

RECEIVED
JAN 3 3 01 PM '02
POSTAL RATE COMMISSION
OFFICE OF THE PRESIDENT

PRESIDING OFFICER'S
RULING NO. R2001-1/28

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING ON
OCA MOTION TO COMPEL PRODUCTION
OF INFORMATION REQUESTED IN
OCA/USPS-119 and 123(a)

(Issued January 3, 2002)

On November 19, 2001, the Office of the Consumer Advocate filed a motion¹ to compel the production of information requested in Interrogatories OCA/USPS-119 and -123(a). The Postal Service had objected to these interrogatories on the grounds of irrelevance, immateriality, and potential competitive harm.²

OCA/USPS-119. This interrogatory requests certain Express Mail Next Day/Second Day Service data for Fiscal Years 2000 and 2001. Part (a) requests data on the total volume and revenue generated for each weekday of those periods. For each day of sales identified in the response to part (a), part (b) requests the total volume and revenue of Express Mail for which the applicable delivery service standard was not met. In its motion, OCA argues that the requested data are relevant to determining if there is a specific problem with mail deliveries just before or after a weekend, as compared with deliveries of packages mailed at mid-week, and to comparing actual service performance with claims in Postal Service advertising. OCA Motion at 2, 4. OCA also disputes the Service's claim of commercial sensitivity. In addition to observing that the Service has already provided the same kind of data for

¹ Office of the Consumer Advocate Motion to Compel Production of Documents Requested in Interrogatory OCA/USPS-119-123(a), November 19, 2001.

² Objection of the United States Postal Service to Office of the Consumer Advocate Interrogatories OCA/USPS-119 and 123(a), November 5, 2001.

Saturday deliveries of Next Day Express Mail in response to OCA/USPS-30, OCA notes that it seeks national volume and revenue data, not locally-disaggregated information, and argues that the Service has failed to allege any specific harm that would result from disclosure.

In its Opposition,³ the Postal Service argues that there are marked differences between the competitive value of the Saturday Express Mail data already supplied to OCA and disaggregated weekday data, in view of long-established operational differences between weekdays and Saturdays and significant volume and revenue disparities. While it states that it did not consider providing information in response to OCA/USPS-30(b)—even though the apparent relevance of the data was unclear—to be harmful to its competitive position in the expedited services arena, the Service insists that it did not intend to waive its right to object to the release of irrelevant commercially sensitive information. Postal Service Opposition at 1-2.

Moreover, the Service argues, the Commission has explicitly recognized the potential competitive harm of disclosing disaggregated Express Mail data in prior rate proceedings such as Docket No. R94-1, and found that potential harm to exceed any incremental contribution the information could foreseeably make to the record. Inasmuch as Express Mail rates are not set and do not vary according to the day of the week, the Service asserts that there is no clear nexus between the requested information and any issue pending in this proceeding, and that therefore it is irrelevant. *Id.* at 2-3.

The Postal Service correctly observes that “the Commission has taken care to temper considerations of relevance with a due regard for the commercial sensitivity of highly specific information concerning Express Mail service.”⁴ Here, as in past

³ Opposition of United States Postal Service to OCA Motion to Compel Production of Documents Requested in Interrogatories OCA/USPS-180-181, December 13, 2001. On November 21, the Service filed a Motion for Late Acceptance of Response of United States Postal Service to the Office of Consumer Advocate’s Motion to Compel. Inasmuch as the requested two-day extension of the filing deadline did not work to the prejudice of any party, I shall grant that motion.

⁴ P.O. Ruling R94-1/22, June 3, 1994, at 3. See *also* P.O. Ruling R90-1/29, June 19, 1990, at 3-4.

proceedings, the "'controlling question' to be considered is 'whether the commercial sensitivity of the data outweighs any contribution the data would make to the record in this proceeding.'"⁵

Part (a) of OCA/USPS-119 requests, in effect, a weekday-by-weekday "census" of Express Mail volumes and revenues. By itself, the contribution this information would make to the record in this case would appear to be minimal; as the Service notes, the day of the week on which volumes or revenues are realized by the Postal Service is not a variable used for ratemaking purposes in Commission proceedings. On the other side of the balance, I agree with the Service that such detailed volume and revenue information about a highly competitive product could conceivably be used by the Service's competitors to its detriment. Therefore, I shall deny OCA's motion with respect to this part of the interrogatory.

By contrast, part (b) of the interrogatory asks the Service to quantify segments of Express Mail volume and revenue for which the applicable delivery service standard was not met for the two previous Fiscal Years. As a general matter, the Commission has found that delivery performance data of this kind is directly relevant to determining the value of postal services.⁶ This has led to compelling production of delivery performance data even for competitive services such as Express Mail⁷ and Priority Mail.⁸

However, the Commission has recognized the potential commercial sensitivity of such performance data by allowing reasonable limits on the form in which they are released. For example, in P.O. Ruling R94-1/22, the Presiding Officer denied a motion to compel production of disaggregated proportions of late Express Mail deliveries, concurring with the Service's claim "that the potential competitive harm of disclosing such information exceeds any incremental contribution it could foreseeably make to the

⁵ *Ibid.* (Quoting Response of the United States Postal Service to Association of Priority Mail Users Motion to Compel a Further Response to APMU/USPS-T11-18, May 9, 1994.)

⁶ See PRC Op. R90-1, January 4, 1991, para. 4137.

⁷ P.O. Ruling R94-1/22, *supra*, at 4.

⁸ P.O. Ruling R2000-1, April 26, 2000, at 4-5.

record in this proceeding.”⁹ However, he reached a different conclusion with respect to aggregate data for the first two quarters of the then-current fiscal year, and directed the Service to produce an updated semi-annual report based on those data.¹⁰

Similarly, in this controversy, I find the daily tally of late-delivered Express Mail sought by OCA to be sufficiently detailed business information that its disclosure would involve the potential for competitive harm. Further, its contribution to the evidentiary record in this ratemaking proceeding would appear to be slight, as any daily variations it might show would not necessarily bear on the overall value of Express Mail service. However, in view of the potential relevance of aggregate delivery performance data to the issue of value of service, I shall grant OCA’s motion in part. The Postal Service shall produce the requested information for Express Mail volumes delivered in FY 2000 and 2001, on a quarterly basis if available. If the revenues associated with reported volumes are available, they shall also be produced on the same basis.

OCA/USPS-123(a). This part of *OCA/USPS-123* requests total revenues and volumes in FY 2000 and FY 2001 for 20 individual post offices that do not receive Next or Second-Day Express Mail service; the Postal Service identified these post offices in its response to *OCA/USPS-28*. The Service objected to responding on the grounds of irrelevance and commercial sensitivity.¹¹

In its motion, OCA states that it seeks this information to test the effect of the Service’s claims and advertising for Express Mail on consumers’ perceptions and expenditures. Inasmuch as the Service’s response to part (b) of the same interrogatory purportedly shows that it is just as fast and cheaper to use Priority Mail for shipments to the 20 identified post offices, OCA states that it “seeks to discover the amount of Express Mail dispatched to these locations in plain defiance of economic logic.” Motion at 5. If “more than a trickle” is identified in the response, OCA posits that “it would suggest a problem with the information disseminated by the Service.” *Ibid*. OCA also

⁹ P.O. Ruling R94-1/22, *supra*, at 3.

¹⁰ *Id.* at 4.

¹¹ Postal Service Objection of November 5, 2001, *supra*, at 2.

indicated that it seeks only aggregate annual figures for the 20 post offices as a group, not individual office data, and argues that the Service's claim of potential competitive harm is completely unfounded in light of the modest volumes associated with the small rural communities typical of the 20 identified post offices. *Id.* at 6.

In its Opposition, the Postal Service argues that Express Mail volumes and revenues generated by 20 remote post offices will in no way aid the Commission in ratemaking, and states that it "vehemently objects" to the release of any disaggregated information that is not at issue in this case. Additionally, the Service claims that compiling the requested information would place a "tremendous burden" on the staffs of the affected offices, as the responsive data are not available on a site-specific basis in the Service's automated systems, and thus would have to be gathered manually. Opposition at 3-4.

I agree with the Service that the interrogatory at issue is unlikely to lead to the production of relevant and material evidence in this ratemaking proceeding. While a response to OCA's interrogatory might enumerate some of the instances in which Express Mail is used where arguably there is no advantage in speed of delivery, that information would bear only remotely on Express Mail's overall value of service. Furthermore, the burden of retrieving the requested information—which the Postal Service represents would involve manual searches of records at 20 remote post offices—evidently would outweigh its slight relevance. Therefore, I shall deny OCA's motion with respect to this interrogatory.

RULING

1. The Motion for Late Acceptance of Response of United States Postal Service to the Office of Consumer Advocate's Motion to Compel, filed November 21, 2001, is granted.

2. The Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA/USPS-119 and 123(a), filed November 19, 2001, is denied with respect to OCA/USPS-119(a); granted in part with respect to OCA/USPS-119(b), as specified in the body of this ruling; and denied with respect to OCA/USPS-123(a).


George Omas
Presiding Officer