

UNITED STATES OF AMERICA
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)

Docket No. R2001-1

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
REQUESTED IN OCA/USPS-T-36-1(a)
(November 5, 2001)

Pursuant to Rule 21 of the Commission's Rules of Practice, the Office of the Consumer Advocate (OCA) hereby moves to compel the production of documents responsive to OCA/USPS-36-T-1(a), filed on October 1, 2001. In accordance with the Commission's Rules 26(d) and 27(d), the relevant portions of the interrogatory are reproduced below.

OCA/USPS-T-36-1. The following questions refer to a United States Postal Service Special Services report, C No. 0401241887-PA (2) dated May 18, 1999, filed in docket R-2000-1 as USPS-LR-I-200.

- (a) Since the May 18, 1999, audit, has the Postal Inspection Service or any other entity under Postal Service auspices performed any other audits, studies, or updates on any Postal Service Special Services? If so, please provide a copy of such audit, study, or update.

The Postal Service identifies one responsive study entitled "Review of the Postal Service Delivery Confirmation Program at Selected Facilities" and objects to producing that study on the grounds of lack of relevance and the study's alleged commercial sensitivity. The Service also informed OCA orally that it has identified one other responsive study, which will be produced voluntarily. The Postal Service argues that a report on improper Delivery Confirmation Program scanning techniques at five specific

facilities is irrelevant to any issue before the Commission. The Service also contends that the study's release could allow competitors of the Service to distort the report's contents and, thereby, injure the Service's competitive position.¹

OCA disagrees on both points. With respect to the relevance issue, OCA has filed two motions to compel responses to interrogatories in which the argument is made that issues relating to the efficiency, accuracy and, and convenience of the Postal Service, as well as consumer perceptions of the quality of Postal Service, are directly relevant to a number of issues that must be resolved by the Commission.² In particular, such evidence is relevant to the level of contingency that must be recommended. The interrogatory at issue here supplements these efforts by seeking information on audits, studies, or updates on any Postal Service special services.

The Postal Service has hedged its response, identifying one possibly responsive survey in its written objection, another orally, but not stating in an intelligible, written response whether there are other responsive documents.³ In the report that it refused to turn over, the Service admits that there were problems at five of its facilities over a period of two years that resulted in an Office of Inspector General's report and a review

¹ "Partial Objection of the United States Postal Service to the Office of the Consumer Advocate's Interrogatory OCA/USPS-36-T-1 (a)," filed October 22, 2001 (hereinafter referred to as "Objection") at 1-2.

² "Office of the Consumer Advocate Motion To Compel Production Of Documents Requested In OCA/USPS-7," filed October 23, 2001, at 3-6; "Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA/USPS-51-57," filed October 30, 2001, at 4-8.

³ The Postal Service's one sentence response to OCA/USPS-36-T-1(a) simply referenced its response and revised response to DFC/USPS-1-2. However, Mr. Carlson's interrogatories were far broader in scope but covered a shorter time period than the interrogatory at issue here. Moreover, the Service merely referenced a web site that lists extremely large numbers of studies on every imaginable Postal Service issue; it made no effort to respond to the question asked. Such a "response" is meaningless.

by Postal Service management.⁴ However, the Service contends that this "isolated" incident is irrelevant to the issues that must be decided in this proceeding. Thus, it believes that details on the extent of the problem, its duration, the volume of mail affected, and related matters are beyond the scope of the Commission's authority.

OCA believes that these discovery requests, and others still pending,⁵ are intended to follow up on the Commission's clear expression of concern that the value of a Postal Service product or service is directly affected by issues relating to consumer satisfaction and the efficiency (or lack of efficiency), with which the product is delivered. In its most recent rate decision, the Commission felt that any evaluation of the value of Express Mail service must be "tempered" by concerns about the quality of the actual service delivered and the truthfulness of claims made for it.⁶ The Commission stated that it was (emphasis supplied):

. . . concerned that the Postal Service is not properly informing consumers about the limitations of its delivery network, and that the Postal Service accepts Express Mail knowing that the published delivery standards are impossible to achieve. The Commission suggests that the Service review its overall advertising and consumer information for Express Mail so that consumers are made aware of potential limitations of the service. The Commission also is concerned about the high on-time failure rate (8.8 percent) which seems inconsistent with a guaranteed service.⁷

The Commission made a direct connection between the statutory requirement (Section 3622 of Title 39) that it consider "the value of the mail service actually provided" and the

⁴ Objection at 1-2.

⁵ See, e.g., OCA's interrogatories OCA/USPS-66-73; OCA/USPS-101. The Postal Service has filed sweeping objections to the first set of interrogatories and filed non-responsive and misleading answers to the second. OCA will move to compel shortly.

⁶ PRC Op. R2000-1 at para. 5013.

⁷ *Id.*

efficiency of the service and the accuracy of the claims made by the Postal Service for the product or service.⁸

OCA believes that its interrogatory provides a starting point for an inquiry. If the Postal Service has conducted no significant studies of its special services since May 1999, that alone is a reason for concern. The Postal Service controls the information generated about its services and the retention and use of that information. If it makes a decision not to track the efficiency of or consumer satisfaction with those services, it deprives the Commission, OCA, and other parties of critical information. Accordingly, OCA is entitled to a straight answer as to the number and nature of the studies conducted during a two and one-half year period, whether or not their production is compelled.

The Service's sweeping claims of irrelevance are also suspect. In opposing OCA's Motion to Compel on interrogatory OCA/USPS-7 (*see* note 2, *supra*), the Service argues that information relating to customer perceptions and consumer satisfaction are generally irrelevant to any issue properly before the Commission.⁹ Here, it argues that an admitted failure to scan and process Delivery Confirmation mail is inherently irrelevant, while refusing to disclose the report that is the "best evidence" of the extent of the problem, efforts to check for similar problems, and measures taken to abate the problem.

There is a disturbing pattern to the Postal Service's conduct of discovery on these issues. OCA interrogatory OCA/USPS-T-36-7 asked Witness Mayo about

⁸ *Id.*

⁹ "Response of the United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-7," filed October 30, 2001, at 2.

improper scanning issues relating to the Signature Capture Program. The OCA interrogatory specifically referenced a specific advisory report issued May 2, 2001, regarding "Certified Mail Observations at the Los Angeles Processing and Distribution Center" (Report Number AC-MA-01-002) (hereinafter referred to as the "Los Angeles study"). Despite the fact that the report evidenced a problem with failure to capture signature data because of improper use of old scanning equipment, Witness Mayo indicated no knowledge of such problems in her response. OCA then followed up with an interrogatory (OCA/USP-101, filed October 19, 2001) aimed at institutional knowledge about problems with improper scanning of Signature Capture Program data. The Service's response, filed November 2, 2001, simply states that all facilities have new scanning equipment and, therefore, there is no issue. Given that the Los Angeles report indicates that employees were using old equipment when new equipment was available, resulting in a loss of valuable data, such a response is at least misleading, if not worse.

The Los Angeles study (of problems at only one facility, not five, as in the study withheld here) shows that such studies are without question relevant to this inquiry. Moreover, the Service's non-responsive and misleading answers suggest that the Service is using non-responsive answers and specious relevance arguments to avoid embarrassment or to foreclose lines of inquiry that might show serious problems in its special services. Plainly, a study showing a possible failure to capture Delivery Confirmation data due to improper use of scanning equipment (and any similar responsive studies that have not been identified) is relevant and a proper subject of discovery.

In addition, the Postal Service argues that the identified study is competitively sensitive because competitors might use it to tarnish the image of the Delivery Confirmation Product.¹⁰ Here, the Service is plainly confusing "embarrassing" with "commercially sensitive." There is no showing why the Los Angeles study referred to above could be disclosed, while this one would cause grave competitive harm. Moreover, the Service asks the Commission to presume that the Service's competitors will engage in acts of dishonesty and false advertising in order to use a local study to tarnish the Postal Service generally. The Service makes no showing of past misconduct or any other ground to justify such an assumption.

Frankly, the Postal Service makes claims of confidentiality (and lack of relevance) so often and with so little supporting proof that the claims threaten to defeat OCA's statutory obligation (under Section 3624 (a)) to represent the interests of the general public. Moreover, the identified study is without question critical to evaluating the value of the Delivery Confirmation and related services and must be made available.

¹⁰ Objection at 2.

OCA respectfully requests that the Postal Service be required to comply with OCA/USPS-T-36-1 (a).

Respectfully submitted,

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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.

Stephanie Wallace
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Washington, D.C. 20268-0001
November 5, 2001