

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

Postal Rate and Fee Changes, 2006

:
:
:
Docket No. R2006-1

**OPPOSITION OF THE GREETING CARD ASSOCIATION
TO MOTION OF DIRECT MARKETING ASSOCIATION TO
COMPEL RESPONSES TO INTERROGATORIES
(DMA/GCA-T1-10-12)**

(October 27, 2006)

DMA has moved the Presiding Officer for an order compelling GCA, and its witness Dr. Clifton, to answer several interrogatories (with detailed subparts) concerning banks' relative usage of First Class as opposed to Standard Mail (compare DMA/GCA-T1-10 with DMA/GCA-T1-12), and banks' usage of presort bureaus (DMA/GCA-T1-11).

Illustrative are DMA/GCA-T1-11 b) and c):

b) What is the maximum distance between a bank and the nearest presort bureau for use of a presort bureau to be practical and cost effective?

c) What percentage of First-Class Mail entered by banks is generated within 25 miles of a presort bureau? Within 50 miles? Within 100 miles? Within any other distance for which you have data?

As DMA concedes, GCA objects to the discovery sought because "Dr. Clifton's testimony for GCA 'nowhere addresses banks relative usage of First Class as opposed

to Standard Mail,' [or] 'banks usage of presort bureaus.'" ¹ DMA does not, and properly cannot, dispute the accuracy of GCA's statement. GCA witness Clifton's testimony (GCA-T1) is 58 pages long (not counting appendices). His GCA testimony nowhere addresses banks' use of presort bureaus or relative use of First Class versus Standard Mail. Stated otherwise, DMA cannot tie its discovery requests to a single line of GCA witness Clifton's testimony, but nevertheless seeks to compel answers from him concerning, *inter alia*, the maximum distance between "a bank" (note that this could be any size or type of bank located anywhere) and a "presort bureau" such that the bank could economically use the presort bureau.

DMA seeks to justify its discovery to GCA and Dr. Clifton on grounds that "information on the financial effect of Dr. Clifton's proposal on the banking industry is likely to be directly relevant to the Commission's analysis." (Motion at 2.) By like effect, information on the potential impact of Dr. Clifton's proposal on the healthcare or automobile industries might be of interest to associations representing those industries (were any such litigating before the Commission), but that would not, without more, make them relevant to the Commission's analysis of the effect of proposals on the Postal Service and users of the mails. In short, there is no reason why Dr. Clifton should be directed to provide such information, nor is there any reason to believe that such information has any bearing on the validity of his GCA testimony.

Betraying the unsoundness (and indeed absurdity) of its position, DMA points to Dr. Clifton's past (and withdrawn) testimony on behalf of the American Bankers

¹ Motion of Direct Marketing Association To Compel Responses To Interrogatories DMA/GCA-T1-10-12 at 2 (quoting Revised Objection of GCA to Interrogatories DMA/GCA-T1-10-12).

Association as a justification for inquiring into his knowledge of banks' usage of presort bureaus. To the extent DMA wants to challenge "Dr. Clifton's credibility as a data analyst," it can inquire into his GCA testimony, and not matters outside of the proceeding. To the extent DMA wanted to present evidence on banks' relative use of First Class versus Standard Mail, or the economic distance between banks and presort bureaus, it should have done so directly, and perhaps may still be able to do so at the rebuttal stage. It cannot now fill any perceived evidentiary holes in its case with written cross-examination of Dr. Clifton that is grossly beyond the bounds of his testimony.

DMA characterizes GCA's claims of burden and harassment as "frivolous." GCA strongly suggests that a reading of DMA/GCA-T1-11, subparts a through i, will enable the Presiding Officer to assess realistically whether, *e.g.*, there is no undue burden in having Dr. Clifton identify "the minimum mail volume generated by a bank to warrant leasing or purchasing its own automation machinery." (DMA/GCA-T1-11(f).) Moreover, the issue of burden does not exist in a vacuum. The less relevant the information, the less burden that the producing party must be required to bear. Where the requested information is wholly irrelevant, as is the case here, one never even reaches the issue of burden.

Dr. Clifton is preparing for oral cross-examination. He is busy answering the remainder of the 90 plus questions (with subparts) directed to him by the Postal Service. Neither he, nor GCA, should be put to the task of answering DMA's frolic and detour into, *inter alia*, the distance between banks and presort bureaus. Rule 1 of the Federal Rules of Civil Procedure provides for the just, speedy and economic resolution of proceedings. A similar ethic should inform the Commission's Rules. DMA's motion

to compel should be denied.

Respectfully submitted,

/s/ James Horwood

James Horwood

Peter Hopkins

Spiegel & McDiarmid

1333 New Hampshire Ave. NW, 2nd Floor

Washington, D.C. 20036

Date: October 27 2006