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

Postal Rate and Fee Changes, 2001) Docket No. R2001-1

OFFICE OF THE CONSUMER ADVOCATE
REPLY TO OPPOSITION OF UNITED STATES POSTAL SERVICE
TO OCA MOTION TO COMPEL PRODUCTION OF DOCUMENTS
REQUESTED IN OCA/USPS-64(c), 65-73, 77-78
(November 28, 2001)

The Office of the Consumer Advocate ("OCA") hereby replies to the Opposition of the Postal Service to OCA's November 13, 2001 motion to compel production of documents requested in OCA/USPS-64(c), 65-73, 77-78 (hereinafter "Opposition").[1] A motion for leave to file this reply is being filed concurrently.[2] OCA's reply is necessary to provide the Commission OCA's analysis of the guidelines attached to the Postal Service's Opposition to OCA/USPS-64(c) and 65 that have not previously been available to the OCA.

OCA interrogatories 64(c) and 65 request copies of the results of the American Customer Satisfaction Index. The Postal Service response claims, inter alia, that its subscription contract with the American Society of Quality prevents it from disclosing these survey results, even under protective conditions. In support, the Postal Service

[1] "Opposition of United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-64(c), 65-73, 77-78," filed November 20, 2001.

[2] "Office of the Consumer Advocate Motion for Leave to File A Reply to Opposition of United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-64(c), 65-73, 77-78."

attached to its reply the "Advertising Use Guidelines for the American Customer Satisfaction Index" (ACSI). The Postal Service claims:

> The results are owned and controlled by American Society of Quality, which conducts the ACSI and sells the results. The Postal Service merely subscribes to the Index. Attached are the guidelines for use of the ACSI that the subscribers must follow. Opposition at 2.

The guidelines, in fact, do not support the Postal Service position; rather a fair reading demonstrates the weakness of the Postal Service's contention that it "is under contractual obligation not to release [the results] publicly."[3] The Postal Service did not provide its contractual agreement for the subscription service but instead only offered the subscription guidelines. This suggests that the subscription contract does not contain any specific restriction on the disclosure of the information in question or else the Postal Service would have included a copy of the appropriate contractual language in its Opposition. Instead, the Postal Service points for support to the document styled, in part, "Use Guidelines." The first sentence of the guidelines indicates that, in fact, the guidelines and not the subscription contract are authoritative and provide the specific details for authority under the Subscriber application for public use of the ACSI information and data. It is also clear that, as to public use, no other document is controlling. The guidelines state:

> The [Subscriber] application refers to Use Guidelines to be used by a Subscriber in those specific situations when the Subscriber may publicly use and distribute ACSI Information and Data.

Thus, these guidelines represent the only applicable restriction on the public use of the materials in question.

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[3] "Objections of United States Postal Service to Interrogatories OCA/USPS-64-73, 77-78," October 29, 2001 at 2.

Guidelines are not normally mandatory and nothing in these guidelines suggests otherwise. They specifically state that they are intended to "provide assistance and guidance to a Subscriber." They say nothing about mandatory requirements. The guidelines consistently use the word "should" rather than "must." That is:

> A Subscriber should not publicly use, distribute or reproduce any data from ACSI that has not been previously published or released for publication by the American Society for Quality (ASQ), The University of Michigan and/or CFI Group. (Emphasis supplied.)

Also, the guidelines are clearly limited to instances of "public use." In fact, if the Subscriber is to disseminate permissible information publicly, then the guidelines "request" (not require) that the Subscriber submit information to ASQ for review and consideration of the intended use of the materials. The OCA has already suggested that, if necessary, protective conditions might be applied to the information requested. Under such a protective arrangement, the documents would not be available for public use.

Also, neither the guidelines nor, apparently, the Subscriber application contain any provision for the dissemination of the material pursuant to court order or other legal process in the event information is required to be used or distributed in a non-public manner. The guidelines are silent as to the non-public use of information. By virtue of that silence, it may be assumed that if material will be released in a non-public manner, ASQ does not even request that subscribers submit to it information about the intended use of the material.

For these reasons, in addition to the reasons previously submitted in OCA's November 13, 2001 motion to compel, the Commission should order the production of the data requested in OCA/USPS-64(c) and 65.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Rule 12 of the rules of practice.

Stephanie S. Wallace

Washington, D.C. 20268-0001
November 28, 2001