

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

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

POSTAL RATE AND FEE CHANGES, 2001

Docket No. R2001-1

**OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO OFFICE OF  
THE CONSUMER ADVOCATE MOTION TO COMPEL RESPONSES TO  
INTERROGATORIES OCA/USPS-231-233, 243, 245-47, AND 239-42, 244,  
248-53**

(December 26, 2001)

The United States Postal Service hereby opposes the Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-231-233, 243, 245-47, and 239-42, 244, 248-53.<sup>1</sup> The OCA has fallen far short of demonstrating the relevance of any of these questions to this proceeding, has not adequately addressed the commercial sensitivity of some of the information, and still has not laid a proper factual foundation for some of inquiries. The very declarations which seek to establish this foundation fail to do so and, in fact, only serve to further highlight the Postal Service's concerns and objections.

**OCA/USPS-231-233**

If the OCA is serious in its outrage over the Postal Service's objections to these interrogatories dealing with encounters between OCA staff and ASK-USPS representatives, then the Postal Service finds cause for alarm. There was absolutely no intent on the part of the Postal Service or of undersigned counsel

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<sup>1</sup> The Postal Service has not appended the interrogatories to this Opposition as they were already included with the Postal Service's original objection as well as the OCA's Motion to Compel.

to personally insult Ms. Dreifuss, Ms. Thompson, or anyone else on the OCA staff, nor was there any intent to question anyone's integrity.<sup>2</sup> There was a quite clear intent, however, to force a proper factual foundation to be established for these questions. The Postal Service is alarmed that OCA apparently does not find this necessary, and does not appear to understand that Commission decisions must be based on ***substantial evidence of record***.

The Postal Service is not "insinuating" anything. Indeed, without a proper factual foundation, for purposes of this case, it is as if the conversations never occurred. Moreover, the declarations filed by Ms. Dreifuss and Ms. Thompson do not properly establish this foundation and demonstrate that the Postal Service's original objections were entirely well-founded.

First, neither Ms. Dreifuss nor Ms. Thompson can attest to the exact date that the conversations took place. Ms. Dreifuss, in paragraph 1 of her declaration, recalls that the conversation took place on either November 1 or November 2, then in paragraph 2 says she is "pretty sure about the date." How sure is "pretty sure?" Ms. Thompson apparently had two separate conversations, but cannot recall anything more specific than that they occurred on either November 14, 15, 16 or 19 and is "relatively sure of the date range." See Thompson Declaration, paras. 1, 2 and 3. Did the two conversations take place on the same date or two separate dates? Would there be more possibility that

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<sup>2</sup> The Postal Service does have concerns about OCA's recollection and interpretation of the conversations, which are certainly legitimate areas of inquiry, in this or any other instance, involving any participant, where a factual foundation is required.

Ms. Thompson recalled the conversations more accurately if they occurred closer together in time or farther apart in time? How sure is “relatively sure?”

Second, the Postal Service still has concerns that the full conversations were not reported. Ms. Dreifuss states, “I did not fabricate any part of what I described in interrogatory 231. Everything I said there was actually said by me and said by the ASK-USPS agent.” Dreifuss Declaration, para. 6. Again, no one is questioning Ms. Dreifuss’s integrity, but rather her recollection and interpretation of the conversation. For example, in OCA/USPS-231, part of the interrogatory reads, “The ASK-USPS representative also stated that Priority Mail had an advantage over First Class because ‘Priority Mail travels on the same transportation as Express Mail.’” The first part of the quoted sentence is apparently not intended as a direct quote from the ASK-USPS representative, but the latter part is. Did the ASK-USPS representative use the word “advantage” or is that Ms. Dreifuss’s summary of several other words or phrases used by the ASK-USPS representative? These sorts of questions constitute a legitimate probing of Ms. Dreifuss’s recollection of the conversation in a proceeding based on an evidentiary record.

Also, in paragraph 7 of her declaration, Ms. Dreifuss states, “I related the full conversation, not merely snippets.” But in the very same paragraph, she also states, “I did ask an additional question about Express Mail delivery times between Durham and Burtonsville, but the answer was consistent with my expectation so I did not pose an interrogatory about it.” So, the full conversation apparently was not reported. That may or may not be significant, but it is

something that should be probed in a proceeding based on record evidence.

Likewise, Ms. Thompson states, "However, I did leave out final comments made by the ASK-USPS-agent in response to my query in OCA/USPS-232. The ASK-USPS-agent stated, after I asked why I would want to pay an additional \$3.16 for Priority Mail that I would have to make the choice." Thompson Declaration, para. 4. In addition, Ms. Thompson's declaration says that her calls concerned a "lightweight item", yet the interrogatories which reflect these conversations make specific reference to "a one-ounce letter." Exactly what was conveyed to the ASK-USPS representative about what was being mailed and could this have made a difference, rightly or wrongly, in how the representative responded?

What is particularly troubling about all of this is that the OCA evidently feels perfectly free to draw all sort of conclusions – many of them derogatory to the Postal Service – in the absence of an adequate factual foundation. For example, Ms. Dreifuss states, "The ASK-USPS agent, ***apparently touting the advantages*** of Priority Mail over First Class, also stated that 'Priority Mail receives the same transportation as Express Mail'" (emphasis added). Ms. Dreifuss's conclusion cannot be automatically assumed. ***Exactly*** what was said either to or by the ASK-USPS agent prior to the comment about transportation? This should be probed, particularly given that the statement is true. Local Priority and Express Mail both travel by surface transportation; non-local can both travel via the FedEx network. Isn't it possible that the ASK-USPS representative may not regard the issue of transportation routing with the same degree of gravity as a member of the OCA (or, for that matter, Postal Service ratemaking) staff more

familiar with the rather esoteric details of transportation policy? Perhaps the ASK-USPS representative was merely trying to reassure Ms. Dreifuss that the Postal Service would take good care of her mail.

As another example, Ms. Dreifuss states, "When the agent warned me that First-Class Mail can take up to 30 days to be delivered my surprise increased manifold. Why would the Postal Service say such a thing to a consumer?" Dreifuss Declaration, para. 10. There are any number of reasons why the ASK-USPS representative might have made such a statement. The one coming immediately to mind is that anthrax was in the headlines and the Brentwood postal facility was closed on October 21, 2001. (Ms. Dreifuss is "pretty sure" her call took place on November 1 or 2.) Perhaps the ASK-USPS representative, fearful that all mail in the greater D.C. vicinity (Burtonsville, MD) would be delayed, was actually trying to assist Ms. Dreifuss.

There are any number of other questions the Postal Service (and perhaps other intervenors) might have about these conversations and there is an appropriate solution in an administrative proceeding based on record evidence. And that solution is not to produce tape-recordings and potentially run afoul of wire-tap laws. Rather, it is the typical solution provided for in administrative proceedings – OCA is perfectly free to place its recollections and interpretations and conclusions concerning these conversations into testimony which will be entered into evidence and subject to written and oral examination. An adequate factual foundation to use these conversations as if they are uncontroverted fact

justifying the interrogatories OCA has propounded simply has not been established.

The OCA also misapprehends the Postal Service's objections about the lack of showing that the conversations in question are typical. Of course there is no requirement in Commission rules that anyone has to do anything "one hundred times or a thousand times." OCA Motion at 5. There is a requirement of relevance, however. A few conversations over the phone or at a post office do not automatically make something relevant or allow sweeping generalizations to be drawn.<sup>3</sup> Individuals can be misinformed or make mistakes or they might be doing things properly. The point is whether any of this has a bearing on the issues in the proceeding, and here it does not.

The gist of OCA's claims of relevance seem to be summarized on page 5 of its Motion to Compel, where it states,

OCA placed these calls randomly simply to see whether the Postal Service had heeded the Commission's recommendations in Docket No. R2000-1 that it give information to consumers allowing them to make an informed choice between First Class and Priority Mail. The statements made by the ASK-USPS agents were *unmistakable signs of policies and practices* that were inconsistent with the Commission's R2000-1 recommendations.

First, the OCA calls were not "random" in the statistical sense. Had they been statistically random, perhaps some of the factual foundation they lack might have been established. Of course, OCA would have to file testimony and comply with

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<sup>3</sup> The Postal Service appreciates the OCA's discretion in not naming particular postal employees with whom they have communicated. Knowing the names of those persons would not appear to be necessary. As suggested above, the way

the Commission documentation rules concerning statistical samples. More importantly, certain of the Commission's statements in Docket No. R2000-1 that OCA refers to cannot properly be characterized as "recommendations" in the same sense that the Commission "recommends" rates, fees and classifications. Rather, the Commission's statements were in the nature of advice or suggestions. This is not to say that the Postal Service ignores the Commission's comments or finds them unhelpful, but tying discovery requests to those comments does not automatically make the discovery relevant.

Also, evidence in this record demonstrates that some of the comments upon which the OCA relies to establish relevance were based on a premise that is no longer true. For example, the Commission expressed its concern in Docket No. R2000-1 that "prospective users are not equipped to make informed choices among Priority Mail, First Class, or some other service." PRC Op. R2000-1, Vol. 1, at 307-08. It seems that one of the bases for this conclusion was the Commission's understanding that "[w]hile there appears to be some origin-destination pairs where Priority Mail has a higher standard of service than First-Class this is not the general rule." *Id.* at 308. In fact, as evidenced by Postal Service responses to OCA interrogatories in this docket, it is the general rule that Priority Mail has a higher standard of service than First-Class. See generally the Postal Service's response to OCA/USPS-304, filed December 13, 2001. Specifically, in the response to OCA/USPS-295(b), also filed December 13, 2001 the Postal Service states:

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to establish a proper foundation for this information is for the OCA to file

The Postal Service interprets a "higher" service (delivery) standard to be a "faster" one. With this in mind, the Priority Mail service standard is higher (faster) than that of First-Class Mail for 597,526 out of the 849,106 three-digit ZIP Code pairs in the network.

In subpart (c) of that response, the Postal Service further states:

The First-Class Mail service (delivery) standard is higher (faster) than that of Priority Mail for 133 out of the 849,106 three-digit ZIP Code pairs in the network. One-hundred-and-eight (108) of these 133 pairs involve APO/FPO destinations for which the standard is tracked only from the point of delivery to the point of departure from the U.S. (the "gateway city"). The service standard for First-Class Mail can anomalously be higher than that of Priority Mail when the Priority Mail gateway is located apart from where the APO/FPO First-Class Mail is processed. This is an anomaly because the Postal Service's intent is to never have higher service (delivery) standards for First-Class than for Priority Mail.

The other 25 ZIP Code pairs with higher service standards for First-Class Mail than for Priority Mail are programming errors. They will be corrected in the future.

While it is certainly true that the Commission considers value of service in setting rates, it would seem that information on applicable service standards and service performance is of far more probative value than comments in isolated conversations and post office visits, even where a factual foundation has been clearly established. Where such foundation is lacking, information gleaned from isolated incidents becomes useless as a basis for rate-setting. Not every comment made about Postal Service products or services is material to a value of service determination. For example, on the issue of consumer survey responses, Presiding Officer's Ruling No. R2001-1/7 at 3 stated, "Thus, for example, responses concerning whether mail is being delivered to the correct address or the timeliness of its receipt may corroborate or conflict with other

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testimony.



proffered evidence, *e.g.*, forwarding costs and service standards. This is not to imply that each question of a general nature satisfies this standard.” The Presiding Officer then determined which survey question responses were to be provided. Not included were questions about clerks at post offices clearly explaining mailing services and products needed or suggesting new products and services. The Postal Service believes that the OCA questions concerning the ASK-USPS conversations fall into this latter category.

The OCA claims that the Postal Service’s complaints about not knowing how to respond to OCA/USPS-231(m) are “disingenuous.” OCA Motion at 5. As was noted in the Postal Service’s objection, that interrogatory subpart called for the Postal Service to provide hard copy or electronic format of “**any** Postal Service policy statements, bulletins, scripts, memoranda, directives, training material, or **any other type of written statement or document transmitted from any level of the Postal Service to another (or within any level)** that the ASK-USPS representative **might have referred to or been aware of** as a basis for refusing to state specific First-Class delivery times.” The OCA now states that the Postal Service “knows full well that it must make a good faith effort to search for the documents and materials **in those departments and offices, and of those individuals**, within the organization **that oversee the activities of the ASK-USPS contractor** and **provide the materials used to train** the ASK-USPS agents and give them information.” OCA Motion at 5 (emphasis added). Clearly, OCA’s interpretation of what the interrogatory requested is, in fact, much narrower than the original request. Nonetheless, the Postal Service should not

have to answer even this narrower request for the reasons discussed above concerning lack of an adequate factual foundation and lack of relevance to issues in this proceeding.

**OCA/USPS-239-246 and 248-253**

These interrogatories concern a variety of non-postal services. The Postal Service has provided certain information in response to these interrogatories, including, where appropriate, descriptions of the services as well as revenue and cost figures.<sup>4</sup> The information provided is similar to that provided in Docket No. R2000-1 concerning at least some of the very same services. More information is simply not relevant, despite the OCA's protestations to the contrary. Moreover, some of the OCA's comments on jurisdictional matters evince a misunderstanding of the separate roles of the Postal Service and the Commission.

The OCA implies that the Postal Service has mistakenly concluded that the Postal Service rather than the Commission is the final arbiter of the Commission's jurisdiction over retail services. See OCA Motion at 6. In some sense, this is the Postal Service's view and it is not mistaken. The Board of Governors authorizes the filing of rate and classification cases, so, in the first instance, the Postal Service does make the determination of what services are postal and what services are non-postal. While the Commission can initiate a classification docket on its own motion, the final determination to accept or reject

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<sup>4</sup> Despite providing this level of detail, the Postal Service believes that the information is commercially sensitive and objects to providing anything further on

any Commission recommendations resulting from such a docket is made by the Governors. And, of course, failure to file a request for a recommended decision on what another party might believe to be a postal service can be challenged in Federal District Court.<sup>5</sup>

Despite the Commission's authority to initiate classification dockets, the current docket does not lend itself to a determination of the postal/nonpostal character of a variety of services. This proceeding is *not* a Commission-initiated classification docket; it is a request for changes in rates and fees and establishment of some new classifications authorized by the Board of Governors and initiated by the Postal Service. As such, the Commission must act on the revenue requirement submitted by the Postal Service, which appropriately shows the costs and revenues for postal and non-postal services required by Rule 54(h)(1), and it must act within the ten-month statutory deadline.

There is no requirement that each and every nonpostal service must be "compensatory." If nonpostal services *as a whole* cover their costs, then postal services are not subsidizing non-postal services and that is all the information needed for this proceeding. In fact, the Postal Service has partially responded to the OCA interrogatories and has provided both descriptions of and separate revenue and cost information for the various services that are the subject of OCA's questions.

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this basis. The OCA has not rebutted the Postal Service's claims of commercial sensitivity.

<sup>5</sup> The Postal Service has not changed its views that complaint cases are not a legitimate mechanism to resolve disputes over the postal/nonpostal nature of

The OCA can attempt to do whatever it wants to do in its direct case, but the Postal Service should not be forced into the position of providing information that will assist the OCA in converting this docket into something that it is not. If the OCA wants a referendum on whether services are postal or non-postal, then it needs to find another avenue for doing so.

The OCA made a number of arguments in its Motion concerning the alleged "postal" nature of some of the services about which it inquired. The Postal Service will not address those arguments in detail in this Opposition because, as explained above, this rate proceeding is not the proper vehicle for such arguments or determinations. A few comments, however, are in order as the OCA has apparently misinterpreted or failed to fully understand the descriptions of some of these services provided by the Postal Service in response to the OCA interrogatories.

As one example, the OCA states, "NetPost™ Certified Mail appears to be a variant of Certified Mail, but with a 'referral fee' added by the Postal Service." OCA Motion at 12 (footnote omitted). This is not correct. As the Postal Service stated, "Customers conduct their transaction, including payment and uploading of content and address information, on a third party's web site. A link to this service is available from the Postal Service web site ([www.USPS.com](http://www.USPS.com)); in return the Postal Service receives what amounts to a referral fee." Postal Service Response to OCA/USPS-252, filed December 12, 2001. No referral fee is assessed the customer; rather, the Postal Service receives money from the third

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certain services. It points out, however, that various parties and the Commission

party for providing the link to that party's web site on the Postal Service's web site. As another example, OCA indicates with regard to eBillPay, NetPost™ CardStore and NetPost™ Certified Mail that "[e]ach involves the mailing of a First-Class letter; and in the case of NetPost™ Certified Mail, the mailing of other classes of mail as well." The applicable legal standards are not so broad that anything which might tangentially "involve" a piece of mail automatically becomes a postal service. It is clear from the interrogatory answers provided by the Postal Service for these services that the OCA Motion does not fully or properly describe them. As just one instance, the OCA's statement completely fails to address third party involvement in NetPost™ CardStore and NetPost™ Certified Mail.

The Postal Service has provided even more information on these services than is relevant to a determination of the rates, fees and classifications at issue in this case. It should not have to provide anything further.

**OCA/USPS-247**

In its Motion to Compel, the OCA now offers further details of the phone call from an individual post office box customer in Stanton, Nebraska. OCA now states, "He first telephoned the Postal Service for an explanation of why his post office box fee had approximately doubled following the Docket No. R97-1 rate and fee increases and had gone up about a third following the Docket No. R2000-1 proceeding." OCA Motion at 13. If the OCA is going to start adding details of its conversation with this individual in bits and pieces, then the Postal

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disagree.

Service objects, as it did with OCA/USPS-231-233, that OCA has not established an adequate factual foundation, and has not shown that this one conversation is anything more than an isolated incident and thus lacks relevance. Furthermore, the OCA's comment only emphasizes the Postal Service's initial argument that the issues concerning post office box increases in Docket No. R97-1 and Docket No. R2000-1 were fully litigated in **those** cases; the increases in **this** docket are the only relevant inquiries now. The OCA has failed to even address this argument and it is no wonder, since the OCA was fully involved in litigating post office box fee increases in those past dockets.

The Postal Service should not be forced to relitigate fee increases settled in past dockets. The Commission, the Postal Service and all participants should be allowed to focus their full attention on the issues in the instant docket.

### **Conclusion**

The OCA has not demonstrated good reasons why the Postal Service should be required to further respond to the disputed interrogatories. The Postal Service thus requests that the OCA Motion to Compel be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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**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.



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