

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

MOTION OF THE UNITED STATES POSTAL SERVICE TO
DISALLOW WRITTEN DISCOVERY ON UPDATE TESTIMONY AND RELATED
MATERIALS
(July 19, 2000)

The United States Postal Service hereby moves that written discovery on any and all update testimony and related materials¹ not be allowed. First, written discovery is neither expressly permitted nor contemplated by Order No. 1294 and Presiding Officer's Ruling No. R2000-1/71 ("Ruling No. 71"). Second, the schedule for the remainder of the case established under Ruling No. 71 does not provide adequate time for written discovery. Finally, even if written discovery were allowed, certain of the interrogatories filed to date are objectionable on a variety of grounds, including that they

^{1/} The Postal Service filed the testimonies of witnesses Patelunas (USPS-ST-44) and Kay (USPS-ST-45) and several library references on July 7, 2000, pursuant to Order No. 1294 and Ruling No. 71. See Notice of United States Postal Service of Filing of Supplemental Testimony in Response to Order No. 1294, July 7, 2000. The Postal Service stated that it would provide "the CD-ROM for the rollforward and for the incremental cost model" as quickly as possible, as well as the PRC version and "traditional rollforward and revenue requirement documentation." *Id.* at 2. The Postal Service further indicated that "the significant workload involved in performing the updates" by July 7 meant that the documentation would be provided by July 21. *Id.* at 3. The Postal Service is still in the process of providing that documentation and currently cannot be sure that all of it will be completed by July 21.

are either outside the scope of Order No. 1294 or would be unduly burdensome to answer.²

Neither Order No. 1294 nor Ruling No. 71 provide for written discovery. In Order No. 1294, the Commission recognized that the ten month statutory deadline for issuance of its recommended decision would influence the procedures for incorporating *any projections including FY 1999 costs and the use that could be made of these materials*. The Commission stated, "The Commission's ability to develop the most complete evidentiary record for decision and to accord participants procedural due process is affected by the requirement that it meet this statutory schedule."³ The Commission found that the procedural schedule could be modified so that participants would have an opportunity to adjust their presentations to incorporate actual FY 1999 CRA costs, and directed the Presiding Officer to design a revised procedural schedule, noting that the revised schedule "should allow at least six weeks between oral argument and the conclusion of the ten month statutory period for issuing a Commission decision."⁴

^{2/} To date, Time Warner Inc. and the Office of the Consumer Advocate have filed interrogatories. TW and the OCA each filed a set on July 14 and the OCA filed another set on July 17. The interrogatories are included with this Motion as Attachments A through C. In this Motion, the Postal Service will discuss specific objections to some, but not all, of these interrogatories as examples. The Postal Service will not specifically object to each potentially flawed interrogatory, both because such objections will be moot if this Motion is granted, and because there is no time to do so, given the ongoing preparation of update materials. The Postal Service, however, does not waive its right to file specific objections in the event this Motion is denied.

^{3/} Order No. 1294, at 3.

^{4/} *Id.* at 6.

In Ruling No. 71, the Presiding Officer established a revised procedural schedule that neither mentions written discovery nor, under any realistic scenario, provides time for it. Ruling No. 71 established a date of July 21 for the Postal Service to file its final update materials. To follow in quick succession are informal technical conferences to be held on July 26 through July 28, at which Postal Service witnesses sponsoring the updates are to answer participants' questions.⁵ Hearings on the Postal Service's updates are scheduled for August 3 and 4. It is thus clear from this "fast track" schedule that written discovery is not contemplated. For example, the Time Warner interrogatories were filed on July 14, meaning that responses are due on July 28 -- the last day for technical conferences. Allowing written discovery simply makes no sense under these circumstances.⁶

Providing for written discovery becomes particularly onerous for the Postal Service, given the already tight timeframes. As indicated above, the Postal Service is already challenged to comply with the July 21 date for filing the PRC version and the remaining rollforward and revenue requirement documentation. It is a plain fact that the persons involved in the documentation effort can devote no time to interrogatory responses until after the documentation efforts are completed. By that point, those

^{5/} Parties are to provide written notice of the subjects they wish to cover at the technical conferences by July 24.

^{6/} The Postal Service is more than willing to address questions about the update at the technical conferences. Also, the further documentation that will be provided on the update may address some of the parties' questions as well.

It also should be noted that Ruling No. 71 establishes a date of July 31 for completion of discovery directed to the Postal Service. Lest anyone assert to the contrary, this merely extends the previous cutoff of July 11. It does not, by its clear terms, apply to discovery on Postal Service witnesses sponsoring the update.

same people will need to prepare for technical conferences and hearings on the updates. To impose the further burden of dealing with written discovery -- including responses, objections, and motions practice -- on already strained resources will hamper the Postal Service's ability to prepare for the technical conferences and hearings, not to mention its ability to develop and write rebuttal testimony. Much of the intervenor testimony which the Postal Service plans to rebut covers items such as costing methodology and rate design issues, which are unaffected by the update. To place further burdens connected with the update on the Postal Service, while it is attempting to develop such rebuttal testimony, clearly further impinges on the Postal Service's right to due process.⁷

Although, given the nature of the Postal Service's present motion, specific objections to the pending interrogatories need not be addressed at this time, it is instructive to point out a few examples of how attempted discovery on the updates has already gotten out of hand. One of the Time Warner interrogatories provides a clear illustration. Interrogatory TW/USPS-ST44-3 basically requests complete documentation of FY 1999 costs, as if FY 1999 were the base year in this case within the meaning and scope of the Commission's filing requirements. It is not the base year the Postal

⁷ The Postal Service previously pointed out that Order No. 1294 denies the Postal Service due process by, in effect, "essentially nullify[ing] much of the Postal Service's original filing, and . . . fail[ing] to provide an effective opportunity to adjust." United States Postal Service Motion for Reconsideration of Order No. 1294, June 2, 2000, at 6. Allowing written discovery only exacerbates the situation.

In any event, intervenors may claim that their due process rights will be violated in the absence of written discovery. Due process, however, does not automatically mandate written discovery in all circumstances. For example, the Commission traditionally has not provided for written discovery on rebuttal testimony.

Service proposed, which has been fully documented in accordance with the Commission's rules. Further, the Commission certainly has not indicated that using FY 1999 to revise test year forecasts means a full re-examination of all base year cost issues in the context of FY 1999. Order No. 1294 clearly stated:

The Commission agrees that its decision will be improved to the extent it can incorporate actual FY 1999 CRA costs into its *test year forecasts*. Actual data are obviously more accurate than estimates, and forecasts beginning with actual data are preferable to forecasts beginning with estimates. The Commission also agrees with the majority of respondents that it may not be feasible to completely revise the Postal Service request to incorporate FY 1999 as the base year for all estimates. (Emphasis added.)⁸

Thus, it is apparent that the Commission's focus has been on test year impacts, not on rehashing base year issues.

Also, when the Postal Service filed the FY 1999 CRA and the associated A and B Workpapers back in early April, the Commission did not order that further documentation be produced nor did the parties formally request it. The Postal Service has made quite clear from the very beginning of the discussion of what was to be done with FY 1999 data that full documentation of all aspects was simply not feasible. For example, in a status report filed in response to Notice of Inquiry No. 1, the Postal Service stated:

In the context of the CRA Report, the NOI also refers to "supporting cost data." The NOI specifically mentions Base Year Workpapers A and B. With one important caveat, the Postal Service anticipates that it could have those workpapers available within a week or less of providing the CRA Report. The caveat would be that while the substance of the workpapers could be provided on such a schedule, complete citation footnotes and cross-references could not be. To file versions of Workpapers A and B that were cross-referenced to the

^{8/} Order No. 1294, at 3.

same degree as those already filed in this case for BY 1998 would add several months to the expected availability date.⁹

Again, in response to Notice of Inquiry No. 2, the Postal Service stated:

For example, we estimate that, if the roll-forward were not updated for the most recent inflation forecasts, which would otherwise affect such inputs as wage and benefit levels and volume projections, the exercise of developing new test year estimates would take somewhere between six to ten weeks. This includes time to create some documentation, but *it would be impossible in that time to duplicate the level of documentation required by the Commission's rules and submitted with the Postal Service's original filing.* (Emphasis added.)¹⁰

It should be noted that these latter comments were made in terms of rollforward-type documentation; they did not even attempt to address base year documentation issues. The Postal Service estimates it would take more than three months to fully document FY 1999 as the base year. This would include the normal rate-case documentation of IOCS, CCS, TRACS, and MODS (as in USPS-LR-I-106). Obviously, this is not attainable, as contemplated by Order No. 1294.

Other examples of why discovery should not be allowed on the update materials are provided by the first set of OCA interrogatories. Interrogatory OCA/USPS-ST44-1 requests clarification of various electronic file acronyms from USPS-LR-I-406, precisely the kind of inquiry suitable for the technical conferences to be held on July 26-28 pursuant to Ruling No. 71. Interrogatory OCA/USPS-ST44-3 requests "printouts similar to those provided as workpapers by USPS witness Kashani." First, this request is moot -- USPS-LR-I-410, containing the requested information was filed this past Monday,

^{9/} Status Report of the United States Postal Service Regarding FY 1999 Data in Response to Notice of Inquiry No. 1, February 14, 2000, at 4.

^{10/} Initial Comments of the United States Postal Service in Response to Notice of Inquiry No. 2, May 8, 2000, at 5.

July 17. Second, the request is inefficient and, in effect, cumulative. Rather than waiting to get the documentation which the Postal Service has indicated would be forthcoming, the OCA is serving redundant discovery. Moreover, the information was provided in electronic form in USPS-LR-I-406, filed on July 12 -- the same library reference that is the subject of the OCA's first interrogatory.¹¹

Written discovery was neither provided for nor contemplated by Order No. 1294 and Ruling No. 71. The tight schedule established for dealing with the FY 1999 update materials does not allow time for it. Moreover, to impose the burden of responding to written discovery on the update at the same time that the Postal Service is still in the process of preparing update materials, preparing for technical conferences and hearings on those materials, as well as preparing rebuttal testimony, would violate the Postal Service's due process rights to a full and fair hearing on the case it has proposed. For these reasons, the Postal Service's Motion should be granted.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Susan M. Duchek

^{11/} It is interesting to note that the OCA would impose documentation burdens on the Postal Service in connection with its update that it does not follow itself with regard to its own direct case. As indicated by OCA witness Thompson's response to USPS/OCA-T9-2, she failed to provide any hard copy version of her programs and data files. See Tr. 23/10438.

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.

A handwritten signature in cursive script, appearing to read "Susan M. Duchek", is written over a horizontal line.

Susan M. Duchek

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2990 Fax -5402
July 19, 2000

**INTERROGATORIES OF TIME WARNER INC. TO WITNESS
PATELUNAS (USPS-ST-44)**

TW/USPS-ST44-1 Please confirm that the calculations performed by yourself and witness Kay (USPS-ST-45) depend on first having determined BY99 volume variable costs per subclass and special service for each cost segment. If not confirmed, please explain.

TW/USPS-ST44-2 Please confirm that development of BY99 volume variable costs per subclass and special service category in cost segments 3 and 6 depends on the use of IOCS data, similar to the FY98 IOCS data contained in USPS LR-I-12. If not confirmed, please explain how the BY99 cost data were derived.

TW/USPS-ST44-3 Have the IOCS data needed to replicate BY99 cost data for cost segments 3 and 6 been included with the data provided in connection with your and witness Kay's supplemental testimony? If so, please describe where they can be found. If not, please provide them in a format similar to that used in LR-I-12. In either case, please answer the following:

- a. Was the attribution and distribution of BY99 mail processing costs to subclasses and special services performed using the same SAS program used by witness Van-Ty-Smith to distribute the FY98 costs? If not, please explain all differences and provide the program that will replicate the Postal Service's BY99 costs.
- b. Please provide the Postal Service's estimates of BY99 volume variable mail processing costs per MODS, NonMODS and BMC cost pool and per subclass and special service. If this information already has been filed, please explain where it can be found.
- c. Please provide all other information pertinent to the development of BY99 cost data that correspond to the FY98 information provided in USPS LR-I-106.
- d. Please identify and provide all other information necessary to replicate the Postal Service's attribution and distribution of BY99 cost data, including all raw data used, in all cost segments, that has not been provided already in this case.

OCA/USPS-ST44-1. The following question relates to USPS-LR-I-406. USPS-LR-I-406 consists of electronic files for FY 99, FY 00 and FY 01. Many of the files have similar names with varying file extensions. For purposes of this interrogatory, please assume that an asterisk represents the file extension (*). Please explain what each of the following seven file acronyms represent: (1) FY99tcm.*; (2) FY00mix.*; (3) FY00xt.*; (4) FY01at.*; (5) FY01atm.*; (6) FY01b.*; and (7) FY01bm.*.

OCA/USPS-ST44-2. Does your supplemental testimony rely upon the same FY 99 data as that used by USPS witness Kashani for the following components: (1) USPS component 555 - Total Square Feet; (2) USPS component 562 --Total Rental Value; (3) USPS component 1299 - Capital; (4) USPS component 1298 - Maintenance Labor; and (5) USPS component 1297 - Parts and Supplies? If not, please provide a printout of the information you used in a format similar to that provided in USPS witness Kashani's Workpaper A at 152 - 154. Include in your printout the applicable component numbers used.

OCA/USPS-ST44-3. Please provide as a library reference printouts similar to those provided as workpapers by USPS witness Kashani. Please give priority to providing the following printouts: (1) your FY 99 data in a format similar to USPS witness Kashani's workpaper A; and (2) "B Reports" for FY 00 and FY 01.

OCA/USPS-ST44-4. The following interrogatory refers to USPS-LR-I-422, Excel file WC01_Or.xls.

- (a) Please confirm that in USPS-LR-I-126 at 92, the USPS estimated a 10.5 percent increase $((\$1,198,124,884 / \$1,083,966,019)-1)$ in the "medical portion" of workers' compensation for FY 01. If you are unable to confirm, please explain.
- (b) Please specifically identify the rationale used and cite any sources relied upon when the "medical portion" of workers' compensation for FY 01 was modified from the 10.5 percent increase in the original filing to a 20.6 percent increase in your supplemental testimony $((\$1,493,034,282 / \$1,238,103,369)-1)$.
- (c) Please explain how the USPS estimated increase of 20.6 percent in the "medical portion" of the FY 01 workers' compensation compares to the FY 01 national average estimate. If no comparison is available, please explain what comparison (if any) the USPS performs when preparing its workers' compensation estimates. If no comparisons are performed, please explain why none are done.
- (d) Please confirm that in USPS-LR-I-126 at 92, the USPS estimated a 6.5 percent increase $((\$4,565,057,984 / \$4,286,193,352)-1)$ in the "base compensation liability" from FY 00 to FY 01. If you are unable to confirm, please explain.
- (e) Please specifically identify the rationale used and cite any information provided that led to the decrease from 6.5 percent to the 3.3 percent

(((\$4,184,293,872 - \$4,049,782,684)-1) "compensation portion" cost increase for FY 01.

(f) Please confirm the following:

- (1) Actual USPS FY 00 Q3 expense for the "medical portion" of workers' compensation is \$1,238,103,369.
- (2) Actual USPS FY 00 Q3 expense for the "compensation portion" of workers' compensation is \$4,049,782,684.
- (3) If you are unable to confirm parts (1) and (2) of this interrogatory, please provide the actual expenses. If Q3 expenses are unavailable, please indicate when they will be available and provide them at that time.

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 12 of the rules of practice.


Stephanie S. Wallace

Washington, D.C. 20268-0001
July 17, 2000