

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

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POSTAL RATE AND FEE CHANGES, 2000)

POSTAL RATE COMMISSION
DOCKET NO. PR 2000-1

ASSOCIATION OF PRIORITY MAIL USERS, INC.
MOTION TO COMPEL UNITED STATES POSTAL SERVICE TO
PRODUCE INFORMATION REQUESTED IN INTERROGATORIES APMU/UPS-T34-2, 4,
5, 6, 7, 8a, 8c, and 14 TO WITNESS MAURA ROBINSON
(March 23, 2000)

Pursuant to section 25(d) of the Rules of Practice of the Postal Rate Commission, the Association of Priority Mail Users, Inc. ("APMU") hereby moves the Presiding Officer to order the United States Postal Service to answer interrogatories APMU/USPS-T34-2, 4, 5, 6, 7, 8a, 8c, and 14, filed on February 28, 2000. A copy of these interrogatories is attached hereto as Attachment "A." The Postal Service filed objections to these interrogatories on March 9, 2000.

APMU submits that the requested information is highly relevant to the determination of proper rates for Priority Mail and that none of it is "commercially sensitive" as the Postal Service alleges or, in the alternative, if the Postal Service were to demonstrate clearly that any of the requested information is "commercially sensitive," this "commercial sensitivity" can be addressed by the protection afforded by section 25(f) of the Rules of Practice of the Postal Rate Commission and the information should be produced subject to appropriate protective conditions.

THE DISCOVERY REQUESTS AND OBJECTIONS

As a basis for the requested above-average 15 percent rate increase for Priority Mail, the Postal Service relies heavily upon an increase in the Emery Worldwide Airlines ("Emery")

contract costs from BY 98 to Test Year Before Rates of \$209,006,000. The interrogatories propounded by APMU, including those objected to by the Postal Service, seek to probe the specific cost items driving this huge increase. The interrogatories objected to by the Postal Service are attached hereto, but, in general, they ask for the following information: lift capacity provided by Emery, the conditions under which non-Emery lift capacity may be used and fuel surcharges charged by Emery (APMU/USPS-T34-2); whether and by what means Emery transports all Priority Mail between the two regions covered by the Priority Mail Processing Center (PMPC) contract (APMU/USPS-T34-4); the means (ground or air) by which Emery transports Priority Mail between certain paired cities (APMU/USPS-T34-5); how Priority Mail originating in selected exemplar cities is transported to the PMPC (APMU/USPS-T34-6); how Priority Mail that originates outside the areas served by the PMPCs and addressed to the same selected exemplar cities would be transported (APMU/USPS-T34-7); performance data for First Class mail and Priority Mail that failed to meet its delivery standard (APMU/USPS-T34-8a, c); and whether any of the PMPCs are equipped to sort Priority Mail on a mechanized basis and whether there are plans to add such equipment to any PMPCs (APMU/USPS-T34-14).

ARGUMENT

Proposed Stipulation

One reading of the objections interposed by the Postal Service could be that it is taking the position that the contract with Emery is exclusively a fixed price per piece contract and that, since the Postal Service is charged only one price per piece regardless of Emery's costs,

all costs incurred by Emery are irrelevant. Indeed, if the Postal Service were to stipulate that the contract with Emery is exclusively a fixed price per piece contract and that all payments to Emery are exclusively for per piece charges set out in the original contract, and the price of the contract to the Postal Service has and could never be increased or supplemented during the contract period, and that there are no claims by Emery against the Postal Service under the contract and that there are not now nor have there ever been any extra payments nor any basis for extra payments by the Postal Service to Emery, APMU would agree to withdraw the interrogatories that the Postal Service has here objected to.¹ If the Postal Service is unable to make such a stipulation, then the costs incurred by Emery, *i.e.*, the costs covered by these interrogatories, are the costs driving the Postal Service's substantially above-average rate increase request for Priority Mail and are clearly relevant and discoverable, as discussed below.

Relevance

Section 25(c) of the Rules of Practice of the Postal Rate Commission requires that the bases for objections to interrogatories "shall be clearly and fully stated." In spite of this clear requirement for specificity, the Postal Service has couched its objections in the broadest of terms stating that the information is not relevant followed by blanket statements such as "[u]nder the PMPC contract, operational details such as these are solely the concern of the contractor, and have no bearing on the costs incurred by the Postal Service in the base year or

¹ This offer to withdraw the interrogatories would not extend to interrogatory APMU/USPS-T34-8a and 8c which deals with delivery standards rather than costs.

test year.” In effect, the Postal Service is attempting to use the contract with Emery as a shield to hide the details of the very cost figures on which it relies to justify its substantially above-average rate increase for Priority Mail. The decision to contract out mail processing and transportation functions does not immunize those expenses from discovery. To sustain such a notion would defeat the purpose of the discovery rules of this Commission by denying APMU and other intervenors the opportunity to test the evidence on which the Postal Service relies.

No attempt is made by the Postal Service to give specific reasons as to how details concerning the costs it relies on in this action are irrelevant to this action. Clearly, Section 25(c) places the burden of making this showing on the objecting party, the Postal Service. On this basis alone, the objections should be found “not to be valid” (Section 25(d)).

Likewise, the Postal Service’s failure to specify the basis for its objection that the information is irrelevant is telling. The Postal Service has interposed an objection to each of the interrogatories at issue here which, paraphrased, says “Emery’s costs have no bearing on the costs incurred by the Postal Service.” The implication from the objection is that all of Emery’s costs are borne by Emery and not passed through to the Postal Service, *i.e.*, that the contract is a fixed unit cost contract. On the other hand, the Postal Service’s rate request is based on increases in costs to the Postal Service from this very same contract in the amount of \$209,006,000, an amount which appears to be disproportionate to the changes in volume of Priority Mail pieces processed by Emery. APMU has propounded other interrogatories to learn if, in practice, the Emery contract really operates as a fixed unit cost contract, but even if it did, the Emery costs are being used by the Postal Service to justify its request, raising legitimate questions about the costs being incurred. The Postal Service should not be allowed

to preclude an examination of these costs by hiding the information behind an outsource contract and then turn around and use the same costs to justify its request.

Furthermore, the Emery contract will expire next year during the pendency of the period in which the requested rates will be in effect. At that point, assuming that the Postal Service will take all reasonable steps to control its costs, the cost increases occurring under the Emery contract would likely be brought under control.

APMU is not arguing that the Emery contract costs are not related to Priority Mail, as clearly they must be. The issue is whether these extraordinary cost increases are about to come to an end. The Postal Service can be expected to take decisive action to control its costs at the end of the current PMPC contract on February 23, 2002. Given this probable scenario, APMU will argue to the Commission, *inter alia*, that Priority Mail rate increases be tempered due to the expectation that Priority Mail costs soon will be brought under control.

Section 25(a) defines the scope of interrogatories by providing that they may seek “information calculated to lead to the discovery of admissible evidence.” The interrogatories at issue here seek information concerning the details of the cost increases the Postal Service relies upon in this action. This information may well be admissible in its own right and clearly, at the least, is “calculated to lead to the discovery of admissible evidence.”

Accordingly, the objections should be found “not to be valid” and overruled and an Order entered compelling the Postal Service to respond to each interrogatory separately and fully within 10 days of said Order.

Interrogatory APMU/USPS-T34-8a and 8c seeks performance data for First-Class mail and Priority Mail that failed to meet its delivery standard. This information is clearly relevant because performance data has always been considered by the Commission in setting coverages.

Commercial Sensitivity

In addition to objecting on the grounds of relevance, the Postal Service has also asserted that each of the Interrogatories at issue here seeks information that is “commercially sensitive.” Little, if any, detail is given as to how this information may be “commercially sensitive.” The Postal Service does not assert that the information is not calculated to lead to the discovery of admissible evidence. Therefore, the information is discoverable. The question raised by the objection is whether this discoverable information can be protected from disclosure.

In evaluating this objection, the Presiding Officer “must balance the potential competitive harm of disclosure against the strong public interest in favor of empowering each participant to obtain all the evidence needed to prove its case.” Ruling No. R97-1/62, at 8. “Because of the strong public policy favoring public disclosure, the burden of establishing the applicability of an evidentiary privilege is on the party asserting it.” *Id.*, quoting Commission Order No. 1025 (August 17, 1994) at 11. The Postal Service has not met this burden here. Instead, it has simply made blanket statements such as “[t]he Postal Service further objects on the ground that the answers to these questions may reveal commercially sensitive information of the contractor.” No attempt is made to indicate how the information may be sensitive or what, if any, harm might be suffered by the contractor. In fact, the objection itself speaks only


in terms of possibilities (“may reveal”). Given this broad, conclusory statement, the objection should be found “not to be valid.”

While not expressed as such, this objection could be read as a request for a Protective Order under Section 25(f). However, even if viewed as a request under Section 25(f), the objection/request should be denied. Section 25(f) states that the Presiding Officer may (1) order answers “on such terms and conditions as are just” or (2) may make a protective order “for good cause” limiting interrogatories “as justice requires” to protect a party from “undue annoyance, embarrassment, oppression, or expense.” The Postal Service makes no attempt to show what terms and conditions would be just. Nor does it set forth any “good cause” for limiting interrogatories or make any attempt to show what “justice requires” to protect the Postal Service from annoyance, embarrassment, oppression, or expense.” Instead, if the objection is read as a request for Protective Order, the Postal Service seeks a blanket Protective Order protecting it from disclosing any information under any terms. Since the Postal Service has failed to satisfy the requirements of Section 25(f), no Protective Order should issue and the objections based on “commercial sensitivity” should be overruled.

CONCLUSION

WHEREFORE, the premises considered, APMU requests that an order be entered compelling the Postal Service to respond separately and fully to interrogatories APMU/USPS-T34-2, 4, 5, 6, 7, 8a, 8c, and -14, filed on February 28, 2000.

Respectfully submitted,



William J. Olson

John S. Miles

WILLIAM J. OLSON, P.C.

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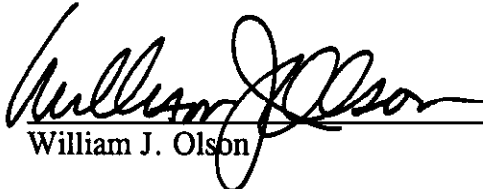
McLean, Virginia 22102-3860

(703) 356-5070

Counsel for Association of Priority Mail Users, Inc.

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.



William J. Olson

March 23, 2000

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WASHINGTON, D.C. 20268-0001

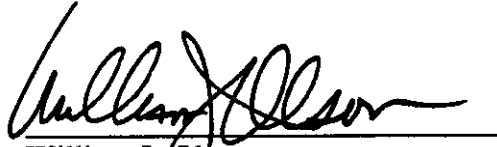
POSTAL RATE AND FEE CHANGES, 2000)

Docket No. R2000-1

ASSOCIATION OF PRIORITY MAIL USERS, INC.
FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO UNITED STATES POSTAL SERVICE
WITNESS MAURA ROBINSON (APMU/USPS-T34-1-15)
(February 28, 2000)

Pursuant to sections 25 and 26 of the Rules of Practice of the Postal Rate Commission, the Association of Priority Mail Users, Inc. hereby submits interrogatories and requests for production of documents. If necessary, please redirect any interrogatories and/or requests to a more appropriate Postal Service witness.

Respectfully submitted,

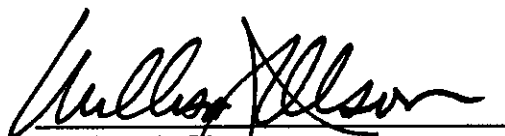


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William J. Olson

February 28, 2000

APMU/USPS-T34-1.

Under the contract currently in effect between the Postal Service and the commercial airlines:

- a. What is the non-distance-related per-pound terminal handling fee?
- b. What is the distance-related per-pound per-mile fee?
- c. What fuel surcharge (if any) does the Postal Service pay?
- d. When did the current contract begin and when does the contract expire? If the contract will expire prior to the end of TY 2001, what estimated rate(s) did you and the roll-forward model use?

APMU/USPS-T34-2.

Under the contract with Emery Worldwide Airlines (“Emery”) referred to in your testimony at pages 12-13:

- a. How many planes are provided, and how much lift capacity is provided, by Emery?
- b. Is the lift capacity provided by Emery used solely to transport Priority Mail between PMPCs in the Northeast and Florida?
- c. Unless your answer to preceding part (b) is an unqualified affirmative, please describe fully how the lift capacity provided by Emery is used.
- d. When the PMPCs operated by Emery have Priority Mail destinating to cities or areas not served by Emery’s own aircraft, please explain the following:

- i. When and under what conditions does Emery turn the mail over to the Postal Service at the nearest AMF for transportation under the Postal Service's contracts with the commercial air carriers?
 - ii. When and under what conditions does Emery contract with other third-party air carriers to transport the mail?
- e. Does the Postal Service pay Emery a fuel surcharge when oil prices increase? If so, how much is called for under the contract, and how did you adjust for this in the roll-forward model program for TY 2001?

APMU/USPS-T34-3.

Other than air transportation provided under the terms of the PMPC contract, does the Postal Service pay Emery separately for any air transportation provided by Emery? If so, please explain fully and state how much.

APMU/USPS-T34-4.

Within each of the two regions covered by the PMPC contract (*i.e.*, Florida and the Northeast), does the contractor transport all Priority Mail between the PMPCs?

- a. If your answer is affirmative, is the transportation within each region by ground, by air, or both?
- b. Regarding intra-regional PMPC transportation, are there any times or conditions under which the contractor carries any other class of mail? If so, please provide these times and conditions.

- c. Are there any times or conditions under which contractor-provided surface transportation can carry other non-mail loads, or are all of the contractor's vehicles used under the contract dedicated solely to mail?
- d. Does the Postal Service have any data or other information regarding the capacity utilization of contractor-provided trucks used to transport Priority Mail within Florida and the Northeast? If so, please provide all such information.

APMU/USPS-T34-5.

For Priority Mail that originates and destines in areas served by PMPCs in the following cities, please indicate whether the contractor provides transportation by ground or by air.

- a. Miami-Jacksonville
- b. Miami-Orlando
- c. Jacksonville-Orlando
- d. Nashua-Pittsburg
- e. Philadelphia-Rochester

APMU/USPS-T34-6.

Please explain how Priority Mail that originates in the following cities is transported to the PMPC, stating the route followed, the mode of transportation, and whether transportation is provided by the Postal Service or the contractor. Also, please indicate the PMPC to which the mail would be taken regarding each city. For purposes of your answer, assume that each

piece of Priority Mail is addressed to a city outside the two PMPC areas, and is west of the Mississippi River.

- a. Burlington, VT
- b. Pensacola, FL
- c. Ft. Myers, FL
- d. Albany, NY
- e. Providence, RI

APMU/USPS-T34-7.

Explain how Priority Mail that originates outside the areas served by the PMPCs (*e.g.*, west of Ohio) and addressed to each of the five cities listed in APMU/USPS-T34-6 would be transported. That is, to which PMPC would the mail flow, and, from the PMPC, how and by whom would the mail be transported to the destinating city?

APMU/USPS-T34-8.

- a. Testimony of witness Tayman (USPS-T-9), at page 9, Table 7, provides EXFC quarterly performance data for First-Class Mail having overnight, 2-day and 3-day delivery standards. For PQ 01 FY 1998 through PQ 04 FY 1999, please provide available EXFC data on the tail of the distribution separately for First-Class Mail with (i) an overnight delivery standard, (ii) a 2-day delivery standard, and (iii) a 3-day delivery standard. For example, for First-Class Mail

that failed to meet its delivery standard, how many days elapsed before it actually arrived?

- b. For Base Year 1998, please provide quarterly performance data for Priority Mail as developed from the independent PETE system.
- c. Please provide available data on the tail of the distribution for Priority Mail with (i) an overnight delivery standard, (ii) a 2-day delivery standard, and (iii) a 3-day delivery standard. For example, for Priority Mail that failed to meet its delivery standard, how many days elapsed before it actually arrived?

APMU/USPS-T34-9.

- a. Using all performance data in the possession of the Postal Service, please provide all available evidence which indicates that delivery performance of Priority Mail exceeds the delivery performance of First-Class Mail.
- b. Using all performance data possessed by the Postal Service, please provide all available evidence that delivery performance of First-Class Mail exceeds the delivery performance of Priority Mail.

APMU/USPS-T34-10.

Please refer to your Attachment J, page 1.

- a. For the volumes of Priority Mail shown in Attachment J, please indicate the number or percentage of pieces for which delivery was actually confirmed by scanning the piece.

- b. For those pieces for which delivery was actually confirmed, please indicate the percentage which received (i) overnight delivery, (ii) 2-day delivery, (iii) 3-day delivery, and (iv) delivery in more than three days.

APMU/USPS-T34-11.

Please refer to your testimony on page 6, lines 9-14. For Airborne, Federal Express, United Parcel Service, and any other competitors for which the Postal Service has information, please provide summary information showing which competitors offer guarantees (specify), free insurance (specify amount), free track-and-trace, and any "other services" (specify) referred to in your testimony which the Postal Service does not offer for Priority Mail, specifying in detail what those guarantees, insurance amounts and other services are.

APMU/USPS-T34-12.

Please refer to Attachment E, line (c) to your testimony. The increase in Emery contract costs from BY 98 to Test Year Before Rates is indicated to be \$209,006,000.

- a. How much of this increase is the result of increased volume of Priority Mail expected to be handled by Emery through the PMPC network?
- b. How much of this increase is the result of additional airlift supplied by Emery?
- c. How much of this increase is the result of higher per unit fees which the Postal Service will pay to Emery?
- d. If your answers to the preceding questions do not explain all of the \$209,006,000 increase, please provide a detailed explanation for the remainder.

APMU/USPS-T34-13.

Have any of the Postal Service's costs under the contract with Emery been capitalized in one year and written off over subsequent years? If so, please specify the amount, the purpose, and the period used for amortization.

APMU/USPS-T34-14.

Are any of the PMPCs equipped to sort Priority Mail flats on a mechanized basis (*e.g.*, with a flat sorting machine), or are flats sorted manually at every PMPC? Please specify which PMPCs use flat sorting equipment, and specify any other PMPCs for which such equipment is planned (including when).

APMU/USPS-T34-15.

In what month of what year did the first PMPC become operational? In what month of what year did the last (tenth) PMPC become operational?

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000)

Docket No. R2000-1

AMAZON.COM, INC.
NOTICE OF APPEARANCE
(March 23, 2000)

Please enter the appearance of William J. Olson and John S. Miles as counsel for Amazon.com, Inc. as follows:

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Tel: (703) 356-5070
Fax: (703)356-5085
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Tim Leslie, Esquire and Shawn Childs of Amazon.com, Inc. will continue to be the persons designated to received service of documents in this proceeding.

Respectfully submitted,

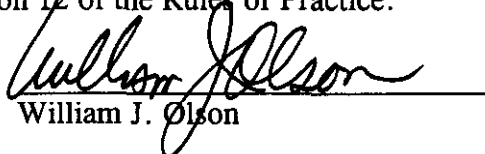


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Counsel for Amazon.com, Inc.

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William J. Olson

March 23, 2000