

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, 1997

Docket No. R97-1

**REPLY OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF NDMS TO STRIKE TESTIMONY OF USPS WITNESS FRONK
(September 9, 1997)**

The United States Postal Service hereby files this reply to the August 29, 1997, motion of Nashua, District, Mystic & Seattle to strike that portion of the testimony of witness David Fronk which proposes changes to the nonstandard surcharges for First-Class Mail pieces.¹

The decision to strike testimony is reserved for extraordinary circumstances. The Postal Service submits that such circumstances do not presently exist and that the motion filed by NDMS is, at best, premature.

As the basis for their motion, NDMS emphasize the fact that although witness Fronk relies upon the results produced by the analysis reflected in USPS Library Reference H-112, neither he nor any of the other 40 Postal Service witnesses in this proceeding is the sponsor of the Library Reference. NDMS argue that

the question becomes whether LR-H-112 constitutes (or will constitute record evidence in this case. If not, LR-H-112 is not a fair subject for incorporation by reference through witness Fronk's testimony and that portion of witness Fronk's testimony exclusively derivative of LR-H-112 should not be included in the record in this proceeding. A witness should not be able to effectively bootstrap otherwise inadmissible evidence and make proposals merely by referring to them in his testimony without submitting testimony as to his own expert opinion. Unsponsored library references, such as LR-H-112, which witness Fronk attempt to incorporate by reference, does not constitute record evidence for purposes of rendering a recommended decision in this docket. [Citation omitted].

¹USPS-T-32, page 24, lines 3-11.

As the basis for their argument, NDMS allude to Rule 5 of the Special Rules of Practice. See Presiding Officer's Ruling No. R97-1/4, Attachment B (August 1, 1997). Presumably, they rely upon the final sentence which reads: "Library reference material is not evidence unless and until it is designated and sponsored by a witness."

The Library Reference is not sponsored by witness Fronk. He relies upon the results of the study. Although LR-H-112 is not presented as the testimony of a particular witness, it is nevertheless subject to discovery and the Postal Service will continue to fulfill its obligation to provide responses to discovery questions submitted by the parties. NDMS have submitted numerous interrogatories to the Postal Service seeking explanation and clarification of the analysis contained in Library Reference H-112. The Postal Service has found none of the interrogatories objectionable and intends to continue to provide respond fully to those questions.² NDMS and other parties are free to designate any of those responses into the evidentiary record

The Postal Service has not yet moved into evidence any testimony in this proceeding. In particular, it has not yet moved into evidence the testimony of witness Fronk which relies upon the results produced by the analysis in USPS-LR-H-112. The Commission presently is not faced with a circumstance where the Postal Service has declined to respond to discovery. The Commission is not faced with a circumstance where a party, having requested an opportunity to conduct oral cross-examination of any postal witness on the contents of USPS-LR-H-112, has been denied an opportunity to do so. If and when the Postal Service is faced with a request by a party to conduct

² The revised response of witness Fronk to NDMS/USPS-T32-1, filed today, identifies the Postal Service analyst who was principally responsible for the study reflected in USPS-LR-H-112.

oral cross-examination about the contents of USPS-LR-H-112, it will respond in a manner consistent with its litigation interests in this proceeding.³

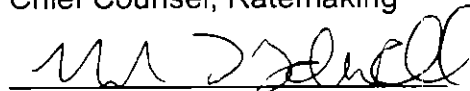
Accordingly, the question of whether USPS-LR-H-112 presently needs a "sponsor" within the meaning of Special Rule 5 is not one which needs to be resolved now. Based upon the foregoing, the Postal Service submits that the NDMS motion is not ripe for consideration at this time. The Postal Service requests that the motion be denied. In the alternative, the Postal Service requests that a ruling be held in abeyance until such time as there are sufficient grounds for a renewed motion to strike and the Postal Service responds to that renewed motion.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

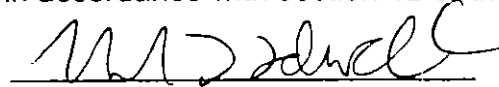
Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Michael T. Tidwell

CERTIFICATE OF SERVICE

I hereby certify that I have this date 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

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202)268-2998/FAX: -5402
September 9, 1997

³ Not the least of which is to support the nonstandard surcharge proposals of witness Fronk.