

DOCKET SECTION

ORDER NO 1197

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Before Commissioners:

Edward J. Gleiman, Chairman;
George W. Haley, Vice Chairman;
W.H. "Trey" LeBlanc, III;
H. Edward Quick, Jr., and George A. Omas

Postal Rate and Fee Changes

Docket No. R97-1

ORDER ACCEPTING CERTIFICATION AND GRANTING MAJOR MAILERS ASSOCIATION MOTION TO COMPEL

(Issued October 1, 1997)

On August 25, 1997, the Postal Service objected to the following interrogatories: propounded on August 13, 1997 by Major Mailers Association (MMA): MMA /USPS-T5-1 and 6(b), MMA/USPS-T25-1(B) and (C), MMA/USPS-T30-3(A) through (D), 4(A) through (D), 6, 7(A)(2), 8(C)(1) through (3), and MMA/USPS-T32-15(B). The Postal Service objected to them on August 25, 1997.¹

On September 8, 1997, MMA filed a motion to compel answers to the following subset of those interrogatories: MMA/USPS-T32-15(B) (asking witness Fronk for the coverages for letters under Commission-approved methodology); MMA/USPS-T25-1(B) and (C) (asking witness Hatfield if his unit benchmark processing costs embody USPS' proposed attribution methods, and, if so, what would be the costs for First-Class letters under Commission-approved methodology); MMA/USPS-T30-3(A) (asking witness O'Hara whether LR H-215 shows coverages etc. under the Commission-approved

¹ Objection of United States Postal Service to Major Mailers Association Interrogatories MMA/USPS-T5-1 and 6(b), MMA/USPS-T25-1(B) and (C), MMA/USPS-T30-3(A) through (D), 4(A) through (D), 6, 7(A)(2) and 8(C)(1) through (3), and MMA/USPS-T32-15(B) ("Objection").

methodology); MMA/USPS-T30-4(A) and (D) (asking witness O'Hara whether cost coverages etc. under the Commission-approved methodology can be derived from LR H-215 and if not, to provide that information for the subclasses); MMA/USPS-T30-6 (asking witness O'Hara to provide the contributions to overhead for the subclasses under the Commission-approved methodology); MMA-USPS-T30-7(A)(2) (asking witness O'Hara for the contributions to overhead for letters under the Commission-approved methodology); MMA-USPS-T30-8(C)(1) and (C)(3) (asking witness O'Hara if LR H-215 includes the "final adjustments" that witness O'Hara made in his own exhibits USPS-T-30F and T-30G and, if not, to supply data showing the impact of those adjustments). In response to the Postal Service's objections, MMA withdrew interrogatories MMA/USPS-T7-1 and MMA/USPS-T30-3(B)-(D), T30-4(B)-(C) and T30-8(C)(2).² The Office of the Consumer Advocate (OCA) filed a reply in support of MMA's motion.³ The Postal Service filed its opposition to MMA's motion on September 15, 1997.⁴

The interrogatories addressed by MMA's motion are of two kinds. Interrogatory MMA/USPS-T25 (C) asks the Postal Service to show what effect attributing costs according to Commission-approved methods would have on the unit mail processing costs that witness Hatfield calculates. These costs are used by witness Fronk as the basis for the Postal Service's proposed worksharing discounts for the various categories of First-Class letters. The remaining interrogatories ask the Postal Service to show what effect attributing costs according to Commission-approved methods would have on cost coverages for various subclasses and rate categories at the Postal Service's proposed rates.

² Major Mailers Association's Motion to Compel Answers to Certain Interrogatories ("Motion"), September 8, 1997, at 6.

³ Office of the Consumer Advocate Reply in Support of Major Mailers Association's Motion to Compel Answers to Certain Interrogatories, September 10, 1997.

⁴ 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 ("Opposition"), September 15, 1997.

Rule 54 of the Commission's rules of practice states what must be in the Postal Service's initial filing in order to support a requested change in rates. It requires that the Postal Service provide such information as is necessary "to fully inform the Commission and the parties of the nature, scope, significance and impact" of the Postal Service's proposals. Generally, it prescribes the threshold level of cost, volume, and revenue information that is considered necessary to have "up front" in order to efficiently litigate any request for new rates under the stringent deadlines imposed by statute.

Cost coverage has traditionally been one of the most important measures of the impact of proposed changes in postal rates. See Order No. 1146 at 2, Order No. 1176 at 1. In recent rate cases, the Postal Service has proposed simultaneous changes in rates and in the established methods for calculating the attributable cost floor used as a basis for evaluating cost coverages. In those cases, the Commission noted that quantification of the impact of proposed departures from established attribution principles is basic to the ability of intervenors, the Commission, and the public to make an informed evaluation of a Postal Service request for changes in rates. PRC Op. R94-1, para. 1047. The Commission affirmed that it is the Postal Service's burden as the proponent of changes in rates to demonstrate their impact on the status quo, measured by methods consistent with the status quo. The Commission noted that the burden of disentangling the effect of the Postal Service's proposed changes to established attribution methods from the effect of its proposed changes in rates properly belongs to the Postal Service, not the Commission or the parties. See, e.g., Order No. 1126 (Docket No. MC96-3) at 12.

The Postal Service resisted this interpretation of its duty, primarily on the ground that Rule 54 did not explicitly require it. Accordingly, Rule 54(a) was amended to make it clear that it is the Postal Service's duty to separately show in its Request the impact of its proposed changes in attribution methods and its proposed changes in rates. See Docket No. RM97-1.

Rule 54(a) now specifically requires the Postal Service to include accurate and timely notice of what the impact of its proposed changes in rates would be, measured by established attribution methods. The Postal Service's request in this docket partially complied. Because it was the first rate request filed under the amended Rule 54, the Postal Service was given additional time to complete and correct its Rule 54(a) presentation. See Library Reference H-215 and P.O. Ruling Nos. R97-1/7 and R97-1/8.

In its Objection, and its Opposition to MMA's Motion, the Postal Service takes the position that Rule 54(a) is intended to preempt discovery concerning what the impact of Postal Service's proposed rates would be if measured by established methods. The Presiding Officer certified this issue to the Commission as one involving a basic question of law and policy. P.O. Ruling R97-1/36. The Commission accepts certification.

The purpose of Rule 54(a). The purpose of Rule 54(a) is much narrower than the Postal Service alleges. As the proponent of changes in rates, the Postal Service has two distinct obligations. One to provide timely notice, in a process that is subject to severe time restrictions, of the impact of its proposed changes in rates, so that the parties and the Commission can know what is at stake in time to respond appropriately. Another is the obligation of going forward with the evidence required to support a change in an existing rate schedule. See 5 U.S.C. § 556(d).

The presentation required by Rule 54(a) relates only to the first obligation. It is intended only to ensure accurate and timely notice of the impact of proposed changes in rates unobscured by simultaneous proposals to change methods of cost attribution.⁵ Moreover, it is intended only to require a threshold level of attributable cost information, notice of which can be presumed necessary for any request that involves proposed

⁵ The need for such notice in this docket is beyond dispute. In this docket, the Postal Service has combined its proposals for new rates with proposals to make fundamental changes to the methods by which it and the Commission have for decades attributed the costs of mail processing and other basic functions to the subclasses of mail. The net effect of its proposed changes in attribution methods is to reduce attributable costs by over \$5 billion.

changes in both attribution principles and rates, without regard to the specific content of those proposals.

Despite the urging of participants in Docket No. RM97-1, amended Rule 54(a) does not require notice of the impact of changes in attribution methods at the rate category level, does not require the Postal Service to show the impact of changes in the mechanics by which attributable costs are calculated if a change in attribution principles is not implicated, and does not require the Postal Service to show the impact of each proposed change in attribution principles separately. Although the Commission recognized that such information could be “highly relevant and useful,” depending on the specific contents of the Postal Service’s proposals, it concluded that a blanket requirement to provide them in Rule 54(a), without taking the specific contents of the particular Postal Service proposals into account, would be unduly burdensome. Where these additional kinds of information may be needed to adequately evaluate specific Postal Service proposals, the Commission contemplated that the need for such information would be balanced against the burden of providing it on a case by case basis, through normal discovery. See Order No. 1176 (Docket No. RM97-1), 62 FR 30242 (Tuesday, June 3, 1997), at 30244.

The Postal Service’s obligation to go forward with the evidence necessary to support a proposed change in the existing rate schedule is independent of Rule 54(a). Where the Postal Service simultaneously proposes changes in attribution principles and changes in rates, it has the duty not only to provide notice of the impact of its rate proposals separately from the impact of its proposed changes in attribution principles, it has the parallel duty to respond to discovery and provide evidence of that impact in the context of an Administrative Procedures Act hearing. In adopting Rule 54(a), the Commission observed that its purpose was not to secure record evidence, but to provide notice of issues that could be pursued by parties and the Commission during the hearing. In adopting the Rule, the Commission contemplated that evidence concerning those issues would be placed on the record by the usual means of discovery and Presiding Officer Information Requests. *Id.* at 30244, 30249. The Postal

Service's Rule 54(a) presentation bears on that duty only to the extent that the work already done in preparing its Rule 54(a) presentation can be taken into account in evaluating the burden of requiring the Postal Service to respond to discovery requests concerning the impact of its proposed changes in attribution methods.

The Postal Service makes a generalized complaint that discovery concerning the Commission's cost attribution methods should be directed to the Commission. It also complains that it should not be required to attest to interrogatory answers concerning the Commission's methods, since that would be requiring it to adopt a litigation position against its will. Objection at 4-5; Opposition at 5. The Postal Service, however, fails to demonstrate that responding to any particular MMA interrogatory would raise risks of this kind. Its interrogatories don't ask the Postal Service to explain Commission methods that MMA doesn't understand, or exercise speculative judgment in any significant way concerning how the Commission would apply established attribution principles to the Postal Service's rate and classification proposals. If the Postal Service could demonstrate with specificity how an interrogatory asks the Postal Service to do this, that might provide a legitimate ground for an objection. MMA's interrogatories only ask the Postal Service to perform the essentially mechanical exercise of quantifying the impact of its rate and classification proposals using established attribution principles. Any risk that Postal Service witnesses providing such information would adopt a litigation position with which they disagree is easily avoided.⁶

MMA/USPS-T25-1(B) and (C). Postal Service witness Hatfield calculates total unit mail processing costs for the various rate categories of First-Class letters and cards. These unit costs provide the basis of worksharing discounts for First-Class letters and cards because they indicate the amount of costs avoided by the various

⁶ Witnesses may explicitly qualify their answers as good faith efforts to quantify the impact of the Postal Service's rate proposals under established attribution principles, and explicitly disclaim any implication that their answers endorse the merits of established attribution principles with which they disagree.

worksharing categories. Witness Hatfield's calculations are summarized in Table II-2, at page four of USPS-T-25. MMA/USPS-T25-1(B) asks witness Hatfield whether these unit mail processing costs would be different if calculated by "the Commission's approved cost methodology as provided in the last omnibus rate proceeding, Docket No. R94-1?" MMA/USPS-T25-1(C) asks witness Hatfield to calculate the difference, if any.

MMA asserts, correctly, that the propriety of these interrogatories is determined by the standards of Rule 25. Rule 25 allows discovery of "nonprivileged information relevant to the subject matter of such proceeding" if it is "reasonably calculated to lead to the discovery of admissible evidence." MMA argues that information such as that requested by MMA/USPS-T25-1(C) is not only relevant and material, but essential to justifying the Postal Service's case. Motion at 4. It asserts that it cannot derive this information on its own, and that without it, "no one can assess the impact of the Service's proposed methodology, determine if it is fair, or set rates (or discounts) if the Commission decides to reject or modify the Service's proposed methodology." *Id.* at 10.

The Postal Service replies that the Presiding Officer has found that it has already given "meaningful notice" of the effect of its proposed attribution methods in its Rule 54(a) presentation (USPS LR-H-215). LR-H-215 may give meaningful notice of the impact of the Postal Service's proposed changes in attribution methods on subclass attributable costs, but it gives no notice of the impact of those proposed attribution changes on witness Hatfield's mail processing cost avoidance calculations upon which discounts for the various rate categories of First-Class letters and cards depend.

Rule 54 prescribes the content of rate requests. The argument that rate requests that satisfy Rule 54 cut off discovery is fundamentally misconceived. Rule 54 has always been the starting point for evaluating rate proposals. Participants and the Commission are entitled to access through discovery to broad categories of additional information likely to lead to the production of relevant evidence. Satisfying Rule 54 does not limit reasonable discovery.

Amended Rule 54(a) did not adopt a blanket requirement that the Postal Service must show the impact of proposed changes in attribution methods at the rate category level because not all changes in attribution principles may be assumed to have significant impacts on estimates of worksharing cost avoidance. In this docket, however, the potential impact may be assumed to be substantial. The Postal Service has proposed a fundamental change in the way that both it and the Commission have attributed mail processing costs in the past. The change would reduce the estimated volume variability of mail processing costs from 96% to 76%, and reduce attributable mail processing costs by roughly \$1.8 billion. Since mail processing variabilities are a basic input to the engineering models of attributable costs avoided by worksharing, the Postal Service's proposed changes in attribution methods can be assumed to have had a substantial impact on witness Hatfield's calculation of rate category unit costs. The effect of the Postal Service's proposed changes in mail processing attribution methods on the cost avoidance calculations that underlie its proposed rate category discounts is information that is obviously relevant to evaluating both its proposed attribution methods and its proposed discounts. Indeed, it would be difficult to properly evaluate the Postal Service's proposed discounts without it. The Postal Service justifies many of its proposed passthroughs of avoided cost by reference to its proposed changes in mail processing cost attribution methods and the need to moderate the changes that they imply in discounts.

The Postal Service argues that it would be unduly burdensome to require it to show how established attribution methods would effect witness Hatfield's calculations of unit mail processing costs. In its Objection, at 7, it asserts that it would require a minimum of one to two weeks. In its Opposition, at 9, it asserts that the maximum it might require would be 155 hours (100 hours to update Library Reference MCR-10, which calculates mail processing costs by shape using LIOCATT, 40 hours to redo the operation-specific piggyback factors in USPS LR-H-77, and 15 hours to incorporate that information into witness Hatfield's model). Given the fundamental importance of

knowing what impact the Postal Service's proposed changes in mail processing attribution would have on the cost basis of rate category rates, even the maximum estimate would not be excessive.⁷ For that reason, witness Hatfield will be directed to respond to these interrogatories.

The pleadings demonstrate some confusion over what reference point should be used if these costs are to be recalculated according to established Commission methods. MMA/USPS T25-1(C) asks that they be calculated using "the Commission-approved methodology." The Postal Service's Objection, at 7, mentions uncertainty as to whether MMA wants witness Hatfield to apply the MC95-1 analysis, or incorporate the changes that he has made to that analysis. MMA replies that it is seeking an analysis consistent with attribution methods applied in Docket No. R94-1.

Docket No. R94-1 is not a very meaningful reference point for demonstrating the effect that the Postal Service's proposed changes in mail processing attribution methods would have on established models of cost avoidance. In Docket No. R94-1, new worksharing discounts were arrived at not by estimating the amount of costs likely to be avoided in the relevant test year, but simply by applying across-the-board, percentage increases to existing discounts within the various subclasses. In contrast, cost avoidance analysis was a major focus of Docket No. MC95-1, which resulted in the adoption of basic changes in the way in which cost avoidance is modeled. If the purpose of MMA/USPS-T25-1(C) is to demonstrate the effect that the Postal Service's proposed changes in mail processing attribution principles would have on avoided costs calculated by "the Commission-approved methodology," MC95-1 is the appropriate reference point for demonstrating that effect. For that reason, witness Hatfield is directed to recalculate Table II-2 using established mail processing attribution methods and the cost avoidance approach adopted in MC95-1. He may

⁷ Most of the alleged burden involves updating Library Reference MCR-10 to develop shape-based piggyback factors. The Postal Service alleges that this "essentially would require a new study." Opposition at 9. Since the SAS program that generated MCR-10 is already developed, it is far from clear why updating those inputs would take so long.

incorporate his recent changes to the MC95-1 cost avoidance models, if it eases the burden of responding to MMA/USPS-T25-1(C).

MMA/USPS-T32-15(B); MMA/USPS-T30-3(A), MMA/USPS-T30-4(A) and (D) MMA/USPS-T30-6, MMA-USPS-T30-7(A)(2), MMA-USPS-T30-8(C)(1) and (C)(3).

This group of interrogatories asks the Postal Service to calculate what the effect of its proposed rates on cost coverages would be if they were calculated by Commission-approved attribution methods. MMA recognizes that the Postal Service has already done almost all of the calculations in the course of preparing its Rule 54(a) alternate cost presentation. See USPS Library Reference H-215. While calculating cost coverages would require the application of volume and revenue figures to attributable costs, these steps are routine, once attributable costs have been calculated according to Commission approved methods. The only significant issue raised by this group of interrogatories is whether the Postal Service should be required to take the attributable costs that it has calculated in Library Reference H-215 and make a handful of minor, miscellaneous "final adjustments" that correspond to the final adjustments that it makes to its own proposed attributable costs.

Given the fundamental changes in attribution principles that the Postal Service is proposing in this docket, the parties have a clear need to be able to determine the effect of those changes on cost coverages. Although the final adjustments that Postal Service witness O'Hara makes to the attributable costs developed by other Postal Service witnesses appear to have only a minor effect on those costs, they are needed for an accurate and complete estimate of attributable costs, whether they are calculated by established methods or the Postal Service's proposed methods.

In its Objections, at 5, the Postal Service states that it "is not in a position to predict what final adjustments, if any, the Commission would make to its costs." MMA does not ask the Postal Service to speculate about which of its proposals will be accepted by the Commission. MMA's interrogatories ask what the impact of the Postal Service's own rate and classification proposals would be if they were measured by established attribution principles. The Postal Service may adhere to any new variability

analysis or new distribution key that it might have used to estimate new cost elements for a proposed new category of service, as long as it does not clearly conflict with established attribution principles. If the Postal Service believes that a final adjustment that it has made to its own attributable costs clearly conflicts with established attribution principles, it need only state its reasons for that belief to be excused from including that adjustment in its estimate of attributable costs under established principles.

This guidance should enable the Postal Service to make final adjustments to its estimate of attributable costs under established principles that correspond to those that it has made to its own attributable cost presentation. For example, it should resolve the difficulties that the Postal Service alleges prevent it from adjusting its estimate of attributable costs under established principles to reflect the proposed elimination of Standard (A) Single Piece mail.⁸ It may use its own estimate of what proportion of that volume would migrate to other subclasses. The attributable costs of Standard (A) Single Piece may be redistributed to those subclasses on the same basis as the Postal Service redistributes them, but the amount of attributable costs redistributed should be the amount that established attribution methods would attribute to Standard (A) Single Piece mail.

The Postal Service took the position that if MMA interrogatories ask the Postal Service to make the same final adjustments to its estimate of attributable costs under established attribution principles that it makes to its own estimate of attributable costs, MMA could make those adjustments itself by simply substituting dollar amounts of attributable costs from the Postal Service's Rule 54(a) presentation directly into witness O'Hara's Exhibit USPS-30F. Opposition at 7. In reply, MMA demonstrates,⁹ and in

⁸ Opposition of the United States Postal Service to Major Mailers Association Motion Requesting Leave to File a Reply, or in the Alternative, Motion for Leave to Respond to the Reply ("Further Opposition"), September 24, 1997, at 3.

⁹ Major Mailers Association Reply to the Postal Service's Opposition to Motion to Compel, September 19, 1997, at 3-4.

response the Postal Service in effect concedes,¹⁰ that making final adjustments in a manner that does not conflict with established attribution principles would require some informed analysis of the way in which the Postal Service's proposed attribution methods differ from established attribution methods. These pleadings demonstrate that witness O'Hara's final adjustments are not obvious or routine, and that MMA cannot be presumed to know how to do them. Therefore, there is no equitable ground for relieving the Postal Service of its burden to provide information that allows participants to assess the impact of its proposals on the status quo, which includes making appropriate final adjustments to its estimate of attributable costs calculated according to established attribution principles. Accordingly, the Postal Service is directed to respond to this group of interrogatories.

All of these interrogatories essentially ask variations of the same question—what would cost coverages at the Postal Service's proposed rates be if final adjustments had been made to attributable costs calculated under established attribution methods. Therefore, the Postal Service, at its option, may respond to each of these interrogatories individually, or it may simply provide a summary table that estimates what attributable costs (after final adjustments) and cost coverages would be if the Postal Service's rate and classification proposals were implemented, calculated in ways that do not conflict with established attribution principles.

IT IS ORDERED:

1. The Major Mailers Association's Motion to Compel Answers to Certain Interrogatories, filed September 8, 1997, is granted with respect to MMA/USPS-T25-1(B) and (C) to the extent described in the body of this Order. Responses are due 14 days from the date of this order.

¹⁰ Further Opposition at 2.

2. The Postal Service is directed to respond to MMA/USPS-T32-15(B); MMA/USPS-T30-3(A), MMA/USPS-T30-4(A) and (D), MMA/USPS-T30-6, MMA/USPS-T30-7(A)(2), MMA/USPS-T30-8(C)(1) and (C)(3), or to provide a summary table of attributable costs (after final adjustments) and cost coverages, calculated in a manner that is consistent with established attribution principles, as described in the body of this order. Responses are due 14 days from the date of this order.

3. The Major Mailers Association's Motion Requesting Leave to File a Reply to the Postal Service's Opposition to Motion to Compel, filed September 19, 1997, is granted.

4. The Postal Service's Motion for Leave to Respond to the Reply, filed September 24, 1997, is granted.

By the Commission.

(S E A L)



Margaret P. Crenshaw
Secretary