

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

UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO NEWSPAPER ASSOCIATION OF AMERICA MOTION TO PLACE USPS MARKETING DOCUMENT INTO EVIDENCE, OR, IN THE ALTERNATIVE, MOTION TO (NAA/USPS-RFA-1)

On March 27, 1998, NAA filed its Motion to Place USPS Marketing Document into Evidence (hereinafter "Motion"). The document that NAA seeks to enter, designated as NAA/R97-1 LR-2, has been the subject of motion practice since February 17, 1998. On that date, NAA filed a discovery request upon the Postal Service seeking that the Postal Service admit to the existence of the document. The Postal Service objected to that discovery request. NAA subsequently filed a motion to compel, to which the Postal Service filed an answer in opposition. The Presiding Officer granted NAA's Motion to Compel a response to NAA's discovery request. Tr. 33/17361-62. The Postal Service requested certification of the ruling, which the Presiding Officer granted in P.O. Ruling No. R97-1/114. In Order No. 1210, issued on March 25, 1998, the Commission affirmed the Presiding Officer's ruling. Pursuant to Order No. 1210, the Postal Service filed a compelled response to NAA's discovery request on March 26, 1998. NAA's Motion to place the document into evidence followed.

The Postal Service hereby opposes NAA's Motion. NAA claims that the document establishes evidence of "Postal Service bias," which is inherently relevant and routinely admitted in judicial proceedings. NAA goes on to state that "[i]f a statement or document is contrary to a party's position in a hearing, it is also routinely admitted as a party admission" NAA Motion at 2. NAA fails to explain, however, what statement of the Postal Service or testimony of a postal witness it seeks to impeach through

admission of the proffered document. NAA's terse Motion does not identify the statement or testimony for which the proffered document would show evidence of bias; indeed, the Postal Service knows of none. Furthermore, NAA has not established the relevance of every statement in the document to the alleged bias, let alone to the scope of this proceeding.

In addition, NAA/R97-1 LR-2 consists of entirely new evidence. As such, NAA/R97-1 LR-2 cannot be considered NAA's rebuttal to witness Buckel's testimony, SMC-T-1. The subject matter of NAA/R97-1 LR-2 extends well beyond the scope of witness Buckel's testimony, into territory that even goes well beyond the scope of this proceeding. The document consists of over 300 pages of detailed market information in several key postal markets, and commercially sensitive ideas and plans for introducing and improving postal products and services. NAA has completely failed to tailor its Motion so as to seek admission of the portions that relate to its allegations of bias. As such, NAA has failed to meet its burden to demonstrate the relevance or materiality of this document in relation to evidence of bias. Alternatively, even if NAA/R97-1 LR-2 were admissible for a purpose related to NAA's Request for Admission, NAA has failed to offer a justification for entering those portions of the marketing plan that do not relate to its Request for Admission or its arguments regarding admissibility of the document.

NAA cites absolutely no procedural mechanism in support of its Motion to have the document entered into evidence at this late stage of the proceeding. NAA cites Rule 31 in support of its Motion; however, nothing in that Rule establishes *when* evidence may be offered in a proceeding.¹ Rule 31 is, moreover, subject to the procedural schedule

¹ Rule 31(d) would also fail to serve as a proper basis for the document's admission. Rule 31(d) permits participants to offer into evidence "public documents," which can include reports, decisions, opinions, or published scientific or economic

and the Special Rules of Practice, which dictate the time when, and form by which, materials may be received into evidence. P.O. Ruling No. R97-1/4. Specifically, Rule 1A of the Special Rules of Practice provides that:

A participant's case-in-chief shall be in writing and shall include the participant's direct case and rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by a trial brief or legal memoranda. There will be a stage providing an opportunity to rebut presentations of other participants and for the Postal Service to present surrebuttal evidence.

Here, NAA/R97-1 LR-2 consists of NAA's offer of evidence. As such, NAA/R97-1 LR-2 consists of either NAA's exhibit in support of its "direct case" or its "rebuttal . . . to the United States Postal Service's case-in-chief." *Cf.* Special Rule 1A. Special Rule 1A entitles the Postal Service, and other participants, to present evidence to rebut NAA presentation.

Finally, to the extent that NAA's Motion can be construed as a discovery request or a follow-up discovery request, the Postal Service submits that it is improper and untimely under Special Rule 2E, and bears absolutely no relationship to the *circumstances surrounding the absence of a response or objection to NAA/USPS-10.*²

statistical data issued by executive branch agencies and legislative bodies. The offeror, however, has the burden of showing that the document is "reasonably available to the public . . ." NAA/R97-1 LR-2 is clearly not a "report, decision, opinion, or published scientific or economic statistical data." Its contents rather consist of sensitive market information and marketing plans that an entity would not voluntarily disclose to the public. In addition, the Postal Service does not concede that this document is one of which the Commission could take official notice under its Rule 31(j) procedures.

² 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 United States Postal Service (filed March 20, 1998) and Reply of United States Postal Service (filed March 25, 1998). The Postal Service

Admission of the contents of NAA/R97-1 LR-2 would be highly prejudicial to the Postal Service, by augmenting the record with an unbalanced evidentiary submission and posing a serious risk that participants and the Commission may misinterpret and misuse the contents of NAA/R97-1 LR-2.

CONCLUSION

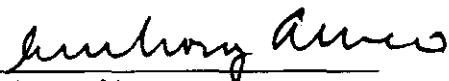
WHEREFORE, for the foregoing reasons, the Postal Service respectfully requests that NAA's Motion be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
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Anthony 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 Alverno

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April 2, 1998