

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

Proposed Amendments to
Filing Requirements

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Docket No. RM2003-1

OFFICE OF THE CONSUMER ADVOCATE
REPLY COMMENTS ON NOTICE OF PROPOSED RULEMAKING
CONCERNING EVIDENCE SUPPORTING RATE AND CLASSIFICATION CHANGES
(February 26, 2003)

The Office of the Consumer Advocate ("OCA") hereby files reply comments in response to comments in this docket upon the Commission's Notice of Proposed Rulemaking ("Notice").¹ That Notice proposed new Commission rules to require that Postal Service rate and classification requests must contain witness testimony that includes a "roadmap" as to how the testimony of all of the various Postal Service witnesses in the case interrelates and to identify all material changes affecting cost attribution methodology, volume projections, or rate design.

The OCA comments supported the proposed rule change as described in the Notice to provide for a "roadmap" witness.² However, the OCA suggested a modification of the proposed language in order to conform to the sense of the Commission's discussion in the Notice. The proposed language fails to require specific quantification of the impact of changes in methodology relating to cost

¹ "Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes," Order No. 1355, December 13, 2002.

attribution, volume estimation or rate design. The OCA believes the Commission should specifically require in Rule 3001.53(c) that the Postal Service must, as the party most able to do so, quantify the impact of each methodological change.

The OCA comments further suggested several additional improvements in the Commission rules. Most relevant to the Postal Service's initial comments³ in this rulemaking is the OCA proposal that the Commission require a witness response to an interrogatory asking for clarification of a proponent's position (either the initial witness to whom an interrogatory was directed or a witness on redirection), rather than an institutional response.⁴ Alternatively, the OCA would not oppose a rule permitting institutional responses if the response indicated a witness who would be available for answering questions on oral cross-examination. The object of the OCA suggestion is to obtain the advantages inherent in having the opportunity to interrogate an individual witness regarding the matter addressed in discovery. When questions such as these are submitted to the Postal Service, the responses materialize as explanations from unidentified individuals, of unknown expertise, from within an institution that numbers nearly one million. It is currently impossible to evaluate the fitness of those unnamed individuals to answer the questions posed. It should be incumbent on the proponent of

² "Office of the Consumer Advocate Comments on Notice of Proposed Rulemaking Concerning Evidence Supporting Rate and Classification Changes," February 12, 2003.

³ "Initial Comments of the United States Postal Service," February 12, 2003.

⁴ The OCA comments also suggested a change in Commission practice so as to routinely notice in the federal register alternative proposals presented, at hearing, in a direct case by participants. (Comments at 6-8.) The OCA proposed several additional reporting requirements intended to enhance the Commission's ability to carry out its statutory mandate to measure the value and quality of service actually provided by the Postal Service. (Comments at 8-15.) The comments also incorporated by reference the OCA's comments in rulemaking Docket No. RM2003-3, *Periodic Reporting*, filed February 10, 2003. There the OCA proposed several additional filing requirements related to Postal Service reports to Congress and details of the Postal Service's operating budget by accounting period.

fact to provide not only the clarification of the proponent's direct case but also the identity of those individual(s) (presumably witnesses) making the clarification. The thrust of the Postal Service's comments as discussed below would actually move toward greater use, rather than less use, of institutional material.

The Postal Service comments concede that a roadmap of the Postal Service case would be useful,⁵ but complain that it is too onerous to require an individual to become familiar with an entire rate case to explain its contents and how it interrelates. (Postal Service Comments at 4.) Rather, the Postal Service requests that the roadmap should instead be limited to a discussion in the application in the nature of an institutional overview. It says that approach is more "realistic and attainable based on present experience."⁶ It suggests, instead, a "moderate refocusing" of the rule in a manner that has the impact of significantly reducing the value of the new rule.

Unfortunately, the Postal Service's proposed refocusing would reduce the value of the rule to other participants and the Commission. In fact, the Postal Service's revisions would also run counter to the OCA proposal designed to eliminate institutional responses by the Postal Service where the interrogatory involves the affirmative case of the Postal Service. The Postal Service's suggestion would eliminate the rule proposed to provide an opportunity to address questions to a specific witness concerning the overall interrelation of the Postal Service's case during the interrogatory and oral cross-examination phase. As we noted previously in the OCA comments, the Commission routes Presiding Officer Information Requests to witnesses rather than to the Postal Service as an institution. Institutional discussion or institutional responses to

⁵ See Postal Service Comments, note 1 at 3.

interrogatories regarding the overall case prevents satisfactory investigation for a complete clarification of the rationale or underlying support for a proponent's direct case. As the deadline for the end of discovery approaches, the tactic of redirecting interrogatories for an institutional response further exacerbates this problem and clarification of the Postal Service's case is often not satisfactorily obtained.

The Postal Service offers a parade of reasons for not providing a single roadmap witness, but they are not convincing. It is difficult to believe that there is no individual or several individuals, for that matter, at the Postal Service who are responsible for understanding in a general way the interrelationships of the witnesses' testimony and the impact of the few new methodological changes in each case. United Parcel Service put it this way in supporting the Commission rule, "Certainly there is *someone* at the Postal Service responsible for making sure that its proposals constitute a coherent whole that makes sense. Otherwise, both the Postal Service and the Commission should be concerned about how well-thought out the Postal Service's case is." (UPS Comments at 3.)

Also, the Postal Service's claim that providing a roadmap witness does not gain any apparent "functional advantage" over an institutional statement fails to grasp one of the fundamental needs for such a roadmap witness. (Postal Service Comments at 26.) The advantage is that it is far more efficient for the participants and the Commission to direct interrogatories to one individual about overview matters than digging into the depths of each witness' testimony. Of course, where an interrogatory requests greater detail than is known by the roadmap witness, the witness could obviously consult with the specific witnesses involved in order to respond to an interrogatory.

⁶ Postal Service Comments at 3.

Contrary to the Postal Service's suggestion, the new rule does not place the Postal Service witness in the position of sponsoring testimony regarding Commission methodologies which they do not believe is appropriate for estimating costs. The Postal Service witness is obviously not deemed to be sponsoring the PRC version; only explaining how the Postal Service's presentation relates to the Commission methodologies. This is best handled by the Postal Service witness sponsoring the related Postal Service methodologies. There is no need, as the Postal Service proposes, to change the proposed rule by shifting language in Rule 53 from subsection (c) to subsection (b) in order to place the discussion of the PRC version into an institutional pleading. (Postal Service Comments at 15-16.) The testimony of the overview witness will not be placed on a reference shelf like library references or attorney-witness tables or compliance statements. Witnesses with overview knowledge of the case must be available for questioning for a better understanding of the Postal Service's case.

The Postal Service admits it would not be difficult to summarize the functional organization of the case and the sources of material and the specific downstream witnesses who use the outputs of other witnesses. It is concerned, rather, that it will have difficulty with understanding what the Commission wants as the "linkage between [a witness'] analysis and the testimony of those witnesses who rely on it." (Postal Service Comments at 8.) But In several places, the Postal Service's comments indicate a good understanding of how to prepare the necessary information to meet the requirements of the proposed rule despite its numerous claims of uncertainty over the detail required. (Postal Service Comments at 7-10, 14-15 and 26-27.) The Postal

Service's primary objection seems to be in finding a witness to testify to the overview rather than difficulty in determining the material that will be required by the rule for the overview. (Postal Service Comments at 4.)

The Postal Service's fear of the need for great detail in the overview testimony is overblown. The Postal Service is raising unlikely and phantom concerns. The Commission's rule is clearly not asking for extensive mind-numbing detail. The rule is not intended to create undue interference with the Postal Service's ability to present the best possible rate proposals; nor is it suggesting the Postal Service roadmap witness use a different format in describing the elements of its case. (See Postal Service Comments at 20.) In fact, the purpose of the roadmap testimony is just the opposite--to provide a readable overview and to lessen the burden on all parties concerned with reviewing the rate case, including reducing the Postal Service's burden of responding to interrogatories seeking an explanation of the impact of the Postal Service case. In any event, even if the summary for each witness were as long as one page in length, that portion of the overview witness' testimony would only be approximately 40 plus pages, far shorter than much of the Postal Service testimony which frequently can be over 100 pages. There is no need to "bog down" the reader with detail as the Postal Service envisions. (Postal Service Comments at 11.)

The Postal Service claims it is unclear what the Commission meant in the Notice by "something more" is required. The Notice says the testimony of Postal Service witness Van-Ty-Smith "briefly notes" certain witnesses use her mail processing volume variable costs. The Notice then states, "The proposed rule would require 'something more' from the roadmap witness." (Notice at 7.) Just after noting the need for

"something more," the Notice fully explains that statement, "Specifically, the roadmap witness's overview of the Postal Service's filing would identify the subject matter of each witness's testimony, explain how the testimony of the various witnesses interrelates, and highlight changes in cost methodology, volume estimation and rate design. See proposed §3001.53 (b)." (Notice at 7-8.) The "something more" alluded to by the Commission is the need for a single witness to address the proposal as a whole and for a discussion of the implications of the linkage of the testimonies. (See Notice at 6-7.)

The Postal Service suggests that the Commission's example in the Notice referring to witness Van-Ty-Smith's testimony in Docket No. R2001-1 is confusing because that testimony does include a discussion of the links to other witnesses. But reference back to the Commission's aforementioned language indicates that more cohesive detail than the listing in Van-Ty-Smith's testimony is needed to tie the testimony together as a whole, including a discussion of changes in methodologies. The Notice states that the roadmap should "explain the linkage between [a witness'] analysis and the testimony of those witnesses who rely on it." (Comment at 12 re Notice at 7.) It is clear that the Commission is seeking a cohesive whole in the overview of the case. It is the obligation of the Postal Service to trim its roadmap testimony so as to provide a rational overview of the case. With some trial and error and adjustments that will be suggested for the roadmap by the initial interrogatories, the appropriate level of detail in the overview in future cases will become readily apparent. The Postal Service's comments recognize that it will take this approach in preparing the overview. (Postal Service Comments, note 4 at 12.)

Wherefore, the OCA supports the proposed rules and proposes for Commission

consideration the additional practices and rules presented in the OCA's February 12, 2003 comments on the Notice.

Respectfully submitted,

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