

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
AND INFORMATION REQUESTED IN OCA/USPS-60 (a), (b), AND (e)
(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 and information responsive to OCAUSPS-60 (a), (b), and (e), filed on October 11, 2001. In accordance with the Commission's Rules 26(d) and 27(d), the relevant portions of the interrogatory are reproduced below.

OCA/USPS-60. The following refers to an article, "Special delivery?" published in Consumer Reports, December 1998. A copy of the article follows as Attachment 1.

- (a) Since December 1998, has the Postal Service performed any analyses, studies, reports or prepared any articles regarding the comparison of USPS Express Mail, Priority Mail and Parcel Post offerings with similar services offered by Federal Express and United Parcel Service? If so, please provide a copy of each. If not, please explain why the Postal Service has performed no comparisons.
 - (b) The Consumer Report article indicates that the FedEx sued the Postal Service for "false advertising." Please indicate the outcome of the lawsuit.
- * * *
- (e) For FY 2000 and FY 2001, please provide the following information in a format amenable to importing into an EXCEL spreadsheet: (1)

the number and nature of the complaint lodged with the Postal Service regarding the accuracy or truthfulness of Priority Mail advertisements; and, (2) the number and nature of the complaint lodged with the Postal Service regarding the accuracy or truthfulness of Express Mail advertisements

The Postal Service objects to these subparts on the grounds that the comparative efficiency of its Express Mail, Parcel Post, and Priority Mail Services with competitive services and the truthfulness of Postal Service's claims and advertising are irrelevant to this proceeding.¹ The Service also suggests that interrogatory 60(a) is overly broad and seeks confidential information.²

OCA has filed two motions to compel responses to interrogatories in which the argument is made that issues relating to the efficiency, accuracy, and convenience of the Postal Service, as well as consumer perceptions of the quality of postal services, are directly relevant to a number of issues that must be resolved by the Commission.³ 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 data on the relative efficiency of specific premium services offered by the Postal Service and on complaints and allegations of deceptive or false advertising.

These discovery requests, and others still pending,⁴ are intended to follow up on the Commission's clear expression of concern that the value of a Postal Service product

¹ "Partial Objection of the United States Postal Service to the Office of the Consumer Advocate's Interrogatory OCA/USPS-60 (a), -(b), (e)," filed October 22, 2001 (hereinafter referred to as "Objection") at 1-2.

² *Id.* at 3.

³ "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.

⁴ See, e.g., interrogatories OCA/USPS-36-1 (a); and OCA/USPS-66-73. The Postal Service has filed sweeping objections to all of these interrogatories. OCA will move to compel shortly.

or service, in this case Express Mail, must be “tempered” by concerns about the quality of the product or service.⁵ 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.⁶

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 efficiency of the service and the accuracy of the claims made by the Postal Service for the product or service.⁷

The Postal Service rejects the connection found by the Commission. It denies any relevance to information on the relative efficiency of the Service versus its competitors and of any and all data on competitor or customer complaints on the accuracy of its advertising.⁸ Moreover, in opposing OCA’s Motion to Compel on Interrogatory OCA/USPS-7 (see note 3, *supra*), the Service argues that information relating to customer perceptions and consumer satisfaction are generally irrelevant to any issue properly before the Commission.⁹

⁵ PRC Op. R2000-1 at para. 5013.

⁶ *Id.*

⁷ *Id.*

⁸ Objection at 1-2.

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. Apparently, the Service contends that inaccurate verbal instructions by employees, rudeness, or slow window service are unrelated to the value of the service actually provided. OCA doubts that customers or the Commission agree.

Here OCA seeks studies on the relative efficiency of the Postal Service versus significant competitors and on false advertising complaints. Elsewhere, OCA seeks data on the substance of the claims being made by the Service (*see, inter alia*, note 4, *supra*) and on specific performance problems. OCA submits that a disparity between on-time failure rates or other service criteria between the Service and alternative sources is relevant, as would be persistent complaints demonstrating that the Service continues to make inflated claims that its performance cannot justify.¹⁰ Moreover, it is difficult to imagine how a consumer complaint about Postal Service advertising would not be tied to a specific service perceived to be less swift or efficient than was touted by the Service's advertising. The interrogatories go to the issues of efficiency and accurate advertising expressly identified by the Commission as relevant to the value of the service(s) provided by the Postal Service.

In addition, Section 3622 requires the Commission to ensure the establishment of a fair and equitable rate structure. Presumably, even the Postal Service would agree that a structure supported by deceptive claims and failure to disclose repeated inability to meet guarantees or service claims is not fair and equitable.

The Postal Service also objects to interrogatory 60(a) on the ground that it is overly broad. OCA is willing to limit any search to national headquarters, but submits that a request that covers less than a three year period and seeks presumably high level studies evaluating three specific categories of Postal Service offerings (Express Mail, Priority Mail, and Parcel Post) with products offered by two specific competitors (Fed Ex and UPS) is not overly broad.

¹⁰ Such information also bears on the availability of alternatives to the Service, another statutory criterion that the Commission must consider.

Finally, the Service argues that any such studies are so confidential that they should not be produced even under protective conditions. First, OCA cannot refrain from pointing out that this objection would ring with more conviction if the Service actually admitted that such studies exist, rather than claiming confidentiality for a potentially nonexistent pile of documents. Second, OCA believes that such studies are critical to evaluating the value of the identified services and must be made available. 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.

OCA respectfully requests that the Postal Service be required to comply with OCA/USPS-60 (a), (b) and (e), with the limitation to Interrogatory 60(a) discussed above.

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