

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 FOR
(1) PRODUCTION OF DOCUMENTS RELIED ON IN THE POSTAL SERVICE'S
OPPOSITION TO OCA MOTION TO COMPEL PRODUCTION OF DOCUMENTS
REQUESTED IN OCA/USPS-T36-1(a) AND (2) LEAVE TO FILE
A REPLY TO OPPOSITION OF THE POSTAL SERVICE
(November 28, 2001)

The Office of the Consumer Advocate (OCA) hereby moves for (1) production of documents quoted and relied upon in the Opposition of the United States Postal Service to OCA's motion to compel the production of documents requested in OCA/USPS-36T-1(a) ("Opposition")¹ and (2) leave to file a reply to the Postal Service's Opposition following the production of documents that are currently being withheld.

The Postal Service identified and withheld one study responsive to OCA/USPS-T-36-1(a).² This was a study by the Office of Inspector General ("OIG") entitled "Review of the Postal Service Delivery Confirmation Program at Selected Facilities." The Service opposed producing that study on the grounds of lack of relevance and the study's alleged commercial sensitivity. In its Opposition, the Postal Service quoted and characterized internal Postal Service document(s) as alleged proof of the irrelevance of

¹ "Opposition of United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-3-T-1(a)," filed November 13, 2001.

² "Partial Objection of the United States Postal Service to Interrogatory OCA/USPS-T36-1 (a) of the Office of the Consumer Advocate," filed October 22, 2001.

the report at issue.³ The document(s) were not attached to the Opposition or filed *in camera*.

After failing to locate the documents, OCA discussed the issue with Postal Service counsel. OCA learned that copies of the document(s) were attachments to the report and were being withheld, presumably on the same grounds as the report. The Service has not responded to OCA's recent request (by telephone) for the documents.

The Service's action in quoting and citing the substance of withheld documents to oppose discovery requests raises a fundamental issue of fairness. The Commission should not allow a party to cite the substance of a withheld document to support its opposition to discovery, unless the party chooses to waive discovery objections and to attach or file the document. Here, OCA cannot assess whether the Service's characterizations are fair or whether the quote is accurate in context. The Service should be required to choose between relying on the document(s) or withholding it/them. Since the Service chose to cite the document(s), the Service must produce it/them, possibly subject to protective conditions, if appropriate, or after minimal redaction of obviously extraneous but sensitive material.⁴

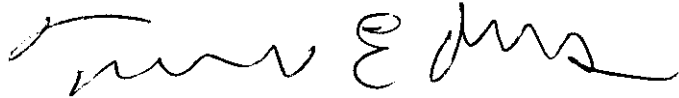
The OCA respectfully requests that the Presiding Officer enter a ruling requiring production of the cited documents and granting OCA leave to file a reply in support of its motion to compel production of the underlying report within five business days of receipt

³ Opposition at 2 quoting a Letter, dated September 20, 2000, from the Postal Service's Vice President for Delivery to OIG's Acting Inspector General for Business Operations. The Opposition also characterizes the position of OIG and its subsequent actions, but does not identify a source for these factual assertions.

⁴ Redaction may often unacceptably infringe on the rights of the party seeking discovery to fully litigate the discovery issue.

of the documents. Alternatively, the Presiding Officer may choose to disregard any arguments presented in the Opposition that quote or rely upon materials withheld both from the OCA and the Commission.

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 S. Wallace

Washington, D.C. 20268-0001
November 28, 2001