

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 INTERROGATORY OCA/USPS-180-181
(December 6, 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 specific material as requested in OCA/USPS-180 and 181. The Postal Service filed objections to these interrogatories on November 23, 2001.¹ In accordance with Commission Rules 26(d) and 27(d), the interrogatories and the Postal Service objection are set forth in full.

OCA/USPS-180. For FY 2002, please provide a copy of the television advertising (in a format suitable for use in a standard VCR) used to advertise (a) Priority Mail and (b) Express Mail.

OCA/USPS-181. For FY 2002, please provide a copy of radio advertising (in a format suitable for use in a standard cassette tape recorder) used to advertise (a) Priority Mail and (b) Express Mail.

Postal Service Objection

These interrogatories extend into FY2002 a series of OCA requests for information regarding the content and development of Postal Service advertising for Express Mail and Priority Mail. Just as the Postal Service objected to the earlier inquiries, it now objects to interrogatories 180 and 181 on grounds of relevance. See Objections of United States Postal Service to Interrogatories OCA/USPS-64-73, 77-78 (October 29, 2001);

¹ "Objections of United States Postal Service to Interrogatories OCA/USPS-180-181," filed November 23, 2001 (hereinafter cited as "Objection").

Opposition of United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-64(c), 65-73, 77-78 (November 20, 2001).²

The Postal Service's objections are thus already before the Commission in a pending motion by OCA to compel production of, *inter alia*, videotapes of Postal Service TV advertising and cassette tapes of radio ads for Express Mail and Priority Mail for earlier time periods.³ The current interrogatories seek only updated advertisements for the current fiscal year. They do not seek the types of internal analyses and compilations of consumer complaints disputed in the earlier motion to compel. The only ground of objection raised by the Postal Service to these specifications is that a review of advertising claims is beyond the Commission's authority and, therefore, irrelevant to any issue in this proceeding.

It is puzzling that the Postal Service chooses to reiterate a legal theory already flatly rejected by the Presiding Officer.⁴ The Postal Service's central contention, cited by reference in the Objection at issue here, is that the regulation of advertising is the exclusive province of the Board of Governors and, therefore, any discovery aimed at advertising is irrelevant to the issues before the Commission.⁵ In POR 2001-1/12 (at 2-

² The Postal Service's objection to the earlier interrogatories will be referred to as "Objection to OCA/USPS-64(c) *et seq.*"

³ "Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA/USPS-64(c), 65-73, 77-78," filed November 13, 2001. The OCA has subsequently moved for leave to file a reply. See "Office of the Consumer Advocate Motion for Leave to File A Reply to Opposition of United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-64(c), 65-73, 77-78," filed November 28, 2001; "Office of the Consumer Advocate Reply to Opposition of United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-64(c), 65-73, 77-78," filed November 28, 2001.

⁴ POR No. R2001-1/12 (November 21, 2001) (hereinafter "POR R2001-1/12") at 4-5, *following* POR No. R2001-1/7 (November 7, 2001).

⁵ Objection at 1-2 citing Objection to OCA/USPS-64(c) *et seq.* at 5-7. The Service has taken this argument about the Commission's lack of authority to even look at advertising to extraordinary lengths. In

4), the Presiding Officer addressed precisely this contention. In that ruling the Presiding Officer found that information about the outcome of a suit about allegedly false advertising claims brought by Federal Express against the Postal Service (OCA interrogatory 60(b)) and about consumer complaints relating to Postal Service advertising claims (60(c)) were relevant. Specifically, the Presiding Officer found that complaints regarding the accuracy or truthfulness of Priority Mail or Express Mail advertising claims were relevant to the Commission's statutory obligation under 39 U.S.C. § 3622(b)(2) to consider the value of mail service to the recipient as well as the sender.⁶ Here, OCA seeks the claims themselves, the advertisements.

Obviously, it is impossible to assess the accuracy of the claims or service performance measured against the claims without the claims themselves. OCA believes that the Postal Service's relevance objections have been obviated by the Presiding Officer's recent POR1/12 and that the Service filed its Objection knowing that its claims had been obviated. The Postal Service continues to engage in a pattern of needless objections.

opposing OCA interrogatory 77, the Service argued that the Commission could not authorize discovery of the cost of mailing a notification letter to consumers as background for a possible recommendation on false or misleading advertising claims. USPS Opposition to OCA/USPS-64(c) *et seq.* at 10. Taken to this extreme, the Service's argument would curtail the Commission's power to permit participants a full opportunity to pursue discovery under the Administrative Procedure Act -- 5 U.S.C. §556(d) -- and even to formulate its own inquiries by means of POIRs.

⁶ POR R2001-1/12 at 5.

For the foregoing reasons, OCA asks that the Postal Service be directed to provide complete responses to interrogatories OCA/USPS-180 and 181.

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
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December 6, 2001