

BEFORE THE
POSTAL RATE COMMISSION

POSTAL RATE AND FEE CHANGES, 1997

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY
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MOTION OF UNITED PARCEL SERVICE TO COMPEL
PRODUCTION OF INFORMATION AND MATERIALS REQUESTED
IN INTERROGATORY UPS/USPS-T29-11

(August 28, 1997)

Pursuant to the Special Rules of Practice in this proceeding, United Parcel Service ("UPS") hereby moves that the Presiding Officer overrule the objection filed by the United States Postal Service ("Postal Service") to interrogatory UPS/USPS-T29-11 to Postal Service witness Daniel (the "Interrogatory"), and order the Postal Service to produce the information and materials requested in that Interrogatory.

Statement of Facts

On August 4, 1997, UPS filed the Interrogatory at issue, which states as follows: "Please provide the results to date (costs, revenues, volumes, etc.) of the Priority Mail pre-barcoding experiment that is the subject of Docket No. MC96-1."

On August 14, 1997, the Postal Service objected to the Interrogatory, asserting that the information requested in the Interrogatory is irrelevant to this proceeding, and that the information sought is proprietary and "pre-decisional," and therefore need not be produced.

Argument

I. **The Information Requested In The Interrogatory Is Relevant To The Postal Service's Proposed Barcode Discount for Standard Mail (B) Packages.**

Interrogatory UPS/USPS-T29-11 seeks the data collected to date in the Parcel Service's First Class/Priority Mail pre-barcoding experiment. In that experiment, the Postal Service is providing a 4-cent-per-piece discount for pre-barcoded First-Class and Priority Mail packages. *See Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Final Rule, 61 Fed. Reg. 17,206 (1996); see also Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96-1.* Under the experiment, which began on April 28, 1996, and runs through April 28, 1998, participating mailers receive a 4-cent discount on each First-Class or Priority Mail parcel that the mailers pre-barcode. "The 4-cent discount is based on the estimated cost difference between keying a nonbarcoded parcel and scanning a barcoded parcel." 61 Fed. Reg. 17,206.

The pre-barcoded First Class/Priority Mail parcel rate category applies to parcels that: (1) are entered at one of 6 specific facilities designated by the Postal Service; (2) are prepared in a mailing of at least 50 pieces; (3) bear a barcode and are marked as specified by the Postal Service; and (4) meet machinability and other preparation requirements specified by the Postal Service. See Request, Attachment A at 12 (§ 221.41), 16 (§ 223.4).

Despite the Postal Service's assertions to the contrary, the data collected for First Class/Priority Mail pre-barcoded parcels is directly relevant to the Postal Service's request in this proceeding for an identical 4-cent per piece discount for Parcel Post pre-barcoded parcels, which appears to be modeled on the experimental First Class/Priority Mail pre-barcode discount. The substantive requirements of the proposed Parcel Post barcode discount are essentially the same as the requirements for the First Class/Priority Mail pre-barcode discount: (1) the mailing must be entered at facilities designated by the Postal Service; (2) the mailing must be of at least 50 pieces; (3) the mail must bear a barcode and be prepared as specified by the Postal Service; and (4) the mailing must meet other preparation and machinability requirements specified by the Postal Service. See Request, Attachment A at 33 (§ 322.15). Further, the amount of the proposed barcode discount for Parcel Post¹ -- 4 cents per parcel -- is identical to the discount provided to mailers for pre-barcoded First Class/Priority Mail

¹ The proposed Parcel Post pre-barcode discount of 4 cents is set forth in the Postal Service's Request at Attachment B, page 24, Rate Schedule 322.1A.

parcels, undoubtedly because the Postal Service operation avoided -- keying a nonbarcoded parcel -- is the same in both cases.

Thus, the proposed barcode discount for Parcel Post is identical in both form and substance to the First Class/Priority Mail pre-barcode discount that is the subject of the Interrogatory. In each case the discounts are for pre-barcoding parcels; in each case the discounts are 4-cents per piece; and presumably in each case the discounts are related to the cost savings realized because Postal Service personnel need not manually key nonbarcoded parcels. Clearly, the Postal Service's claim that the data collected (i.e., costs, revenues, volumes, etc.) in the experiment are not relevant to the identical proposal for Parcel Post packages is without merit.

Furthermore, the information sought in the Interrogatory is of obvious relevance to this proceeding because the more than one year's worth of data collected in the pre-barcode experiment will provide a basis for evaluating the identical proposed discount for Parcel Post. By receiving the data collected in the First Class/Priority Mail pre-barcoding experiment, the Commission and the parties will be better able to assess whether the proposed Parcel Post barcode discount accurately reflects the alleged cost savings to the Postal Service. The information sought in the Interrogatory is clearly relevant to this proceeding, and the Postal Service should be ordered to produce all responsive information and materials.

II. The Data And Results From The First Class/Priority Mail Pre-Barcoding Experiment Are Not Protected From Disclosure Under Any Theory Of Privilege.

The Postal Service's claim that the data collected to date in the First Class/Priority Mail pre-barcoding experiment do not have to be produced because they are "pre-decisional" proprietary information is without merit. As a threshold matter, there is no pre-decisional privilege here and the Postal Service's argument that the information should be withheld on that ground is absolutely without merit. Moreover, even if the Postal Service's claimed pre-decisional privilege were likened to a deliberative process privilege, that privilege still would not permit the Postal Service to withhold the requested information.

Under the deliberative process privilege, certain opinions and recommendations underlying governmental decisions may be protected from disclosure, so as to encourage open discussion of legal and policy issues and to protect the decisionmaking process of government agencies. See Mapother v. Department of Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993); Wolf v. Department of Health & Human Servs., 839 F.2d 768, 773 (D.C. Cir. 1988); Playboy Enterprises, Inc. v. Department of Justice, 677 F.2d 931, 935 (D.C. Cir. 1982). However, the deliberative process privilege does not shield from disclosure purely factual information such as that sought by the Interrogatory (costs, volumes, etc.), and reports, statistics, surveys and other fact-based materials are not exempt from disclosure under the privilege. See


Petroleum Info. Corp. v. Department of Interior, 976 F.2d 1429, 1434 (D.C. Cir. 1992); EPA v. Mink, 410 U.S. 73, 87-89, (1973)(“purely factual” material not protected); Playboy Enterprises, Inc., 677 F.2d at 935; Pacific Molasses Co. v. National Labor Relations Board, 577 F.2d 1172, 1183 (5th Cir. 1978)(statistical report not protected from disclosure); McClelland v. Andrus, 606 F.2d 1278, 1289 (D.C. Cir. 1979)(beyond dispute that unevaluated factual reports not exempt from disclosure); Army Times Publishing Co. v. Department of Air Force, 998 F. 2d 1067 (D.C. Cir. 1993)(poll results not privileged).

Here, the information sought in the Interrogatory is clearly fact-based; the Interrogatory seeks nothing more than facts such as costs, revenues, and volumes relating to the First Class/Priority Mail pre-barcoding experiment. Information of this type will not reveal the deliberative process of the Postal Service, and production of that information will in no way “chill” the Postal Service’s willingness to test new product offerings or inhibit “open discussion of legal and policy issues.” There is no legitimate privilege supporting the Postal Service’s withholding of the requested information, and there is no legitimate concern about the effects disclosure of the requested data will have on the Postal Service’s decisionmaking process. The Postal Service should be ordered to produce the information and materials requested in the Interrogatory.

Conclusion

For the foregoing reasons, United Parcel Service respectfully submits that the Postal Service's objection to Interrogatory UPS/USPS-T29-11 should be overruled, and the Postal Service should be ordered to produce the information and materials requested in that Interrogatory.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Commission's Rules of Practice.



Albert P. Parker, II

Dated: August 28, 1997
Philadelphia, PA