

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, 2001

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Docket No. R2001-1

OFFICE OF THE CONSUMER ADVOCATE  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS  
REQUESTED IN OCA/USPS-51-57  
(October 30, 2001)

Pursuant to Rule 21 of the Rules of Practice of the Postal Rate Commission, the Office of the Consumer Advocate (OCA) hereby moves to compel the production of survey results, studies and related materials requested in interrogatories OCA/USPS-51-57, filed October 5, 2001. In accordance with the Commission's Rules 26(d) and 27(d), the interrogatories are reproduced in the discussion below.

For the most part, the Postal Service objected to filing any of the requested material, refusing to produce anything in response to Interrogatories 51-52 and 54-57, alleging that most of the results were irrelevant.<sup>1</sup> The Postal Service agreed to produce results narrowly confined to addressing a specific class of mail, but took the view that all historical material and all material addressing general consumer satisfaction or the quality of service was irrelevant to this proceeding. In response to Interrogatory 53, the Postal Service attached to its Objection copies of two

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<sup>1</sup> "Objection of the United States Postal Service to the Office of the Consumer Advocate's Interrogatories OCA/USPS-51-57 and Joint Motion for Protective Conditions," filed October 15, 2001 (hereinafter referred to as "Objection") at 1.

blank surveys of business customers and offered to produce some limited material relating to business customers' experiences with specific classes of services,<sup>2</sup> but only subject to protective conditions. The Postal Service takes the position that survey results that are not class-specific are not "relevant to a proceeding under 39 U.S.C. §§3622 and 3623" and are irrelevant to "the Commission's evaluation of the overall value of service provided."<sup>3</sup>

OCA strongly disagrees that only class-specific survey results are relevant to the current rate proceeding and asks the Presiding Officer to direct the Postal Service to submit much of the information that the Service is currently withholding. However, to mitigate the extent of the burden and scope concerns alleged by the Postal Service, OCA sets forth limitations to its request that should eliminate any valid objections.

#### 1. LIMITATIONS ON SCOPE OF SEARCH AND TIME PERIODS

OCA is willing to limit itself to national studies and survey results for studies and surveys conducted in FY 94, FY97, FY 2000 and FY 2001, as well as studies and survey results for studies and surveys conducted in the single fiscal year FY 2000 that involved a geographical area of more than one state or the whole states of Texas or California. The requests are further limited to restrict any search requirements to Postal Service headquarters files. In addition, no search of individual employees' files is required, unless an employee maintains a set of files that are not duplicated elsewhere and are regularly used as a resource or reference by other employees or managers. However, OCA requests that responsive materials in the files of individual Postal

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<sup>2</sup> Objection at 5. The Postal service agreed to provide material responsive to survey questions 1 k, l, m and o and subparts a-h of Questions 12-15.

<sup>3</sup> *Id.* at 3.

Service employees be produced if they are known to be responsive without conducting a general search.

Finally, with respect to Interrogatory 53, OCA is prepared to limit the questions from the two surveys identified by the Postal Service as responsive. In discussing that interrogatory below, OCA lists specific questions for which results are sought, eliminating all other questions. However, OCA cannot discern whether the Postal Service is saying that these are the only responsive documents and requests that a full response to the Interrogatory, as modified herein, be ordered.

These limitations substantially reduce any search burden. In addition, the limited time periods sought are plainly relevant and, indeed, critical to any evaluation of the value of the services. The Postal Service concedes that some material from FY 2000 and FY 2001 is relevant.<sup>4</sup> The Postal Service's objections to anything dated before FY 2000 would preclude any inquiry into whether a particular service is getting better or worse over time or whether a persistent problem has gone uncorrected despite clear evidence of dissatisfaction.

## 2. PRIVILEGE AND CONFIDENTIALITY OBJECTIONS

The Postal Service raises sweeping confidentiality and privilege objections, without identifying even the general classes of responsive material. Indeed, the Service admits that it has not even attempted to review or catalogue -- or apparently even look at -- the bulk of the responsive materials.<sup>5</sup> The Postal Service is in the untenable position of pointing to a file cabinet that it knows is full of responsive documents and

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<sup>4</sup> *Id.* at 2, 4.

<sup>5</sup> *Id.* at 1-2 & note 1.

refusing to even glance at the documents because some one (unidentified) document might be privileged.

Generalized privilege objections of this kind are legally inadequate and have been rejected in Commission proceedings.<sup>6</sup> The Service should be required to identify the responsive materials in some detail and explain, as to each document or group, the basis for the claim. In addition to satisfying the minimal legal requirements for perfecting a privilege claim, such a list would provide a basis for negotiations over further limitations on OCA's requests. It is difficult to target limitations when the requestor is confronted with blanket objections to producing virtually anything and deprived of even a minimal description of what, in fact, exists and is responsive.

Finally, on the alleged issue of commercial sensitivity, OCA notes that data as old as 1994 or 1997 does not seem likely to be sensitive. Moreover, data on consumer satisfaction is routinely collected and publicly published with awards and criticisms in other industries such as the automobile industry. Those who fare poorly have to compete harder; they aren't allowed the option of hiding their problems, which is what the Postal Service advocates. Far from protecting competition, the kind of secrecy sought here is anti-competitive.

### 3. RELEVANCE OBJECTIONS

It bears emphasis that the standard for discovery articulated by Rules 26 and 27 is that a discovery request must only be "reasonably calculated to lead to the discovery of admissible evidence." Thus, contrary to the argument implicitly made in the Postal

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<sup>6</sup> POR No. C99-1/9 (Aug. 9, 1999) at 4, where the Presiding Officer rejected the Postal Service's generalized claims of privilege, commercial sensitivity, and irrelevance and required the Postal Service to file a log detailing the nature of the responsive information and the basis for the Service's claim.

Service's Objection, it is not necessary that the requestor be able to show exactly how each document or piece of information will be used in the requestor's submitted testimony. OCA may seek material that is relevant background to building an evidentiary case or is relevant to identifying issues that need to be explored. Where the Postal Service has an absolute monopoly on most of the necessary information, and even decides whether the information will be compiled (and if it will be retained if it is compiled), the other participants would be denied a fair opportunity to litigate the proceeding if discovery were limited in the way the Service urges.

Customers' perceptions of the efficiency, accuracy, and convenience of the Postal Service and its staff are highly relevant to a number of issues that must be resolved by the Commission. In particular, this proceeding requires that the Commission consider the level of the contingency that will be recommended. One of the ten "Significant Possible Adversities" proffered by witness Tayman as a justification for his proposal to add a three percent contingency to the revenue requirement is the "variation between projected and actual mail volume and revenue," a variation that he characterizes as "inevitable."<sup>7</sup> He notes that revenue variance from the Docket No. R2000-1 estimate was more than two percent. OCA entirely agrees that Postal Service mis-estimates of volumes and revenues are a source of valid concern. OCA strongly disagrees, however, that such variations are "inevitable."

In Docket No. R2000-1, as in the current proceeding, witness Tayman offered revenue shortfalls and disappointing volume growth as bases for establishing the

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<sup>7</sup> USPS-T-6 at 61.

R2000-1 contingency at 2.5 percent.<sup>8</sup> OCA witness Burns challenged the revenue and volume contentions of witness Tayman on the ground that such matters are controllable by the Postal Service, and therefore, not proper justifications for a higher contingency.<sup>9</sup> Witness Burns stressed that, "The Postal Service can influence volumes by improving service . . . ." In his direct testimony, witness Burns testified that:<sup>10</sup>

The purpose of a contingency is to cover expense[s] which are unexpected . . . and are uncontrollable . . . . After all, honest, efficient, and economical management will make every reasonable effort to control those costs that are foreseen and foreseeable.

OCA witness Burns' testimony is consistent with the Commission's view of the purpose of the contingency. In Docket No. R2000-1, the Commission's opinion reiterated the legal standard for assessing the need for a particular level of contingency that it had articulated years before in Docket No. R84-1:<sup>11</sup>

the [§3621] provision is intended to protect against unforeseeable events, not capable of being prevented through honest, efficient, and economical management, and which might have a significantly adverse impact on the financial position of the Service or upon its operations.

Through the discovery at issue here and other discovery requests, OCA is attempting to develop evidence on the level of customer satisfaction both with particular classes and services (that relate directly to the issue of markup) and with the Postal Service generally. The latter type of information – general and

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<sup>8</sup> USPS-T-9 at 43 (R2000-1).

<sup>9</sup> Tr. 22/9735 (response of witness Burns to interrogatory USPS/OCA-T2-8; R2000-1).

<sup>10</sup> *Id.* at 9710 (OCA-T-2 at 3). As the quoted passage demonstrates, witness Burns invoked the "honest, efficient, and economical management" proviso of the Postal Reorganization Act. OCA fully intends to invoke this proviso in the current proceeding in connection with customer satisfaction and quality of service issues.

<sup>11</sup> PRC Op. R2000-1, para. 2152.

diverse customer satisfaction/dissatisfaction with the Postal Service – is material that OCA intends to incorporate into its own testimony relating to the contingency. The Postal Service evidently wishes to neglect or ignore such information in the development of its contingency testimony. The Postal Service should not be allowed to prevent the OCA from presenting important, directly relevant testimony.

OCA further notes that customer perceptions about the Postal Service and its efficiency, accuracy, convenience, and courtesy undoubtedly will influence the growth or diminution of volumes in the test year. Customers will base their decisions to use the Postal Service or alternative communications and interactive options on such perceptions. Yet Postal Service witness Tolley fails to give these matters explicit treatment in his volume estimation procedures. In addition, OCA is seeking a sample of historical data to determine whether customer perceptions and the level of satisfaction are getting better, worse, or staying constant. This discovery will also show whether there exist persistent serious problems or, alternatively, areas of potential customer interest in new products that the Service has identified but chosen to ignore. These kinds of perceptions and issues may very well contribute to the revenue shortfall noted by witness Tayman and cited above. The requested survey results are relevant to an evaluation of the Postal Service's volume and revenue estimates in this proceeding, as well as to the issues of rate design and application of pricing criteria.

While the Postal Service concedes that some materials from FY 2000 and FY 2001 are relevant, it objects to producing anything dated before FY 2000. As already noted in discussing the limitations proffered by OCA, the inability to obtain even the

limited sample of historical data would preclude any inquiry into whether a particular service is getting better or worse over time or whether a persistent problem has gone uncorrected. In looking at projected revenue and mail volume figures that are persistently overstated, it is relevant whether customer perceptions of the Postal Service are getting better or worse over time. The very limited historical sample (national survey results and studies of FY 1994 and 1997) sought is clearly relevant.

Finally, the Postal Service will presumably object to the modification that would seek results for FY 2000 only from various regional and local surveys. OCA believes that it is clear that the population of the United States is increasingly varied and that, therefore, it is logical to expect to find regional variations in customer satisfaction. Given that customer satisfaction bears directly on the growth or decline of revenues, OCA seeks to obtain a very limited sample of localized data to observe regional variations in customer satisfaction and what data the Service has on this issue. It may be that data on Postal Service responsiveness to regional variations is important. Plainly, there is no way for OCA to even begin to assess this issue without some minimal data.

#### 4. RELEVANCE OF THE INDIVIDUAL SPECIFICATIONS

##### A. OCA/USPS-51.

The Associated Press has reported on the operations of the Postal Service in Northern Virginia, indicating that 99 percent of area residents experienced excellent, very good, or good experience with the Postal Service, the highest rating of the 85 districts surveyed from coast to coast. (See Attachment). The survey was reported as having begun in 1992. Please furnish copies and any available summaries of the survey for all districts surveyed from 1992 to the present, excluding surveys already requested under OCA/USPS-7 (if applicable).



This Interrogatory, as modified, seeks information similar to that sought by OCAUSPS-7 (filed Sept. 28, 2001), on which OCA has already moved to compel. See Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA/USPS-7 (filed Oct. 23, 2001). As already argued, OCA is attempting to develop evidence on the level of customer satisfaction both with particular classes and services (directly relevant to the issue of markup) and with the Postal Service generally. The latter type of general customer satisfaction information is directly relevant to OCA's own testimony relating to the proposed contingency. As modified, the information sought is plainly relevant.

**B. OCA/USPS-52**

Please provide copies of all studies, customer surveys, employee surveys, and publicly available surveys in the possession of the Postal Service related to the measurement, review, and/or evaluation of the quality of Postal Service products and services. Please include such materials produced since 1990, whether the work was performed by the Postal Service, its contractors, independent agencies, other companies or other organizations. Products and services include but are not limited to First Class Mail, Priority Mail, Express Mail, Parcel Post, Standard A Mail, Standard B Mail, Periodicals, Insurance, Registered Mail, Certified Mail, Money Orders, Return Receipt Requested, and Delivery Confirmation. This request does not apply to any data being separately furnished under OCA/USPS-7 or OCA/USPS-51.

This Interrogatory is aimed directly at studies or surveys evaluating the quality of Postal Service products and services. As noted above, the quality of those products and services is directly relevant to the growth or diminution of Postal Service revenues and, thereby, to the appropriate size of the contingency.

## C. OCA-USPS-53.

Please provide copies of all studies, customer surveys, employee surveys, and publicly available surveys in the possession of the Postal Service related to the measurement, review, and/or evaluation of consumer satisfaction with Postal Service products and services. Please include such materials produced since 1990, whether the work was performed by the Postal Service, its contractors, independent agencies, other companies or other organizations. Products and services include but are not limited to First Class Mail, Priority Mail, Express Mail, Parcel Post, Standard A Mail, Standard B Mail, Periodicals, Insurance, Registered Mail, Certified Mail, Money Orders, Return Receipt Requested, and Delivery Confirmation. This request does not apply to any data being separately furnished under OCA/USPS-7 or OCA/USPS-51.

This interrogatory is aimed directly at consumer satisfaction with Postal Service Products and services, a key determinant of revenue growth or decline. The Service agrees that some material is relevant and producible and has agreed to provide limited responses to two identified national business surveys. The Service has agreed to provide material responsive to survey Questions 1 k, l, m and o and subparts a-h of Questions 12-15 for both surveys, subject to protective conditions. OCA believes that subparts 1 a-j & n of Question 1 and Questions 3, 5, 6-8, 10 subparts i of Questions 12-15, Questions 17-18a, 21-22, subparts b & d of Question 26, subparts b-d of Question 27, and questions 32-32a are also relevant and has no objection to protective conditions, subject to review and a possible motion to remove protective conditions. As with other interrogatories, OCA is unclear whether there are other responsive documents and requests a full response.

The relevance of this material cannot be gainsaid. As one example, in Question 1, the customer is asked to rate various services and procedures. The Postal Service objects to all subparts that are not specifically directed at an individual service. The Service claims that an inquiry directed at damaged mail is utterly irrelevant (Question 1

subpart n). Plainly, customer perceptions of the condition of parcels or letters received are relevant.

D. OCA/USPS-54.

Please provide copies of all studies, customer surveys, employee surveys, and publicly available surveys in the possession of the Postal Service related to the measurement, review, and/or evaluation of consumer preferences and needs with respect to existing or potential Postal Service products and services. Please include such materials produced since 1990, whether the work was performed by the Postal Service, its contractors, independent agencies, other companies or other organizations. Products and services include but are not limited to First Class Mail, Priority Mail, Express Mail, Parcel Post, Standard A Mail, Standard B Mail, Periodicals, Insurance, Registered Mail, Certified Mail, Money Orders, Return Receipt Requested, and Delivery Confirmation. This request does not apply to any data being separately furnished under OCA/USPS-7 or OCA/USPS-51.

It is difficult to imagine a request more relevant than one aimed at identifying data on customer satisfaction with existing services and identifying potential new services that customers desire and hope the Postal Service will provide. The degree to which the Service is or is not responsive to consumer demand for new services will have a direct impact on Postal Service revenues and, therefore, on the likelihood that projected revenues will not fall short due to a failure to provide customers with what they want.

Moreover, the claim of commercial sensitivity in this case is bizarre.<sup>12</sup> The interrogatory seeks information on customer attitudes, not future plans to offer new products. While OCA believes that plans to offer new products would be a relevant area of inquiry, it must be pointed out that such plans are not at issue here. As limited, the interrogatory should be enforced.

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<sup>12</sup> Objection at 7-8.

E. OCA/USPS-55.

Please provide copies of all studies, customer surveys, employee surveys, and publicly available surveys in the possession of the Postal Service related to the measurement, review, and/or evaluation of window service furnished to customers at Postal Service retail facilities. Please include such materials produced since 1990, whether the work was performed by the Postal Service, its contractors, independent agencies, other companies or other organizations. Products and services include but are not limited to First Class Mail, Priority Mail, Express Mail, Parcel Post, Standard A Mail, Standard B Mail, Periodicals, Insurance, Registered Mail, Certified Mail, Money Orders, Return Receipt Requested, and Delivery Confirmation. This request does not apply to any data being separately furnished under OCA/USPS-7 or OCA/USPS-51.

Window service is a primary time of contact between the customer and the Postal Service. The Service's argument that window service is irrelevant because not part of a specific class or type of mail is without merit.<sup>13</sup> Obviously, the efficiency and courtesy of window service is a major determinant of whether customers choose the Service or an alternative supplier. As limited, the request for information no longer seeks data from 1990 on. Seeking limited information on the quality of window service is both proper and highly relevant. Any purported objection based on commercial sensitivity is vastly outweighed by the clear probative value of the information.

F. OCA/USPS-56.

Please provide copies of all studies, customer surveys, employee surveys, and publicly available surveys in the possession of the Postal Service related to the measurement, review, and/or evaluation of assistance and/or information provided by Postal Service employees and contractors to the public in response to telephone inquiries. Please include such materials produced since 1990, whether the work was performed by the Postal Service, its contractors, independent agencies, other companies or other organizations. Products and services include but are not limited to First Class Mail, Priority Mail, Express Mail, Parcel Post, Standard A Mail, Standard B Mail, Periodicals, Insurance, Registered Mail, Certified Mail, Money Orders, Return Receipt Requested,

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<sup>13</sup>

Objection at 8.

and Delivery Confirmation. This request does not apply to any data being separately furnished under OCA/USPS-7 or OCA/USPS-51.

Like window service, telephone communications between Postal Service employees and the public are a major point of contact and a major potential explanation of why customers either do or do not utilize the Postal Service's products and services. Again, the suggestion that this information is commercially sensitive is not credible. Moreover, as with window service, there is not even a tangential link to future product plans.<sup>14</sup> The information is relevant to why consumers do or do not use Postal Service products and services and its value outweighs any purported confidentiality.

G. OCA/USPS-57.

Please provide copies of all studies, customer surveys, employee surveys, and publicly available surveys in the possession of the Postal Service related to the measurement, review, and/or evaluation of the delivery service provided by Rural and City carriers to postal customers.

OCA/USPS-57 seeks information on consumer perceptions of quality at another important point of contact between the service and customers -- the actual point of delivery by rural or city carriers. Again, this is a critical interface between the Service and its clientele and is directly relevant to whether customers are satisfied with reliance on delivery by Postal Service carriers. Moreover, if differences in consumer satisfaction between city and rural customers are identified, it might be possible to identify specific ways to increase the value of Postal Service products and services. Again, the probative value outweighs any alleged sensitivity.

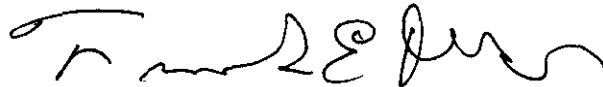
For the foregoing reasons, OCA respectfully requests that the Postal Service be directed to comply with OCA/USPS-51-57, as modified, and, in particular, that the

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<sup>14</sup> Objection at 9.

Service be ordered to provide survey responses for subparts a-j & n of Question 1 and Questions 1, 3, 5, 6-8, 10 subparts i of Questions 12-15, Questions 17-18a, 21-22, subparts b & d of Question 26, subparts b-d of Question 27, and Questions 32-32a of the two business surveys identified in response to OCA/USPS-53. OCA also asks that the service be directed to provide data for each response category in the survey question, not merely lumping what the Service sees as favorable responses together.<sup>15</sup>

Respectfully submitted,



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<sup>15</sup> In its partial response to OCA/USPS 7, the Postal Service lumped responses for the "Excellent," "Very Good," and "Good" rating categories as a single percentage and provided no data on other categories. While a further response had been requested, the Service has not agreed to provide the data. OCA believed it should receive information on each rating category, broken out separately by "Excellent," "Very Good," "Good," "Fair," and so on.

# 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 Rule 12 of the rules of practice.



h'Enri Whitseyjohnson

Washington, D.C. 20268-0001  
October 30, 2001