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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

UNITED STATES POSTAL SERVICE MOTION TO COMPEL
RESPONSES TO INTERROGATORIES
USPS/OCA-T300-35, 36C, AND 38C AND D
(November 15, 1996)

Pursuant to rule 25 of the Rules of Practice and Procedure, the United States Postal Service hereby moves to compel responses to interrogatories USPS/OCA-T300-35, 36c, 38c and 38d, to which the Office of the Consumer Advocate (OCA) filed objections on November 12, 1996.¹

Three of the four subject interrogatories request responses to hypothetical questions. The OCA's response is summarized in the second sentence of the Objection:

The interrogatories at issue postulate scenarios so far-fetched and unrealistic that no probative value could be attached to witness Callow's answers to such questions.

Objection at 1. Phrased in more traditional legal nomenclature, this objection appears to be one of relevance, or that the answers to these interrogatories are incapable of leading to the discovery of admissible evidence. This claim is nonsense, a waste of resources, and would be subject to a motion for sanctions were it posed in a federal court.

¹ Office of the Consumer Advocate Objection to Interrogatories USPS/OCA-T300-35, 36c, and 38c and d (November 12, 1996).

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USPS/OCA-T300-35

As correctly noted in the objection, this interrogatory hypothesizes a before rates cost coverage of 90 percent in the Docket No. MC96-3 test year. The Postal Service has actually projected a 100 percent cost coverage in the test year using fees established in Docket No. R94-1 and the OCA accordingly constructed its alternative fee proposal to generate the same cost coverage.² Based on the actual projection of 100 percent coverage in the test year, the OCA argues that answering the interrogatory would be "pointless" and require speculation. *Id.*

In essence, the OCA's position is that the permissible range of hypothetical questions are defined by the factual bounds of the case. Since by definition, hypothetical questions contain a "combination of assumed or proved facts and circumstances",³ the OCA's position would preclude any hypothetical questions.

The OCA has premised its opposition to the Request in this case on the assertion that fees may only be increased in omnibus rate cases. See, e.g., OCA-T-300 at 18. Interrogatory USPS/OCA-T300-35 simply seeks to test the full ramifications of the OCA's position.⁴ If the OCA responds to the interrogatory by indicating that its alternate fee proposal would also assume a 90 percent cost

² Witness Callow's testimony at first referred to the goal of 100 percent, OCA-T-300 at 18, 25. The most recent revisions (filed November 13, 1996) revise this figure to 101 percent, OCA-T-300 at 18 (as revised).

³ *Black's Law Dictionary*, 5th ed. (1979).

⁴ Unlike witness Callow, OCA witness Thompson did not object but instead provided some further elaboration on this point in her response to USPS/OCA-T200-33 (November 14, 1996); idiosyncrasies in her approach may be addressed in oral cross-examination.

- 3 -

coverage, then we know that the OCA position would, in some circumstances, require that recommended fees not recover their costs. If on the other hand, the OCA responds by indicating that its alternative fee proposal would still seek at least 100 percent cost coverage, then we know that the OCA's position on the revenue generation constraints between omnibus cases has at least some limits. Given that the cost coverage for box fees recommended in R94-1 (115 percent) has eroded to the 100 percent level in the test year in MC96-3, had the Postal Service waited one more year to file the Special Services reform case the hypothetical 90 percent cost coverage may well have been realized; it is, accordingly, far from speculative.

In conclusion, an answer to interrogatory USPS/OCA-T300-35 should be compelled since it tests the limits of the OCA's legal position, while posing facts that could well have been the very ones upon which this case was based. As such, the OCA's objection on grounds of relevance has absolutely no merit.

USPS/OCA-T300-36c

Similarly with respect to interrogatory USPS/OCA-T300-36c, which postulates the use of a FY 1995 rather than a FY 1996 test year, the OCA objection is based upon the factual bounds of the USPS direct case. *Id.* at 2. Interrogatory 36c, as with interrogatory 35, seeks to test the limits of the OCA's position on fee increases outside omnibus cases. Much as interrogatory 35 postulated a 90 percent cost coverage, interrogatory 36c postulates a different test year which would also lead to a different cost coverage, presumably somewhere between the 115 percent

- 4 -

recommended in R94-1 and the current 100 percent. Accordingly, the interrogatory is relevant, proper, and readily answerable, and an answer to it should be compelled.

The OCA attempts to buttress its argument by posing a series of what-if questions that already have a set of workable answers. As examples, the OCA inquires when would the case have been filed, what would the cost coverage have been at that time. Since the interrogatory explicitly states that the FY 1995 test year would apply "in Docket No. MC96-3", the OCA's questions can simply be answered as they are in this docket. The OCA has not, moreover, raised or perfected a burden objection, so the objection should properly be resolved on relevance grounds.

Since interrogatory USPS/OCA-T300-36c is relevant, does not call for speculation, and is readily answered, an answer to it should be compelled.

Interrogatories USPS/OCA-T300-38c and d

Interrogatories USPS/OCA-T300-38, subparts c and d, continue the line of questioning identified above in which the Postal Service seeks to determine the limits of the OCA's position that fee increases are appropriate only in omnibus cases. In these instances, the focus is on information that was unavailable in R94-1. Subpart c simply seeks confirmation that higher CMRA fees may justify higher box fees while subpart d inquires whether new information regarding the high level of CMRA fees "can" be reflected in cost coverages developed in "interim" cases. Both of these questions are directly pertinent to the issues in this case as well as to the broader issue of the OCA's view of the appropriate scope of "interim" cases.

The OCA's objection refers, without citation, to the testimony of another witness as establishing the OCA's position in opposition to interim fee increases and otherwise repeats its legal position. The objection offers no legally cognizable reason why, however, the questions cannot or should not be answered. Accordingly, this motion requests that answers be compelled.

The OCA's final paragraph argues that the interrogatories referenced above are "counter-productive" and "waste valuable Commission time." That they may not prove productive to the OCA's case is, of course, exactly why they should be answered. As for the Commission's time, it is only wasted by this unnecessary motions practice instead of answering directly.

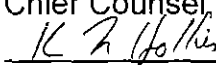
WHEREFORE, the Postal Service asks that answers to interrogatories USPS/OCA-T300-35, 36c, 38c and 38d be compelled.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking




Kenneth N. Hollies

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.

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-3083; Fax -5402
November 15, 1996



Kenneth N. Hollies