

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

**OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO
THE OFFICE OF THE CONSUMER ADVOCATE'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS REQUESTED ON OCA/USPS-51-57
(November 9, 2001)**

The Postal Service opposes the Office of Consumer Advocate's Motion to *Compel the Production of Documents Requested in OCA/USPS-51-57*, filed on October 30, 2001, on the grounds of relevancy, commercial sensitivity, overbreadth, deliberative process privilege and burden. The Postal Service has already provided the FY2000 and FY2001 national survey results of class-specific questions. In their motion, OCA seeks general survey results that measure customer attitudes about quality of and satisfaction with products and services, the response the Postal Service provides to telephone inquiries, preferences or need for existing or potential product and services, and window and delivery service. The OCA has limited their initial request to results of national studies and surveys conducted in FY94, FY97, FY2000 and FY2001.

The Postal Service maintains its position that results not tied to specific classes of mail are not relevant to the determination of rates and fees, which defines the scope of this proceeding. The Postal Service is willing to narrow this discovery dispute further by providing more information than that provided in its initial response. Without waiving its right to raise a relevancy objection in the

future and despite the disturbing nature of the POR as discussed below, the Postal Service will provide, pursuant to a grant of appropriate protective conditions, the available responses to all survey questions paralleling the questions listed in the Presiding Officer's Ruling 2001-1/7, from the following surveys¹: USPS Business Customer Satisfaction Survey, FY94 and FY 97; USPS Customer Satisfaction Survey (Residential), FY94 and FY97; National Account Survey, FY94, FY97, FY00 and FY01 and the Premier Account Survey, FY94, FY97, FY00 and FY01. While the Postal Service is willing to narrow this discovery dispute in this way, it strongly opposes the production of its market research.

I. Customer Satisfaction Measurement

The survey material being produced constitutes all information in the possession of the Postal Service responsive to these interrogatories with the following exceptions: the commercially sensitive market research data, discussed below; data from the American Customer Satisfaction Index, which is the subject of OCA/USPS-64 and 65 and a partial objection filed by the Postal Service on October 29, 2001; and publicly available material.² The four surveys constitute Postal Service's Customer Satisfaction Measurement or CSM. The Postal Service conducts CSM on a national basis. It does not separately conduct regional or local CSM studies, since its products, services, and pricing do not vary by region or locality. The four studies mentioned above, which survey

¹ Some of the survey data from FY94 and FY97 may not be available. After receiving POR 2001-1/7, the Postal Service undertook a search and has not yet been able to confirm that data from all four surveys are available for FY94 and FY97. In its motion for protective conditions, the Postal Service will report on the status of the search.

residential customers, small business customers, Premier Accounts and National Accounts, comprise the universe of the Postal Service's CSM.

The survey data that will be provided will give the OCA access to much of the kind of current and historical data it says it wants to explore: "[c]ustomers' perceptions of the efficiency, accuracy, and convenience of the Postal Service and its staff"; information on "general and diverse customer satisfaction/dissatisfaction with the Postal Service"; historical data to determine whether customer perceptions and the level of satisfaction are getting better, worse, or staying constant". OCA Motion to Compel at 5, 6 and 7. While the Postal Service in no way concedes the probative value of the information being produced, it is nevertheless willing to produce it.

II. Market Research

The Postal Service continues to insist that the commercial sensitivity of market research falling within the scope of these interrogatories, particularly 54, and the burden of reviewing and producing such research, greatly outweigh the OCA's purported need for access. Despite OCA limitations to FY 94, FY 97, FY 2000 and FY2001, there remain 381 surveys that are possibly responsive to OCA's discovery request.

The Postal Service is entitled by law to protect from disclosure its highly sensitive market research, conducted in the ordinary course of business and not

² In light of the POR 2001-1/7, the Postal Service will revise its response to OCA/USPS-53 to identify publicly available customer satisfaction data.

offered in support of any rate or classification proposal before the Commission. As the Commission is well aware, 39 U.S.C. § 410(c)(2) provides that the Postal Service shall not be required to disclose "information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed." The Office of Market Intelligence and Segmentation oversees the conduct of extensive research, probing the various market segments served by the Postal Service, of a type which, as a matter of "good business practice", would never be made available to the competition. Congress foresaw this need and provided for it by statute.

Courts have assessed the merits of a request to protect commercially sensitive information from disclosure by evaluating 1) the extent to which information is known outside the business; 2) the extent to which information is known to those inside the business, 3) the measures taken to guard the secrecy of the information; and 4) the value of the information to the business and its competitors. Reliance Insurance Co. v. Barron's, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)

The market research clearly meets these criteria. None of the 381 studies were prepared for dissemination to the public or to outside stakeholders. Access to postal employees and contractors is strictly limited: the market research database is protected by security measures. Some of the data is so sensitive it is not placed in the database. Moreover these studies cover many aspects of the Postal Service's business. They look at various market segments and

competitors, assessing segments' and customers' use of both postal and competitive services. They look at business processes, evaluating existing ones and exploring possible new offerings. They consider pricing options. They evaluate the retail and business channel services and assess proposed changes in services. They explore new product concepts. The value to postal competitors is immeasurable.³ This data warrants protection from disclosure.

Moreover, the courts have recognized that for highly confidential business data the party seeking disclosure has the burden of demonstrating how the material is relevant. It is not necessarily enough to protect the data from general public disclosure. In Brown & Williamson Tobacco Corporation v. Jacobson, et.al, 1984 U.S. Dist. Lexis 17348, the court granted the plaintiff's motion for protective order preventing discovery of market research unless it dealt specifically with the incidents at issue in the case. The litigant's need for the information to adequately present its case must be considered in light of the potential damage disclosure would cause to the holder of the trade secret. See Hartley Pen Co. v. United States District Court, 287 F1 2d 324, 328 (9th Cir. 1961)

The data simply are not relevant, even to the OCA's stated objectives in propounding its interrogatories. Unlike the survey material being provided the OCA, the Postal Service's market research is not longitudinal – it is not intended to measure changes in customer perceptions over time. Any arguably responsive market research would not span the fiscal years pinpointed by the OCA, and

³ The Postal Service is willing to provide a sworn statement from the Manager of Market Intelligence and Segmentation regarding the factors that merit protection, if that would assist the Presiding Officer.

would provide the OCA with no additional information on trends in customer satisfaction.

Additionally, market research must be considered too commercially sensitive to divulge where, as here, so much material is already being provided and the showing of relevancy is tangential at best. Again, the reader would gain information on the Postal Service's relationships with its customers, as well as customers' perceptions of our services and any proposed changes, plus the measured response to any concepts being tested. The value of this kind of information to competitors can hardly be overstated.

Public disclosure of studies of this kind could engender considerable fallout. They would provide the reader with critical information to understand and evaluate management's business strategies, exposing ideas being considered, and the parameters being tested. The reader could also gain insight into why various concepts were either accepted or rejected by postal management, as part of the ongoing process of product evaluation and/or design. Since all of this would constitute an impermissible intrusion into the postal decisionmaking process, the deliberative process privilege should apply. Courts have found that confidential information dating back even a decade or more may provide valuable insights into a company's current business practices that a competitor may seek to exploit. Encyclopedia Brown v. Home Box Office, 26 F. Supp. 2d 601, 614 (S.D.N.Y. 1998)

Any reasonable business enterprise would consider its strictly internal market research information to be proprietary and confidential, and would make

every effort to protect it from public disclosure. That fact was recognized by Congress, when it enacted 39 U.S.C. § 410(c)(2). Accordingly, the Postal Service continues to object to interrogatory 54 insofar as it encompasses market research studies, on the grounds that the material is not only irrelevant, but commercially sensitive, and covered by the deliberative process privilege.

Finally, the Postal Service reiterates its position that provision of any responsive material within its market research files would be unjustifiably burdensome. As noted previously, review of each study for responsiveness and copying could take an average of one hour or more. Again, a reasonable level of review would take far longer. Even with the OCA's agreement to limit its request to FY's 94, 97, 00 and 01, the total number of potentially responsive studies still stands at 381. The Office of Market Intelligence and Segmentation estimates that it would have to expend around \$5000 in personnel costs, and \$1000 for copying. Assumption of such a burden, particularly at a time when postal resources are being drained at almost unprecedented levels, can not be justified.

OCA's position that the Postal Service should file a log of the nature of each of the documents in dispute does not account for the burden that still remains. See OCA's Motion to Compel at 4. Even logging 381 market research surveys would strain Postal Service's resources.

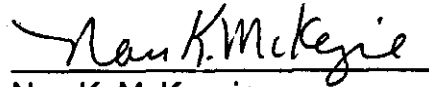
Therefore, the Postal Service respectfully requests that the Commission deny the OCA's Motion to Compel.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

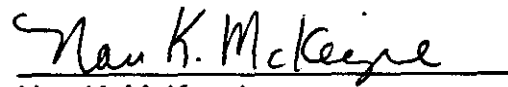
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CERTIFICATE OF SERVICE

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.



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