

DOCKET SECTION

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

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U.S. POSTAL SERVICE

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

**MOTION OF UNITED STATES POSTAL SERVICE FOR LEAVE TO FILE REPLY
AND REPLY OF UNITED STATES POSTAL SERVICE TO
NEWSPAPER ASSOCIATION OF AMERICA OPPOSITION TO UNITED STATES
POSTAL SERVICE REQUEST FOR CERTIFICATION OF PRESIDING OFFICER'S
RULING AT TR. 33/17361-62**

Pursuant to Rule 21 of the Rules of Practice and Procedure, the Postal Service hereby moves for leave to file a brief reply to the Newspaper Association of America Opposition to United States Postal Service Request for Certification of Presiding Officer's Ruling at Tr. 33/17361-62 (hereinafter "NAA Opposition"). Leave to file a reply is warranted in this circumstance because, as shown below, NAA's Opposition misstates and misinterprets facts and law.

First, NAA's contention that the Postal Service's Request for Certification is untimely is erroneous. The Presiding Officer ruled on NAA's Motion to Compel on March 17. Section 32 of the Commission's Rules of Practice and Procedure clearly provides that a request for certification "shall be made within 5 days after the presiding officer's ruling has been issued." Nothing in the Special Rules of Practice or the Ruling itself supersedes the due date established by section 32. Accordingly, the due date for a request for certification of the Ruling was March 24, in accordance with Rule 32 and the computation of time provision in Rule 15. The Postal Service's Request for Certification was filed on March 20, four days before the due date. The Postal Service, moreover, sent a copy of its Request to NAA by facsimile transmission on Friday evening. Thus, the Postal Service has undertaken to promote a prompt and expeditious resolution of this controversy, and its request for

certification is not untimely under the Rules of Practice.

Secondly, NAA contends that section 25(e) of the Rules of Practice "contains no deadline for supplementing interrogatory responses." This is also incorrect. NAA fails to acknowledge that Special Rule of Practice 2C speaks directly to this point. Special Rule 2C clearly establishes that the duty to update or supplement responses to written discovery extends through "the date that answers are accepted into evidence as written cross-examination." Thus, even if there was a duty to update a response to interrogatory NAA/USPS-10, the obligation to do so elapsed long ago, when responses on the Postal Service's direct case were accepted into evidence.

Thirdly, NAA incorrectly interprets Rule 2E. NAA claims that participants could have used the document to prepare their testimony. As an example, NAA states that AAPS witness Bradstreet may have cited the document in his testimony. NAA's argument is still clearly at odds with established Commission precedent. The essence of NAA's argument appears to be that Rule 2E should permit discovery upon the Postal Service, after the deadline for discovery on the Postal Service's case-in-chief has expired, for the purpose of rebutting the Postal Service's case-in-chief. NAA's contention is directly contradicted by P.O. Ruling No. R97-1/85, which clearly provides that discovery under Rule 2E is "not available for the purpose of developing testimony to rebut the direct case of the Postal Service." See also P.O. Ruling No. R97-1/89 at 3-4. NAA has made no representation that its discovery was aimed at obtaining information to rebut the case of an intervenor; consequently, in accordance with P.O. Ruling No. R87-1/118, NAA has manifestly failed to meet its burden of demonstrating that the discovery is intended for the purpose of preparing testimony in rebuttal to intervenor cases. Its motion to compel discovery therefore fails.

Fourthly, NAA provides no citation for the proposition that SMC witness Buckel

"alluded to [the marketing plan] in his testimony even without awaiting USPS authentication." NAA Opposition at 7. The fact that witness Buckel may have become acquainted with the document should not be surprising, since NAA filed a copy of NAA/R97-1 LR-2 on March 11, 1998. Witness Buckel testified in the rebuttal phase of this proceeding twelve days *after* NAA made the document available to the public by filing it with the Commission as a library reference.

Finally, NAA's allegation that the Postal Service suffers from "unclean hands" cannot be taken seriously. *The Postal Service has done absolutely nothing improper.* Throughout this controversy, the Postal Service has only exercised its procedural due process rights under the Commission's Rules of Practice to avoid the imminent and substantial prejudicial effect that will be caused upon it by NAA's attempt to augment the evidentiary record with the inclusion of NAA/R97-1 LR-2 at this late stage of the proceeding. The Postal Service's motion practice, moreover, is motivated by its sincere desire to prevent against the risk of reversible error to the extent the Commission's recommendations are informed by NAA/R97-1 LR-2.

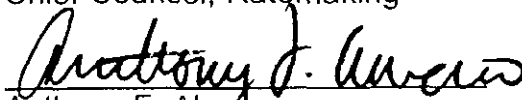
WHEREFORE, the Postal Service hereby moves for leave to file the instant reply to NAA's Opposition, and reaffirms its request that the Presiding Officer certify an appeal of the Ruling to the Commission.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

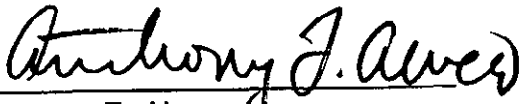
By its attorneys:

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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.


Anthony F. Alverno

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