

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 OCA MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND
INFORMATION REQUESTED IN OCA/USPS-60(a), (b), and (e)
(November 13, 2001)**

On November 5, 2001, the Office of the Consumer Advocate (OCA) filed a motion to compel responses to OCA interrogatories OCA/USPS-60(a), (b), and (e), to which the Postal Service had objected on October 22, 2001. The interrogatories in question are based on a 1998 Consumer Reports article comparing Postal Service and competitor delivery services. Subpart (a) asks for any and all "analyses, studies, reports or . . . articles" performed by the Postal Service regarding comparisons of Express Mail, Priority Mail and Parcel Post with competing services of FedEx and UPS, or an explanation why no such analyses, etc. have been performed. Subpart (b) requests the outcome of litigation between FedEx and the Postal Service reported in the article. Subpart (e) requests detailed spreadsheet-compatible information regarding the nature of complaints lodged with the Postal Service regarding the veracity of its Priority Mail and Express Mail advertisements.

The Postal Service objected to responding to each of these subparts on the grounds of relevance. The Postal Service further objected that subpart (a) was overbroad, unduly burdensome, and would require the provision of confidential, proprietary, commercially-sensitive information. The OCA now maintains that the information

sought is relevant to evaluating the value of services rendered by the Postal Service, and to assessing the fairness of the rate structure proposed by the Postal Service. OCA Motion to Compel at 3-4. The Postal Service disagrees.

Although, as the OCA points out, the Commission did express concern in the last general rate case about whether the Postal Service was providing sufficient or misleading information to customers of Express Mail, this expression of concern is not dispositive of the relevance issue. The question is: does the Commission have authority to review the accuracy of Postal Service advertisements? The answer is no. While the Congress saw fit to empower the Postal Service to investigate false representation issues under 39 U.S.C § 3005, no such power was granted to the Commission. The scope of its authority is constrained to those issues appropriate to the conduct of rate proceedings under 39 U.S.C. §3622. Perhaps in acknowledgment of this statutory limitation, the OCA attempts to justify its inquiry as in furtherance of the Commission's authority to evaluate the fairness and equity of the Postal Service's rates, or the value of the services rendered by the Postal Service.

Unfortunately, the OCA still has failed to explain how responses to the specific questions it poses will enable the Commission to better carry out its functions. For example, how exactly will disclosure of the outcome of a vaguely-described lawsuit initiated by FedEx years ago against the Postal Service better enable the Commission to assess the value of Express Mail, Priority Mail or Parcel Post in the test year? Perhaps the OCA is hoping that a court may have found that Postal Service ads for Priority Mail may were in some way misleading in years past. Even if this had happened, which the Postal Service disputes, such a finding would have little bearing

on the value of *Priority Mail* years later, specifically in the test year of this rate case.

Similarly, the fact that a certain number of citizen complaints may have been received by the Postal Service would do little to reliably indicate whether or to what extent the advertisements for a particular product may have been perceived to be accurate or truthful. Moreover, even if some complaints were received, it is unclear exactly what this would tell us regarding the value of the service whose advertisements were complained of. If the OCA is concerned with the actual performance of *Express Mail*, *Priority Mail* and *Parcel Post*, it is free to inquire about available indicators of such performance, and, indeed, has done so. But obscure references to “the relative efficiency of the Postal Service versus significant competitors” is an insufficient nexus to the value of the Postal Service’s services in this case, and certainly does not justify wide-ranging inquiries into all “analyses, studies, or . . . articles” that the Postal Service may have comparing its services to those of its competitors, or all complaints lodged with the Postal Service regarding the truthfulness of its advertisements.

To reduce the wide scope of its questions, the OCA now states that in subpart (a) it seeks only a limited search of the Postal Service’s national headquarters for “high-level studies” evaluating the Postal Service’s *Express Mail*, *Priority Mail* and *Parcel Post* offerings in comparison to products offered by *FedEx* and *UPS*. While the Postal Service appreciates the OCA’s effort to more narrowly focus its inquiry, the fact remains that such a search would still be quite burdensome and time-consuming. This burden is not justified by the limited relevance of the information sought.

Moreover, even as now limited, subpart (a) on its face calls for the production of any strategic analysis of competitor products, and would encompass commercially sensitive

and proprietary analyses and reports. Although the OCA casually dismisses the Postal Service's concerns regarding making such proprietary information available to its competitors (see Motion at 6), such concerns are serious and merit the Commission's intervention. The Postal Service periodically commissions analyses of the marketplace for its services in order to assess its competitive posture. Such analyses do not come without cost, and the results acquired are proprietary to the Postal Service. It should be easy for any party to these proceedings to understand why the Postal Service would strenuously resist sharing the benefits of such competitive analyses in this public proceeding, a proceeding in which the Postal Service's competitors are significantly involved.


For the foregoing reasons, the Postal Service opposes the OCA Motion to Compel.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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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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