

DOCKET SECTION

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

RESPONSE OF THE UNITED STATES POSTAL SERVICE IN OPPOSITION
TO MOTION OF THE NATIONAL NEWSPAPER ASSOCIATION
REGARDING LIBRARY REFERENCE H-89
(October 28, 1997)

On October 20, 1997, the NNA filed a motion requesting that the Postal Service be required to produce a witness to sponsor Library Reference H-89. The motion stated (pg. 2) that if "the Postal Service is willing to produce a witness to sponsor this document and NNA can be permitted a short time for discovery on it, we believe our concerns will be adequately addressed." The Postal Service hereby responds in opposition to this motion.

Witness Pafford's testimony (USPS-T-1, filed July 10) is very short, seven pages of text, but on pages 5 and 6, he cites Library Reference H-89 as the source of greater details on the design and structure of the data subsystems he is describing on those pages of his testimony. Without any apparent difficulty, NNA located what it believed to be the relevant portion of LR-H-89, and directed several interrogatories (e.g., Nos. 9 and 10) to witness Pafford regarding it. He responded on September 12. NNA subsequently asked follow-ups to witness Pafford on his earlier responses (e.g., No. 17). On October 10, almost a week before hearings, NNA designated responses from both its initial and follow-up sets of interrogatories to witness Pafford, as well as portions of LR-H-89 itself.

At hearings on October 16, NNA placed the portion of LR-H-89 relating to its interrogatories into the packet of designated written cross examination. Tr. 9/4384-

86. (This was done after some discussion of the interrogatory responses relating to LR-H-89. See Tr. 9/4377-84.) During a discussion of the appropriate procedures, the *Presiding Officer* suggested that the pages of LR-H-89 be marked as a cross-examination exhibit, that counsel for NNA ask the questions she wished to ask, and then, if she wished, move the exhibit (i.e., the pages of LR-H-89) into evidence. Tr. 9/4386. Her response was:

That's fine, Mr. Chairman. It actually may not prove to be necessary. We weren't sure of the extent of the witness's knowledge of the sampling system, and that was why we had offered this. But let me see if I can explore with Mr. Pafford where I think we're headed here. Maybe we can resolve this procedural problem.

Id.

In the exchange that followed, Mr. Pafford responded fully and completely to all of the questions posed by NNA counsel. Tr. 9/4386-89. At the conclusion of her questions, counsel for NNA stated:

That's what I needed to find out, Mr. Chairman. Thank you.

Tr. 9/4389 (Emphasis added). Counsel made no attempt to move the pages of LR-H-89 into evidence, and the witness was excused.

On October 20, four days after the hearing, NNA filed the instant motion, seeking to have the Postal Service produce a witness to sponsor LR-H-89, and, apparently, "a short time for discovery on it." NNA in its motion alleges that it attempted to inquire about elements of H-89 during its cross-examination of witness Pafford, and alludes to his "disavowal of use of these systems for purposes of constructing the volume data into which NNA was inquiring." According to NNA, "precise use of the Statistical Sampling Systems in Base Year 1996 is unclear and appears to be the subject of

contradictory evidence appearing thus far on the record in the instant case.”

The Postal Service opposes the NNA motion in its entirety. The facts as recited above make it abundantly obvious that NNA has known from the start of this case the witness to whom questions about the relevant portions of LR-H-89 should be directed. NNA asked him written interrogatories, asked him written follow-ups to his responses, and conducted oral cross-examination of him. If there is anything unclear about how the statistical systems described in USPS-T-1 and LR-H-89 are employed in this case, NNA has had every opportunity to explore that on the record. At the conclusion of its cross-examination of witness Pafford, there was absolutely no indication that witness Pafford had failed to explain any aspect of the matter to NNA's satisfaction.¹

To put the real purpose of the motion “down where the goats can get at it” (to use a phrase from the cross-examination, Tr. 9/4386), NNA is seeking nothing more than another bite at the discovery apple. Upon reviewing the transcript, NNA has apparently found itself for one reason or another unhappy with the record as it now stands. In that respect, it may be in no different posture than many parties who fear that they might have failed to ask just the right question, or pose every possible

¹ The Postal Service is unaware of any basis for NNA's claim that the “precise use of the Statistical Sampling Systems in Base Year 1996 is unclear and appears to be the subject of contradictory evidence appearing thus far on the record in the instant case.” Of course, if NNA believes that there is contradictory evidence, it is perfectly free to cite to that evidence as it sees fit in preparing its own testimony and writing its own briefs. Moreover, NNA has proffered absolutely no reason why it was unable to explore any apparent contradictions in the period for written discovery, follow-up discovery, and oral cross-examination that extended with respect to Mr. Pafford's testimony from July 10 until hearings on October 16 — a period in excess of three months.

interrogatory. When viewed in the context of the above sequence of events, however, there is simply nothing about NNA's predicament which merits the relief it seeks. The totally fortuitous (at least from NNA's perspective) swirl of controversy that has arisen regarding entirely distinct library references (and entirely distinct types of library references) should have no bearing on whether or not NNA should be afforded yet another opportunity to explore with witness Pafford what has been universally acknowledged to be the subject matter of his testimony from the very start of this case.

Although the Postal Service strongly objects to any opportunity for further discovery on this matter, the Postal Service is not opposed to entry into evidence of the pages of LR-H-89 currently transcribed at Tr. 9/4340–47. In other words, if NNA now wishes to avail itself of the Presiding Officer's earlier suggestion and move its exhibit into evidence, the Postal Service has no objection. This would appear to moot out any need for further relief regarding "sponsorship" of LR-H-89. As noted above, the appropriate witness on the RPW portions of that library reference is Mr. Pafford, NNA has long been aware of that, and NNA (as well as all other parties) have already had the opportunity to engage him in both written and oral cross-examination. The foundation to admit those pages into evidence would appear to be well-established.

At the conclusion of its motion, NNA claims that if a sponsoring witness is not named, NNA will join ANM in requesting a stay in this proceeding. While the Postal Service has already demonstrated why ANM's request was utterly without merit, NNA

has defied the odds and come up with a request that has even less merit. Suffice it to say that the Postal Service believes that this "me too" portion of the NNA motion may safely be characterized as hollow saber rattling. It is simply untenable to suggest any correspondence between the extraordinary relief implicit in a stay of the entire proceeding and the deficiencies alleged in NNA's ample opportunities to explore LR-H-89 with Mr. Pafford.

WHEREFORE, for the reasons discussed above, the Postal Service respectfully opposes NNA's motion for any relief whatsoever, with the exception of granting NNA further leave to move into evidence the pages of LR-H-89 which currently appear as a cross-examination exhibit, to which the Postal Service would not object.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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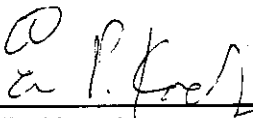


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October 28, 1997

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.



Eric P. Koetting

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October 28, 1997