

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

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

**ASSOCIATION FOR POSTAL COMMERCE AND THE
MAILING AND FULFILLMENT SERVICE ASSOCIATION
NOTICE OF WITHDRAWAL OF INTERROGATORY TO
UNITED STATES POSTAL SERVICE
WITNESS L. PAUL LOETSCHER (POSTCOM/USPS-T28-2)
September 8, 2006**

The Association for Postal Commerce and the Mailing and Fulfillment Service Association (collectively "PostCom") hereby withdraw interrogatory POSTCOM/USPS-T28-2 to USPS Witness L. Paul Loetscher.

On August 25, 2006, the Postal Service filed its objections to POSTCOM/USPS-T28-2. Its objections were based on three grounds: (1) the documents sought by PostCom are privileged; (2) the documents and information sought by PostCom are irrelevant; and (3) the interrogatory is untimely. While none of these objections have merit, we have determined to withdraw the interrogatory for the reasons set forth below.

The Postal Service objects to the production of the e-mails and other documents sought by PostCom because it claims that they are internal pre-decisional privileged communications. Although there may be merit to the underlying rationale of this argument, the situation with regards to the creation of the new Non-Flat Machinable ("NFM") category of mail is distinguishable and should fall outside the privilege. In a sense, all of the testimony on the rate category is predecisional since the Postal Service has not yet issued any implementing rules relating to NFMs. Nevertheless, PostCom will

address the inferences that may be made as a result of the lack of full disclosure about the Postal Service's NFM definitions on brief.

PostCom also takes issues with the Postal Service's argument that the e-mails are irrelevant to the omnibus rate case. Nothing could be more relevant. These e-mails (and perhaps other documents that the Postal Service refuses to provide) provide Witness McCrery's definitional categories for non-ECR Standard Mail non-letter volumes upon which Witness Loetscher based his study. Without knowing how the Witness formulated the categories in LR-33, neither the Commission nor PostCom can determine what factors drove the decision-making process – operational or otherwise. Moreover, there are inconsistencies between the definitions used in LR-33, Witness Loetscher's oral testimony and Witness McCrery's oral testimony. PostCom will deal with these inconsistencies on brief.

Finally, the Postal Service contends that the interrogatory is untimely because it was filed 32 days after the deadline for discovery elapsed. The Postal Service claims that PostCom failed to make its request for the e-mails referenced by Witness Loetscher during the hearing, and now it is too late to request these documents. The Postal Service's arguments are without merit. Although it is true that PostCom did not submit an interrogatory regarding the e-mails during the initial discovery period, it had no way of knowing that these documents existed until it came to light during oral cross-examination. One of the purposes of allowing follow-up interrogatories is for exactly this type of situation -- to clarify and complete the record so that the Commission can fully understand how and why the Postal Service reached its positions. No party can be

expected to anticipate every single document that may be relevant during the initial discovery period.¹ Nevertheless, the interrogatory is withdrawn.

Respectfully submitted,

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¹ On August 15, 2006, PostCom submitted two follow-up interrogatories to Witness Loetscher (POSTCOM/USPS-T28-2 and POSTCOM/USPS-T28-3). Witness Loetscher responded to POSTCOM/USPS-T28-3 on August 29, 2006 – four days after the Postal Service filed its objections to POSTCOM/USPS-T28-2. Using the Postal Service’s own rationale, the Postal Service should have objected to this interrogatory based on untimeliness as well. The Postal Service simply cannot have it both ways.