

August 18, 2003

Hon. Steven W. Williams, Secretary  
U.S. Postal Rate Commission  
Washington, DC 20268-0001

Dear Mr. Williams,

I am writing to express the views of the Office of the Consumer Advocate (OCA) on a matter currently under consideration by the Commission in Docket No. C2003-1, Complaint on Removal of Collection Boxes. In Order No. 1379,<sup>1</sup> the Commission accepted certification of Presiding Officer's Ruling No. C2003-1/2, and established August 11 and 18, 2003, as the dates for submitting Comments and Reply Comments, respectively, on the question whether Postal Service's Customer Satisfaction Measurement (CSM) data should be used to deny Douglas F. Carlson's request for a hearing on whether the Postal Service's collection box removal practices and policies are consistent with the Postal Reorganization Act and rules adopted by the Postal Service setting forth criteria and procedures for such removal.

As you may recall from a spirited disagreement between OCA and the Postal Service in Docket No. R2001-1 concerning this very question, OCA takes a strong position on the question of public access to this information. OCA believes now, as it did then, that the CSM survey information that ascertains the views of residential customers on the adequacy of postal services is material that should be in the public domain. OCA holds the firm conviction that the monitoring of these data over time can provide important indicators of the quality of service that the Postal Service provides to the public. While the Postal Service directly measures only a very limited number of

---

<sup>1</sup> "Order Accepting Certification of Presiding Officer's Ruling No. C2003-1/2," July 25, 2003.

postal services, e.g., First Class (by means of EXFC<sup>2</sup> and ODIS<sup>3</sup>), Priority Mail (by means of PETE<sup>4</sup> and ODIS), and Package Services (by means of ODIS), the Postal Service is a vital channel of commerce and communication for a myriad of other services and products. As a general proposition, direct measurement of service performance is preferable to the more indirect tool of measuring perception and opinion of service performance. Nevertheless, the CSM data are the only measures (albeit indirect) of the adequacy of numerous postal services, products, methods, and operations.

The Postal Service persuaded the Presiding Officer in the last rate case that release of CSM data should be restricted to employees of the Commission (including OCA) and participants in the rate case.<sup>5</sup> OCA scrupulously complied with all of the protective conditions imposed. This included the filing of a *Confidential Report* on March 8, 2002, that contained analysis and discussion of the CSM data supplied under protective conditions.<sup>6</sup> In Ruling No. R2001-1/57,<sup>7</sup> the Presiding Officer directed OCA to destroy all copies of the Confidential Report and, (OCA assumed), all notes, drafts, etc.

---

<sup>2</sup> External First Class measurement system.

<sup>3</sup> Origin Destination Information System.

<sup>4</sup> Priority End to End system.

<sup>5</sup> P.O. Ruling No. R2001-1/17, "Presiding Officer's Ruling Directing the Production of Data Subject to Protective Conditions," December 7, 2001, Attachment at 1.

<sup>6</sup> Mindful of P.O. Ruling No. R2001-1/17, OCA filed a motion to accompany the submission of two copies of its Report to the Commission's Docket Section, i.e., "Office of the Consumer Advocate Motion to Request that the Presiding Officer Accept for Filing a *Confidential Report* on Quality of Services Provided by the Postal Service to the Public," March 8, 2003. OCA anticipated that the same protective conditions that restricted access to the CSM data themselves would be applied to OCA's discussion and analysis of the restricted data.

<sup>7</sup> "Presiding Officer's Ruling Denying OCA Motions for Acceptance of Filings of Material on Quality of Services," March 21, 2001, at 6.

OCA did so immediately following the Presiding Officer's Ruling and, in fact, retains no copies or notes, but only a vague recollection of the types of analysis and discussion that the Report contained.<sup>8</sup>

It should be recalled that the Commission's decision in Docket No. R2001-1 was based upon a Stipulation and Agreement signed by OCA and most participants. OCA thereby agreed not to use the CSM data in any evidentiary or legal presentation to influence the Commission not to recommend the stipulated rates and classifications. Had Docket No. R2001-1 followed the normal procedural course, however, OCA likely would have filed the Confidential Report as testimony and argued on brief that the CSM results should be used as a factor in determining the need for a contingency and setting price levels for services examined in the CSM survey. This would have been part of a long chain of complicated procedures to prevent public dissemination of the results to the residential customers (and others) who had shared their opinions in the first place. The Commission's own Opinion, to the extent that it considered OCA's evidence and arguments, would also have been subject to the established restrictions. This could have led to an Opinion that decided important revenue and price issues outside the scrutiny of the public.

In OCA's view, the Postal Service, an agency privileged with a valuable public monopoly, does not enjoy precisely equal privileges to avoid "competitive disadvantage" that its private counterparts enjoy. The view of the OCA is that since the Postal Service has been singled out for exceptional revenue-raising powers via the Private Express statutes, it has exceptional obligations to keep the public apprised of the quality of

---

<sup>8</sup> Having destroyed all written materials, members of the OCA staff must rely on memory alone to recollect the contents of the Report.

service it is providing. If the Postal Service did not enjoy its highly valuable monopoly, then the competitive marketplace could obtain a significant share of these revenues or spur the Postal Service to improve its performance of services. With its ability to rely on a massive captive customer base, however, it can allow service to degenerate while not experiencing a material loss of revenues.

In its Comments,<sup>9</sup> the Postal Service argues that fax, internet, and electronic mail are viable alternatives to First Class. Such media are not currently causing a precipitous decline in First Class volumes; but the specter of competition from fax, internet, and e-mail are beside the point. No private entity can provide a hard copy communication service that operates substantially like First-Class Mail at substantially the same price because the Private Express statutes forbid it. This is the monopoly service that the Postal Service claims, implausibly, needs to be protected from competitive disadvantage. OCA believes that, in fact, the opposite is true. The Postal Service provides First Class service at an unmatched competitive *advantage*. To restore the competitive balance, the Postal Service should be obligated to collect, and report publicly, at regular intervals, how well it is providing its monopoly services. The crucial fact should not be overlooked that the Postal Service's monopoly not only protects it from price competition from private providers, but from quality of service competition as well. Under the PRA, no matter how terrible First Class service is, the Postal Service still retains its monopoly over this vital channel of commerce and communication.

---

<sup>9</sup> "Initial Comments of the United States Postal Service Upon Certification of Presiding Officer's Ruling No. C2003-1/2," August 11, 2003, at 10.

Since the Postal Service is shielded from competition in providing services protected under the Private Express statutes, the only way that members of the public can learn whether a postal monopoly is a “good deal” for them and actually satisfies their need for “prompt, reliable, and efficient services . . . in all areas”<sup>10</sup> is to impose exceptional responsibilities on the Postal Service on public policy grounds.

In the instant complaint case, the Postal Service should not be permitted to use information withheld from the public to persuade the Commission to dismiss Mr. Carlson’s complaint. One important difference in the proposed use of CSM data in Docket No. 2003-1 is that the Postal Service is the proponent of its use and, therefore, subject to a higher burden of persuasion than was the case when P.O. Ruling No. R2001-1/17 was issued – in that case, OCA was the proponent for its use. There is an important public policy difference as well. In Docket No. R2001-1, the Commission retained the ability to issue a decision (albeit a confidential one) based upon the CSM data that could have resulted in more equitable rates for postal customers. In the instant case, however, the Postal Service wishes to use the CSM data to have the Commission dismiss Mr. Carlson’s complaint, possibly resulting in a reduction of service to the public. Surely the public should have an opportunity to see and evaluate the evidence that the Postal Service wishes to furnish outside of public scrutiny since the use of these data might reduce the level of service the public receives.

A final consideration is that the specific CSM data that the Postal Service wants to hide from public view concerns the public’s attitudes toward sufficiency of collection box access. As OCA argued in Docket No. R2001-1, the mailbox is almost exclusively a channel for individual and small business customers to enter First-Class Mail (and

---

<sup>10</sup> 39 U.S.C. §101(a).

small amounts of Priority Mail) that are subject to the Private Express statutes. Since the collection box is a monopolist's channel, the Private Express statutes already provide ample protection against competitive disadvantage.

In evaluating the Postal Service's assertion of privilege in the instant complaint case, the Presiding Officer rightly found that "no argument or evidence of potential competitive harm has been presented,"<sup>11</sup> and, more importantly, that:

[P]rotective conditions necessarily limit public discussion and use of the material. As the Commission's primary means of expression is generally through public rulings, orders and opinions, submission of data under seal can unduly and unnecessarily complicate issuance of requisite documents. In section 3662 cases, unfettered discussion takes on added significance, as the Commission's role is to provide a public forum for evaluation of mail users' complaints.

This determination is in harmony with a Presiding Officer ruling from an earlier Carlson complaint case, Docket No. C2001-1: "[A] proposal for protective conditions is extraordinary relief that is contrary to the requirement that hearings on postal matters be open and accessible to the public."<sup>12</sup>

---

<sup>11</sup> P. O. Ruling No. C2003-1/2, "Presiding Officer's Ruling on Postal Service Motion for Protective Conditions," July 14, 2003, at 4 - 5.

<sup>12</sup> P.O. Ruling No. C2001-1/13, "Presiding Officer's Ruling Certifying Appeal to Commission of Presiding Officer's Ruling No. C2001-1/10," at 6.

OCA is hopeful that the sound decision of the Presiding Officer in the instant complaint case -- to consider CSM data only in an open, public manner -- will be affirmed by the full Commission.

Sincerely,

Shelley S. Dreifuss  
Director, Office of the Consumer Advocate  
U.S. Postal Rate Commission  
Washington, D.C. 20268-0001  
(202) 789-6837; fax -6819  
e-mail: dreifusss@prc.gov