

Before the
POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Six-Day to Five-Day Street Delivery :
and Related Service Changes : Docket No. N2010-1

GREETING CARD ASSOCIATION RESPONSE TO POSTAL SERVICE
OBJECTIONS TO FOLLOWUP INTERROGATORIES

On July 12, 2010, the Postal Service filed objections to certain followup interrogatories filed on June 30, 2010, by the Greeting Card Association (GCA). The affected interrogatories are GCA/USPS-T8-11-13 (witness Elmore-Yalch) and GCA/USPS-T9-9-12 (witness Whiteman). Several grounds of objection are advanced; we deal with them separately. For reasons developed below, GCA is not, at this point, captioning its pleading as a Motion to Compel. GCA does, however, reserve the right to file such a pleading if necessary.

Timeliness. The Postal Service objects to all the interrogatories “because they are late, filed three weeks after the close of discovery against the Postal Service[.]”¹ In a footnote, the Service cites the Presiding Officer’s April 28, 2010, Ruling (POR No. 1) establishing the procedural schedule in this case. On the same page of the Ruling cited by the Service, however, the Presiding Officer provided that:

. . . It [i.e., the procedural schedule] contemplates discovery will be answered by June 23, 2010, *all follow-up discovery will be filed by June 30, 2010, and follow-up discovery will be answered by July 7, 2010, well in advance of the hearing.* . . .

¹ Objections of the United States Postal Service to Discovery Requests of Greeting Card Association to Witnesses Elmore-Yalch and Whiteman (“Objections”), p. 1.

Several intervenors express interest in sponsoring rebuttal testimony. Recognizing that the Postal Service is the repository for information and data intervenors may need to formulate a direct case on rebuttal, the deadline for discovery for purposes of developing intervenors' direct case is July 14, 2010. [Italics added.]

All of the items objected to were clearly labeled as followup interrogatories. Each referred the respondent to an earlier-round answer – in most cases, to a GCA interrogatory; in one case², to an interrogatory from the National Newspaper Association. The Postal Service does not argue, nor do we believe it reasonably could argue, that the followup questions do not appropriately arise from the answers given in the first round. Consequently, it seems to follow that the interrogatories in issue were followup inquiries of the kind specifically contemplated by POR No. 1.

Since the interrogatories were filed on June 30, 2010, the deadline for followup discovery established by POR No. 1, they were not late. We respectfully request a ruling to that effect.³

The question of interrogatories for purposes of preparing a direct case.

The Postal Service observes that GCA “also does not claim that the interrogatories in question were posed for the purpose of permitting it to produce its own direct evidence[.]”⁴ This is true, but not relevant. That POR No. 1 *also* provided for interrogatories aimed at constructing a direct case in opposition, and allowed them as late as July 14, 2010, has no bearing on the right of GCA or any other party to file appropriate followup interrogatories on or before June 30. This argument, therefore, is simply a variant of the untimeliness argument discussed above, and is similarly invalid.

² GCA/USPS-T9-12 (witness Whiteman).

³ We note that the Postal Service has responded, without objection, to followup interrogatories to it (GCA/USPS-2), and to witnesses Granholm (GCA/USPS-T3-9 to -T3-14), Bradley (GCA/USPS-T6-14 to -T6-18 – redirecting -T6-15, -T6-17, and -T6-18 to itself), and Colvin (GCA/USPS-T7-6 and -T7-7). All these interrogatories were filed on June 29 or June 30, 2010.

⁴ Objections, p. 2.

Other objections. The Postal Service also characterizes the affected interrogatories as “argumentative,” “contrary to fact,” “seek[ing] illogical information,” and not calculated to lead to admissible evidence. For the most part, these objections are raised so generally as to be difficult to discuss in a response. One is specific: the Service states that an interrogatory “seeks the comment of witness Whiteman about witness Bradley’s testimony (which witness Whiteman is not legally competent to do)[.]” This objection seems to apply to GCA/USPS-T9-12, the only interrogatory in which Dr. Bradley is mentioned. That question, however, does not ask for Mr. Whiteman’s *comment on* Dr. Bradley’s work; it asks him to answer, “as though it had been directed to [him] originally,” a question⁵ to which Dr. Bradley had responded by stating that his assignment was to estimate cost savings, not volume effects, and that “[t]hat task fell, I believe, to witness Whiteman.” GCA takes this to mean that consideration of the volume effects of reducing delivery days in other posts is properly part of the volume estimation witness’s job, and for that reason we redirected the question to Mr. Whiteman. It seems evident that it could be answered without addressing Dr. Bradley’s testimony at all.

Further steps. The Postal Service states that “more properly formulated questions addressed to the witnesses in their scheduled appearances on the stand next week will likely not draw objections from Postal Service counsel.”⁶ This is a helpful suggestion, and we will be prepared to follow it as appropriate. GCA suggests, however, that it would be desirable, so far as possible, to avoid lengthening the hearing day, by discussing in advance and in more detail whether any or all of the written interrogatories (whether or not reformulated) can yield useful and unobjectionable answers. We are contacting Postal Service counsel to explore the possibility of meeting for this purpose.

⁵ GCA/USPS-T6-4.

⁶ Objections, p. 2.

Consequently, GCA respectfully urges that (i) insofar as the objections rest on any form of untimeliness argument, those arguments be rejected, and (ii) none of the objections be sustained, pending the outcome of efforts to resolve the differences revealed by the Objections.

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Respectfully submitted,

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