

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

RECEIVED  
SEP 15 4 44 PM '97  
POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY  
Docket No. R97-1

POSTAL RATE AND FEE CHANGES, 1997

OPPOSITION OF UNITED STATES POSTAL SERVICE TO MAJOR MAILERS  
ASSOCIATION'S MOTION TO COMPEL ANSWERS TO CERTAIN  
INTERROGATORIES AND THE OFFICE OF THE CONSUMER ADVOCATE  
REPLY IN SUPPORT THEREOF  
(September 15, 1997)

The United States Postal Service hereby opposes Major Mailers Association Motion to Compel Answers to Certain Interrogatories ("*MMA Motion*") and the Office of the Consumer Advocate Reply in Support thereof ("*OCA Reply*").<sup>1</sup> The MMA and OCA arguments to the contrary notwithstanding, the information requested is not required by revised Rule 54(a)(1), conflicts with the Commission's expressed intent in adopting the rule, and is more appropriate coming from the Commission. Moreover, the Commission has recognized that the Postal Service's obligations under Rule 54(a)(1) are not judged in the context of routine Rule 25 discovery issues. Also, supplying the requested information in some instances is unnecessary since MMA can do the work itself, and in other instances would be unduly burdensome. In all instances, responding to MMA's requests concerning the

---

<sup>1</sup> MMA has withdrawn certain of the interrogatories that were the subject of the Postal Service's objection filed on August 25, 1997 and thus, those interrogatories will not be discussed. See *MMA Motion at 6, n.1*. The status of MMA/USPS-T5-6(b) is unclear since it is not mentioned in MMA's recitation of those interrogatories withdrawn and those to which answers are sought to be compelled. *Id.* The Postal Service assumes that MMA is seeking to compel a response to that interrogatory and will discuss it accordingly.

Commission's costing methodology and model would impede the Postal Service's ability to support its own proposals in this case. In addition, in some instances, the interrogatories call for legal conclusions.

In reviewing both the MMA Motion and the OCA Reply, one might easily miss the fact that revised Rule 54(a)(1) had ever been enacted. MMA devotes much time and argument to quoting past Presiding Officer Rulings and Commission Orders from Docket Nos. R94-1 and MC96-3. See *MMA Motion at 2-4*. The OCA likewise waxes indignant over alleged discovery abuses from Docket No. MC97-2 and this docket concerning Postal Service proposals for Prepaid Reply Mail and Qualified Business Reply Mail. See *OCA Reply at 5-6*. Quite simply, this is a dispute over the Postal Service's obligations under revised Rule 54(a)(1) and the extraneous arguments of MMA and OCA should not be allowed to cloud the issue.

The fact of the matter is that revised Rule 54(a)(1) does not require the Postal Service to produce the information sought by MMA. Rule 54(a)(1) requires the Postal Service to "include an alternate cost presentation satisfying paragraph (h) of this section that shows what the effect on its request would be if it did not propose changes in cost attribution principles." *Rule 54(a)(1)*. The Postal Service has done this with the filing and revising of Library References H-196 and H-215. The Postal Service also filed a table of relative mark-ups in response to Presiding Officer's Ruling No. R97-1/7. See *Attachment A to Motion of United States Postal Service for Reconsideration of Parts of Presiding Officer's Ruling No. R97-1/7, August 15, 1997*. The Presiding Officer has acknowledged that the Postal Service has given effective

notice to the parties of the impact of its costing methodologies, stating:

The Postal Service complied with the initial requirement of P.O. Ruling R97-1/7 by providing a table of relative mark-ups which reflected then available cost information. That table, and the underlying cost information, should have provided effective notice to participants that the new cost attribution methods proposed by the Postal Service in this case could significantly impact the rates recommended by the Commission, and further should have provided some indication of how those proposed methods might impact on specific subclasses of mail. The quality of that notice would have been better if the Postal Service had accurately replicated established cost attribution methods. Nonetheless, I conclude that meaningful notice has been provided as a result of the new requirements of rule 54(a), and the Service's response to P.O. Ruling R97-1/7.

*Presiding Officer's Ruling Granting in Part Postal Service Motions for*

*Reconsideration, Presiding Officer's Ruling No. R97-1/8, August 25, 1997, at 3.*

This quote from the Presiding Officer's Ruling is entirely consistent with the Commission's expressed intent in enacting revised Rule 54(a)(1). The Commission had expressly stated that the Postal Service was "merely required to affirm that it has made a good faith effort to give notice of what the impact would be of its proposed departures from established attribution principles." *Docket No. RM97-1, Order No. 1176 at 23-24.* The Postal Service believes that it has met that obligation and that responding to a stream of discovery concerning its alternate cost presentation goes beyond the intent of the Commission in adopting the rule. Presiding Officer's Ruling No. R97-1/8 indicates a similar intent in the context of a discussion concerning constant updating of the Postal Service's alternate cost presentation library references, stating that "the discussions leading to the amendment of rule 54(a) did not contemplate such an obligation." *Presiding Officer's Ruling No. R97-1/8 at 3.* The Postal Service is of the view that an

obligation to respond to discovery on those library references is analogous to an obligation to update them, and that neither is called for.

Also, as the Postal Service pointed out in its initial objection, having witnesses respond to discovery questions concerning its alternate cost presentation flies in the face of the Commission's explicit statement that such presentation could be provided either as sworn testimony or as a library reference. *Docket No. RM97-1, Order No. 1176 at 23*. MMA's feeble rejoinder that it "is not trying to change the Service's Rule 54(a)(1) filing," but rather "is requesting answers to interrogatories under Rule 25" is unconvincing. *MMA Motion at 12*. As the Postal Service also suggested in its initial objection, it believes that intervenor discovery concerning the Commission's cost model is best addressed on the record by the Commission itself.

Both MMA and the OCA argue that the MMA interrogatories must be judged by the requirements of Rule 25 rather than those of revised Rule 54(a)(1). The Postal Service does not agree. The Commission in amending Rule 54(a)(1) has recognized that the Postal Service's obligations under Rule 54(a)(1) are not to be assessed in the framework of conventional Rule 25 discovery issues. This is evident in several concerns articulated by the Commission in enacting the rule.

One concern was that the Postal Service not be overburdened, for example, by the requirement that it show the impact of its proposed costing changes both individually and collectively. The Commission stated that it was "concerned that such a requirement would impose too great a burden on the Postal Service. The Postal Service's attributable cost presentations are more complex and more detailed

than those required of most public utilities." *Docket No. RM97-1, Order No. 1176 at* 6. Another concern was that the Postal Service not be required "to adopt a litigating position against its will," and for this reason, was required only "to affirm that it has made a good faith effort to give notice of what the impact would be of its proposed departures from established attribution principles." *Id. at 23-24*. Requiring the Postal Service to respond to discovery concerning the Commission's cost model is entirely inconsistent with the Commission's articulated concerns. It is burdensome and at a basic level, forces the Postal Service to espouse a litigating position to which it is unalterably opposed.<sup>2</sup>

The Postal Service also believes that Presiding Officer's Ruling No. R97-1/8 implicitly acknowledges that the normal discovery obligations inherent in Rule 25 cannot automatically be grafted onto the requirements of Rule 54(a)(1). By stating that the Postal Service has provided "meaningful notice" of the impact of its proposed costing methodologies and by acknowledging that Rule 54(a)(1) did not "give rise to any continuing obligation to constantly update" its alternate cost presentation, the Presiding Officer has indicated that the Postal Service has complied with both the letter and the spirit of the Rule. This clearly suggests that the Postal Service's obligations under Rule 54(a)(1) are limited and do not encompass the normal Rule 25 discovery duties.

---

<sup>2</sup> This is fundamentally different than the Postal Service merely being requested to respond to questions *about its proposals* that might elicit information adverse to those proposals. No one would argue that the Postal Service or, for that matter, any participant is shielded from such discovery.

The information sought in many of the specific discovery requests directed to Postal Service witnesses by MMA either has already been provided or can be computed by MMA itself. For example, MMA/USPS-T5-6(b) asks for the percentage of clerk and mailhandler direct labor overhead costs in the test year under the Commission's methodology. An examination of Library Reference H-215, Part III, section 12, page 4, component 3:1 (direct labor) and 3:2 (overhead) and page 5, component 3:Tot (total Segment 3 costs), should allow computation of this amount.<sup>3</sup> MMA/USPS-T30-3(A) requests cost coverages, proposed rate levels and test year finances requests information clearly not required by Rule 54(a)(1). Nonetheless, some of this information has already been provided and deemed sufficient. See *Motion of the United States Postal Service for Reconsideration of Parts of Presiding Officer's Ruling No. R97-1/7, Attachment A, August 15, 1997*; see also *Presiding Officer's Ruling No. R97-1/8, August 25, 1997*. Much the same can be said of MMA/USPS-T30-4(A) and (D).<sup>4</sup>

---

<sup>3</sup> Interestingly, MMA seems able to delve into Library Reference H-215 to make arguments in support of its Motion, but still wants Postal Service witnesses to perform and attest to other calculations which presumably would support whatever case MMA is planning to file. See *MMA Motion at 8, n.3*. This belies MMA's protestations that it is not attempting to "change the Service's Rule 54(a)(1) filing" by having witnesses sponsor answers concerning the Commission's costing methodology. See *MMA Motion at 12*.

<sup>4</sup> The Postal Service previously had objected that certain of the interrogatories to witness O'Hara call for legal conclusions in that they suggest that cost coverage and mark up information in a specified format is required by Rule 54(a)(1). The Postal Service renews that argument here, although notes that Presiding Officer's Ruling No. R97-1/8 has held that provision of cost coverage and mark up information is not explicitly required by the Rule.

To the extent MMA wants cost coverages and mark-up information for First-Class nonpresorted letters and worksharing letters separately, the Postal Service is at a loss to understand why MMA apparently has been unable to compute these amounts itself using Library Reference H-215 and witness O'Hara's exhibits. To the further extent that MMA complains that the information contained in witness O'Hara's exhibits and H-215 are not comparable, it can make them comparable itself. See *MMA Motion at 7*. It can add the Postal Service's final adjustments to the costs contained in H-215 and apply the contingency as well.

To derive the information MMA is requesting in MMA/USPS-T30(4), as well as T30-6, T30-7(A)(2), T30-8(C)(1) and (3), and T32-15(B), all MMA has to do is to take Library Reference H-215, Part III, Section 12, matrix FY98rcam.c, column 24:Tot and subtract the penalty costs (as MMA has already shown it knows how to do, see *MMA Motion at 8, n.3*) and substitute the costs for those presently contained in Exhibit USPS-30F, column 1. Then, MMA can carry those numbers through the remaining calculations to column 6 of that Exhibit. MMA can then multiply column 6 by the contingency factor and it will have calculated total Commission costs. Those costs should then be substituted for those presently contained in Exhibit USPS-30B. This information, together with the revenue information in that exhibit and the volume information in Exhibit USPS-30G can be used to calculate cost coverages, mark ups, per piece contributions to other costs, etc. This hardly constitutes an "elaborate set of calculations" or "a formidable and time consuming task." See *MMA Motion at 8*.

Finally, MMA's arguments that witness Hatfield's analysis (MMA/USPS-T25-1(B) and (C)) needs to be provided under the Commission's methodology, and further that the Postal Service has failed to sustain its burden argument are not persuasive. Presiding Officer's Ruling No. R97-1/8 acknowledges that the Postal Service has complied with Rule 54(a)(1) and has provided "meaningful notice" of the effect of its proposed costing methodologies. Thus, it is entirely false to say that without the information requested in these interrogatories "no one can assess the impact of the Service's proposed methodology, determine if it is fair, set rates (or discounts) if the Commission decides to reject or modify the Service's proposed methodology." *MMA Motion at 10.*

The language of revised Rule 54(a)(1), as well as the Commission's discussion in enacting it and Presiding Officer's Ruling No. R97-1/8, make clear that what is required by the rule is an alternate cost presentation which essentially presents the Postal Service's proposals as inputs to the Commission's basic cost model. The Commission's cost model consists of a base year and a rollforward of cost segments and components for the classes and subclasses of mail. Rule 54(a)(1) does not contemplate assumptions or analyses extraneous to the basic cost model. If it did, the Postal Service, the Commission and the parties would, in effect, be presenting and litigating two cases. Introducing this further level of complexity would make it virtually impossible for the ratemaking process to be conducted within the statutorily mandated ten-month deadline.

With regard to the burden of having witness Hatfield redo his analysis, Rule 25(c) requires that a burden argument "shall state with particularity the effort required to answer the interrogatory, providing estimates of cost and work hours required, *to the extent possible*." *Rule 25(c) (emphasis added)*. It is reasonable that the Postal Service cannot be more specific, given witness Hatfield's unfamiliarity with the Commission's costing methodology. However, as the Postal Service noted in its initial objection, a special study would have to be completed to develop shape-specific piggyback factors. The Postal Service believes this would essentially require a new study -- an update of Library Reference MCR-10 from Docket No. MC95-1, involving calculation of costs by shape using LIOCATT data. The Postal Service estimates that this could take as much as 80 hours of contractor time (which would be an added expense for the Postal Service) and as much as 20 hours for postal personnel to supervise and review. It is further believed that as much as an additional 30 to 40 hours would be spent redoing parts of USPS LR-H-77 to compute operation-specific mail processing piggyback factors by CRA line item to be consistent with the costs contained in LR-H-215. Also, as much as another 15 hours of witness Hatfield's time might be required to provide his model using the newly developed information.

Given the press of responding to discovery on its own proposals, the Postal Service cannot even envision that it has the resources needed to undertake such an effort at this juncture. Thus, as initially stated, the estimated one to two weeks required to produce the information requested by MMA was a minimum. Requiring

a new study and the response time outlined above would be considered unduly burdensome even within the context of a normal Rule 25 discovery request. Given the unique posture of the Postal Service's obligations under revised Rule 54(a)(1), imposition of such a burden is wholly unjustified.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

  
Susan M. Duchek

**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.

  
Susan M. Duchek

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2990; Fax -5402  
September 15, 1997