

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

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POSTAL RATE AND FEE CHANGES, 1997

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

OBJECTION OF UNITED STATES POSTAL SERVICE TO INTERROGATORY
OF THE ASSOCIATION OF ALTERNATIVE POSTAL SYSTEMS DIRECTED TO THE
POSTAL SERVICE
(AAPS/USPS-6)

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service objects to interrogatory AAPS/USPS-6 directed to the Postal Service and filed on September 5, 1997.

Interrogatory 6 asks whether the Postal Service conducted or commissioned a study or report on alternative delivery since the Strategic Analysis, Inc., (SAI) report "revealed during the course of Docket No. MC95-1" and for the production of "any completed study or report or a description of any work in process."

The SAI report to which interrogatory 6 refers was the subject of a request for production propounded by American Business Press (ABP) in Docket No. MC95-1. In that proceeding, ABP moved to compel production¹ of *SAI Alternate Delivery Report* over the Postal Service's objection that, *inter alia*, the document was irrelevant and was confidential, proprietary, or a trade secret possessing competitive value.² The

¹ First Motion of American Business Press to Compel Production of Documents and Responses to Interrogatories from United States Postal Service (ABP Motion) (April 28, 1995).

² See United States Postal Service Answer in Opposition to Motion of ABP to Compel Answers to Interrogatories ABP/USPS-T22-1,2,3B,4-6; ABP/USPS-T19-19 and 34; and First Request for Production of Documents, (May 4, 1995); Objection of United States Postal Service to First Request for Production of Documents by American Business Press, (April 3, 1995).

Presiding Officer in Docket No. MC95-1 ruled that, despite the fact that report may not have been relied upon by the Postal Service's witnesses, the SAI report was "part of the institutional knowledge of the Postal Service" and relevant by virtue of the fact that the Postal Service had placed the threat of alternative delivery in issue through its proposal to create a Publications Service subclass designed to better compete with alternative delivery in the Periodicals delivery market.³ The Presiding Officer reasoned:

In this docket, the Postal Service has asserted that second-class mail should be restructured in part to meet the threat of alternate delivery. It is undeniably relevant to know the extent to which that position is supported by the institutional knowledge that the Postal Service has acquired through its own studies. Having placed the alternative delivery threat in issue, the Postal Service may not plausibly assert that its own studies of this issue . . . are not 'reasonably calculated to lead to the discovery of admissible evidence' under rule 26(a).⁴

With regard to the Postal Service's objection on the document's commercial sensitivity, the Presiding Officer held that the Postal Service had not met its burden of establishing a claim of competitive harm from disclosure.⁵ In particular, the Presiding Officer noted that the Postal Service did not provide information on the study's contents (including cost data, sales data, profit margins, market share, etc.), the level of detail, the postal services that would be affected by disclosure, and how

³ P.O. Ruling MC95-1/11 at 3.

⁴ *Id.*

⁵ *Id.* at 4-5.

these services would be affected.⁶

The Postal Service has identified subsequent research conducted by SAI as responsive to AAPS' request for production. The Postal Service objects to the production of this material on grounds of relevance and commercial sensitivity. With regard to relevance, P.O. Ruling No. MC95-1/11 can be easily distinguished. As explained above, central to the Presiding Officer's ruling in Docket No. MC95-1 was the fact that the Postal Service had placed the "alternative delivery threat" in issue by proposing to restructure the former second-class service in order to compete more effectively with alternative delivery firms.⁷ By contrast, in this docket the Postal Service has not proposed new subclasses or classification changes to respond to a competitive threat in the markets served by Periodicals and Standard (A) services. Neither the Request nor the testimony of the Postal Service's witnesses place the subject matter of the requested materials, *i.e.*, the competitive threat posed by the alternate delivery industry, in issue in this docket. Consequently, interrogatory 6 is properly objectionable on grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 6 is also objectionable on grounds that the requested material is

⁶ The ruling provided that the Postal Service produce "the report or an edited version thereof." P.O. Ruling No. MC95-1/11. Pursuant to agreement with ABP, however, only a summary of the document, along with a few attachments from the report, were entered into the record to avoid further litigation on the discovery request. See Docket No. MC95-1, Tr. 9/3193, 3195.

⁷ The Postal Service proposed the creation of a new Publications Service subclass in Periodicals to better compete with alternatives. See, *e.g.*, Docket No. MC95-1, Direct Testimony of witness McBride, USPS-T-1, at 54.

requested is confidential, proprietary, and/or a trade secret possessing competitive value. The contents of this research include:

- definition of alternate delivery and categorization of alternative delivery providers;
- identification of alternative delivery providers by name, location, size, areas served, business practices and strategies, pricing, etc.;
- methods of collection of information;
- a summary of changes in the alternative delivery industry, including failures, consolidations, mergers and acquisitions, and public offerings;
- annual volume by market segment (e.g., catalog or magazine) and by provider type from 1993 to 1996 and forecast of growth to 2005;
- revenue trends and profitability potential of alternative delivery;
- market delivery rates offered by alternative delivery;
- analysis of factors influencing the success of alternative delivery;
- researchers' recommendations to the Postal Service regarding alternative delivery; and
- reaction to price change.

Disclosure of this information would result in competitive harm to the Postal Service, particularly in the markets for Standard (A) and Periodicals services, where the Postal Service faces competition from alternative delivery. First, disclosure would reveal what the Postal Service knows, as well as what it does not know, about its competitors. Such intelligence in the hands of competitors would reveal precisely what the Postal Service understands about alternative providers' strengths and weaknesses, thereby enabling competitors to identify and develop resources to compete with the Postal Service, as well as to identify areas where they can take comfort in the Postal Service's unawareness of their business strategies, practices, and successes. Secondly, disclosure would reveal the researchers' mental impressions and recommendations, which would, in essence, compromise the Postal Service's ability to better position its products with those of alternative providers. Thirdly, disclosure would provide competitors of the Postal Service with research on

the market in which they compete. Disclosure would accordingly give competitors of the Postal Service access to free information about their market, which any other firm would undoubtedly deem to be proprietary. Finally, as explained in Docket No. MC95-1, disclosure would have a deleterious effect on postal information-gathering. The Postal Service collects information on a variety of topics on a variety of business areas. If the Postal Service is routinely forced to divulge its proprietary information, the Postal Service's ability to collect information in the future will be seriously compromised, from both a research standpoint, and also a customer information standpoint, as customers and consumers alike will know that their input is subject to public disclosure at the whim of anyone who wishes to request it.

WHEREFORE, the United States Postal Service objects to interrogatory AAPS/USPS-6.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

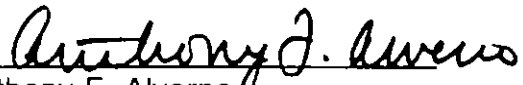
By its attorneys:

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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.


Anthony F. Alverno

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