

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

**REPLY OF THE UNITED STATES POSTAL SERVICE TO  
THE OFFICE OF THE CONSUMER ADVOCATE'S RESPONSE TO MOTION  
FOR PROTECTIVE CONDITIONS FOR RESULTS OF CONSUMER  
SATISFACTION SURVEYS  
(November 26, 2001)**

The Postal Service hereby replies to the Office of the Consumer Advocate's Response to United States Postal Service Motion for Protective Conditions for Results of Consumer Satisfaction Surveys, filed on November 19, 2001. The OCA has failed to rebut the Postal Service's case that protective conditions are warranted and meet the needs of the participants in this proceeding. Furthermore, the OCA's main argument in support of release of the data, namely that disclosure would generate negative press and "influence the Postal Service to do a better job" represents a wrongful use of discovery, and clearly falls outside the scope of this proceeding.

**Background**

In interrogatories OCA/USPS-7 and 51-57, OCA has requested access to customer satisfaction survey material, among other things. OCA/USPS-7 seeks the 2000 and 2001 data from two surveys: Customer Satisfaction Measurement (CSM) Residential survey and CSM Small/Large Business survey (hereinafter referred to as "Residential survey" and "Business survey," respectively).

Interrogatories OCA/USPS-51-57, as subsequently limited by OCA, seek the FY94, 97, 2000 and 2001 for four surveys: Residential and Business surveys, the CSM National Account survey and the CSM Premier Account surveys.<sup>1</sup> In its response to these interrogatories, the Postal Service agreed to provide the 2000 and 2001 results pursuant to protective conditions for class-specific questions for these four surveys.<sup>2</sup> OCA joined two motions for protective conditions which were granted in POR No. 2001/2 and 3.

The discovery dispute at issue here involves the remaining survey data requested by OCA/USPS-7 and 51-57. Over the Postal Service's opposition, the Presiding Officer issued POR-2001-1/7 on November 7, 2001 in which he partially granted the OCA's motion to compel the survey material responsive to OCA/USPS-7, the 2000 and 2001 Residential and Business survey results). Subsequently, the Postal Service, in an effort to narrow the dispute, agreed to provide the available survey data requested in OCA/USPS-51-57 that parallels the data that had been ordered in Ruling No. 7: Residential and Business data for FY94 and 97, all pursuant to an order of protective conditions; and National and Premier Account survey data for FY94, 97, 2000 and 2001.<sup>3 4</sup>

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<sup>1</sup> For the years at issue, the Postal Service surveyed residences, small and large business, National Account customers, and Premier Account customers, although it did not use the term "Customer Satisfaction Measurement" until 1998. See Declaration of Francia G. Smith (Smith Declaration), para. 2. For purposes of this reply, the Postal Service will refer to all the surveys at issue, including FY94 and 97 as CSM surveys.

<sup>2</sup> Objection of the United States Postal Service to the Office of the Consumer Advocate's Interrogatories (OCA/USPS-51-57) and Joint Motion for Protective Conditions, filed on October 15, 2001.

<sup>3</sup> See *Opposition of the United States Postal Service to the Office of Consumer Advocate's Motion to Compel Production of Documents Requested in OCA/USPS-51-57*, filed on October 9, 2001.

The Postal Service moved for protective conditions for the survey data from all the surveys at issue on November 13, 2001. Motion for Protective Conditions for Result of Customer Satisfaction Surveys. On November 19, 2001, the Office of Consumer Advocate filed its opposition.

### **Overview**

When assessing whether protective conditions are warranted, the Commission has engaged in analysis of the relative risks and benefits from disclosure. As stated previously:

Whether, and on what terms, protection is to be afforded is for the agency to determine by balancing the harm of disclosure against the party's need to prove his case and the public interest in just and accurate adjudication of disputes.

Order No. 1025, August 17, 1994 at 11.

Before launching into a rebuttal of the OCA's opposition to protective conditions, it is appropriate to calibrate the scales upon which this dispute will be measured. The discovery of customer satisfaction data sets the Commission on a novel path. As will be addressed at length below, these data are Postal Service trade secrets and highly valuable confidential business information. Yet, none of the data were prepared in anticipation of this proceeding. None of the data relate to the costs of products or services or volume or revenue projections, which are the mainstays of litigation before the Commission.<sup>5</sup>

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<sup>4</sup> The Postal Service has data from all surveys at issue except FY 94 where it has only the Residential survey data available. The FY94 Business, National Accounts and Premier surveys are not available.

<sup>5</sup> Cf. Motion of United States Postal Service for Waiver and For Protective Conditions for Library References Concerning Costs Associated With the Fedex Transportation Agreement., filed in this proceeding on September 24, 2001.

Furthermore, the relevancy and probative value of this survey material has not been established. Rather POR-2001-1/7 permitted the discovery of material that has a "special nexus" to this proceeding or, as the OCA so aptly put, the Presiding Officer "held that OCA is merely required to show that the information sought may lead to the discovery of relevant evidence."<sup>6</sup> The Presiding Officer has granted the OCA considerable leeway to pursue their theory. It remains to be seen how customer satisfaction survey data will lead to quantifiable improvements in revenue and volume forecasting, as the OCA has maintained.<sup>7</sup>

Moreover, these are perilous times for the Postal Service, as it faces one of its greatest crises, bioterrorism. The arguments on the facts and the law strongly support the issuance of protective conditions. The current environment in which the Postal Service faces challenges of diversion from its core products and in which bioterrorism has put the safety of the mail in question, dictates an approach that minimizes the potential harm. The Presiding Officer must decide: is disclosure worth the attendant risks to the Postal Service, particularly when the value of this information to the Commission in recommending rates and fees is unknown.

The Presiding Officer must measure the risk of harm against the ability of the OCA to prove its case and in light of the public interest in just and accurate adjudication of disputes. Yet, the protective conditions will not deny the OCA a

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<sup>6</sup> See Office of the Consumer Advocate Motion to Compel Production of Documents Requested OCA/USPS-64(c), 65-73, 77-78 at 4.

<sup>7</sup> See Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA-7, filed on October 23, 2001.

full and fair opportunity to pursue its novel theory. Indeed, missing from OCA's opposition is any argument that the access afforded under protective conditions will in any way inhibit the presentation of its case.<sup>8</sup> Nor is there any argument that protective conditions will adversely affect the ability of the Commission to complete its statutory role of recommending rates and fees. With such valuable, proprietary, commercially sensitive information at stake, it makes no sense "to risk competitive injury from disclosure based on a generalized concept favoring public scrutiny of regulated industry ratemaking," as this can prove to be "unduly harsh." 44 F.E.R.C. P61,066 at 23 (reversing ALJ order granting motion to compel production of commercially sensitive information exempt from disclosure under FOIA, 5 U.S.C. § 552 (b)(4)). This is particularly true when the harms from disclosure far outweighs any benefits.

### **Argument**

In its opposition to the motion for protective conditions, the crux of OCA's argument is that the Postal Service has failed to prove that it would be harmed by the release of the data. This argument is without merit.

While OCA's analysis treats harm as a single topic, courts have often broken the issue into three subparts, an approach that is helpful here. In Zenith v. Matsushita Electric Industrial Co. Ltd., 529 F. Supp. 866 (E.D. Pa 1981), the court articulated the lines of inquiry as follows: 1) Is the matter sought to be

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<sup>8</sup> OCA's expression of great concern that this discovery dispute has caused a delay in receiving survey material, is specious. See OCA's Response to Motion of Postal Service for Leave to Reply to OCA's Opposition to Protective Conditions for Results of Consumer (sic) Satisfaction Surveys, filed on November 23, 2001 at 2. If this information was so important to the presentation of their case, then why did OCA oppose protective conditions when supporting the motion would have enabled them to receive access to the material?

protected “a trade secret or other confidential research, development, or commercial information” which should be protected? 2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order? 3) Has the party seeking protection shown “good cause” for invoking the court’s protection? Id. at 889-890.

There is no doubt that the survey data sought here meets the first criterion, as has been shown in the attached declarations: from Max D. Larsen, a managing partner at The Gallup Organization (Larsen Declaration), and from Francia G. Smith, the Vice President and Consumer Advocate for the United States Postal Service (Smith Declaration). These declarations demonstrate that, not only does the Postal Service guard survey information carefully from public disclosure, but government and commercial enterprises do so as well. See Smith declaration, para. 5-8; Larsen Declaration, para. 5-6. These declarations also make evident the tremendous value of this information, much of which would dissipate upon dissemination to the public.<sup>9</sup> Even Congress and the GAO, which have received this data as part of their oversight functions, have withheld it from public disclosure. Smith para \_\_\_\_\_. It is worth noting that, in its Opposition, OCA does not dispute that this information is a trade secret or confidential business data.

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<sup>9</sup> OCA argues that the cost of the survey has no bearing on this discussion since the Postal Service routinely provides other costly data in these proceedings. Opposition at 9. The annual cost of these surveys is data over \$4 million. See Smith Declaration, para. 2. However, other “expensive” data that is collected for presentation in rates cases differs from survey data. In the former, the Postal Service collects the data for the express reason of supporting its request for a recommended decision on rates and fees. The value of the data does not diminish when publicized. By comparison the value of the survey data drops precipitously when publicized for the reasons stated in this reply.

Second, the declarations also address the cognizable harm that could result from release. For example, the data collected pinpoint organizational strengths and weaknesses. Larsen declaration, para. 4. Whether the data are favorable or not, a company that seeks to sell alternatives to Postal Service customers can use the data to its advantage. To illustrate, if the data reflect that customers are satisfied overall with the service they receive at their local post offices, commercial mail receiving agencies may shift their marketing strategy away from service and instead emphasize that it offers a variety of vendors' offerings for package services. Obviously, if the data are unfavorable, the resources may be shifted in favor of highlighting their service. See Smith Declaration, para. 7.

Even the OCA anticipates that the Postal Service could be harmed by this disclosure. In its opposition at page 4, the OCA identifies as the sole advantage to disclosure: "To the extent that the mailing public may be dissatisfied with elements of the service that it receives from the Postal Service, airing these concerns in public may influence the Postal Service to do a better job." In effect, the OCA expects bad press and offers it as a meritorious outcome. Generating bad press as an objective is an inappropriate use of discovery and to our knowledge has never been considered in any civil litigation or Commission proceeding as a suitable goal. If anything, the potential for bad press underscores the need for protective conditions.

The Postal Service anticipates that OCA will argue that the harm resulting from bad press about Postal Service's weaknesses does not qualify as

competitive harm justifying protective conditions. Yet, negative media has both short term and long term effects, as the recent bioterrorism crisis has shown. An October 30, 2001 article in Internet Week, found at <http://www.internetwk.com/story/INW20011030S003>, stated that recent anthrax scare is leading to increased interest in moving bill payments and account management online. An analyst from the Yankee Group stated that the e-billing industry as a whole will see a spike in enrollment over the next year or so, as a result of the anthrax attacks. He predicted an extra 300,000 customers would migrate to e-billing. Thus, negative media about Postal Service weaknesses can be seen to have an adverse impact on postal volume, a clear competitive harm. Long-term effects are also possible from the negative media, as the Postal Service could suffer harm to its brand equity. See Smith Declaration, para. 7.

The Postal Service can also be harmed when it loses control over its survey data. Once the information is made public, neither the Postal Service nor the Commission can exercise any control over the selective use of data. Businesses who compete postal customers could disseminate only partially accurate survey summaries. This is one of the reasons why survey organizations limit the use of their data. For example, the American Quality Society, which publishes the American Consumer Satisfaction Index, bars the selective release of data. See Attachment to the Opposition of the United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-64(c), 65-73, 77-78.



As for the third criteria, the Postal Service has shown good cause why protective conditions are warranted. Often the courts have stated that the public disclosure would work a clearly defined and serious injury, and engaged in a discussion of harm. See Zenith, supra at 890-891. However, courts have also rejected hard and fast rules and instead have concluded that common sense should prevail; that the injury is often patent. Id. Under either approach, the Postal Service has proved that it will suffer harm justifying protective conditions.

OCA's discussion of the lack of competitive harm in disclosure is unpersuasive. On page 4 of its Opposition, the OCA states that the Postal Service makes no "distinction about competitive services and those for which it has no effective competition." This argument reflects a fundamental misunderstanding of the legal and competitive environment in which the Postal Service operates. While it certainly is true that letters carried over post roads by private carrier are subject to the Private Express Statutes (PES), the competitive environment is far broader than the OCA would have the Commission believe.

Even services subject to PES, face the possibility of diversion to alternative forms and means of communication, whether through fax, telephone, internet, or electronic mail. In fact, the Postal Service has offered substantial testimony on the effect of diversion on mail volumes and revenues. See generally the Testimonies of Witnesses Tolley (T-7), Thress (T-8) and Bernstein (T-10.) See also the Internet Week article, supra. This position has been repeated in discovery in this proceeding. "With rare exceptions (e.g., "free-for-the-blind"), for virtually all of the Postal Service's products and/or services, there

are private sector enterprises seeking to satisfy the needs of the Postal Service's customers by means outside of the nation's postal system." <sup>10</sup> See the Response of the United States Postal Service to Interrogatories of United Parcel Service, UPS/USPS-15, filed November 21, 2001. Thus, as stated earlier, information about customer perceptions of postal services could inform strategies for encouraging customers to use alternatives.

Furthermore, the OCA's position that the survey data should be released because they do not involve competitive services is factually incorrect, even under OCA's definition of "competitive." OCA identifies as "competitive" products Priority Mail, Package Services and presumably Express Mail. Opposition at 4. An examination of the survey forms at issue, which have been attached to the responses of the Postal Services to OCA/USPS-7 and 53, show most of the information could have an impact on "competitive services" even under the OCA restrictive interpretation. The Residential survey, for example, asks questions about "Mail You Receive," "Mail You Send," experiences at "the Post Office" and other Postal Services. Most of the questions are general in nature, not related to any one product or service, which means that it would cover mail that the OCA considers "competitive" as well as mail that it considers "non-competitive." As argued above, arbitrarily distinguishing between competitive and non-competitive products is without merit in this discussion.

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<sup>10</sup> To support their proposition that First Class mail is not a service that can suffer competitive harm, OCA misrepresents an opposition to a motion to compel involving Interrogatory OCA/USPS-T36-1(a), filed on November 13, 2001. The Postal Service did not state or argue that First-Class mail is not a competitive product. See Opposition at 4.

Finally, the OCA's argument that Section 410(c) has no bearing on this dispute is meritless, particularly when one examines the competitive environment in place at the time that the Postal Reorganization Act was implemented. In 1970, the Postal Service faced far less competition than it does today. Electronic media did not pose threats of diversion and there were fewer viable alternatives to serve the needs of the nation's postal customers. Yet, even at a time when the Postal Service faced far less competition than it does today, Congress saw fit to add a specific provision designed to protect the Postal Service against public disclosure of important business information. Even in 1970, Congress appreciated the harm that such disclosure could cause.

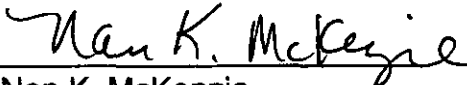
In conclusion, the Postal Service has shown that protective conditions are warranted. Its motion for protective conditions should be granted.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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# THE GALLUP ORGANIZATION

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I, Max D. Larsen, declare as follows:

1. I am a Managing Partner of The Gallup Organization. The Gallup Organization is one of the world's largest management consulting firms. Gallup's core expertise is in measuring and understanding human attitudes and behavior. Gallup applies this expertise to help companies improve business performance by leveraging their employee and customer assets. Gallup also conducts *The Gallup Poll*, the world's leading source of public opinion since 1935.
2. Gallup conducts survey and management research of all types, but we are especially focused on helping organizations to improve employee and customer engagement, and therefore to improve business outcomes. Decades of experience studying the employees and customers of our clients have allowed us to develop unique tools to measure employee and customer satisfaction, and link the results to business outcomes. Gallup's years of conducting employee and customer research have also resulted in a large comparative database, which can be used to measure an organization's results against results of other organizations with similar mission and purpose.
3. Gallup's list of clients includes large Federal agencies, state governments, well-known Fortune 500 companies, and non-profit organizations. A sampling of several of Gallup's most prominent clients appears below.

## Government

Federal Deposit Insurance Corporation  
State of California  
State of Illinois  
State of Maine  
State of Maryland  
U.S. Department of Agriculture  
U.S. Department of Defense  
U.S. Department of Education  
U.S. Department of Transportation  
U.S. Fish and Wildlife Service  
U.S. General Services Administration  
U.S. Internal Revenue Service  
U.S. Postal Service  
U.S. Social Security Administration

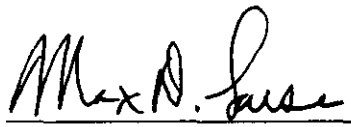
## Private Sector

Allied Van Lines  
AT&T  
Best Buy  
Blockbuster  
British Aero Space  
Caterpillar  
Disney  
Fidelity Investments  
International Paper  
Nortel Networks  
TGI Friday's  
Toyota  
Wal-Mart  
3M

4. These and many other organizations contract with Gallup to survey their employees and customers in order to provide management with information regarding organizational performance. The organizations we work with do not make their survey results publicly available. The survey data we collect can and does pinpoint areas of organizational strength and potential areas of improvement. The public dissemination of this information would place most organizations we work with at a very substantial competitive disadvantage, especially if competitors would not be required to disclose corresponding information. Competitors might use survey information to target vulnerable market segments or use advertising to focus selectively on areas of their own comparative advantage.
5. Beyond this, the public dissemination of employee and customer information would have a chilling effect on the candor of survey responses. In order to be useful, feedback from customers and employees must be accurate and truthful. The public release of this information might make customers and employees unwilling to provide the honest and specific feedback the organization needs to make changes and improve services. Gallup's policies regarding confidentiality of data, which prohibit Gallup employees from the public release or discussion of data collected on behalf of its clients without client authorization, were promulgated precisely because of the sensitivity of the data we collect.
6. As noted above, Gallup collects survey information for a wide variety of public and private organizations, including federal agencies such as the Internal Revenue Service, the Social Security Administration, the General Services Administration and other federal agencies. None of these organizations releases their results to the general public beyond carefully controlled summaries. Releases by management are carefully controlled so that the organization would not yield competitive advantage, violate guarantees of confidentiality to respondents, and/or limit legitimate management prerogatives to use data to make change and improve service.

I declare, under the penalty of perjury that the foregoing information is true and correct to the best of my knowledge, information, and belief.

Dated: 11/26/01

  
Max D. Larsen



**I, Francia G. Smith, declare:**

- 1. I am the Vice President and Consumer Advocate for the United States Postal Service. The Office of Consumer Advocate is responsible for Customer Satisfaction Measurement (CSM) and service performance measurement. My department oversees the conduct of customer satisfaction surveys and sets policies on the use of the survey results. I have held this position since 1999.**
- 2. For at least eight years, the Postal Service has contracted with The Gallup Organization to conduct national surveys of postal customers on their evaluations of postal products and service quality. Since PQ II, FY 1998, The Gallup Organization has conducted four surveys for the Postal Service under the following names: the CSM Residential survey, the CSM Small/Large Business survey, the CSM National Account survey and the CSM Premier Account survey. Currently, the Postal Service spends over \$4 million annually for these national surveys.**
- 3. The Postal Service conducts CSM surveys to measure customer experiences with postal products, services and channels and to identify opportunities for improvement. Survey results also provide a detailed understanding of the markets in which postal products compete and the needs of our customer segments.**

4. The Postal Service makes the survey results available to postal managers so that they can identify opportunities to improve customer satisfaction, improve product and service performance, address specific areas of customer concern and better understand the competitive marketplace. Detailed survey results are designed to provide diagnostic information related to specific products and services, how they align with internal processes and their impact on satisfaction. The corporate use of CSM data has been to develop results indicators of success to support strategic initiatives.
5. The Postal Service strictly controls the access and dissemination of CSM survey data. For example, the only survey result that is released publicly is from a single independent question, in the CSM Residential survey, that asks consumers to rate the overall performance of the Postal Service. The Postal Service does not disseminate or publicize any other CSM survey results. The Postal Service also does not disseminate or publicize results from past surveys, even surveys that are 2, 5 or 8 years old.
6. The Postal Service has taken steps to protect the data from public dissemination. Authorized users access CSM survey results electronically through internal reporting systems. In addition, contractors working for the Postal Service requiring access to the survey data must sign a non-disclosure agreement before obtaining authorization.
7. The Postal Service does not disseminate or publicize the results for several reasons. Among other reasons, customer satisfaction and

competitive service performance results are considered proprietary, because they can potentially be used by a competitor to damage the competitive position of the Postal Service; the Postal Service would lose the competitive advantage gained from the data and would in fact place itself at an unfair disadvantage since competitors do not release similar data; results could be subject to selective reporting which could cause harm to the Postal Service brand equity and potential revenue; disclosure would allow competitors to gain access to invaluable data about the marketplace and product performance. For instance, survey responses revealing customer perceptions of service by retail clerks and carriers could be used by competitors, such as commercial mail receiving agency franchisors, to identify the strengths and weaknesses of the Postal Service's customer-service operations, thereby allowing them to target their marketing and other resources to areas of weakness, or avoid competition in areas of strength. The public release of survey responses that identify weaknesses is very likely to generate negative media articles. With the recent threat of bioterrorism and anthrax in the mail, there have been numerous articles about the advantages of using alternative mail services. As recently as November 27, 2001, the Washington Post had a long front page article on this topic entitled "What's in the Mail: Many Doubts, Anthrax Crisis Points Up Postal Service's Longtime Woes." Additional negative press attention would only exacerbate the current




situation and further undermine confidence in the Postal Service's continuing viability in competitive situations.

8. I know of no other private or public industry that publicizes or releases detailed customer survey data for the reasons mentioned above. Even favorable data is not disseminated or publicized, as it might be misreported by the press or misused by our competitors. This postal policy has been consistently applied since customer satisfaction measurement began in 1991.
9. For roughly five years, my office has released portions of the quarterly CSM survey results to the U.S. Congress and the General Accounting Office. These results are appropriately labeled as "restricted information". To the best of my knowledge, Congress and the GAO have never made any of the CSM results public.
10. The surveys have never been conducted to prepare for or support a request before the Postal Rate Commission.

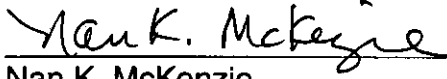
I declare under penalty of perjury that the foregoing statement is true, to the best of my knowledge, information and belief.

Date: 11/28/01

  
Francia G. Smith

## 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.

  
Nan K. McKenzie

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November 28, 2001