

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-64(c), 65-73, 77-78
(November 13, 2001)

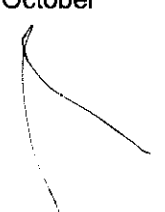
Pursuant to Rule 21 of the Rules of Practice of the Postal Rate Commission, the Office of the Consumer Advocate ("OCA") hereby moves to compel the production of certain specific documents as requested in OCA/USPS-64(c), 65-73, 77 and 78. The Postal Service filed objections to these interrogatories on October 29, 2001.¹

OCA believes that the Postal Service's relevance objections have been obviated in large part by the Presiding Officer's recent ruling on the Postal Service's blanket objections to interrogatories aimed at consumer satisfaction, surveys, and other issues relating to consumer choice.² Accordingly, OCA will address the relevance of that ruling to the Service's general objections, demonstrate the relevance of the individual specifications, and then address the inadequate and undocumented privilege claims made by the Service.

I. POR-1/7 AND THE POSTAL SERVICE'S BOILERPLATE RELEVANCE OBJECTIONS

POR-1/7 rejected the Postal Service's sweeping boilerplate objections to every OCA interrogatory that sought information on consumer satisfaction with the Postal

¹ "Objections of United States Postal Service to Interrogatories OCA/USPS-64-73, 77-78," October 29, 2001.



Service's products and services. In particular, POR-1/7 found that the information sought was relevant even though it was not strictly tied to a particular class and was not specifically related to the determination of rates or fees for that class.³ First, the Presiding Officer determined that the consumer satisfaction surveys were relevant to the volume estimates made by witness Tolley and that these estimates might well be influenced by consumer perceptions of the quality of services rendered by the Postal Service.⁴ Second, he found that information relating to proper delivery, timeliness and other service quality issues were relevant to assess and corroborate or question data proffered by the Postal Service on forwarding costs and service standards.⁵ Third, the Presiding Officer noted that information relating to consumer satisfaction and consumer perceptions of service quality were relevant to the statutory requirement (Section 3621) that rates generate sufficient revenue to recover, as nearly as practicable, the Postal Service's total costs incurred under honest, efficient, and economical management.⁶

More generally, POR-1/7 rejected the Postal Service's tactic of building a straw man by assuming the content of OCA's eventual testimony on the appropriate size of the contingency and then "rebutting" the materiality of its own invented future testimony. The Presiding Officer correctly concluded that OCA is entitled to obtain relevant evidence on consumer satisfaction without having to meet objections based on the

² POR No.R2001-1/7 (November 7, 2001) (hereinafter "POR 1/7").

³ *Id.* at 1-2.

⁴ *Id.* at 2-3.

⁵ *Id.* at 3.

⁶ *Id.*

hypothetical nature of future testimony.⁷ He held that OCA is merely required to show that the information sought may lead to the discovery of relevant evidence. OCA is not required to rebut attacks on its testimony before the Postal Service produces the information needed to draft and prepare the testimony.

II. RELEVANCE OF INDIVIDUAL INTERROGATORIES

OCA responds to the Postal Service's objections, discussing as one group as the Postal Service did, OCA/USPS-66-73. In accordance with the Commission Rules 26(d) and 27(d), interrogatory OCA/USPS-64(c) and the remainder of OCA/USPS-64, together with the Postal Service response are reproduced below.

A. OCA/USPS-64(c).

OCA/USPS-64. The American Customer Satisfaction Index is a national economic indicator of customer satisfaction with the quality of goods and services available to household consumers in the United States. Approximately 30 government agencies participate in the Index.

- (a) Does the Postal Service currently participate in the Index?
- (b) If the answer to (a) is negative, please discuss why the Postal Service does not participate. Provide specific cites to all documents used in preparing your response and include a copy of each source document referenced if one has not been previously filed in this docket.
- (c) If the answer to (a) is positive, please furnish copies of all results.

Response:

- (a) Yes, the Postal Service is included in the Index.
- (b) Not applicable.
- (c) See objection filed on October 29, 2001.

The Postal Service's response to OCA/USPS-64(a) indicates that the Postal Service currently participates in the American Customer Satisfaction Index, a national indicator of customer satisfaction with the quality of goods and services available to household consumers in the United States. However, the Postal Service objects to

⁷

Id.

interrogatory OCA/USPS-64(c) that asks if the Postal Service does participate in the Index to “furnish copies of all results” of the American Customer Satisfaction Index.

The Postal Service’s objections are very limited and can be readily answered. First, the Postal Service says that it “is under contractual obligation not to release it publicly.” (Objections at 2). The first objection may be easily remedied by providing for procedures that insure the documents are not released publicly but are released only under protective conditions providing for limited access. Assuming the information is confidential, and that the Postal Service can make the demonstration of competitive harm required by POR-1/7 at 4, arrangements can be provided to maintain legitimately confidential material just as this Commission already has with several documents in this proceeding.⁸ The Presiding Officer has already issued two rulings providing for protective conditions in this docket, the first covering access to the commercially sensitive FedEx agreement.⁹ However, OCA submits that the Service should be required to explain why it has entered into contractual arrangements that limit its ability to provide the Commission with relevant and material information. Surely, it is foreseeable that rate applications will be made and that such contractual prohibitions hamper the Commission and impinge on the discovery rights of interested parties.

Second, the Postal Service claims: “[s]ince the results can not, in any event, be tied back to any specific postal class or service they are not relevant to any rate or

⁸ OCA notes that POR-1/7 rejected sweeping confidentiality claims by the Service and required a particularized showing of the harm, if any, that would be caused by public disclosure.

⁹ See “Presiding Officer’s Ruling Granting Motions For Protective Conditions,” Ruling No. R2001-1/3, October 23, 2001 and “Presiding Officer’s Ruling Granting Motion For Waiver And For Protective Conditions,” Ruling No. R2001-1/5, October 31, 2001. See also, “Order on Protective Conditions Appropriate for Application to Sensitive Information Produced in This Proceeding,” Order No. 1283, January 28, 2000.

classification issue before the Commission in this proceeding." (Objections at 2). The question of whether matters not related to any specific class or service issue are relevant has been discussed previously by the OCA in two separate motions to compel¹⁰ and definitively resolved in POR-1/7. The Presiding Officer's ruling obviates this argument.

Postal Service witness Tayman, testifying as to the appropriate level of contingency, has said that the contingency is necessary to provide for the "variation between the estimated and actual mail volume." (USPS-T-6 at 61). As discussed in the testimony in Docket No. R2000-1, mailer's perceptions of the quality of mail service, *i.e.*, efficiency, accuracy, and convenience of the mails generally (not only class specific perceptions) are relevant to the level of mail volume and revenue. Ultimately the level of volume and revenue determines the degree of profit or loss. Postal management clearly has control over service quality and, it follows, to a certain degree exercises control over mail volume. In other words, mail volume can be increased through service quality improvements. As noted in OCA's previous motions, witness Tolley has not taken this possibility into account in estimating volume. Nor has witness Tayman. If the opportunities for improving service quality are considered to have an impact on mail volume, then the estimated size of the contingency may be lessened. Thus, in exercising control over the quality of service and the volume of mail, Postal Service management would be able to ease developing shortfalls in mail volume estimates and mitigate the need for a portion of the contingency allowance.

¹⁰ "Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA/USPS-7, October 23, 2001; "Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA/USPS-51-57," October 30, 2001.

OCA submits that POR-1/7 validated this line of argument and established the relevance of information on consumer satisfaction. Thus, the interrogatory plainly requests information relevant to the issues in this proceeding and the Commission should compel the Postal Service to produce the information available in its files.

B. OCA/USPS-65.

OCA/USPS-65 asks in relevant part:

Has the Postal Service ever participated in the American Customer Satisfaction Index? If so, please furnish copies of the results.

The Postal Service responded that it has been included in the Index since its inception, as part of the Transportation, Communications and Utilities sector. However, it objects that the interrogatory asks for copies of the results of the Index "without reference to any timeframe." (Objection at 2.) It claims "this interrogatory is overbroad, since it makes no attempt to limit itself to any reasonably current time period or, for that matter, to any particular time period whatsoever." (*Ibid.*)¹¹

¹¹ The Interrogatory OCA/USPS-65 and the Postal Service response are produced below in their entirety:

OCA/USPS-65. Has the Postal Service ever participated in the American Customer Satisfaction Index? If so, please furnish copies of the results.

(a) If the answer is positive, please discuss why the Postal Service commenced its participation in the Index and what benefits or advantages it expected to accrue by participation. Provide specific cites to all documents used in preparing your response and include a copy of each source document referenced if one has not been previously filed in this docket.

(b) If the Postal Service did at one time participate in the Index but no longer does, please discuss the circumstances that led to the cessation of participation and the reasons for ceasing to participate. Provide specific cites to all documents used in preparing your response and include a copy of each source document referenced if one has not been previously filed in this docket.

RESPONSE:

The Postal Service's objection is disingenuous, at best, as the request for copies of the results clearly means copies of all results during the period of participation. There is no ambiguity to the question. The Postal Service explicitly states in its response to OCA/USPS-65 that it has been included in the Index "since its inception." Thus, the particular time period covered by the interrogatory is, based upon the Postal Service's period of participation, the period since the inception of the Index. The Postal Service claims the OCA has not attempted to limit the interrogatory to "any reasonably current time period." (*Ibid.*) Not only is it not the burden of the OCA to limit an interrogatory to a reasonably current time period, but more importantly, the Postal Service has not suggested that the plain meaning of the request covers an unreasonable time period. It is not unreasonable to request the results of the survey since its inception.

The Postal Service again recites its objection that the information requested is not relevant as noted in the above discussion of OCA/USPS-64. The Postal Service only says "we note that any such results have no relevance to this proceeding, because they do not relate to specific mail classes or services." (*Ibid.*) In response, we incorporate in this motion to compel the argument presented above in the discussion relating to interrogatory OCA/USPS-64(c).

C. OCA/USPS-66-73¹²

The Postal Service has been included in the Index since its inception, as part of the Transportation, Communications and Utilities sector. The Postal Service has never been given a choice as to whether to participate, but has simply been included in the list of organizations about which data has been collected. Publicly available portions of the Index can be viewed at its website, www.asq.org/info/acsi/scores/transcommutil.htm/.

(a) Objection filed on October 29, 2001.

(b) Objection filed on October 29, 2001.

¹² The interrogatories, which are lengthy, are set forth as an appendix to this motion.

These interrogatories seek to assess the accuracy of Postal Service advertising and consumer perceptions of the accuracy of such advertising. The format is that interrogatories OCA/USPS-66, 68, 70, and 72 ask for videotapes (66 and 68) of television ads for Priority Mail and Express Mail and cassettes (70 and 72) of radio advertising for those two services. Subpart (a) of each interrogatory asks for internal Postal Service reports, studies, etc. of the accuracy or truthfulness of the identified advertisements. Subpart (b) of each of the four interrogatories asks for compilations, studies or tabulations of consumer complaints about the identified advertising. Interrogatories OCA/USPS-67, 69, 71, and 73 ask for "storyboards" used to develop the advertising identified in response to the immediately previous interrogatory. Thus, OCA/USPS-67 asks for "storyboards used to develop the television advertising for Priority Mail identified in response to OCA/USPS-66." The group of interrogatories seeks the actual contents of advertisements, internal Postal Service analyses of their accuracy and truthfulness, and data on consumer perceptions of their accuracy or truthfulness.

The Postal Service objects to all of the interrogatories as seeking irrelevant information and to the four "storyboard" interrogatories (OCA/USPS 67, 69, 71, and 73) as overly broad and burdensome. It also raises privilege claims as to interrogatories 66, 68, 70, and 72, which are discussed below.

Initially, OCA submits that the four interrogatories seeking the actual advertisements and studies of their accuracy and of consumer perceptions of their accuracy are directly relevant. The Presiding Officer in his November 7th ruling dismissed the objection that the inquiries are not directly tied to the determination of a

specific rate.¹³ Moreover, OCA believes that these discovery requests 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 the accuracy of the guarantees or advertising claims made for the product. 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.¹⁴ 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.¹⁵

The Commission made a direct connection between the truthfulness of Postal Service claims and the value of the product or service. OCA is merely seeking data on a specific concern expressed in the Commission's most recent decision. In light of that decision and POR1/7, these interrogatories are plainly relevant.

The Postal Service objects to the four interrogatories that seek "storyboards" on the grounds of burden, excessive breadth, and irrelevance. OCA removes the first two

¹³ POR-1/7 at 3.

¹⁴ PRC Op. R2000-1, para. 5013.

¹⁵ *Id.*

objections by agreeing to limit the requests to storyboards for advertisements run in calendar years 2000 and 2001.¹⁶

As to relevance, the storyboards are directly relevant to the development of the ads and how the claims were edited or modified in the development process. OCA is seeking to determine whether the advertisements became more or less truthful and accurate as they developed. This information bears on whether the Postal Service is heeding the Commission's clearly expressed concerns about its claims or allowing "puffery" to creep into its advertising.

Finally, the Postal Service objects to subparts (a) of interrogatories OCA/USPS-66, 68, 70, and 72 on the apparent ground that every single responsive document is subject to claims of governmental deliberative process privilege and attorney-client privilege. Absolutely no showing is made that any of the documents would reveal the deliberations of senior management of the Service. Neither is any authority cited that the privilege applies to discussions of a purely commercial decision about advertising, to discussions that involved outside consultants, or to discussions that may have involved lower level employees, not the Postmaster General. Similarly, there is not even a straightforward assertion that any of the documents were authored by an attorney or sought an attorney's advice. Such bald, unsupported claims should be dismissed out of hand.

General objections of the kind made here have been rejected in Commission proceedings.¹⁷ As in the ruling cited, the Presiding Officer should require the Service to file a detailed log indicating the nature of each document, the recipient and sender, and

¹⁶ The Service did not make the breadth and burden objections as to OCA/USPS-66, 68, 70, and 72.

the basis (if any) for claiming the privilege at issue. Also, the Service should be required to cite detailed authority for the assertion of the deliberative process privilege to communications involving low level employees and third parties. The Service should also explain how it can claim that privilege without a sworn affidavit from the Postmaster General, the highest official of the Service, which is the routine manner of assertion by federal agencies.

D. OCAUSPS-77

This interrogatory reads as follows:

OCA/USPS-77. The following refers to an October 16, 2001, article "USPS to Warn Public on Biohazards in Mail," from section A-7 of the Washington Post. Please provide a copy of the warning being sent to the "135 million U.S. homes, businesses and other addresses..." Include in your response an estimate of the cost to prepare and send the warning. In the estimate, please exclude the cost of the gloves and masks provided to all mail-handling employees. Please cite your sources and provide a copy of the source if one has not been previously filed in this docket.

This interrogatory seeks information on the cost of sending a notification mailing to 135 million addresses warning of biohazards. The Postal Service objects on the ground that the information is irrelevant.

This interrogatory seeks information on the cost of sending notification letters to Postal Service customers. One of the potential remedies that OCA is considering with respect to false or exaggerated claims or advertising is a corrective mailing to customers disclosing the problem and correcting the inaccurate or false claim. Predictably, the Service will object to the expense and burden in conclusory terms with no details (as it has done in this Objection). Accordingly, OCA seeks cost information on the most recent such mailing known to OCA so that the record can reflect actual

costs for such a mailing and the Commission can consider the proposed remedy on a specific factual record. If the Service is not required to produce this information, the Commission will face objections to any such proposed remedy with no record on which to base a decision relative to burden and cost.

E. OCA/USPS-78.

OCA/USPS-78. The following refers to USPS-LR-J-144, volume 1. Please provide a copy of the video "Customer Perceptions" identified on page 20 of "Module 1: Sales and Services Associates."

Here, OCA seeks a training video used to sensitize Postal Service workers to the kinds of experiences that produce negative consumer attitudes towards a company or a product or service. In view of the prior ruling cited above, it is obvious that the objection that the "video contains no class- or service- specific information" is without merit and should be rejected. OCA wished, among other things, to determine if the negative employee behaviors addressed are those actually reported with great frequency by Postal Service customers or if the training is misdirected.

OCA asks that the Service be ordered to comply with these interrogatories, with the minor modifications addressed in the text. OCA does not concur in the request for protective treatment, absent the showing mandated by POR1/7. For the foregoing

reasons, OCA asks that the Postal Service be directed to provide complete responses to interrogatories OCA/USPS-64(c), 65-73, and 77-78.

Respectfully submitted,

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Appendix: OCA/USPS-66-73

OCA/USPS-66. Please provide the actual video (in a format suitable for use in a standard VCR) of television advertising used to advertise Priority Mail.

- (a) Please provide specific cites to all internal Postal Service documents referring or relating to the truthfulness, accuracy, inaccuracy or deceptiveness of any advertisement or advertisements identified and include a copy of each source document referenced if one has not been previously filed in this docket.
- (b) Please provide specific cites for all tabulations, lists, summaries, analyses and compilations of consumer complaints relating to the truthfulness, accuracy, inaccuracy, or deceptiveness of any advertisement or advertisements identified and include a copy of each document referenced if one has not been previously filed in this docket.

OCA/USPS-67. Please provide a copy of the storyboards used to develop the television advertising for Priority Mail identified in response to OCA/USPS-66.

OCA/USPS-68. Please provide a copy of the actual video (in a format suitable for use in a standard VCR) of television advertising used to advertise Express Mail.

- (a) Please provide specific cites to all internal Postal Service documents referring or relating to the truthfulness, accuracy, inaccuracy or deceptiveness of any advertisement or advertisements identified and include a copy of each document referenced if one has not been previously filed in this docket.
- (b) Please provide specific cites for all tabulations, lists, summaries, analyses and compilations of consumer complaints relating to the truthfulness, accuracy, inaccuracy, or deceptiveness of any advertisement or advertisements identified and include a copy of each document referenced if one has not been previously filed in this docket.

OCA/USPS-69. Please provide a copy of the storyboards used to develop the television advertising for Express Mail identified in response to OCA/USPS-68.

OCA/USPS-70. Please provide copies of radio advertising (in a format suitable for a cassette tape recorder) used to advertise Priority Mail.

- (a) Please provide specific cites to all internal Postal Service documents referring or relating to the truthfulness, accuracy, inaccuracy or deceptiveness of any advertisement or advertisements identified and include a copy of each document referenced if one has not been previously filed in this docket.
- (b) Please provide specific cites for all tabulations, lists, summaries, analyses and compilations of consumer complaints relating to the truthfulness, accuracy, inaccuracy, or deceptiveness of any advertisement or advertisements identified and include a copy of each document referenced if one has not been previously filed in this docket.

OCA/USPS-71. Please provide a copy of the storyboards used to develop the radio advertising for Priority Mail identified in response to OCA/USPS-70.


OCA/USPS-72. Please provide copies of radio advertising (in a format suitable for a cassette tape recorder) used to advertise Express Mail.

- (a) Please provide specific cites to all internal Postal Service documents referring or relating to the truthfulness, accuracy, inaccuracy or deceptiveness of any advertisement or advertisements identified and include a copy of each document referenced if one has not been previously filed in this docket.
- (b) Please provide specific cites for all tabulations, lists, summaries, analyses and compilations of consumer complaints relating to the truthfulness, accuracy, inaccuracy, or deceptiveness of any advertisement or advertisements identified and include a copy of each document referenced if one has not been previously filed in this docket.

OCA/USPS-73. Please provide copies of the storyboards used to develop the radio advertising for Express Mail identified in response to OCA/USPS-72.

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.



Sylvia Brown

Washington, D.C. 20268-0001
November 13, 2001