

DOCKET SECTION

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

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

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

MOTION OF THE UNITED STATES POSTAL SERVICE TO COMPEL RESPONSES TO USPS/ANM-T1-26 and 36 (February 20, 1998)

In accordance with Special Rule 2B, the United States Postal Service hereby requests that the Presiding Officer compel a response to the following two discovery requests directed by the Postal Service to the Alliance of Nonprofit Mailers:

USPS/ANM-T1-26 and 36. The interrogatories read as follows:

USPS/ANM-T1-26. Please refer to Exhibit 1-ANM-T1 of your testimony, where you summarize the results of a survey conducted by ANM under your supervision. For each responding organization that mailed Standard A regular rate mail with a nonprofit indicia, please provide:

- a. the name of the organization;
- b. the organization's address;
- c. the number of pieces entered at regular rates with nonprofit indicia; and the name of the Postal facility(ies) where the mailing(s) were entered.

USPS/ANM-T1-36. Please provide the information requested in USPS/ANM-T1-26, for the survey responses you received since completing your testimony.

ANM objects to these discovery requests, alleging that revealing the names and addresses of the organizations responding to their survey would subject these organizations to some sort of unspecified "retaliation" from the Postal Service. ANM claims that in soliciting responses to the survey, respondents were promised that their identities would be kept secret, because of this very concern.

ANM's commitment to preserve the confidentiality of its survey respondents does not indicate the type of "retaliation" it claims that its members fear. ANM's survey concerns instances where mailings were presented with nonprofit indicia, found not to be mailing at nonprofit rates, but were nevertheless permitted to be entered as prepared. Presumably, ANM is concerned that this practice, which it claims gives rise to an alleged "mismatch" between Postal Service volume and cost data, should be protected from any corrective action. However, the Postal Service has no preordained intention to alter any reasonable operating practice solely in response to the situation that ANM describes, or this discovery dispute.

Moreover, ANM's claim that releasing the identities of its survey respondents would "chill" its ability to obtain such information in the future is made significantly less compelling by the fact that nowhere on the survey instrument does any kind of assurance of confidentiality appear. ANM, through the testimony of its witness Haldi, has indicated that "it is impossible to identify how many nonprofit executives received the survey because it was copied and recopied by other 'umbrella' nonprofit organizations." *Testimony of Dr. John Haldi Concerning Rates for Nonprofit Standard Mail (A) on Behalf of Alliance of Nonprofit Mailers, ANM-T-1, Exhibit 1 - ANM-T-1, page 2.* How could have ANM have contacted each of the entities to reassure them of the confidentiality of their responses, if ANM had no way of knowing even how many surveys were sent out?

ANM's objection claims that the Postal Service has no legitimate interest in the information sought in discovery requests USPS/ANM-T1-26 and -36, that outweighs

“subjecting mailers and their trade associations to these risks” that ANM has failed to specify. In the testimony of witness Haldi, ANM has placed into the record the results of a survey that in no way purports to be representative of the mailers that the survey seeks to represent. This lack of representativeness is virtually assured from the survey instrument itself, which appears to have been designed to elicit responses only from publications who were assessed Standard (A) commercial rates for certain mailings, when the mailers had intended to pay more favorable nonprofit rates. It is unquestionable that the results of the survey are biased; permitting ANM to continue to withhold this information would prevent the Postal Service and the Commission from having any idea of the magnitude of this bias, by understanding which publications were moved to respond to ANM’S incitive plea.

ANM cites a portion of Presiding Officer’s Ruling No. MC95-1/19 to illustrate an instance in which the Presiding Officer upheld a Postal Service determination not to provide the identities of publications used in market research. *ANM Objection* at 2, fn. 1. This ruling is inapposite to the question of the survey responses under consideration here; there, the Presiding Officer determined that the Postal Service was not required to respond to certain National Newspaper Association (NNA) interrogatories which had asked for the identity of publications that would be likely to be eligible for a new subclass proposed by the Postal Service. *Presiding Officer’s Ruling No. MC95-1/19*, at 4-5. The Presiding Officer ruled that this line of inquiry called for speculation, and that NNA had not made a showing that the identities of the publications it requested were relevant to any of the issues in that proceeding. *Id.* at 6.

The Postal Service has shown not only the relevance of the identities of the mailers who responded to ANM's survey, but their absolute necessity, if the record regarding ANM's survey is to be correct. This survey is relied upon heavily in the testimony of ANM's witness Haldi; this reliance may be placed upon results that are irretrievably flawed by bias. If the record is void of any idea of the degree to which such bias exists, the Commission will have no way of assessing the amount of reliance it may place upon the study.

In the Presiding Officer's Ruling relied upon by ANM, the Presiding Officer noted that "mailers' expectations about confidentiality do not create an absolute bar against disclosure," but that the interest in withholding material that may be considered privileged must be balanced by the discovery rights of the interrogator. *Id.* at 2. In this case, the Postal Service must obtain the requested identities of the respondents to ANM's survey in order to assess the degree of bias in the survey results. This need is weighed only against ANM's vague assertions of retaliation to survey participation, and

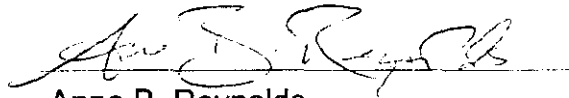
its unsupported allegations of a pledge of confidentiality. The balance in this instance clearly weighs in favor of releasing the requested information.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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February 20, 1998

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.


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February 20, 1998