

PRESIDING OFFICER'S  
RULING NO. R2005-1/70

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

Postal Rate and Fee Changes

Docket No. R2005-1

PRESIDING OFFICER'S RULING CONCERNING  
MOTION TO COMPEL RESPONSES TO  
OCA/USPS-147a and d and 148a

(Issued August 11, 2005)

The Office of the Consumer Advocate (OCA) seeks to compel responses to interrogatories OCA/USPS-147a and d, and 148a.<sup>1</sup> The interrogatories share a common theme. Each is an outgrowth of the Postal Service's response to OCA/USPS-53 and each seeks copies of agreements executed by the Postal Service. In interrogatory 147a, OCA seeks copies of 75 linking agreements; in interrogatory 147d, OCA requests copies of agreements concerning Mailing Online, NetPost Certified Mail, and NetPost Card Store; and in interrogatory 148a, OCA requests a copy of the agreement with Authentidate concerning Electronic Postmark service.

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<sup>1</sup> OCA's motion to compel was filed initially on July 5, 2005. It subsequently filed a motion to file a revised motion to compel to correct miscellaneous errors. Office of the Consumer Advocate Motion to be Permitted to File Revised "Motion to Compel Responses to Interrogatories OCA/USPS-147a and d and 148a., July 6, 2005. That motion is granted. Simultaneously, it also submitted the revised motion to compel. Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-147a. and d. and 148a., July 6, 2005 (OCA Revised Motion).

The Postal Service objects on the grounds of relevance, proprietary information, and undue burden.<sup>2</sup>

In summary, the motion is denied to the extent that the Postal Service will not be required to produce the agreements. It will, however, consistent with an earlier ruling, be required to provide a brief description of the services provided under the various underlying agreements and to provide, on an aggregate basis, the base year and test year costs and revenues associated with these services.

*Background.* Characterizing the services at issue as nonpostal, the Postal Service asserts that because the Commission lacks jurisdiction over these services details of the agreements are immaterial to issues in this proceeding.<sup>3</sup> Second, the Postal Service claims that the agreements “are likely to include content viewed as proprietary information” by the signatories.<sup>4</sup> It also states that some agreements contain non-disclosure provisions that “would impede the Postal Service’s ability to comply with the OCA’s request” even if the Postal Service did not object to it.<sup>5</sup> Third, the Postal Service argues that responding to the request would be unduly burdensome based on the number of agreements to be reviewed and the need to coordinate with some of the parties to the agreements.<sup>6</sup>

The OCA challenges the Postal Service’s characterization of the services as nonpostal noting that the jurisdictional status of these services has yet to be determined.<sup>7</sup> OCA also takes exception to the Postal Service’s claim that it already described activities under these agreements, arguing that the attachment to

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<sup>2</sup> Objection of the United States Postal Service to Interrogatories of the OCA (OCA/USPS-147a & d, 148a), June 21, 2005 (Postal Service Objection). The Postal Service also filed a motion to accept its objection out-of-time. Motion of the United States Postal Service for Late Acceptance of Objections to Interrogatories of the OCA (OCA/USPS-147.a&d, 148.a), June 21, 2005. The motion is granted.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> OCA Revised Motion at 2-5.

OCA/USPS-53 only addressed some 20 services, leaving some 55-60 agreements that were not discussed.

Regarding the claim of undue burden, OCA replies that the Postal Service cannot avoid devoting some time to preparing the agreements for review. It suggests procedures apparently designed to resolve the jurisdictional status of these services. For example, it suggests that the Postal Service would submit redacted and unredacted copies of the agreements following which participants would be permitted to argue specific redactions be removed upon a showing that the agreement related to jurisdictional activities. These procedures, OCA believes, may greatly reduce the burden claimed by the Postal Service, since a subset of the agreements may be found to be nonjurisdictional.<sup>8</sup>

OCA dismisses the Postal Service's claim that the nondisclosure provisions may preclude filing the agreements with the Commission, arguing that the Commission's responsibilities under the Act may require that such agreements be filed. OCA also notes that the confidentiality of proprietary information can be preserved through the use of protective conditions.<sup>9</sup>

In response, the Postal Service contends that OCA fails to adequately address the merits of its arguments.<sup>10</sup> The Postal Service reiterates its claim that the burden of producing 75-80 agreements would be significant, specifically taking issue with OCA's suggestion that the approximately 80 agreements could be reviewed, redacted, and filed in "a few hours."<sup>11</sup>

The Postal Service also argues that "issues associated with the 75-80 agreements have little relevance," since, even in the unlikely event that OCA were to

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<sup>8</sup> See *id.* at 6-7. The unredacted copies would be submitted under protective conditions. These procedures would apply only to the 75 linking agreements. OCA argues that the agreements underlying Mailing Online, NetPost Certified Mail, NetPost Card Store, and Electronic Postmark should be filed without protective conditions since more is known about these services. *Id.* at 7-9.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> Response of the United States Postal Service to Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-147a and d, and 148a, July 13, 2005, at 2 (Postal Service Response).

<sup>11</sup> *Id.* at 2-3.

uncover accounting or costing errors connected with the services, “there would be no impact on the Commission’s recommended rates in this proceeding.”<sup>12</sup>

*Discussion.* Facially, at the very least, this dispute involves a recurring issue — the jurisdictional status of various services provided by the Postal Service. OCA seeks the underlying agreements for some 80 services (or products) and suggests procedures for resolving their status. Postal Service resists, claiming that the services are nonpostal and, therefore, irrelevant to issues before the Commission.<sup>13</sup> It also argues that it would be unduly burdensome to respond to the request and further that the information sought is proprietary.

At the outset, the Postal Service’s unilateral claim that the services are nonpostal is not dispositive of the issue of relevance, let alone the question of the jurisdictional status of the services. As noted in P.O. Ruling R2005-1/58, “that information is sought about nonpostal services does not render questions irrelevant.”<sup>14</sup> But unlike the interrogatories subject to that Ruling, including OCA/USPS-53, in which OCA sought a description of each service as well as a host of financial data, here OCA requests the underlying agreements for approximately 80 services. The distinction between the two is significant. As a general matter, the interrogatories subject to P.O. Ruling R2005-1/58 sought data concerning “nonpostal” services which, at a minimum, would enable participants to assess whether jurisdictional services were subsidizing “nonpostal” services. In contrast, here OCA seeks the underlying agreements largely for the purpose, it would appear, of attempting to determine the jurisdictional status of services provided thereunder.<sup>15</sup>

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> See Postal Service Objection at 2. In its response, the Postal Service changes the emphasis of its relevance objection, arguing that issues regarding the 75-80 agreements have little relevance to this proceeding. Postal Service Response at 4.

<sup>14</sup> P.O. Ruling R2005-1/58, July 22, 2005, at 6, citing P.O. Ruling R2001-1/42, January 29, 2002, at 7-11.

<sup>15</sup> In a parenthetical comment to interrogatory 147a, OCA states that “[o]ne of the major purposes” of its request is to better understand the activities performed by the parties to the agreement, and to determine whether expenses associated with such activities have been properly accounted for.

While that issue is certainly not unimportant, the question arises whether this is the appropriate forum to determine the jurisdictional status of approximately 80 services which, by all indications, would have little effect on rates recommended in this proceeding.<sup>16</sup> As a practical matter, it is simply not realistic to attempt to resolve that issue, particularly as to some 80 services, in this proceeding. As the Postal Service notes, the Commission has pending before it, in Docket No. RM2004-1, a proposal to amend its rules to define the term “postal service.”<sup>17</sup> On balance, it is administratively more expedient to await the conclusion of that rulemaking, rather than address the issue on an *ad hoc* basis in this proceeding. Moreover, the procedures suggested by OCA to resolve the issue, whereby the Postal Service would submit both redacted and unredacted copies of the agreements (even assuming they would reduce the Postal Service’s burden) would be cumbersome at best.<sup>18</sup>

There is an additional reason, however, to deny OCA’s motion. It has not shown that the relevance of the agreements outweighs the burden imposed on the Postal Service to produce them. In response to the Postal Service’s initial claim of undue burden, OCA states that “[t]he Postal Service cannot avoid spending some time in preparing the requested agreements for review by the Commission.”<sup>19</sup> The statement is accurate as far as it goes, but it does not address the merits of the Postal Service’s burden objection.

In its objection, the Postal Service argued that responding to OCA’s request could easily take “hundreds of hours of effort,” including retrieving the agreements, examining them for proprietary information, and coordinating with the parties to the

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<sup>16</sup> This statement is not intended to minimize the significance of the jurisdictional issue or legitimize the rationale that “nonpostal” activities are, for ratemaking purposes, likely to be lost in the rounding, thus making their regulatory implications inconsequential.

<sup>17</sup> See Postal Service Response at 4.

<sup>18</sup> Circumstances play a role in this ruling. The denial of OCA’s motion on this basis is heavily influenced by the fact that Docket No. RM2004-1 remains pending. If this were not the case, different considerations would be brought to bear. This is not intended as a prejudgment of any issue, but simply that this facet of the Ruling should be read narrowly.

<sup>19</sup> OCA Revised Motion at 6.

agreements.<sup>20</sup> OCA essentially glosses over the Postal Service's claim, asserting that submitting the agreements in redacted form should not take the Postal Service "more than a few hours."<sup>21</sup> The Postal Service counters that a "few hours" might imply that the agreements could be reviewed and redacted in about two and one-half minutes each.<sup>22</sup> The sheer number of agreements at issue makes the reasonableness of OCA's time estimate questionable. While OCA does suggest procedures to resolve the issue, ostensibly designed to reduce the Postal Service's burden, it is not apparent that the burden would be reduced appreciably.

While the motion is denied to the extent that the Postal Service will not be required to produce the agreements, it will be required to provide certain limited information, specifically a description of the services performed (or products provided) under the underlying agreements and certain base and test year data.

The Postal Service takes issue with OCA's parenthetical comment that the information is needed to understand the activities performed by the parties to the contract and the treatment of costs related to such activities, arguing that the activities have already been described in response to OCA/USPS-53 and that further details are irrelevant to this proceeding.<sup>23</sup> OCA responds that this statement is in error since Attachment Two in response to OCA/USPS-53 only describes some 20 services, whereas the instant interrogatories seek approximately 80 agreements. OCA has a fair point. It does not appear that the Postal Service has described the balance of the services requested. The discussion in Attachment Two is somewhat cryptic. It does not describe the services rendered but rather indicates generally that the Postal Service

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<sup>20</sup> Postal Service Objection at 3-4.

<sup>21</sup> OCA Revised Motion at 6.

<sup>22</sup> Postal Service Response at 3.

<sup>23</sup> Postal Service Objection at 2. In addition, the Postal Service asserts that it is unnecessary to examine the agreements to understand the activities performed by the Postal Service. *Ibid.* In its response, however, the Postal Service takes a different tack. There, it argues that under the definition proposed in Docket No. R2004-1 OCA would not need an understanding of the activities performed under the agreement to determine their jurisdictional status. This, the Postal Service contends, "suggests that the agreements may have little relevance to the purpose for which the OCA seeks them." Postal Service Response at 5.

“limit[s] consideration of Affiliates to those that complement our core product offering, generate mail, and/or provide value to our customers.”<sup>24</sup> These may be memorialized in Affiliate Agreements.<sup>25</sup>

P.O. Ruling R2005-1/58 resolved related issues, directing the Postal Service to describe any services not previously described and to provide base year costs and revenues, again to the extent not already furnished. Consistent with that Ruling, the Postal Service is directed to describe the services (or products) provided under the various agreements discussed in Attachment Two under the heading “Affiliates and Alliances.” While the description need not be extensive, it should provide sufficient detail so that the nature of the services (or products) provided is reasonably clear.

The Postal Service suggests that the financial results associated with these services would not affect rates recommended in this proceeding. While that result seems likely, it does not preclude the existence of cross-subsidies. Accordingly, it should also provide base year and test year costs and revenues associated with these services. For purposes of this proceeding, the Postal Service may, if it wishes, submit that information on an aggregate basis by type of agreement, *i.e.*, the types discussed under the heading “Affiliates and Alliances” in Attachment Two.

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<sup>24</sup> Partial Responses of the United States Postal Service to Interrogatories of the OCA (OCA/USPS-43, 46, 51, 52, 53, 54), June 2, 2005, at Attachment Two under the heading “Affiliates and Alliances” (Attachment Two).

<sup>25</sup> The Postal Service also notes that “Affiliates that do not generate revenue are referred to as linking agreements.” It also states that it “has more than 75 linking agreements with companies, such as the PC Postage Vendors and other government agencies.” *Ibid.*

## RULING

1. The Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-147a. and d. and 148.a, July 6, 2005, is denied to the extent that the Postal Service will not be required to produce the requested agreements.
2. As set forth in the body of this Ruling, the Postal Service is directed to provide a description of the services (or products) provided under the agreements and to provide base year and test year costs and revenues associated with those agreements.
3. The Office of the Consumer Advocate Motion to be Permitted to File Revised “Motion to Compel Responses to Interrogatories OCA/USPS-147a. and d. and 148.a.”, July 6, 2005, is granted.
4. The Motion of the United States Postal Service for Late Acceptance of Objections to Interrogatories of the OCA, (OCA/USPS-147.a&d, 148.a), June 21, 2005, is granted.

George Omas  
Presiding Officer