

DOCKET SECTION

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Docket No. R97-1

POSTAL RATE AND FEE CHANGES, 1997

**OPPOSITION OF UNITED STATES POSTAL SERVICE
TO MOTION OF ALLIANCE OF NONPROFIT MAILERS
TO COMPEL ANSWERS TO INTERROGATORIES OR
STRIKE TESTIMONY
(ANM/USPS 1-16)
(November 21, 1997)**

On November 3, 1997, the Alliance of Nonprofit Mailers (ANM) filed sixteen general interrogatories directed to the Postal Service relating to "each Library Reference that the Postal Service has sponsored into evidence, or expects to sponsor into evidence," based on, and in many cases, reiterating, portions of the Commission's filing rules. Most of the questions seem to be intended to require the Postal Service to set out, in exacting detail, how particular filing requirements have been met. Some of the interrogatories, also request a high degree of detailed information regarding the internal processes which led to the creation of such library references.

The Postal Service filed general and specific objections to these interrogatories on November 4, 1997, on a variety of grounds. On November 14, 1997, ANM moved to compel responses to these interrogatories, or, in the alternative, for the Commission to strike from the evidentiary record unspecified portions of the testimony of unnamed Postal Service witnesses which rely upon certain library references.

The Postal Service's objections to these unfocussed, overbroad and unduly burdensome interrogatories set out the basic position of the Postal Service in this matter

and need not be reiterated here. The Commission is invited to review those objections for details of the ANM interrogatories and their attendant defects. However, particular misleading and incorrect positions taken in the Motion warrant brief response.

First, ANM reiterates its well-worn claim that it will be denied due process if the Postal Service is not compelled to respond to these (and presumably, other) discovery requests at this stage of the proceeding. See Motion at 1. Once again this position is founded on the wrong-headed assertion that because the Postal Service provided certain information at the outset of the proceeding in the form of library references, this form of designation created an impenetrable barrier to the conduct of discovery related to this information. *Id.* at 2-4.¹ As the Postal Service has made plain in pleadings filed previously, this premise has no basis in fact or in law. The materials in question have been available to ANM and all other intervenors since July 10th, and discovery pertaining to these and other library references has been authorized and conducted since that date.² There is simply no basis for ANM to complain that any actions of the Postal Service prevented ANM from filing these or any other discovery requests earlier in the proceeding, and no process due ANM has been denied as a result of the actions

¹ ANM makes the surprising statement, “[d]isclosure and discovery of the Postal Service’s case come first - *then* the defects get identified.” Motion to Compel at 4. When applied to the facts of this dispute, this statement completely undermines the false premise ANM seeks to promote. It is precisely because the Postal Service, by filing copious and exhaustive documentation with its Request, fully *disclosed* the essential underpinnings of its case, and immediately made itself available for *discovery* on that information, that ANM has for *months* had the opportunity to *identify* and explore possible defects in the Postal Service’s presentation. ANM’s belated procedural tactics in the guise of necessary discovery should be rebuffed.

² The Postal Service does not concede that such overbroad and unduly burdensome questions would have been appropriate earlier in the proceeding. It is certainly the case, however, that their objectionable aspects are intensified by ANM’s months-long refusal to conduct substantive discovery.

of the Postal Service or the Commission.

ANM's predominant focus on the status of the materials in question as library references rather than testimony, and its use of detailed filing rules to create an obstacle course in its belated discovery efforts, are diversionary tactics apparently designed to reinforce ANM's procedural due process claims, perhaps for purposes of judicial appeal should this proceeding result in rates that ANM finds objectionable. The real issue raised by ANM's motion, however, is whether the Postal Service should be compelled to respond to unfocussed, overbroad and unduly burdensome interrogatories such as those now propounded. ANM asserts that its interrogatories are proper according to a single venerable Supreme Court opinion pertaining to the conduct of discovery in the federal courts, and that Postal Service responses are mandated by the Commission's rules. *Id.* The Postal Service submits that longstanding Commission practice, confirmed in this case, requires that, in recognition of the fact that the Postal Service files copious documentation of its case with its Request, questioning parties must undertake a reasonable effort to review the information filed by the Postal Service and direct focussed interrogatories on particular, relevant issues, rather than initiate scattershot discovery of the type now pursued by ANM, which proceeds from the false implication that the Postal Service has failed to provide any of the documentation required by the Commission's rules.

In ruling against a motion to compel which would have, if granted, required the Postal Service to provide general documentation regarding a wide range of library references in addition to that already provided, the Presiding Officer stated:

Interrogatories 1 and 2 ask for more comprehensive descriptions of all the Postal Service's workpapers and library references filed in R97-1. This is an overly broad request for information which would be burdensome for the Postal Service to provide. The Postal Service need not respond. If

[the moving party] has questions about the contents of specific workpapers and library references, he can ask for that information.

Ruling No. R97-1/53 at 2. The interrogatories now posed by ANM are similarly overbroad and are far more burdensome. None of the questions posed reflect any familiarity with, or contemplation of, the extensive information already provided by the Postal Service in its strenuous efforts to meet the filing requirements when filing a rate request.

The need for specificity in questioning is especially great in the context of the additional discovery period ordered by the Commission. The following quote is instructive in discerning the rationale behind the decision not to exclude the disputed library references from the record, while granting additional time for discovery:

The Commission fully supports the proposition that available relevant, material information should be admitted into the evidentiary record so long as doing so will not deny due process to any participant. In this instance, the Postal Service is offering to sponsor as evidence information that will enhance the ability of participants and the Commission to evaluate its Request. This information has been available to participants, and its admission into evidence at this time, while parties still have an adequate opportunity to explore the probity of this information and present evidence concerning it, will not unfairly impact on any participant's due process rights.

Order No. 1201 at 17. It is clear that the intent of Order 1201 was to allow further discovery into the substantive underpinnings and validity of the challenged library references, not to encourage lawyers to quibble at length and at great expense over whether vast portions of the procedural requirements of the Commission's rules have been met, nor to invite additional attempts to exclude relevant information from the record. If ANM has any substantive questions regarding the probity of particular library references, and cannot resolve those questions based on a reasonable review of the extensive documentation already provided, let it come forward and ask targeted, specific

questions aimed at improving its understanding, and perfecting the evidentiary record upon which the Commission must make a decision. While the Postal Service firmly believes that the time for such discovery has come and gone, and that such additional discovery is neither warranted nor necessary on due process grounds, the Postal Service will continue to make every effort to respond fully to reasonable discovery requests posed under Order No. 1201 and the Presiding Officer's rulings implementing it.³ If, however, ANM has no interest in investigating the substantive validity of the disputed library references (an inference consistent with its conduct in discovery to date), the Commission should not encourage this party's attempt to use the Commission's rules as the basis for unproductive procedural wrangling which can serve no purpose but to contrive a dubious issue for later appeal.

The Postal Service does not believe that the Commission wishes to allow the Postal Service's burden of participation in this case to become unduly burdensome, and thereby frustrate the intent of Congress that ratemaking under the Act be rational, fair, and businesslike. The Postal Service already has gone to great lengths to document its case at the outset and throughout its course, in compliance with the Commission's rules and beyond.⁴ Moreover, when spurious claims were raised regarding the adequacy of

³ The Postal Service is also willing to make reasonable efforts to cooperate with appropriate informal discovery aimed at improving ANM's understanding of the substantive, technical underpinnings of the disputed materials.

⁴ In its Motion at 2, ANM tries to obfuscate the true nature of its questions by alleging that the Postal Service's objections are an attempt to "excuse it from supplying" the information required by Rules 31 and 54. Nothing could be further from the truth. The Postal Service has already supplied the information required by those rules, with perhaps isolated exceptions of little or no importance which could have been explored through legitimate and focussed discovery requests at any time since July 10. The Postal Service does not object to having to comply with those rules, even though they are extremely burdensome and make it difficult to prepare a timely filing. We do object

the foundation of the Postal Service's case, the Postal Service responded very cooperatively to the Presiding Officer's suggestion that any appearance of possible record defects could be obviated by sponsorship and admission into evidence of additional library references. To grant the Motion would be to ignore that effort, and, at great cost to the Postal Service and the public interest, force a duplication or much of the Postal Service's extremely heavy documentation burden.

This burden is simply undue given the nature of the interrogatories now propounded by ANM, which are not reasonably calculated to lead to the production of admissible evidence. This is so first because the information sought, if produced, would not be new, but would be a wasteful and laborious restatement of information which has long been available had ANM taken the trouble to review it. Second, vast amounts of the responses would consist of explanations why the requirements sought to be applied do not fit the library references in question. Third, given the extremely broad nature of the requests, much of the information to be produced would be immaterial to the issues in the case.⁵

to having to respond to ANM's indiscriminate demand that the Postal Service unnecessarily reiterate, for each of over 40 library references, exactly how the Postal Service has complied with each and every one of those rules, even in instances where the rules clearly do not apply.

⁵ For example, of what import is the location where data were summarized, or expanded, as requested in interrogatories 1 and 3? Why would it be helpful to the record for the Postal Service to identify by name all of the individual data collectors involved in the production of data used in the disputed library references, as interrogatory 1 requests? What does the identity of every person consulted regarding the feasibility and desirability of each study matter to this proceeding? What does it matter who proposed a study? See interrogatory 8. Why should the Postal Service be required to provide the machine on which each computer analysis was run, as requested in interrogatory 15?

For the reasons stated above, as well as in its objections to these interrogatories, the ANM Motion should be denied in its entirety.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

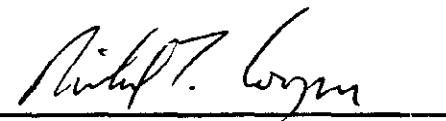
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November 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


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