

ORDER NO. 1420

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: George Omas, Chairman;
Tony Hammond, Vice Chairman;
Dana B. Covington, Sr.; and Ruth Y. Goldway

Repositionable Notes Market Test

Docket No. MC2004-5

ORDER DENYING DMA MOTION IN PART

(September 30, 2004)

On August 11, 2004, the Direct Marketing Association (DMA) joined with the Association for Postal Commerce, and the Mailing & Fulfillment Service Association in a motion to dismiss the Postal Service's request in this docket.¹ That motion was denied on August 30, 2004, by Order No. 1417. Order No. 1417 held that whether the "value" of Repositionable Note (RPN) mail should be reflected in classifications and rates turned, in part, on factual considerations, and therefore should be based on a hearing record.

On September 21, 2004, the National Newspaper Association filed the testimony of Jerry Tidwell. It argued that certain periodicals bearing RPNs would be highly cross-elastic with competing privately-delivered periodicals bearing RPNs. The following day, DMA filed its Direct Marketing Association Motion for Permission to Conduct Limited Cross-Examination of Postal Service Witnesses Holland and Kaneer (Motion). According to the DMA motion, at 1, it

¹ Joint Motion to Dismiss of the Association for Postal Commerce, Mailing & Fulfillment Association, and Direct Marketing Association, filed August 11, 2004.

has reviewed the USPS testimony in light of Order No. 1417 and has concluded that the Commission's consideration of the USPS proposal would benefit from an elucidation of some of the key aspects of the Postal Service's testimony.

The Motion identifies USPS witness Holland's description of the proposed RPN market test and data collection effort, and USPS witness Kaneer's justification for the special rates proposed as topics of oral cross-examination. It also proposed to examine the USPS witnesses "on several critical portions" of NNA witness Tidwell's testimony.

The Postal Service opposes DMA's motion. It points out that it is almost three weeks late, since the date for filing motions to conduct oral cross-examine of the Postal Service witnesses was September 2, 2004.² It argues that the above-quoted excerpts from DMA's motion do not satisfactorily explain why DMA waited three weeks to ask to cross-examine its witnesses. It urges that DMA not be allowed to delay this docket, which, under the expedited procedures of Subpart J, has a target completion date of October 12, 2004. Opposition at 2-3. The Postal Service, however, offers to entertain informal discovery from DMA, and to cooperate in placing its answers on the record. *Id.* at 3-4.

The Postal Service's suggestion offers a reasonable compromise between the need to expedite this docket and DMA's interests in fleshing out the record. The Commission will set October 8, 2004 as the deadline for designating material for inclusion in the record, including Postal Service direct testimony and answers to written cross-examination, and the testimony of NNA witness Tidwell. DMA will be given until October 8, 2004 to engage in informal discovery with the Postal Service. On that day, the DMA shall report to the Commission on progress made pursuing informal discovery, and whether there is a need to hold the record open to receive additional Postal Service answers. Any participant wishing to file briefs shall do so within seven days of the close of the record. Reply briefs will be due within seven days of initial briefs.

² Opposition of United States Postal Service in Response to Motion of Direct Marketing Association for Permission to Conduct Cross-Examination, filed September 27, 2004 (Opposition).

It is ordered:

1. The Direct Marketing Association Motion for Permission to Conduct Limited Cross-Examination of Postal Service Witnesses Holland and Kaneer, filed September 22, 2004, is denied, in part, as explained in the body of this Order.
2. The deadline for designating portions of the direct testimony and responses to written cross-examination already filed in this docket for inclusion in the evidentiary record is October 8, 2004.
3. The Direct Marketing Association shall file a report with the Commission on October 8, 2004 on the progress of its informal discovery efforts directed to the Postal Service, and the need, if any, to hold the record open beyond October 8, 2004 to receive answers to such discovery.
4. Briefs shall be due within seven days of the close of the evidentiary record. Reply briefs shall be due seven days thereafter.

By the Commission.
(SEAL)

Steven W. Williams
Secretary