

DOCKET SECTION

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

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POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OBJECTION OF UNITED STATES POSTAL SERVICE TO REQUEST FOR ADMISSIONS OF THE NEWSPAPER ASSOCIATION OF AMERICA (NAA/USPS-RFA-1-6)

On February 17, 1998, NAA filed a request for admissions (RFA) directed to the Postal Service. The RFA asks that the Postal Service confirm the existence of a document entitled "United States Postal Service 1998 Marketing Plans," for which NAA supplied a facsimile cover page as an attachment to the RFA, and that the Postal Service admit to various statements allegedly quoted from the document. The Postal Service has become increasingly concerned about what appears to be a growing trend by intervenors who disregard the Commission's rules regarding limitations on discovery. Accordingly, the Postal Service objects to the RFA on grounds of timeliness.

The RFA is not identified as follow-up, nor does it qualify as such; the RFA is, moreover, filed out of time under Special Rule of Practice 2E ("Special Rule 2E"). That rule creates an exception to the general rule that discovery against the Postal Service is scheduled to end prior to the receipt into evidence of its direct case, by allowing participants to obtain, up to 15 days prior to the due date for filing rebuttal testimony, "information (such as operating procedures or data) available only from the Postal Service."¹

Well-established Commission precedents limit the scope of discovery under Rule

¹ The time for submitting discovery to the Postal Service under Rule 2E expired on February 17. P.O. Ruling No. R97-1/54.

2E. As clearly explained in P.O. Ruling No. R97-1/85, the purpose for which participants may avail themselves of discovery under Special Rule 2E is quite narrow. Special Rule 2E "enable[s] a participant to obtain information available only from the Postal Service for the purpose of developing rebuttal testimony." P.O. Ruling No. R97-1/85; see *also* P.O. Ruling No. R97-1/89. The Presiding Officer's holdings in the instant docket are consistent with prior rulings that Special Rule 2E is intended for the specific purpose of *developing rebuttal testimony* to rebut the evidence of a participant other than the Postal Service, not for other, more far-reaching purposes. See P.O. Ruling No. MC96-3/36 at 3; P.O. Ruling No. MC96-3/21 at 2; P.O. Ruling No. R87-1/138; P.O. Ruling No. R87-1/118; P.O. Ruling R87-1/108 at 1-2.² The burden of establishing that the purpose of the discovery request is for the development of *testimony* rests with the party conducting discovery. P.O. Ruling No. R87-1/118 at 2.

In this case, NAA cannot meet its burden. First, the RFA is not crafted to obtain "information or data" available only from the Postal Service. NAA does not purport to seek any "information or data" available only from the Postal Service through the RFA; rather, NAA supplies a copy of the cover page of the document and quotes directly from it, thereby establishing that NAA already has access to the information.

Secondly, even assuming that the RFA was designed to elicit "information or data" from the Postal Service, in order for the RFA to fall within the scope of Special Rule 2E at this stage of the proceeding, consistent with P.O. Ruling No. R87-1/118,

² Special Rules 2E in Docket Nos. MC96-3 and R87-1 were the same in all material respects to Special Rule 2E in the instant docket. See P.O. Ruling No. MC96-3/3, Attachment B at 4-5; Docket No. R87-1/3, Attachment B at 3-4.

NAA has the burden of showing that the RFA is intended to elicit information to develop rebuttal testimony. This it cannot do. NAA would have to show that it intends to rebut the evidence of a participant *other than the Postal Service* in order to successfully prove that it is entitled to discovery at this late stage of the proceeding. No participant has offered testimony pertaining to the document referenced in the RFA. The RFA is accordingly improper discovery under Special Rule 2E because NAA cannot link it with the preparation or filing of rebuttal testimony.

In sum, the Postal Service objects to the RFA on the grounds that 1) it is filed after the close of discovery on the Postal Service's direct case and is, accordingly, late; 2) it is not follow-up as that term is used in Rule 2.D because it was not propounded during the regular discovery period; 3) it does not seek information or data available from the Postal Service, as required by Rule 2E; and 4) since the purpose of the RFA is not, as required by Rule 2E, to develop rebuttal testimony from materials solely in the possession of the Postal Service, that rule does not permit the late filing of the RFA.

CONCLUSION

WHEREFORE, for the foregoing reasons, the United States Postal Service objects to NAA/USPS-RFA-1-6.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Anthony F. Alverno

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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