

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  
REQUESTED IN OCA/USPS-119 and 123(a)  
(November 19, 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-119 and 123(a). The Postal Service filed objections to these interrogatories on November 5, 2001.<sup>1</sup>

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 of other issues relating to consumer choice.<sup>2</sup> Accordingly, in addressing each of the Service's relevance objections, OCA will show that they have been obviated by POR1/7 (if they ever had any validity).

In accordance with the Commission's Rules 26(d) and 27(d), the interrogatories are set out before the legal discussion of the Service's objections.

A. Interrogatory OCA/USPS-119.

OCA/USPS-119. For FY 2000 and FY 2001 and for each day of the week (e.g., Monday – Friday), please provide the following Express Mail

<sup>1</sup> "Objection of United States Postal Service to Office of the Consumer Advocate Interrogatories OCA/USPS-119 and 123(a)," filed November 5, 2001 (hereinafter cited as "Objection").

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

Next Day/Second Day Service data. Please cite your sources and provide a copy of the cited document if one has not been previously filed in this docket. If you are unable to provide an actual value, please provide an estimate.

- (a) The total volume and revenue generated by on each day of the week (for example, Mondays during FY 2000).
- (b) For each day of sales identified in response to (a), please provide the total volume and revenue of Express Mail for which the delivery service standard was not met.

The Postal Service objects to OCA interrogatory OCA/USPS 119 on the grounds that a request for total daily Express Mail service data is not relevant or material. The assertions are baldly stated without further explanation or support.

It is baffling why the Postal Service filed such a frivolous objection. To begin with, the Service had already provided the specific information requested for Saturday deliveries of Next Day Express Mail in response to OCA/USPS-30, i.e., Express Mail Next Day Saturday volumes and revenues for FY2000.<sup>3</sup> Since the Service has already conceded that Saturday data is relevant, how can it possibly argue that the exact same information for other days of the week is irrelevant (or, for that matter, confidential)?

Part (b) of the interrogatory seeks specific data on the magnitude of any problem the Postal Service may be having in meeting its delivery standards for Express Mail. The data is sought on a daily basis to determine if there is a specific problem with deliveries of mail just before or just after a weekend (for example, Next Day delivery of a package sent on Friday or Saturday), as compared with deliveries of packages dispatched at mid-week.

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<sup>3</sup> "Response of the United States Postal Service to Interrogatories of the Office of Consumer Advocate OCA/USPS-22-26, 30(a, c), 31-50," filed October 18, 2001; "Response of the United States Postal Service to Interrogatories of the Office of Consumer Advocate OCA/USPS-27-28 and 30(b)," filed October 22, 2001.

It is unconscionable that the Postal Service tries to deny the relevance of a concern directly expressed by the Commission in its most recent ratemaking opinion.<sup>4</sup> In that decision, the Commission unmistakably expressed its concern that the value of Express Mail Service, the specific service at issue here, is directly affected by the accuracy of the guarantees or advertising claims made for the product. The Commission felt that any weighing 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, stating that the Commission 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.<sup>5</sup>

Apparently, the Postal Service believes that it can dictate to the Commission (and parties to the proceeding) what evidence they can see and what is relevant to a proceeding before the Commission, even after the Commission has ruled to the contrary of the Service's position.

OCA submits that allowing discovery of relevant information is a mandatory statutory feature of a hearing on the record under the Administrative Procedure Act,<sup>6</sup> a duty imposed by Congress on the Commission. OCA is merely seeking data on a

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<sup>4</sup> PRC Op. R2000-1, para. 5013.

<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. §§ 556 *et. seq.*; see also 39 U.S.C. § 3624.

specific concern expressed in the Commission's most recent rate decision. In light of that decision, this interrogatory is plainly relevant.

The Postal Service's refusal to produce the data based on alleged commercial sensitivity is entitled, if possible, to even less weight. As stated previously, the Service has already produced Next Day Express Mail Service data for Saturdays in response to OCA/USPS-30.<sup>7</sup> No ground for a sudden "discovery" that the material is now confidential is alleged.

Moreover, the previous Postal Service objection cited as support is inapposite.<sup>8</sup> In objecting to OCA institutional interrogatory 29, the Service objected to providing specific data on Express Mail volume, revenue, and refund claims for identified individual Post Offices. While the objection to OCA Interrogatory 29 was without merit, it is not applicable here. Here, OCA merely seeks more data of a kind already conceded to be relevant and not confidential by the responses to OCA/USPS-30. OCA seeks national volume and revenue data for specific days of the week, not any sort of local desegregation of that data. The data is directly relevant to the truthfulness of Postal Service representations about the speed and promptness of its Express Mail Service throughout the week.

In POR1/7, the Presiding Officer stated that the Postal Service had alleged commercial sensitivity without alleging any harm that would arise from disclosure.<sup>9</sup> The same is true here, as in many other instances in which the Service alleges

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<sup>7</sup> See note 3, *supra*, and accompanying text.

<sup>8</sup> Objection at 2 *citing* "Objection of United States Postal Service to Office of the Consumer Advocate Interrogatory OCA/USPS-29," filed October 17, 2001.

<sup>9</sup> POR1/7 at 4.

confidentiality concerns to avoid embarrassment or to evade a valid discovery request. No ground for withholding information of a kind already made public is or could be alleged.

**B. Interrogatory OCA/USPS-123.**

OCA/USPS-123. Please refer to your response to OCA/USPS-28. The following refers to all areas where the Postal Service Express Mail average delivery time is greater than 2 days.

(a) Please provide the total volume and revenue impacted for FY 2000 and FY 2001.

Include cites to source documents and provides a copy if one has not been previously filed in this docket.

The Postal Service objects to providing the volume and revenue data sought by part (a) of OCA Interrogatory 123 on the all too familiar grounds of purported irrelevance and alleged commercial sensitivity. The Service objects to providing Express Mail volume and revenue data for 20 Post Offices identified (in response to OCA interrogatories 27 and 28) as those at which Express Mail average delivery time is longer than two days.

OCA seeks this data to test the effect of Postal Service Express Mail claims and advertising on the perceptions and expenditures of consumers. As the Service itself is forced to admit in its response to OCA/USPS-123(b), it is cheaper and just as fast to use Priority Mail in shipping to the 20 identified Post Offices.<sup>10</sup> Therefore, OCA seeks to discover the amount of Express Mail dispatched to these locations in plain defiance of economic logic. If it were more than a trickle, it would suggest a problem with the information disseminated by the Service. Here, unlike most cases, there is no "tradeoff"

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<sup>10</sup> Response of United States Postal Service to Interrogatories of Office of Consumer Advocate OCA/USPS-114-137, and 139-141, filed November 7, 2001.

between speed and cost to obscure the issue. A customer paying extra for Express Mail service to these locations gets no faster delivery for a greater cost. This is relevant.

Moreover, OCA must point out that the Service is again engaging in a pattern of needless objections. As discussed above, the Service objected to the detailed information on Express Mail and Express Mail refunds for these 20 Post Offices. The OCA responded with a vastly pared down request seeking only annual, aggregate data for the 20 offices as a group. Contrary to the Service's misrepresentation, the interrogatory seeks only annual figures for the 20 offices as a group, not individual office data.<sup>11</sup> Nevertheless, the Service responds by mischaracterizing the request and interposing a blanket refusal to provide any information.

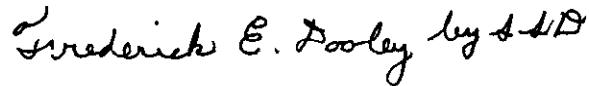
The Service's claim of potential competitive harm is likewise based on the mischaracterization that data is sought for individual Post Offices. Moreover, the allegation, like so many of the Service's commercial sensitivity claims, is completely unfounded. This interrogatory seeks data on Express Mail service to major metropolitan locales like "Chignik," "Chiknik Lagoon," and "Tyonek." The Service alleges no basis to believe that its commercial competitors are champing at the bit to seize the overnight (almost) business directed to these small rural communities. Their status as the only Post Offices that average longer than 2 days' delivery time for Express Mail service make them an interesting and probative sample test of the effect of Postal Service claims and ads, but the very reason that they are of interest makes a claim of competitive harm impossible to take seriously.

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<sup>11</sup> Objection at 2.

OCA asks that the Service be ordered to comply with these interrogatories. OCA does not agree to any 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-119 and 123(a).

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

Washington, D.C. 20268-0001  
November 19, 2001