

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 INTERROGATORIES OF THE NEWSPAPER ASSOCIATION OF AMERICA (NAA/USPS-22-27)

On February 27, 1998, NAA filed interrogatories NAA/USPS-22-27 directed to the Postal Service. These interrogatories relate to matters described in an article in a Mail Advertising Service Association (MASA) publication that is attached to the interrogatories. The MASA article pertains to an "Auto Day" concept, which is described in the article as a means of promoting the use of the mails for advertising, on a periodic basis, automobile-related products and services. The interrogatories were accompanied by Motion for Leave to File Attached Interrogatories After Discovery Cut-Off. Pursuant to Rules 25 and 26 of the Rules of Practice and Procedure, and Special Rule 2B, the Postal Service objects to this discovery request on grounds of relevance and timeliness.

The subject matter of the interrogatories is irrelevant to the matters at issue here. Promotion of an "Auto Day" concept is completely unrelated to the pricing and classification changes at issue in this forum. Prior rulings have held that marketing and promotional plans are "not centrally relevant" to evaluation of rate and classification proposals. P.O. Ruling R83-1/3 at 4-5. Apart from lack of relevance, the interrogatory is objectionable on grounds of timeliness. The interrogatories were filed out of time, and, even had they been filed on or before February 17,¹ do not

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

qualify as legitimate discovery under Special Rule of Practice 2E ("Special Rule 2E"). Special Rule 2E 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 20 days prior to the due date for filing rebuttal testimony, "information (such as operating procedures or data) available only from the Postal Service." Well-established Commission precedents limit the scope of discovery under Rule 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 at 3; *see also* P.O. Ruling No. R97-1/89 at 3. 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 order for the interrogatories to fall within the scope of Special Rule 2E at this stage of the proceeding, consistent with P.O. Ruling No. R87-1/118, NAA has the burden of showing that the interrogatories are intended to elicit information to develop

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.

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. Cf. P.O. Ruling No. R97-1/85 at 4. No participant has offered testimony pertaining to the information referenced in the interrogatories. The interrogatories are accordingly improper discovery under Special Rule 2E because NAA cannot link them with the preparation or filing of rebuttal testimony.

It is also of no moment that NAA did not become aware of the Auto Day concept until after the discovery period prescribed by Special Rule 2E expired. In the course of any 10-month proceeding, participants' curiosity may be aroused by a host of interesting topics of which they become aware after the close of discovery on the Postal Service's case-in-chief. Yet this does not excuse participants from adhering to the time limits prescribed for discovery on the Postal Service's case-in-chief. If this sort of discovery were permitted to continue after the close of discovery on the Postal Service, "the discovery cutoff date would have little meaning." See P.O. Ruling No. R97-1/85 at 4. Permitting this discovery to go forward could, moreover, frustrate the Postal Service's and Commission's common interest in securing the timely issuance of a recommended decision. The Presiding Officer has emphasized that this proceeding "must move forward with deliberate speed as we are operating on a compressed schedule. Therefore, discovery cutoff dates must be respected" P.O. Ruling No. R97-1/89 at 3.

CONCLUSION

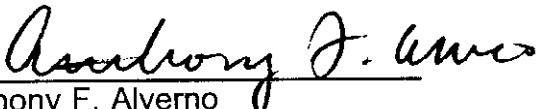
WHEREFORE, for the foregoing reasons, the United States Postal Service objects to interrogatories NAA/USPS-22-27.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

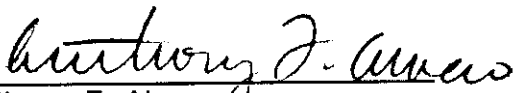
By its attorneys:

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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.


Anthony F. Alverno

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