

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE CONSUMER ADVOCATE

Postal Rate and Fee Changes, 2001 )

Docket No. R2001-1

OFFICE OF THE CONSUMER ADVOCATE  
MOTION TO COMPEL PRODUCTION OF INFORMATION  
REQUESTED IN OCA/USPS-234  
(December 20, 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 information as requested in OCA/USPS-234. The Postal Service filed objections to these interrogatories on December 6, 2001.<sup>1</sup>

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

OCA/USPS-234. For FY 2000 and FY 2001 and for each day of the week, i.e., Monday – Saturday, please provide the following Priority Mail 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 exact value, please provide an estimate.

(a) The total volume and revenue generated by each day of the week, i.e., Monday through Saturday, in FY 2000. The information may be provided in a format similar to that used in OCA/USPS-30.

(b) For each day of sales identified in response to (a), please provide the total volume of Priority Mail for which the delivery service standard was not met. The information may be provided in a format similar to that used in OCA/USPS-30.

(c) For each day of sales identified in response to (a), please provide the total revenue of Priority Mail for which the delivery service standard

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<sup>1</sup> "Objection of United States Postal Service to [Office of the Consumer Advocate] Interrogatory OCA/USPS-234," filed December 6, 2001 (hereinafter cited as "Objection").

was not met. The information may be provided in a format similar to that used in OCA/USPS-30.

The Postal Service filed a two-sentence objection that simply referred to a previous opposition to a (still pending) motion to compel on interrogatory OCA/USPS-119.<sup>2</sup> Despite the fact that interrogatory 234 seeks information on an entirely different service, the Postal Service provides absolutely no explanation how the relevance and confidentiality objections made in the context of Express Mail information (sought by interrogatory 119) apply to interrogatory 234, which seeks information about Priority Mail service. The OCA and the Commission are left to guess how the earlier opposition applies here.

#### A. RELEVANCE

It is noteworthy that, in opposing enforcement of interrogatories 119 and 234, the Postal Service never actually makes any substantive argument to support its relevance and materiality objections.<sup>3</sup> Both interrogatories seek data on daily volumes and revenues and the levels of deliveries that fail to meet (Postal Service created) performance standards.<sup>4</sup> Essentially, the OCA wants to determine whether, in the case of each service, mailing on specific days (just before the weekend, for example) significantly increases the amount of mail in each service that is delivered late. If so,

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<sup>2</sup> "Opposition of United States Postal Service to Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA/USPS-119 and 123(a)," filed November 28, 2001 (hereinafter cited as "Opposition to Interrogatory 119").

<sup>3</sup> See "Office of The Consumer Advocate Motion to Compel Production Of Documents Requested In OCA/USPS-119-123(a)" at 2, filed November 19, 2001,

<sup>4</sup> To avoid confusion, it should be emphasized that interrogatory 119(b) combines inquiries about volumes and revenues for Express Mail, where the service standard was not met (on a national basis by day of the week), while interrogatory 234 seeks parallel information on Priority Mail "broken out" into separate subsections (b) and (c). While the interrogatories seek information on unrelated services, the general nature of the information is parallel.

the claims made by the Service need to be examined and a recommendation for alterations to the claims should be considered.

The Service claimed that the inquiry regarding Express Mail (119) was irrelevant because "Express Mail rates are determined on an aggregate basis without regard to the day of the week."<sup>5</sup> This is the already rejected argument that discovery must be strictly limited to information related to the calculation of a specific rate for a specific service.<sup>6</sup>

OCA believes that the Postal Service's relevance objections have been obviated by a series of recent rulings by the Presiding Officer on the Postal Service's blanket objections to interrogatories aimed at consumer satisfaction surveys, the accuracy of advertising performance claims for postal services, and of other issues relating to consumer choice.<sup>7</sup> In particular, the Presiding Officer recently held that:

[c]omparing actual service performance with published [Postal Service] standards and representations in advertisements is a valuable "reality check" when the Commission is called upon to assess the value of different mail services under § 3622(b)(2).<sup>8</sup>

As the Commission has ruled even more recently,

[this] interrogator[y] seeks materials that are "likely to have a major influence on the public's perception of the potential value of the various services offered by the Postal Service."<sup>9</sup>

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

<sup>6</sup> All of the arguments presented here apply to both this motion and the earlier motion relating to interrogatories 119 & 123(a), which is still pending.

<sup>7</sup> POR No. R2001-1/7 (November 7, 2001) (hereinafter "POR 1/7"); POR No. R2001-1/12 (November 21, 2001); POR No. R2001-1/17 (December 7, 2001); POR No. R2001-1/20 (December 14, 2001) (hereinafter "POR 1/20"); POR No. R2001-1/21 (December 18, 2001) (hereinafter "POR 1/21").

<sup>8</sup> POR 1/20 at 9.

<sup>9</sup> POR 1/21 at 2, following POR 1/20 at 9.

Without question, that is true here, where data is sought on variances in meeting performance standards. 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, the length of time to deliver a package sent on Friday or Saturday), as compared with deliveries of packages dispatched at mid-week.

Moreover, the Postal Service's general claim that each discovery request must be tied to determination of a specific rate was explicitly rejected in the Presiding Officer's decision in POR 1/7. (Although interrogatory 234 clearly may lead to evidence admissible on the issue of the value of service for Priority Mail). The Presiding Officer specifically stated that issues relating to the timeliness of delivery have a direct relationship to ratemaking issues such as the contingency and markup and are relevant to assessing competitive alternatives.<sup>10</sup> The Service cannot simply ignore this and subsequent rulings on relevance issues in this proceeding.<sup>11</sup>

In both interrogatories 119(b) and 234(b) and (c), the OCA is seeking specific data on the magnitude of any problem the Postal Service may be having in meeting its published delivery standards for specific services (Express Mail in 119 and Priority Mail in 234). This is the concern squarely addressed by the Commission in its most recent ratemaking opinion, in which the Commission expressed its clear concern that the value of Express Mail service 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

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<sup>10</sup> POR1/7 at 2-3.

<sup>11</sup> See note 7 *supra*.

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>12</sup>

Interrogatory 234 is aimed at making the same sort of assessment with respect to Priority Mail.

#### B. CONFIDENTIALITY

Recently, Commissioner Goldway was compelled to characterize Postal Service claims of confidentiality as "conclusory and quite generalized."<sup>13</sup> She also noted that the Service had totally failed to show how its "longstanding policy against public disclosure" applied to the specific service and information at issue or how disclosure would have competitive effects.<sup>14</sup> Here, the Service has not addressed the confidentiality issue at all, apparently assuming that the assertion of a purported general policy against the discovery of disaggregated data would suffice. The Service offers no explanation of how its argument with respect to interrogatory 119 applies to an entirely different service and data base.

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<sup>12</sup> PRC Op. R2000-1, ¶ 5013.

<sup>13</sup> POR C2001-3/14 at 2 (December 19, 2001).

<sup>14</sup> *Id.* at 2-3.

In opposing interrogatory 119, the Postal Service spent all of its effort on the argument that one Commission ruling established an absolute bar to discovery of disaggregated data.<sup>15</sup> In fact the ruling does not support the Service's position.

In POR 94-1/22, the Presiding officer explicitly recognized "the importance of evidence on "the quality of service the subclass has actually been experiencing in the recent past" in assessing value of service under § 3622(b).<sup>16</sup> Accordingly, the Presiding Officer rejected the Service's refusal to provide anything more detailed than annual data. He allowed discovery of total on-time Express Mail data for the immediate two past quarters of the then-current fiscal year in the form of a semi-annual report. In addition, because the data was "historical" (several months old at the time of the ruling), he refused to order protective conditions and directed that the report be made public.

Similarly, in a ruling applicable here, the Presiding Officer rejected the Postal Service's reliance on POR 94-1/22 and ordered production of data on last arriving First Class and Priority Mail shipments (the "tail").<sup>17</sup> While recognizing that the information sought was detailed, the Presiding Officer found no harm in requiring public disclosure of performance information on Priority Mail.

Here, the OCA seeks merely to obtain annual data on a national basis, broken down by day of the week only, for Priority Mail. Under the applicable precedents, the information is directly relevant to assessing the performance and, therefore, the value of the service at issue.

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<sup>15</sup> Objection to Interrogatory 119 at 2, citing POR No. C94-1/22 at 2 (June 3, 1994) (hereinafter "POR 94-1/22").

<sup>16</sup> POR 94-1/22 at 4 note 7 quoting PRC Op. R90-1 at ¶ 4137 (issued January 4, 1991).

<sup>17</sup> POR No. R2000-1/51 at 4-5 (April 26, 2000).

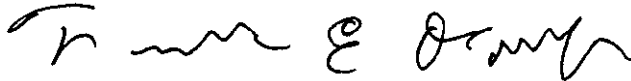
Moreover as in POR No. R2000-1/51 (at 5), the Service has already produced analogous information publicly. The Service already provided information requested for Saturday deliveries of Next Day Express Mail in response to OCA/USPS-30.<sup>18</sup> Since the Service has already conceded that Saturday data for Express Mail is relevant, it cannot credibly argue that essentially similar daily information for either Express Mail or Priority Mail is irrelevant or confidential. Certainly, it cannot do so without explanation or argument of any kind. Two conclusory sentences are plainly inadequate.

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<sup>18</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

For the foregoing reasons, OCA asks that the Postal Service be directed to provide complete responses to interrogatory OCA/USPS-234.

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.



Frederick E Dooley

Washington, D.C. 20268-0001  
December 20, 2001