

DOCKET SECTION

PRESIDING OFFICER'S
RULING No. R97-1/73

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

Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING
ON ALLIANCE OF NONPROFIT MAILERS
EMERGENCY MOTION

(November 26, 1997)

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An Emergency Motion of Alliance of Nonprofit Mailers for Clarification of Presiding Officer's Ruling No. R97-1/69 (Emergency Motion) was filed November 25, 1997. The Postal Service submitted a response in opposition on November 26, 1997.¹

Background. Presiding Officer's Ruling R97-1/69 dealt with two Alliance of Nonprofit Mailers (ANM) motions to compel answers to interrogatories or strike related testimony. The interrogatories in question sought extensive detailed information cataloging how and where 49 Postal Service library references provided references and supporting background that can provide a foundation for admission into evidence. The Postal Service had argued that most of the information sought was available in the library references, and that providing the requested written catalog was both unnecessary and burdensome. P.O. Ruling R97-1/69 granted the ANM motions in part. The interrogatories were found proper, in that they sought relevant information that might lead to the production of evidence. However, the delay inherent in requiring extensive written responses to the interrogatories was considered unwarranted.

Most of the interrogatories sought information on the location of supporting data and documentation. Because these types of questions can often be most effectively

¹ Opposition of United States Postal Service to "Emergency Motion" of Alliance of Nonprofit Mailers (Opposition).

answered in technical conferences, the Postal Service and ANM were directed to attempt to schedule conferences for the purpose of exploring such questions. Additionally, the Postal Service was directed to provide a general summary of where the foundational information required by Commission Rules 31(k) and 54(o) were located for each of the 49 library references to which those rules might apply. That summary was to be filed as a partial answer to the interrogatories and if possible, provided to ANM prior to the technical conferences.

If ANM had not obtained satisfactory information prior to the hearings scheduled for December 1-4, 1997, it was to pursue its inquiries during cross-examination of sponsoring Postal Service witnesses. P.O. Ruling R97-1/69 at 4.

Requested relief. The Emergency Motion reports a conflict that arose between counsel in scheduling the proposed technical conference. ANM sought to have a reporter present to transcribe the conference. The Postal Service objected to this variation from the traditional procedures followed at Commission-authorized technical conferences. ANM now asks for a "clarification" that it be allowed bring a reporter, at its own expense, to prepare a verbatim recording of the conference. It notes that the questions and answers are likely to be specific and technical, and it contends that an accurate record of what was said should minimize confusion and shorten oral cross-examination during the subsequent hearings.

The Postal Service argues that informal procedures for technical conferences have been developed to facilitate the exchange of information. Opposition at 2. It contends that changing an informal conference to an on the record one would inhibit the free flow of information, and it states it would be disinclined to participate in such a conference. *Id.* at 5.

As a general rule, "where" and "how" questions are dealt with through open discussion among all interested attendees at traditional Commission-authorized technical conferences. In contrast, "why" questions are deferred to more formal, record hearings. At informal technical conferences, those familiar with the topic of the

conference can discuss questions and develop helpful responses with minimal attention to the caution and precision engendered by transcription.

ANM recognizes the benefits of informal technical conferences but contends that existing circumstances justify deviation from those practices. Its questions relate to materials which the Postal Service initially provided as library references. The Postal Service did not indicate in its Request that it intended to sponsor these materials as evidence. ANM contends that traditional technical conferences would have been appropriate at an early stage of the case, but the Service's recent decision to sponsor these materials justifies "on the record" conferences at which a greater degree of precision can be imposed. Emergency Motion at 2.

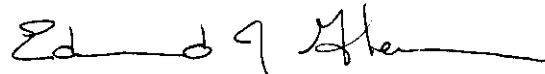
Holding. The Emergency Motion seeks authorization for changing the procedures followed at Commission-authorized technical conferences. Under the current circumstances, I will not impose the relief requested by ANM.

Presiding Officer's Ruling R97-1/69 directed ANM and the Postal Service to participate in a technical conference because the traditional technical conference format seemed well suited to narrowing the scope of cross-examination on the materials sponsored by Postal Service supplemental testimony. The ANM discovery requests which gave rise to that ruling sought a vast array of information that the Postal Service contended was largely readily available. An informal conference is an ideal forum for helping an interested reviewer to locate or trace the development of types of *information through a technical analysis*. A technical conference might enable ANM to ascertain that a substantial amount of the information it sought was available and readily accessible. This would enable it to focus its oral cross-examination on *information not readily available, and on "why" questions related to study procedures and outputs*. While I can appreciate that a transcript might relieve ANM of the burden of taking notes and verifying responses during the technical conference, nothing in the Emergency Motion explains why the traditional technical conference procedures will not help achieve these intended purposes.

Informal technical conferences have been an effective way to assist participants to become familiar with technical materials, which in turn leads to an improved understanding of the strengths and weaknesses of such materials. If all participants are agreeable to transcribing such a conference, they may do so. However, imposing new, more formal procedures might undermine the effectiveness of a process that seems well-suited to achieving the goal of narrowing issues prior to oral cross-examination. Under these circumstances, the relief requested by ANM will be denied.

RULING

Presiding Officer's Ruling R97-1/69 will not be modified in response to the November 25, 1997, Emergency Motion of Alliance of Nonprofit Mailers.

A handwritten signature in black ink, appearing to read "Edward J. Gleiman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Edward J. Gleiman
Presiding Officer