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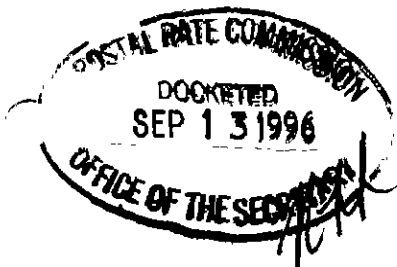
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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

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



SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO OFFICE OF THE
CONSUMER ADVOCATE MOTION TO COMPEL RESPONSES TO
INTERROGATORIES OCA/USPS-48, 53(b) and (c), 54(b) and (e), AND 56(c)
(September 13, 1996)

The United States Postal Service hereby responds to the Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-48, 53(b) and (c), 54(b) and (e), and 56(c). ("OCA Motion"), filed on September 6, 1996. The OCA has not made any arguments which persuasively demonstrate that the requested information should be produced in this docket. Accordingly, the OCA's motion must be denied.

OCA/USPS-48 requested that the Summary Descriptions of USPS Development of Costs by Segments and Components for FY 1994 and FY 1995 be provided in electronic format, despite the fact that these documents were filed in hardcopy form as library references in this case. The OCA states that "it would have thought that the relevance of the request was obvious." *OCA Motion at 2.* It is not at all clear how it is "relevant" to furnish *already available and easily accessible documents* in another format. It may be more convenient; it certainly is not relevant.¹

¹ The OCA also seems to argue that the reference in Commission Rule 26(a) to discovery requests to "inspect and copy any designated documents or *things* which constitute or *contain*" relevant matters covers this situation. In other words, the OCA

The OCA still does not clarify how having the documents in electronic format has anything to do with the specific proposals in this case. On the one hand, the OCA merely says that comparison of electronic versions can be accomplished "much faster and more reliably than using the human eye." *Id.* This may not be true. One of the Postal Service's concerns is the possibility of inadvertent alteration of an electronic document. There is no assurance that a comparison would be reliable so long as the possibility of inadvertent alteration exists. It also is not apparent that a comparison would be faster, given that the existing "electronic version" of the Summary Description is in different formats and different files.²

The OCA also says that "a comparison would assist in verifying that the Postal Service has not overlooked any changes when preparing testimony or interrogatory responses." *Id. at 2.* What changes? Changes in costs, changes in what costs are in what cost components, changes in distribution keys? The fact that the OCA cannot even specify what it is looking for is proof that it is on a fishing expedition. Moreover, in addition to the fact that the Summary Description is already available, it is just what its name implies—a description. Information on

apparently believes that the reference to "things" which "contain" relevant matters means that any document already available in one form can be requested to be produced in any other form. This seems to be a misreading of the rule. A more logical interpretation is that "things" refers to tangible or demonstrative evidence other than documents -- for example, the overflow tubs about which the OCA inquired in this case.

² The OCA has said it will accept multiple files. *See OCA Motion at 4, n. 6.*

Postal Service costs is available from any number of sources in this docket-- for example, the testimony, exhibits, workpapers and interrogatory responses of witness Patelunas.

The OCA also urges that Special Rule 2.E covers the instant request because the rule "does not limit requests to information needed to develop testimony." *Id. at 3*. The OCA goes on to state that "[t]he only reference to testimony relates to setting the deadline for rule 2.E requests with respect to the deadline for submitting final rebuttal testimony." *Id. at 3-4*. This does not appear to be a coincidence. The fact that the deadline for 2.E requests is set with respect to final rebuttal testimony deadlines would suggest that 2.E requests are supposed to be aimed at developing testimony.

Moreover, the OCA's reliance on Presiding Officer's Ruling No. MC95-1/79 is misplaced. An earlier ruling in Docket No. MC95-1 had clearly indicated that special rule 2.E did indeed limit discovery directed to the Postal Service to that necessary for intervenor testimony preparation. In Presiding Officer's Ruling No. MC95-1/73, an OCA motion to compel a response to a discovery request, asking for further explanation of library reference materials used in Postal Service witness Tolley's volume projections, was denied. The Presiding Officer held:

This situation does not bring into play special rule 2.E, which allows for discovery of information available only from the Postal Service in order to enable participants to develop rebuttal testimony. The time for submitting evidence rebutting Postal Service testimony has passed. OCA/USPS-147 does not appear reasonably calculated to lead to the production of evidence in rebuttal to the direct case of a participant other than the Postal Service.

Presiding Officer's Ruling Denying OCA Motion to Compel, Presiding Officer's Ruling No. MC95-1/73, September 21, 1995.

The later ruling cited by the OCA, Presiding Officer's Ruling No. MC95-1/79, said that the earlier ruling (No. MC95-1/73) did not control in the situation immediately at issue because the Commission had issued several Notices of Inquiry, which "could reasonably be expected to affect the interests and needs of participants in a proceeding, including potential 'needs to obtain information... available only from the Postal Service.'" *Presiding Officer's Ruling Denying OCA Motion to Compel Responses to Interrogatories OCA/USPS-152, 156 and 157, Presiding Officer's Ruling No. MC95-1/79, October 5, 1995.* Thus, the later ruling is squarely limited to the situation where specific discovery was tied to specific Notices of Inquiry. In the present instance, there are no similar circumstances. Therefore, in accordance with Presiding Officer's Ruling No. MC95-1/73, OCA/USPS-48 is not legitimate discovery under Special Rule 2.E.

OCA/USPS-53(b) and (c) request "both IOCS estimates and actual costs by craft by sample office by quarter." *OCA Motion at 4.* The OCA further states that it wants the information so that it can "compare IOCS estimates with actual costs as a means of evaluating the reliability of the IOCS." *Id.* Such a broad, general statement concerning why the information is desired does not make the requisite demonstration of relevance to this particular case, nor does it shed any light on how the OCA might use the information to develop testimony under Special Rule 2.E. Furthermore, the Postal Service already has produced, as it always does,

other information from which the parties and Commission can make determinations concerning the reliability of the IOCS. USPS LR-SSR-90, Tables 4-6, contain c.v. estimates and confidence limits reflecting IOCS reliability. Also, the Postal Service has provided detailed information concerning the IOCS in other interrogatory responses and in IOCS documentation.

Although the OCA disclaims any "interest in facility-specific data as a means of evaluating the performance of individual offices," it cannot disguise the fact that a request for "both IOCS estimates and actual costs by craft by sample office by quarter" is indeed a request for facility-specific data. *See OCA Motion at 4.* The OCA disclaimer also does nothing to alleviate the Postal Service's concerns over labor-management relations and competitive considerations expressed in its initial objection. Although the Postal Service appreciates the OCA's expressed willingness to accept the information with finance numbers masked or as a ratio of estimated to actual costs, the OCA still wants this information on an office-by-office basis. This still might tend to reveal facility-specific information. Further, where less than all offices in a CAG are sampled by IOCS, since total labor costs include costs for the entire CAG, estimated costs for a particular sampled office within that CAG will be greater than the actual costs for that office. Thus, it is not clear there is any value in comparing estimated to actual costs on an office-by-office basis. Accordingly, even a slight chance of revealing sensitive facility-specific information is not worth taking.

OCA/USPS-54(c) requested a list of 68 offices not in the FY 1993 IOCS sample, but which advanced to CAGs A and B in FY 1995 and their sample selection probability if the Postal Service could not confirm that these offices had no chance of selection for the FY 1995 IOCS sample. The Postal Service provided a partial response to this interrogatory, stating that, in actuality, there were only 12 such offices which had no chance of selection for the FY 1995 IOCS sample. *See Response of the United States Postal Service to Interrogatories of the Office of the Consumer Advocate (OCA/USPS = 49, 50-52, 53(a), 54-55, 56(a)-(b) and (d)-(e), September 6, 1995.* The Postal Service further stated that although the 12 offices were not included in the IOCS sample, "their labor costs are incorporated in the cost based weighting methodology where costs reflect labor costs for all offices within a CAG stratum." *Id.* Since the 12 offices had no sample selection probability as indicated by the Postal Service's response and since their labor costs are incorporated in the cost based weighting methodology, the request is moot and clearly not relevant. It would seem that the OCA has been provided sufficient information to make whatever point it is trying to make.³

Similarly, OCA/USPS-54(e) requested a list of offices, CAG designations, and reasons for absence from the sampling frame, of any offices in the noncertainty strata that had no chance of selection in the FY 1995 IOCS sample. The Postal Service provided a partial response, stating that "no offices from other

³ Of course, it is not clear what point the OCA is trying to make, much less what that point might have to do with this case.

CAG strata were designed to be added to the sample" and that "the CAG costs include costs for all offices in a CAG." *Id.* Again, the request is moot and clearly not relevant. The OCA needs no further information.

OCA/USPS-56(c) requests that for the finance numbers not in the FY 1995 IOCS sample, the Postal Service give a count of how many had no chance for selection in FY 1996, and also provide the particular finance number for each, the CAG and the reasons why it was absent from the sample. The OCA says the request "seeks to determine whether the Postal Service took steps for FY 1996 to correct frame inadequacies that were clearly present in the FY 1995." *OCA Motion at 6.* The premise upon which OCA seeks to anchor its claim of relevance is faulty. No "frame inadequacies" have been established. *See Response of the United States Postal Service to Interrogatories of the Office of the Consumer Advocate (OCA/USPS = 49, 50-52, 53(a), 54-55, 56(a)-(b) and (d)-(e), September 6, 1995 (responses to numbers 56(d) and 54(c) and (d)).*⁴

⁴ The OCA seeks to further buttress its shaky claims of relevance by referring to a discussion in the Commission's Docket No. MC96-2 Recommended Decision concerning the sampling frame in the market research presented by the Postal Service in that case. In fact, the Commission's discussion of the topic illustrates quite clearly that the issues presented there and those in the instant situation are not comparable. In its MC96-2 Recommended Decision the Commission discussed the "substantial disparity between the number of sample cases that completed screening interviews and the number found eligible for the survey." *PRC Op., MC96-2, at 28-29.* As argued above, no such disparities have been established here. Further, the Commission expressed its belief that the sample sizes in some of the strata were "uncomfortably small for effective use of the ratio estimator." *Id. at 29.* The OCA has made no such claim here.

In addition, the OCA does not specifically discuss the Postal Service's claim concerning the confidentiality and commercial sensitivity of particular finance numbers, and it is unclear whether the OCA has abandoned that part of its request. The Postal Service has not abandoned its arguments on this point. The OCA also claims that it is not seeking FY 1996 cost information. The issue still remains, however, of the relevance of FY IOCS 1996 information that was not used or relied upon for any evidence presented in the Postal Service's case. Expansive discovery of this nature cannot be condoned. The attention of the participants and the Commission should be focused on the real issues presented in this case.

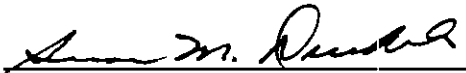
For all of the reasons cited above, as well as the reasons cited in the Postal Service's initial objection, the OCA motion to compel must be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

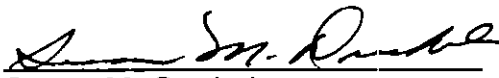
Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Susan M. Duchek

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