

DOCKET SECTION

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

RECEIVED

DEC 29 4 35 PM '97

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE  
TO MOTION OF THE ALLIANCE OF NONPROFIT MAILERS  
TO COMPEL ANSWERS TO INTERROGATORIES AND FOR PERMISSION  
TO FILE SUPPLEMENTAL TESTIMONY WITHIN TWO WEEKS OF RECEIPT OF  
ANSWERS FROM THE USPS  
(December 22, 1997)

The United States Postal Service hereby responds in opposition to the Motion of the Alliance of Nonprofit Mailers to Compel Answers to Interrogatories and for Permission to File Supplemental Testimony within Two Weeks of Receipt of Answers from the USPS, filed on December 22, 1997 ("*ANM Motion*"). The Postal Service has objected to interrogatories ANM/USPS-20-23 and 25-26, on the grounds that they were filed out of time, and because of the burden that would be involved in developing and providing the information sought in certain of the discovery requests. Nothing in ANM's motion alters either of these circumstances, and the Postal Service opposes the ANM Motion.

The ANM Motion indicates that it "drafted and served these questions upon unearthing several factors that may have been responsible" for what it considers to be an anomolous relationship "between the costs attributable to Nonprofit Standard Mail (A) and commercial Standard (A) Mail." *ANM Motion* at 3. Regardless of when ANM unearthed the information upon which it claims its recent discovery requests were made, the fact remains that the cost information about which it only now complains was available for its analysis on July 10, 1997, when the Postal Service's direct case was filed. To allow ANM to pose questions regarding the Postal Service's data systems

now, *five months after the filing of the Postal Service's direct case*, and to permit ANM to use the information sought to muddle the procedural schedule in this Docket would be grossly unfair.

The ANM Motion appears to take two positions as support, which are inconsistent even with one another. First, ANM pleads the significance of the "critical" (*ANM Motion* at 7) information it seeks in its discovery requests, by asserting that its interrogatories seek to "verify the integrity of the data" upon which the Postal Service is relying in making its request to the Commission. *ANM Motion* at 5. What ANM does not address is why, if this information were so vital to the appraisal of the integrity of the Postal Service's filing, it did not pose these questions until five months after the filing of the Postal Service's direct case, and nearly three months after the close of discovery on that case. The cost data were available for ANM's analysis and inquiry on July 10. Nothing prevented ANM from pursuing the data it now finds "questionable" (*ANM Motion* at 7), either through discovery or by requesting the technical conference it now claims is necessary, at any point between July 10 and September 17. However, the period for such inquiry is now long since over.<sup>1</sup>

Additionally, ANM relies, for the first time, on Special Rule 2.E.,<sup>2</sup> claiming that because its discovery requests "seek information related to operating procedure and data that are obviously available only from the Postal Service . . . they fall squarely within the exception to the general rule." *ANM Motion* at 5-6. However, these interrogatories are not proper under Special Rule 2E, because their subject matter

---

<sup>1</sup> It should be noted, moreover, that the Postal Service does not share ANM's apparent belief that the issues raised by its belated interrogatories provide any substantial basis upon which to question the integrity of the reported costs and volumes.

<sup>2</sup> The Postal Service's December 19 objections did not, as characterized by ANM, "ignore Rule 2.E." ANM did not raise Special Rule 2E as authority for its belated discovery requests until filing its Motion to Compel.

concerns issues that were addressed by the Postal Service's direct case.<sup>3</sup> Moreover, Presiding Officer's Ruling No. MC96-3/36, at 2, indicates that Special Rule 2E "is limited to when a participant needs data available only from the Postal Service in order to prepare testimony to rebut participants other than the Postal Service."<sup>4</sup>

Finally, Special Rule 2E does not apply to the interrogatories posed by ANM, as they do not, despite ANM's assertion, request "data" or "operating procedures," but instead request the Postal Service to develop new information which would require a great deal of research and analysis of data only available from the Field. The Postal Service addressed this concern in its December 19 objection, relating to the burden in providing the information sought by ANM.

As ANM now states in its Motion, it indeed offered to limit the scope of its questions to information available at the Postal Service's headquarters. ANM was informed, via telephone conversation with the undersigned, and in the Postal Service's December 19 objection (at 2), that this information was simply not obtainable without an exhaustive search of the Postal Service's field operations.

It is the burden in locating, compiling, and analyzing the information sought by ANM, *coupled with* the fact that the discovery requests at issue are so clearly

---

<sup>3</sup> See Presiding Officer's Ruling No. R87-1/138, at 4 (rule 2E allows parties additional time to identify and request data "where such data is uniquely accessible to the Postal Service, and is not addressed by the Postal Service's case . . .").

<sup>4</sup> That ruling, at page 2, also stated that:

Special Rule 2.E. applies for the limited purpose of allowing parties to develop evidence for submission as rebuttal to the direct cases of participants other than the Postal Service. Discovery for the purpose of developing evidence for submission as rebuttal to the direct case of the Postal Service is generally to be completed before oral cross-examination of Postal Service witnesses.

This ruling should apply with particular emphasis when, as here, the very subject of the untimely interrogatories was covered in the Postal Service's direct case.

inappropriate at this stage of the proceedings, to which the Postal Service continues to strenuously object. To require the Postal Service to furnish ANM with the information its untimely requests seek, particularly at this point, would render the Commission's deadlines for discovery requests without meaning.

For the same reasons, the Postal Service opposes the portion of ANM's Motion that requests an extension of two weeks for it to file testimony utilizing any information that its discovery requests may yield. These efforts to delay illustrate the very need for limiting the time for discovery on the Postal Service's direct case; permitting such clearly untimely discovery, coupled with generous extensions of time for participants to use that discovery in filing belated testimony, would significantly diminish the Postal Service's ability (not to mention that of any other participants) to conduct any meaningful discovery on that testimony.

The direct cases of participants other than the Postal Service are due tomorrow. Discovery on those direct cases is currently due to end on January 28. Permitting ANM to file its supplemental testimony two weeks beyond the time that the Postal Service files responses to the discovery requests at issue would allow ANM until January 21, *at the earliest*, to file such testimony. This would permit the Postal Service one week in which to analyze the supplemental material and file interrogatories regarding it. For all practical purposes, the Postal Service would be permitted only a single round of interrogatories upon the material, as hearings on the participant testimony begin less than a month after ANM would be permitted to file its supplementary material.

This distortion of the procedural schedule would permit ANM to benefit from its own lack of diligence in identifying and pursuing the matters about which it is currently questioning the Postal Service. Such a benefit would prejudice not only the Postal Service, but all the other participants who may wish to conduct discovery on whatever

supplementary presentation ANM may file, or who might have felt constrained by the Commission's legitimate discovery deadlines. ANM has suggested no colorable basis upon which it should uniquely be excused from complying with the discovery deadlines that have bound all of the other participants, and should not now be allowed to benefit by such noncompliance.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

Daniel J. Foucheaux, Jr.

  
Anne B. Reynolds

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2970; Fax -5402  
December 29, 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.

  
Anne B. Reynolds

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
December 29, 1997