

PRESIDING OFFICER'S
RULING NO. MC2004-2/4

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Experimental Priority Mail
Flat-Rate Box

Docket No. MC2004-2

PRESIDING OFFICER'S RULING CONCERNING
OFFICE OF THE CONSUMER ADVOCATE MOTION
TO COMPEL RESPONSES TO INTERROGATORIES
OCA/USPS-T2-14 THROUGH 20

(Issued August 3, 2004)

On July 20, 2004, the Office of the Consumer Advocate filed a motion¹ to compel responses to a series of seven interrogatories it had directed to Postal Service witness Daniel J. Barrett. The Postal Service has objected to each of the interrogatories on the grounds that they are beyond the scope of its proposal in this case and irrelevant.²

The OCA interrogatories at issue request information about various operational and cost aspects of the carrier pickup service currently provided by the Postal Service, which would be available to users of the flat-rate boxes proposed in this case. OCA defends its inquiries generally on the ground that introduction of the proposed boxes is likely to stimulate use of the free carrier pickup service, chiefly because of their uniform postage feature. Because of the strong likelihood of a consequent increase in delivery pickups, OCA argues, facts relating to carrier pickup activities which could cause the Service to incur additional costs are relevant to the Commission's deliberations on the proposed product and consideration of an appropriate data collection plan.³

¹ Office of the Consumer Advocate Motion to Compel Responses to OCA/USPS-T2-14-20, July 20, 2004 ("Motion to Compel").

² Objections of the United States Postal Service to Interrogatories of the Office of the Consumer Advocate (OCA/USPS-T2-8-20), July 6, 2004, at 3-7.

³ Motion to Compel at 2-5.

By contrast, in its Opposition⁴ filed on July 27, the Postal Service argues that the “extraordinarily limited” scope of its proposal to add a single new category to the Priority Mail subclass reduces the field of relevant inquiry in this case and justifies the imposition of reasonable limitations on the scope of discovery. The Service notes that the single new rate proposed here is not derived from Priority Mail costs, but rather is interpolated from the existing rate schedule after “a careful assessment of risk and potential added value.”⁵ According to the Service, this approach recognizes that little is known about how the mailing public will react to the proposed rate category, and that it would be unproductive to examine its potential impact in minute detail. Further, the Service argues that the more demanding scrutiny applied to proposed permanent mail classifications should not apply in the case of a limited experiment of the kind proposed in this case.

I agree with the Postal Service that the breadth of a specific proposal before the Commission roughly dictates the scope of appropriate discovery in a proceeding. Illustratively, it would not appear appropriate in this limited proceeding to entertain discovery requests formulated to advance the state of the art of city delivery carrier cost attribution. However, a proponent’s decision to simplify some aspect of a proposal and thereby “finesse” certain potential issues does not necessarily delimit the scope of proper discovery. The uniform standard, as established in section 26(a) of the rules [39 C.F.R. § 3001.26(a)], is whether an interrogatory “appears reasonably calculated to lead to the discovery of admissible evidence” on matters legitimately at issue in the proceeding.

It is likely, as the Postal Service notes, that many potentially relevant facts will be unknown in the case of a proposed experimental classification. However, the availability of authoritative responses stating that certain requested facts are unknown, and why, can serve a beneficial purpose in such cases. As OCA suggests, they may contribute to the formulation of an appropriate data collection plan for the experiment.

⁴ Opposition of the United States Postal Service to Motion of the Office of the Consumer Advocate to Compel Responses to OCA/USPS-T2-14-20, July 27, 2004 (“Opposition”).

⁵ Opposition at 2.

With these observations in mind, I will now turn to the seven OCA interrogatories in controversy.

OCA/USPS-T2-14 through 17. These interrogatories pose a series of operational questions regarding mail delivery, beginning with interrogatory 14, which asks the witness to confirm that a typical “regular delivery stop” involves placing mail into a curbside box but not exiting the delivery vehicle. OCA characterizes this question as the foundation for the more detailed operations-related interrogatories that follow. Interrogatory 15 asks the witness to confirm that accomplishing the free carrier pickup service accessible from the USPS Internet site would require the carrier to perform six sequential steps. Interrogatory 16 requests confirmation that a “regular delivery stop” for a clusterbox delivery typically does not involve driving or walking to individual homes or businesses to effect delivery. Finally, number 17 asks the witness to confirm that performing free carrier pickup service for a customer who normally receives delivery at a clusterbox would require the carrier to perform eight sequential steps.

OCA argues that these operational questions are relevant to the impact of the new parcel service in light of the probability of an increase in delivery pickups resulting from the introduction of flat-rate parcels. Pickup service would be available under the terms of § D010, OCA notes, and earlier Postal Service responses to interrogatories indicate that flat-rate Priority Mail parcels could be eligible for free service. Consequently, OCA asserts, facts relating to carrier activities which could incur additional costs are germane to the Commission’s consideration of the proposal.

The Service claims that OCA’s inquiry is based entirely on speculation about the impact the new type of Priority Mail might have on carrier activities. According to the Service, this inquiry “far transcends the appropriate boundaries of this proceeding[,]” and the alleged potential for increased carrier collections costs would apply to many types of mail as well.⁶ To allow wide-ranging discovery into such matters, the Service argues, would be problematic.

⁶ Opposition at 4-5.

OCA apparently has established that pickup service could be ancillary to use of the proposed flat-rate boxes. Given this foundation, it is legitimate to inquire about this operational aspect of the proposed boxes' potential use. It is true, as the Postal Service argues, that pickup service is available to the other categories of Priority Mail and other services, but this fact does not obviate the relevance of OCA's inquiry. If all Priority Mail or other services were before the Commission, e.g. in an omnibus rate proceeding, it would be relevant to inquire about their operational use of pickup service. OCA's interrogatories 14 through 17 are appropriately crafted to explore the operational features of those boxes that would receive pickup service, and I shall direct the Postal Service to respond to them.

OCA/USPS-T2-18 through 20. These interrogatories explore the various means for entering single-piece Priority Mail parcels into the mailstream and their relative costs. Interrogatory 18 describes six possible methods for entering flat-rate boxes into the mailstream, asks the witness to confirm them and list any other channels, and requests a ranking of the methods from the most costly to the least. Interrogatory 19 poses the same requests for pound/zone rate Priority Mail packages. Finally, OCA/USPS-T2-20 refers to the means of entry identified in the preceding two interrogatories, asks the witness whether he believes entering flat-rate boxes or pound/zone-rated parcels is more expensive, and requests a detailed rationale for the response given.

OCA claims these interrogatories are relevant because responses will establish differences in the ranking of entry costs between the newly proposed service and pound/zone-rated single-piece Priority Mail. According to OCA, it is relevant to establish the Postal Service's expectations regarding the relative costs of entry to document the possibility that the new product may have some hidden costs that should be recognized and attributed at the appropriate time. OCA challenges the Service's defense that the price proposed for the new product is not cost-based, thus requiring no cost analysis. To the contrary, OCA asserts that the views of the witness on relative costs would assist in identifying potential areas of review and analysis appropriate for consideration in devising a data collection plan.

The Postal Service asserts that these interrogatories also lack an adequate foundation. Because the same entry methods cited in the interrogatories apply to mail categories beyond Priority Mail, the Service claims the issues OCA wishes the witness to address arise not from its proposal, but from a more general concern involving all mail classes. Inasmuch as no specific or different entry requirements are proposed for the new product, the Service submits that focusing on entry-based costing issues would only serve to delay implementation of a potentially beneficial innovation to no good purpose. Furthermore, the Service argues, it is unlikely that responses to these questions would contribute to the record in this case, given the lack of detailed cost information in these areas.

To the extent they explore known or anticipated cost attributes of the mail classification proposed in this docket, I find that discovery on costing issues satisfies the standard in section 26(c) of the rules. By limiting its terms to the foreseen entry cost characteristics of the proposed flat-rate boxes, interrogatory OCA/USPS-T2-18 appears reasonably devised to lead to the discovery of admissible evidence, and I shall direct the Postal Service to provide a response. It is possible, as the Service submits, that the paucity of available information may preclude a definitive response. However, if the witness lacks sufficient information to provide such a response, he may so state. As OCA suggests, a response indicating lack of sufficient information may support arguments regarding the appropriate contours of data collection for the experiment proposed in this case.

Interrogatories OCA/USPS-T2-19 and 20, however, do not satisfy this standard of relevance. Interrogatory 19 asks exclusively about the entry cost characteristics of weight- and zone-rated Priority Mail parcels—a matter entirely extraneous to the Postal Service's narrow proposal in this proceeding. Similarly, interrogatory 20 calls for a comparison between this essentially irrelevant cost behavior and the anticipated cost characteristic of the proposed flat-rate parcels. These inquiries might very well be appropriate in a more expansive proceeding in which the cost behavior of the entire Priority Mail subclass is at issue—for example, a reclassification or an omnibus rate

proceeding. In this very limited proceeding, however, they are outside the realm of relevant inquiry. Therefore, I shall deny OCA's motion as to these two interrogatories.

RULING

The Office of the Consumer Advocate Motion to Compel Responses to OCA/USPS-T2-14-20, filed July 20, 2004, is granted with respect to OCA/USPS-T2-14 through OCA/USPS-T2-18, and denied with respect to OCA/USPS-T2-19 and 20.

Dana B. Covington, Sr.
Presiding Officer