

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

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U.S. DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

OPPOSITION OF UNITED STATES POSTAL SERVICE  
TO ADVO MOTION TO COMPEL ANSWERS TO  
INTERROGATORIES ADVO/USPS-T13-2 AND 19(c)  
TO WITNESS RAYMOND  
(March 16, 2000)

On March 9, 2000, ADVO, Inc. (Advo) filed interrogatories Advo/USPS-T13-2 and 19(c) to witness Raymond. Advo Interrogatory 2 asks witness Raymond to provide (a) a full description of the work plan proposed to the USPS for each contract he performed on the Delivery Redesign project, (b) the statement of work and list of deliverables for each contract performed on the project, (c) a list of reports, analyses, and all other documentation he prepared on each contract he performed on the project, and (d) contract initiation and completion dates for each contract he performed on the project. Interrogatory 19(c) requests, with respect to the use of the Engineered Standards to support and update the Street-Time Survey (STS), copies of all requests, proposals, instructions and correspondence with the USPS and/or USPS contractor representatives relating to such use of the ES data.

The Postal Service filed objections to these interrogatories on March 3, 2000, contending that provision of the data requested would lead to the disclosure of much information that is irrelevant to the matters at issue in this proceeding, would impose an undue burden on the Postal Service, and would inevitably require the disclosure of confidential information pertaining not only to the Postal Service, but also to the firms with which the witness has been associated. The Postal Service further contended

that many of the requested documents contain sensitive information that could compromise future negotiations between the Postal Service and its labor unions and that some of the information sought is commercially sensitive insofar as it would provide to competitors of the Postal Service valuable information regarding efficient materials handling practices. With respect to Interrogatory 19(c), moreover, the Postal Service objected to the question as overbroad, and contended that it could require the disclosure of discussions of litigation strategy, or other privileged communications.

On March 9, 2000, Advo moved to compel production of the requested information. Advo contends that the Postal Service's objections not only are wholly without merit, but alleges that "[t]he Postal Service has apparently decided that stonewalling is the only way to protect its testimony from critical analysis." Advo contends that the relevance of the information sought is "indisputable," derides the Postal Service's concerns regarding the potential disclosure of commercially sensitive, confidential information prepared for potential use in future labor negotiations, and dismisses the Postal Service's concerns regarding the burden of production and the inherent difficulty of separating unobjectionable information from intertwined information deserving of protection. Concluding that the Postal Service's objections "border on the frivolous", Advo demands immediate production of all the information it seeks, regardless of the consequences.

The Postal Service hereby opposes the motion to compel. In what follows, the Postal Service will demonstrate that its intentions, as well as the legitimacy of its concerns, have been mischaracterized by Advo. Not only are the Postal Service's concerns regarding the scope and burden of Advo's interrogatories reasonable under the circumstances, but there is no question that the Advo request would require the production of sensitive and confidential business information that is entitled to protection. Furthermore, contrary to Advo's "all or nothing" position, the Postal Service has

been, and continues to be willing to explore reasonable alternatives under which additional information can be disclosed, while giving appropriate regard to the unique nature of and circumstances surrounding the Engineered Standards/Delivery Redesign (ES) Study.

### **Background**

A fair resolution of this and other disputes relating to the ES study data provided by witness Raymond to witness Baron can only be reached if due regard is given to the history and nature of the data sought. This contextual information is important to understanding the type of information at issue, the Postal Service's concerns regarding provision of certain types of ES documentation, and the Postal Service's actual intentions in regard to provision of such information.

First of all, it must again be noted that the ES study was intended to be a comprehensive study of a very wide variety of factors affecting city delivery carrier operations, with the objective of developing work methods and standards which could, if adopted by the organization, significantly improve the efficiency of those operations. As such, the study was not designed to produce information for use in an omnibus rate proceeding, and included observations of a wide variety of variables, such as weather conditions, carrier weight and length of reach, etc., that clearly have no place in this case. Furthermore, much of the documentation produced concerned not typical carrier operations as recorded in the field, but a number of hypothetical scenarios and projections of efficiency gains under alternative work methods and standards which have not been implemented, and may not be implemented, throughout the Postal Service. Some or all of these methods and standards may be the subject of future negotiations with the affected postal labor unions.

As stated by witness Baron, the Postal Service's use of ES data in this proceeding is directly responsive to a recommendation contained in the April, 1999, A. T. Kearney

Study that operational data on carrier operations from this project be considered for use in the Postal Service's city carrier cost analyses. USPS-T-12 at 33, note 43. See also A. T. Kearney, *Data Quality Study, Technical Report #4: Alternative Approaches for Data Collection* (April 16, 1999), at 53-56. After a period of time devoted to examination of this operational data for possible use in updating the Cost Segment 7 analysis historically used in rate proceedings, on November 19, 1999 a final decision was made by Postal Service management to incorporate the data in the rate filing then being prepared. As witness Baron has explained, the data offer significant advantages over the 1986 STS data used in recent rate cases, not the least of which is its ability to reflect the significant changes in the delivery environment that have occurred in the years following the 1986 data collection. As witness Baron notes, "the ES data set provides the best available source of observations describing what city carriers do in today's operating environment, how they perform each function, and what proportions of street time are devoted to the individual tasks." USPS-T-12 at 33.

Prior to the time the decision was made to employ a portion of ES data in the upcoming rate case, however, the ES project had been abruptly suspended, and the extensive records produced had been summarily placed in storage at a location some distance from Postal Service headquarters. Because of the abrupt suspension, the records were not catalogued, ordered, and archived in such a manner as to make them readily usable. The limited amount of data required by witness Baron to update the STS study, however, could be retrieved from electronic files retained separately by witness Raymond, and was so retrieved, in time for incorporation in the Postal Service's direct case. Furthermore, in the days leading up to the filing of the case, both witness Raymond and witness Baron were able to produce documentation of the data provided to witness Baron, and the nature of the data's use in this proceeding. See USPS-LR-157, USPS-LR-158, USPS-LR-159, and USPS-LR-163.

Following the filing of the Postal Service's request, and, in coordination with the heavy demands placed on witnesses Raymond and Baron during the discovery period, witness Raymond has made repeated trips between his residence in Ohio and the Washington, DC area to retrieve the extensive ES documentation from storage, review the records retrieved, and order them such that they once again comprise systematic groupings of documentation. While this effort was underway, the Postal Service hosted a technical conference featuring both witness Raymond and witness Baron. This technical conference, which took place on February 14, 2000, was the earliest technical conference scheduled by the Postal Service in this case.

#### **The Discovery Requests at Issue**

The Raymond/Baron technical conference spurred the filing of discovery requests by a number of parties directed at the ES study, including interrogatories filed by UPS, MPA and Advo. Pending the completion of the efforts underway by witness Raymond to recompile his extensive documentation, the Postal Service had preliminarily identified a number of confidentiality and commercial sensitivity concerns relating to documents potentially responsive to various interrogatories. Some, but not all, of these concerns stemmed from the fact that information relevant to the Postal Service's use of ES data in this case appear often to be intermingled with other irrelevant information, and with information that is confidential and commercially sensitive. With respect to the pending interrogatories, including the Advo, Inc. interrogatories now at issue, the Postal Service had no choice but to raise its concerns at the appropriate times, in the form of objections to certain requests. At the same time, the Postal Service and its witness have continued to review the recompiled documentation to refine its objections and possibly to produce additional documentation.

Contrary to Advo's allegations, the course of events outlined above does not support Advo's contention that the Postal Service has set out to stonewall the produc-

tion of additional information regarding the study, to the extent such additional information should be required. Moreover, contrary to Advo's contention that the requested information "should have been provided" when the Postal Service filed its case (Advo Motion at 1), no support for this assertion can be found in the Commission's rules of practice and procedure, which nowhere require provision of contractual statements of work, lists of documents produced, and the like.

The Postal Service's effort to reconstitute the ES documentation has made substantial progress since the filing of its objections to the Advo interrogatories. In this regard, the Postal Service has discovered that it and its witness possess very little documentary information that would be responsive to Advo interrogatory 19(c). Given this circumstance, the Postal Service is prepared to withdraw its objection to this question, provided that the Postal Service is allowed to follow the customary practice of redacting personal names, and similar nonessential information in order to protect personal privacy of individuals not involved in this proceeding.

With respect to Advo interrogatory 2, the Postal Service maintains that its objections were well-founded. Because the contracts under which Mr. Raymond conducted studies for the Postal Service have been far broader in scope than would have been necessary to collect the relatively limited amount of data ultimately provided to witness Baron for use in this case, to provide the requested details of the full scope of the original work plans, the statements of work, and lists of deliverables would inevitably require the disclosure of confidential information developed by the Postal Service pursuant to the primary purpose of the ES study: to develop enhanced time standards and work methods for city delivery carriers which would improve future carrier operations, provided future consultations and/or negotiations with the affected labor unions allowed for their use. Similarly, to disclose a full listing of all reports, analyses and all other documentation prepared on each contract, as requested in subpart (c) of this

interrogatory, would be to prematurely disclose to the affected unions the types of information being developed. It is equally clear that to include in this Opposition a detailed listing of the specific documents at issue, together with a description of their contents and all related privileges, as suggested in the Advo Motion at 6, would be to bring about the very premature disclosure that the Postal Service seeks to avoid.

Faced with this difficult circumstance, Advo's response is to indulge in righteous indignation and clamor for the full production of the documentation it seeks. The Postal Service believes, and is confident that the Commission will agree, that a more reasonable alternative course is available. Despite Advo's failure to suggest it, the application of strict protective conditions could permit limited and protected disclosure of the information sought, without threatening to undermine the legitimate commercial interests of the Postal Service. The Presiding Officer only yesterday chose to pursue this course in regard to the disclosure of other confidential and sensitive material pertaining to the ES study. See Presiding Officer's Ruling No. R2000-1/15 (March 15, 2000). While the Postal Service has not yet undertaken the considerable burden involved in producing the descriptions and listings sought in Advo interrogatory 2, we believe that such information could be produced in a reasonable amount of time (perhaps a week) if the Postal Service were allowed, when necessary, to list categories of similar documents (such as hundreds of daily data collection reports transmitted from field data collectors) rather than be required to list each individual document produced.

The Postal Service would be willing to provide such information under appropriate protective conditions.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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March 16, 2000

**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.

  
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