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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

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

POSTAL RATE AND FEE CHANGES, 2000)

Docket No. R2000-1

ASSOCIATION OF PRIORITY MAIL USERS, INC.
MOTION TO COMPEL UNITED STATES POSTAL SERVICE TO
PRODUCE INFORMATION REQUESTED IN INTERROGATORIES
APMU/USPS T34-33, 34, 35, 36, 37, 38, 39, 41, AND 42
TO WITNESS MAURA ROBINSON
(March 31, 2000)

INTRODUCTION

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-T34-33, 34, 35, 36, 37, 38, 39, 41, 42, filed on March 7, 2000. The Postal Service filed its objections to this interrogatories on March 17, 2000.

APMU submits that (i) the requested information is highly relevant to the determination of proper rates for Priority Mail; (ii) that any burden experienced by the Postal Service would be outweighed by the relevance and probative value of the requested information; (iii) the Postal Service has failed to establish that the information is privileged; and (iv) none of the information requested is "commercially sensitive" as the Postal Service alleges or, in the alternative, if the Postal Service were to clearly demonstrate 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

The interrogatories propounded by APMU, including those objected to by the Postal Service, seek to probe and evaluate the specific items driving the Postal Service's requested average 15 percent rate increase for Priority Mail, the reasons underlying the fact that the Postal Service's rate proposal indicates that PMPC costs will increase by 72 percent while volume increases by only 16 percent, as well as other issues relevant to Priority Mail, such as service. The interrogatories objected to by the Postal Service are attached hereto. In general, they ask for the following information, and the Postal Service has interposed the following grounds of objection, discussed below:

1. SERVICE STANDARDS. APMU/USPS-T34-33, 34, 35, and 36 ask the Postal Service to "provide the percentage meeting service standards, and indicate the source of the data used to compute the percentage" from Priority Mail that originated and destined within the PMPC Network (Interrogatory T34-33), that originated and destined outside the PMPC Network (Interrogatory T34-34), that originated outside and destined within the PMPC Network (Interrogatory T34-35), and that originated within and destined outside the PMPC Network (Interrogatory T34-36).

Postal Service objection: Relevance.

2. IG REPORT ON PMPC NETWORK. APMU/USPS-T34-37 asks the Postal Service to provide as a library reference a copy of the Inspector General's report, *Priority Mail Processing Center Network* (September 24, 1999) DA-AR-99-001.

Postal Service objection: Commercially sensitive information.

3. FINAL CALENDAR YEAR ADJUSTMENT TO PMPC NETWORK AGREEMENT. APMU/USPS-T34-38 asks whether the Postal Service has negotiated a final

calendar year 1999 Network operations adjustment under the Supplemental Letter Agreement between the Postal Service and Emery and, if so, to provide information about the additional payment.

Postal Service objections: confidential, trade-secret, commercially sensitive business information.

4. EXCESSIVE PAYMENTS TO COMMERCIAL AIRLINES. APMU/USPS-T34-39 asks the Postal Service to provide a detailed explanation as to why the Postal Service finds it beneficial for the PMPC contractor to pay a (reimbursable) rate to commercial airlines for Priority Mail that exceeds the rate paid under the USPS air system contract.

Postal Service objections: Relevance, confidential, trade-secret, commercially sensitive business information, intrudes into managerial prerogatives, contains information not made publicly available by the Postal Service.

5. EXCESSIVE PAYMENTS FOR PMPC PROCESSING. APMU/USPS-T34-41 asks the Postal Service to confirm that additional costs have been incurred by virtue of the Priority Mail Processing Center Network instead of processing Priority Mail in-house, to confirm or indicate the amount of the additional costs so incurred, and to give an estimate of the increased costs of this category that Postal Service believes will be incurred in Test Year 2001.

Postal Service objections: Relevance, contains information not made publicly available by the Postal Service.

6. IG AUDITS AND REPORTS. APMU/USPS-T34-42 asks the Postal Service to provide as a library reference copies of any other audits or reports on Priority Mail by the Inspector General.

Postal Service objections: Relevance, burden, overbreadth, commercial sensitivity and privilege.

ARGUMENT

Relevance (Objections to Interrogatories T34-33, 34, 35, 36, 39, 41, 42)

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 by stating that the information is not relevant with no further explanation except (objection to interrogatory 33 through 36) where it added the blanket conclusory statement that “[c]urrent and proposed Priority Mail rates are not specific to whether particular mail pieces originate and/or destinate within the PMPC Network, and thus PMPC-specific performance figures would add little to the record of this case.” (Objection, p. 1). No attempt is made by the Postal Service to give specific reasons as to how details concerning the service achieved via the PMPC Network is irrelevant, as improving service was one of the reasons for spending additional money on a dedicated Priority Mail Network. Section 25(c) places the burden of making the showing of irrelevance on the objecting party, the Postal Service. On this basis alone, the objections should be found “not to be valid” (Section 25(d)).

By the vehicle of this discovery objection, the Postal Service would eliminate a significant portion of this case from examination and probing. It has made broad statements, such as that Priority Mail rates are not dependant on whether the mail pieces originate or destinate within the PMPC Network, that the (reimbursable) rate the PMPC contractor pays to

commercial airlines is not relevant to the test-year and base year costs at issue in this proceeding, that comparisons of the cost of processing Priority Mail through the PMPC Network to costs that would have been incurred if it had been processed in-house are not relevant to the actual and projected costs in this proceeding, and that copies of audits or reports on Priority Mail by the Inspector General are not relevant, as if these statements set forth established facts and, the Postal Service argues, these facts should be accepted and are not to be inquired into by the Commission or the Parties. Based on these asserted “facts,” the Postal Service declares these areas to be beyond discovery.

Interrogatories 33, 34, 35, and 36 seek performance data for Priority Mail originating and destinating within and without the PMPC Network. The Postal Service objects to these interrogatories on grounds of relevance by asserting that “Priority Mail rates are not specific to whether particular mail pieces originate and/or destinate within the PMPC Network....” This objection appears to miss the point of the interrogatory, the immediate concern of which is performance. Delivery performance is an important factor underlying value of service, and is appropriately considered by the Commission in establishing rates and setting coverage factors. *See Docket No. R97-1 Op. & Rec. Dec.*, ¶5308 (May 11, 1998). In fact, in Docket No. R97-1, the Commission noted, as one of its bases for “recommending a somewhat reduced proportional contribution to institutional costs by Priority Mail” (*Id.* at ¶5309) that it did not appear that “standards of service are likely to be enhanced as a result” of “implementation of processing through the PMPC Network.” *Id.* at ¶5308. Interrogatories 33, 34, 35, and 36 seek information on the delivery performance of Priority Mail broken down to mail handled within and without the PMPC Network and mail going to and from the PMPC Network. Information on delivery performance is clearly relevant as it is an element considered by the Commission in determining the proper coverage factor. The breakdown is particularly useful because it will allow a comparison between PMPC Network and non-PMPC Network Priority Mail. This comparison is relevant to assessing whether the costs specific to the PMPC

Network system derive any justification from the level of delivery performance and to anticipating whether the Postal Service is likely to extend the PMPC Network contract. In fact, a Postal Service witness has claimed in filed responses that the “PMPC contract was awarded as a pilot test of an approach for improving the service delivery for Priority Mail” and “*there has been measurable improvements in Priority service with the PMPCs....*” (Response of United States Postal Service witness Kingsley to interrogatory APMU/USPS-T10-1(d), p. 3). APMU seeks to test this representation. Further, since the PMPC Network contract will lapse during the pendency of the rates requested in this proceeding, and a significant portion of the costs attributed to Priority Mail are determined by this contract, the Commission should not be deprived of information that would be relevant in the likely event that the Postal Service acts to control Priority Mail costs.

The Postal Service objects that APMU’s request, in interrogatory 39, for the Postal Service’s reason for agreeing to allow the PMPC contractor to pay a (reimbursable) rate to commercial airlines which exceeds the rate paid under the USPS air system contract is “not relevant to the test-year and base year costs at issue in this proceeding.” The Postal Service does not indicate the basis for this assertion. APMU submits that this information is relevant to determining whether the air transportation costs paid under the PMPC contract are proper, whether those costs can be reduced in future years and, in particular, whether the costs are likely to continue in the future.

The PMPC Network was established, as an experiment, to ascertain whether detached, dedicated Priority Mail facilities could and would improve service. The PMPC Network clearly has come with a high (and increasing) cost. The question is whether there is a meaningful trade-off, in this instance, between cost and service, or are Priority Mail users simply paying more for what is essentially the same service. Questions about whether the PMPC Network has achieved its intended result are fair game.

APMU's interrogatory 41 stems from the Inspector General's estimate that processing Priority Mail through the PMPC Network cost the Postal Service \$101 million more than it would have cost to process the same volume of Priority Mail in-house. The interrogatory seeks to have the Postal Service either confirm the accuracy of this estimate or provide its own estimate of the potential cost savings of bringing the processing in-house. This information is relevant to assessing whether the costs specific to the PMPC Network system are higher, lower or equivalent to in-house processing costs and to predicting whether the Postal Service is likely to extend the PMPC Network contract on the same terms.

In interrogatory 42, APMU has requested any other Inspector General audits and reports on Priority Mail. The Postal Service has interposed a broad objection "on grounds of relevance" and states that the "request is far to broad. Much of the auditing by the Inspector General involves operations at particular facilities and other issues beyond the scope of this proceeding." First, audits and reports by the Inspector General "on Priority Mail" are obviously relevant to assessing the cost and performance data the Postal Service is proffering as the basis of its request for a disproportionate increase for Priority Mail rates. If there are specific reports or audits the Postal Service deems to be "beyond the scope of this proceeding," the burden is on the Postal Service to identify them and state the basis for this assertion. A blanket exemption of all IG reports and audits is too broad and will result in valuable and relevant information being withheld. (Nevertheless, APMU is willing to narrow its request, as discussed below under "Undue Burden.")

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,” overruled and an Order entered compelling the Postal Service to respond to each interrogatory separately and fully.

**Commercial Sensitivity
(Objections to Interrogatories 37, 38, and 42)**

In addition to objecting on the grounds of relevance and undue burden, the Postal Service has also asserted that interrogatories 37, 38 and 42 seek information that is “commercially sensitive”, “trade-secret” or “confidential.”¹ 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 issue 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.” Presiding Officer 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 14. The Postal Service has not met this burden here. Instead, it has simply made blanket statements that the interrogatories request commercially sensitive information. For instance, in objecting to interrogatory 37, the Postal Service states the “unredacted version [of the Inspector General’s report on the PMPC Network] would disclose commercially sensitive information.” In objecting to interrogatory 38, the Postal Service states that the provision of information concerning additional payments it may make to the PMPC contractor, Emery, “would reveal confidential, trade-secret,

¹ The Postal Service has described the information as “commercially sensitive” or “trade-secret” or “confidential” without making a distinction between these three categories. Therefore, they are being treated as one class of objection for purposes of this response.

commercially sensitive business information....” With regard to interrogatory 39, the Postal Service has objected that the provision of “detailed contract information” concerning the reimbursable rate the PMPC contractor pays for commercial airline transportation of Priority Mail “would reveal confidential, trade-secret, commercially sensitive business information.” In objecting to interrogatory 42, the Postal Service objects to providing *any* reports or audits on Priority Mail by the Inspector General on the basis that “*many* of the documents ... contain proprietary and commercially sensitive information” (emphasis added). The fact that an audit may reveal that costs are high and service is below par is no justification to withhold this information. No attempt is made to indicate how the information may be sensitive or what, if any, harm might be suffered by the Postal Service. Given these broad, conclusory statements and the uncertainty as to whether or not there would, in fact, be any detriment to the Postal Service, the objection should be found “not to be valid.”

Although 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 allowing it to exempt from disclosing any information under any terms in the areas covered by these interrogatories. 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.

**Undue Burden
(Objection to Interrogatory 42)**

The Postal Service objects to providing copies of reports or audits on Priority Mail by the Inspector General (Interrogatory APMU/USPS-T34-42), on the ground of undue burden and over breadth.

The Postal Service has indicated that “[m]any audits have been conducted by the Inspector General since the IG’s inception in 1997, and are identified only generally in semiannual indices. The burden involved in identifying which audits relate to the topics identified, and then collecting, sorting, and copying responsive documents, would be undue, involving 15 to 25 person hours.” As an initial matter, this objection is not credible. The Postal Service is essentially saying that it stores the reports and audits it receives from the Inspector General in a way that makes it difficult or impossible for the Postal Service to retrieve the document for future reference. If that is truly the case, then the reports and audits are being neglected or mishandled by the Postal Service.

Nevertheless, APMU would be willing to narrow its request to IG reports since the issuance of its report on the PMPC Network in September 1999.

**Privilege
(Objection to Interrogatory 42)**

At the end of its paragraph objecting to interrogatory APMU/USPS T34-42, the Postal Service appended the following: “Finally, the documents *could* contain attorney-client, attorney work product, pre-decisional, and law-enforcement-related communications that are subject to any one of a number of privileges, including the attorney client, deliberative process, attorney work product, and law enforcement privileges.” (Emphasis added.) In essence, the Postal Service objects to providing *any* information responsive to interrogatory 42 based on the *possibility* that *some* of the information *may* be privileged under “any one of a number” of privileges, *some of which may not even be enumerated*.

Sections 25(c) and 26(c) state that a “participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability.” These sections also state that the “bases for objection shall be clearly and fully stated.” These sections place the burden on the objecting party, here the Postal Service, (1) to designate the specific material responsive to interrogatory 42 that it considers to be privileged, (2) to specify the privilege it believes applies to the designated material, and (3) to “state the reasons for its applicability.” The Postal Service has failed to meet any of these criteria. It makes no attempt to designate material it considers privileged and instead states that some of the responsive material *could* be privileged, it does not specify the applicable privilege and instead lists a number of privileges that might apply, suggests that there may be others that are not listed, and it does not even attempt to give a reason for applying any of the privileges to the responsive material. The Postal Service’s objection based on privilege completely fails to meet the requirements of Sections 25(c) and 26(c) and should be found “not to be valid” under Sections 25(d) and 26(d).

**Information not previously made publicly available by the Postal Service
(Objection to Interrogatories 39 and 42)**

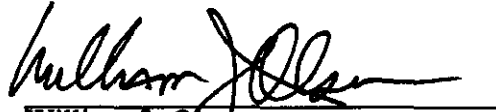
The Postal Service has objected to answering interrogatories 39 and 42 until it is provided with “specific information regarding the means by which redacted information was obtained by the questioning party.” While not conceding the legitimacy of such a question or its legal sufficiency as an objection to discovery, APMU states, with specificity, that a document appearing to be the report in question was obtained in the fall of 1999, well before the commencement of this proceeding. APMU has no information as to what information may have been “redacted” in any other disclosures of the report. Until reviewing the Postal Service’s objection, APMU had not been aware that there may be multiple versions of this document.

Having supplied the information requested in this "objection," APMU submits that the discovery process should not be compromised or delayed by any further inquiry by the Postal Service. The information requested in APMU's interrogatories is relevant and significant to the matters under consideration and the Postal Service should be compelled to answer, fully and completely, interrogatories APMU/USPS-T34-39 and 42.

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-T34-33, 34, 35, 36, 37, 38, 39, 41, and 42, filed on March 7, 2000.

Respectfully submitted,

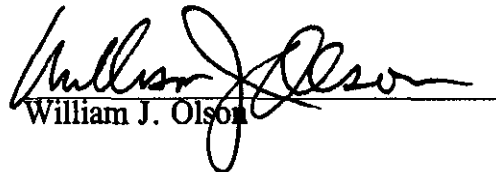


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CERTIFICATE OF SERVICE

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.



William J. Olson

March 31, 2000

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

POSTAL RATE AND FEE CHANGES, 2000)

Docket No. R2000-1

ASSOCIATION OF PRIORITY MAIL USERS, INC.
THIRD INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS TO UNITED STATES POSTAL SERVICE
WITNESS MAURA ROBINSON (APMU/USPS-T34-33-43)
(March 7, 2000)

Pursuant to sections 25 and 26 of the Postal Rate Commission rules of practice, the Association of Priority Mail Users, Inc. ("APMU") hereby submits the following interrogatories and document production requests. If necessary, please redirect any interrogatory and/or request to a more appropriate Postal Service witness.

Respectfully submitted,

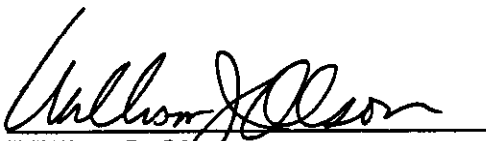


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CERTIFICATE OF SERVICE

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William J. Olson

March 7, 2000

APMU/USPS-T34-33.

For each quarter of FY 1999, for Priority Mail that originated and destined *within* the PMPC network, please provide the percentage meeting service standards, and indicate the source of the data used to compute the percentage.

APMU/USPS-T34-34.

For each quarter of FY 1999, for Priority Mail that originated and destined *outside* the PMPC network, please provide the percentage meeting service standards, and indicate the source of the data used to compute the percentage.

APMU/USPS-T34-35.

For each quarter of FY 1999, for Priority Mail that originated *outside* the PMPC network and destined *within* the PMPC network, please provide the percentage meeting service standards, and indicate the source of the data used to compute the percentage.

APMU/USPS-T34-36.

For each quarter of FY 1999, for Priority Mail that originated *within* the PMPC network and destined *outside* the PMPC network, please provide the percentage meeting service standards, and indicate the source of the data used to compute the percentage.

APMU/USPS-T34-37.

Please provide as a library reference a copy of the Inspector General's report, *Priority Mail Processing Center Network* (September 24, 1999) DA-AR-99-001.

APMU/USPS-T34-38.

Has the Postal Service negotiated a final calendar year 1999 network operations adjustment under the Supplemental Letter Agreement between the Postal Service and Emery? If so, please provide the amount of additional payment in excess of the original contract rate, and indicate separately the amount of the extra payment that arises from (i) increases in volume and (ii) changes in mail mix.

APMU/USPS-T34-39.

The Inspector General's report, *Priority Mail Processing Center Network* (September 24, 1999) DA-AR-99-001, states that the contractor paid commercial airlines a rate that was about \$0.03 per pound higher than the USPS air system contract rate, and "[t]he contracting officer for the Air System Contracts indicated it would not be in USPS best interests to modify the contract to allow the contractor to use USPS commercial air rates" (p. 8, fn. 5). Please provide a detailed explanation why the Postal Service finds it beneficial for the PMPC contractor to pay a (reimbursable) rate to commercial airlines for Priority Mail that exceeds the rate paid under the USPS air system contract.

APMU/USPS-T34-40.

The Inspector General's report, *Priority Mail Processing Center Network* (September 24, 1999) DA-AR-99-001, states that in FY 1998 the PMPC network incurred \$13.2 million of additional costs that included, *inter alia*, costs for track and trace services.

- a. Please indicate what track and trace services the PMPC network has acquired, and explain why the PMPC network requires track and trace services not available to Priority Mail that originates and destines outside the PMPC network.
- b. The report further states that all of these \$13.2 million of additional costs were included in the FY 1998 CRA Report, but "network personnel ... considered these to be start-up and non-recurring costs" (p. 7). Please indicate whether these start-up and non-recurring costs have been included in or excluded from the roll-forward projection to FY 2001. If your answer is to the effect that they are included, please explain the rationale for rolling forward start-up and non-recurring costs.
- c. Please identify and provide the amount of all other start-up and non-recurring costs of the PMPC network included in the FY 1998 CRA, and indicate whether these other start-up and non-recurring costs have been included in or excluded from the roll-forward projection to FY 2001.

APMU/USPS-T34-41.

The Inspector General's report, *Priority Mail Processing Center Network* (September 24, 1999) DA-AR-99-001, states that "When all attributable costs are considered, the USPS paid ... \$101 million more than if the same volume had been processed in-house without a network."

- a. Do you concur in this estimate of additional costs incurred by virtue of the PMPC network? Unless your answer is an unqualified affirmative, please explain why not, and provide your estimate of the additional costs incurred by virtue of having the PMPC network instead of doing the work in-house.
- b. Please provide an estimate of the additional costs that will be attributed to Priority Mail during Test Year 2001 in excess of what would be attributed if the same volume were to be processed in-house without a network.

APMU/USPS-T34-42.

Please provide as a library reference copies of any audits or reports on Priority Mail by the Inspector General, other than the *Priority Mail Processing Center Network* report requested in APMU/USPS-T34-37, including those already released and any that may be released before the record in this Docket is closed.

APMU/USPS-T34-43.

- a. Please explain when Priority Mail sacks dropshipped to DBMCs or DSCFs are scanned for delivery confirmation purposes. If they are not scanned at DBMCs or DSCFs, why not?
- b. Does the Postal Service maintain records on the percentage of Priority Mail dropshipped sacks that is scanned for delivery confirmation purposes? If so, please provide such data.