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

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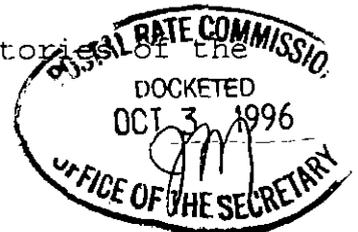
Special Services Fees and Classifications) Docket No. MC96-3

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL RESPONSES TO INTERROGATORIES
OCA/USPS-77 (PARTS d AND e) AND 84 (PART d)
(October 3, 1996)

The Office of the Consumer Advocate (OCA) hereby requests that the presiding officer direct the Postal Service to respond to the interrogatories identified in the caption of this motion. The OCA also requests that the presiding officer rule that discovery by the OCA designed to complete the record (and particularly to correct misstatements in Postal Service library references¹) is permitted under section 2.E of the special rules of practice.

In a rulemaking proceeding captioned "Policy Guidelines for Representation of the Interests of the General Public in Commission Proceedings," Docket No. RM82-2, the Commission stated

¹ See, e.g., Response of the USPS to Interrogatories of the OCA, October 2, 1996, OCA/USPS-78(b).



that one of the functions of the OCA (indeed, the *first* identified function of the OCA) is

to develop a complete and accurate record by :

- (a) Identifying information or data that are needed in addition to those presented by other parties;
- (b) Identifying inaccuracies or fallacies in submitted data or information

Order No. 433, June 1, 1982. The documentation relating to the In-Office Cost System (IOCS) and other cost-estimating systems was, when submitted, and remains incomplete, inaccurate, or fallacious. For example, only one quarter's worth of TRACS data has been provided, and those data cannot even be tested using computer programs submitted by the Postal Service because the data are not, in fact, the data actually used by the Postal Service to develop transportation costs.² Further, even though the documentation underlying the IOCS has now been revised as a result of OCA interrogatories,³ the revised documentation still

² Response of the USPS to Interrogatories of the OCA, September 11, 1996, OCA/USPS-61 (c) and (d); Objection of the USPS to OCA Interrogatories . . . 65(d), (e), . . . , September 9, 1996, at 5: "[A]ttempting to modify the programs to ignore the commercially sensitive information would be unduly burdensome and also would be futile, as the modified programs would produce different results." In other words, not only are the TRACS data incomplete, the data and programs that have been provided are worthless.

³ Notice of the USPS of Filing Revised Pages for Library Reference SSR-90, October 2, 1996.

makes no reference to differential sampling rates for employees at different pay locations of individual finance numbers.⁴

The Postal Service has objected to numerous interrogatories on the ground that special rule 2.E only allows discovery against the Postal Service for the purpose of developing testimony. It is the position of the OCA that special rule 2.E, like the regular discovery rules, allows discovery for the purpose of developing evidence. Responses of the Postal Service can become evidence without the testimony of a witness. It has been the routine practice of the Commission to admit institutional responses of the Postal Service into evidence. Thus, even if the OCA were not under an explicit obligation to identify and rectify incomplete, inaccurate, or fallacious information, it would be entitled—as would any other participant—to submit discovery seeking information available only from the Postal Service.

The OCA has refrained from filing motions to compel with respect to numerous discovery requests pending a ruling on the Service's 2.E objections. The Postal Service has recently requested an explicit ruling on those objections.⁵ The OCA is

⁴ See Response of USPS to Interrogatories of the OCA, October 2, 1996, OCA/USPS-77-80; Library Reference SSR-90 at 14-17 (revised October 2, 1996).

⁵ Reply of the USPS to OCA Comments in Response to POR No. MC96-3/16, October 2, 1996 at 4.

equally desirous of a ruling on this issue. The Postal Service has objected to all the interrogatories that are the subject of the instant motion to compel on the ground that special rule 2.E does not permit them.⁶ A ruling on the instant motion would provide an ideal vehicle for resolving the 2.E issue.

Parts (d) and (e) of interrogatory OCA/USPS-77 request a table of differential sampling rates used at certain pay locations of certain finance numbers for FYs 1996 and 1997. These parts of interrogatory 77 are clearly relevant for the purpose of verifying the Service's responses to parts (a) and (b) of the same interrogatory.⁷ The Service states in those responses that the differential sampling rates for FY 1995 were known before the start of FY 1995 and that such sampling rates are relatively stable from year to year. Providing those sampling rates for FY 1996 (which is over) and for FY 1997 (which has already begun) should be a trivial task, assuming that the response to part (a) of interrogatory 77 is accurate. No burden argument has been made with respect to these questions, and none can be. The Service has already provided the sampling rates for

⁶ Objection of the USPS to OCA Interrogatories OCA/USPS-77(d) and (e), and 84(d), September 30, 1996, at 3.

⁷ See Presiding Officer's Ruling Granting in Part OCA Motion to Compel (Ruling No. MC96-3/16), September 26, 1996, at 6 (with respect to OCA/USPS-56(c)).

FY 1995 without complaint of burden, and, according to the response to 77(a), similar sampling rates for FYs 1996 and 1997 must already exist. There is no question of the Postal Service's having to do a lot of extra work to provide a response. The only meaningful objection of the Postal Service is its 2.E objection.

Interrogatory 84(d) seeks to determine the extent to which a crucial assumption underlying IOCS estimation is violated. As the response to part (b) of interrogatory 84 states, "[T]he method of [IOCS] estimation assumes that 'the sample of offices in each CAG constitutes an equal probability sample.'" (Emphasis added.) This assumption is obviously false. Many offices have changed CAG since the IOCS sample was originally selected, and thus had no chance of selection into the sample of their current CAG. Part (d) of interrogatory 84 seeks to determine how seriously a crucial assumption underlying the IOCS has been violated. Since the Postal Service has refused to say how many offices below CAG B had no chance of selection into the FY 1995 sample (and appears to be resisting a ruling to produce that information),⁸ it is only natural that the OCA would seek that information for other years.

⁸ See September 30 Objection at 3, n.2; Response of USPS to Interrogatories of the OCA, September 6, 1996, OCA/USPS-54(e).

WHEREFORE the OCA requests the presiding officer to direct the Postal Service to respond to interrogatory OCA/USPS-77, parts (d) and (e), and -84, part (d).

Respectfully submitted,



EMMETT RAND COSTICH
Assistant Director

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 3.B(3) of the special rules of practice.



EMMETT RAND COSTICH
Attorney

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October 3, 1996