

DOCKET SECTION

PRESIDING OFFICER'S
RULING NO. R97-1/114

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

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Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING CERTIFYING ISSUE TO THE COMMISSION

(March 25, 1998)

On March 20, 1998, the United States Postal Service filed a request for certification of my ruling granting a motion to compel filed by the Newspaper Association of America (NAA).¹ This controversy arises out of a February 17, 1998 NAA Request for Admission directed to the Postal Service. The Postal Service filed a timely objection and NAA on March 11, 1998 filed its motion to compel.²

I am not convinced that there is substantial ground for difference of opinion concerning the validity of this ruling. Nonetheless it is clear that the Postal Service views this matter as involving an important policy consideration. In light of the limited time remaining before the Commission must take this case under advisement, I will *provide a brief supplemental explanation of the grounds for the ruling in question and certify the matter to the Commission for final resolution.*

On the final day for discovery, NAA submitted a request for admissions to the Postal Service. The Postal Service objected that the requests were not timely, since

¹ United States Postal Service Request for Certification of Presiding Officer's Ruling at Tr. 33/17361-62 Granting Newspaper Association of America Motion to Compel Admission from the United States Postal Service (NAA/USPS-RFA-1).

² Objection of United States Postal Service to Request for Admissions of the Newspaper Association of America (NAA/USPS-RFA-1-6); Newspaper Association of America Motion to Compel Admission from the United States Postal Service.

the requests could not be linked to the preparation of rebuttal testimony. NAA filed a motion seeking to compel a response to only one request for admission. The request asked the Postal Service to

[p]lease admit the existence of a document entitled "United States Postal Service 1998 Marketing Plans" of which the attached is a copy of the cover page. If you cannot completely confirm, please explain.

I found that the discovery was timely, and that the requested information was within the knowledge of the Postal Service. Additionally, I commented that this information might have been required by previous discovery requests filed by NAA on the Postal Service.³ The Postal Service was directed to respond by close of business March 18, 1998.

At the March 19, 1998 hearing, I requested Postal Service counsel to provide a report on the status of its response, as nothing had yet been filed with the Commission. Tr. 35/18752. No response was provided. On the afternoon of Friday, March 20, 1998, the Postal Service submitted its request for certification.

In support of its request for certification, the Postal Service reiterates its argument that the requested information would not be relevant for the development of rebuttal testimony. This contention is not sustainable. The request seeks information obtainable only from the Postal Service (verification that something is a true copy of a Postal Service document) that seems directly related to issues of proper pricing of postal products raised by several intervenors in their direct testimony. NAA used the document during cross-examination of Saturation Mail Coalition witness Buckel, and might easily have chosen to present rebuttal testimony relying on information from the document.

³ At an early date NAA filed an interrogatory seeking information on Postal Service marketing plans. The Postal Service neglected to submit an answer or an objection, and NAA neglected to pursue the issue, either informally or through a motion to compel. This joint oversight leaves outstanding a discovery request which the Postal Service would ordinarily be expected to answer.

The Postal Service also reiterates its argument that the earlier unanswered interrogatory does not serve as a predicate for a follow-up request for admission from NAA. Again, the Postal Service argument is not persuasive. The Postal Service is obligated by Commission rules to respond to discovery requests. The obligation to provide an appropriate response does not end if the Postal Service does answer in a timely fashion. Nor can the failure to file a timely answer be treated as an objection. In this instance, the earlier discovery request would have obtained information on the existence of a Postal Service marketing plan, and a request for admission on whether a particular document was that marketing plan would be proper follow-up.


Finally, the Postal Service argues that granting NAA's motion to compel will result in unfair prejudice to the Postal Service that will substantially outweigh the probative value of the marketing plan. The Service argues that the document is commercially sensitive, and that it would not ordinarily make this information public. However, NAA has already obtained access and made the document public.

The Service further contends that it has insufficient time to prepare a meaningful explanation of the document's contents, in order to prevent misinterpretation and/or mischaracterization. It fears that if the document is authenticated and made part of the record of this case, there is serious risk that participants and the Commission may misinterpret and misuse the contents of this document. The Commission will certainly take into account the cautions provided by the Postal Service in these current, and any subsequent pleadings. The potential for misinterpretation exists for all evidence, and does not justify rejecting otherwise valid discovery requests.

For these reasons I consider the arguments presented in the Postal Service request for certification insubstantial and unpersuasive. Nonetheless, in light of the limited time remaining before the Commission must take this case under advisement, I will certify the matter to the full Commission for review.

RULING

The United States Postal Service Request for Certification of Presiding Officer's Ruling at Tr. 33/17361-62 Granting Newspaper Association of America Motion to Compel Admission From the United States Postal Service (NAA/USPS-RFA-1), filed March 20, 1998, is granted.


Edward J. Gleiman
Presiding Officer