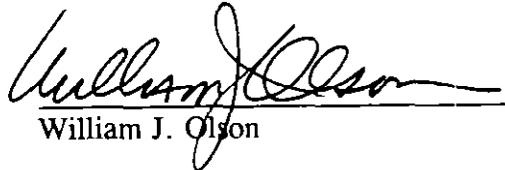
McLean, Virginia 22102-3823

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Counsel for Nashua Photo Inc., District Photo Inc.,  
Mystic Color Lab, and Seattle FilmWorks, Inc.

**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 25, 1997

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



POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OBJECTION OF UNITED STATES POSTAL SERVICE  
TO NDMS INTERROGATORY NDMS/USPS-T33-10  
TO WITNESS SHARKEY  
(August 11, 1997)

The United States Postal Service hereby objects to interrogatory NDMS/USPS-T33-10b, filed on August 1, 1997. This interrogatory requests copies of all data and information in the possession of the Postal Service, other than that included in the delivery confirmation database, that are pertinent to actual delivery service received by Priority Mail during the base year. The interrogatory specifically includes anecdotal information within its scope.

Construed literally, this interrogatory would require the Postal Service to survey each of its employees regarding anecdotal or other information in their possession relating to Priority Mail delivery service. While it is impossible to precisely estimate the burden that this would entail, it is clear that the burden would be excessive, and take, at minimum, weeks to complete and a large expenditure of postal resources, and likely would yield unrepresentative and unreliable information of little utility in Commission proceedings. In addition, the Postal Service objects that the scope of this interrogatory is such that it could encompass city-pair, facility, customer and market-specific information which is proprietary to the Postal Service and is commercially sensitive.

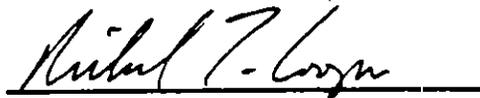
The Postal Service is attempting to determine if nationally-representative data exists which would be responsive to the general thrust of the interrogatory while not possessing the objectionable characteristics identified above. If this more narrow search is productive, the Postal Service promptly will make such information available in an appropriate fashion.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

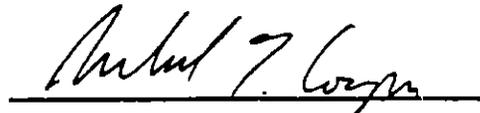


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August 11, 1997

**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.



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