

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

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Postal Rate and Fee Changes, 2001

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Docket No. R2001-1

OFFICE OF THE CONSUMER ADVOCATE
RESPONSE TO MOTION OF THE POSTAL SERVICE FOR THE
ESTABLISHMENT OF A PROCEDURAL MECHANISM AND SCHEDULE
GOVERNING FURTHER PROCEEDINGS IN LIGHT OF SETTLEMENT
(January 28, 2002)

Pursuant to Presiding Officer's Ruling No. R2001-1/30,¹ the Office of the Consumer Advocate (OCA) hereby files its response to the Motion of the Postal Service for the Establishment of a Procedural Mechanism and Schedule Governing Further Proceedings in Light of Settlement.² The Postal Service's motion addressed a number of procedural and scheduling matters. OCA's instant response to the captioned motion, however, will be limited to the Postal Service's position concerning "Discovery Directed at the Postal Service."

The Postal Service moved to have the Presiding Officer suspend further discovery efforts not related to the APWU opposition to the settlement agreement. The suspension envisioned by the Postal Service "would apply to further inquiries, as well as to burdensome or otherwise objectionable efforts to respond to outstanding discovery."³ The Postal Service argues that discovery not related to evaluating the settlement

¹ "Presiding Officer's Ruling Adjusting the Hearing Schedule and Other Procedural Dates," January 8, 2002.

² Filed January 22, 2002. Hereinafter, "Postal Service Motion."

³ Postal Service Motion at 5.

agreement has “been rendered substantially moot.”⁴ The Service would extend this moratorium even to requests for information from the Commission itself.⁵

OCA opposes the motion to excuse the Postal Service from answering outstanding discovery requests and to bar participants such as OCA from pressing for adequate answers to timely (earlier) filed interrogatories. OCA is concerned that the Postal Service is exploiting the widespread support for the settlement a means for giving evasive, incomplete answers to timely filed discovery requests. For example, the Postal Service’s response to interrogatory OCA/USPS-311, filed January 17, 2002, failed to answer several of the questions posed. This interrogatory sought “all documentation that ‘the Postal Service provides postmasters on the service objectives’ with respect to First-Class delivery times.”⁶ The Postal Service provided no documentation responsive to OCA’s request, but merely stated that “information can flow in a variety of ways . . . there is no realistic means of cataloging all of them.” Other questions posed in the interrogatory, e.g., whether it is the Postal Service’s policy to inform customers about the specific First-Class service standard that applies for a specific ZIP Code pair or city/town pair *when a customer asks for this information*, were not answered at all. Instead, the Postal Service made an irrelevant statement about not having a policy to inform customers about matters in which they have not expressed an

⁴ *Id.*

⁵ *Id.*

⁶ Interrogatory 311 followed up on a portion of the response given by the Postal Service in answer to interrogatory OCA/USPS-300. The Postal Service response was quoted in interrogatory no. 311, and above.

interest.⁷ OCA will file a motion to compel complete, responsive answers to interrogatory no. 311 shortly.

It is OCA's position that interrogatories meeting all deadlines established by the Presiding Officer's initial procedural schedule, and which were originally asked to develop OCA's direct case, should be answered in as thorough and accurate a manner as is normally required under Commission Rule 26(e),⁸ absent a settlement of the current case. The legal principle is well established that issues that are likely to recur in future cases, affecting parties who are involved in the current litigation and who are likely to be involved in comparable future litigation, are not rendered moot by their resolution in a given proceeding.⁹ For reasons of fairness and administrative efficiency, evidentiary quests for information relevant to *any* omnibus rate proceedings should not be prematurely foreclosed.

OCA submits that its efforts to complete inquiries legitimately and timely opened prior to the settlement agreement should not be prevented. OCA's requests for information concerning quality of service are germane to legitimate issues that may recur in future omnibus rate proceedings. For example, cost coverages for particular classes of mail may be modified in future cases to reflect low/high quality of

⁷ Another question posed in the interrogatory inquired whether it is the policy of the Postal Service to give no more information about First Class service standards than that First Class will be delivered in one to three days. The Postal Service response ignored the question and merely stated that accurate responses (to the customer inquiry) *can* be provided. Stating that accurate responses *can* be provided is not responsive to a question about policy, i.e., whether such answers *will* be provided.

⁸ I.e., a response to an interrogatory must be "adequate."

⁹ "The questions before the Court are certain to be central to future proceedings, and there is more than a 'reasonable expectation' that petitioners, who have taken part in most or all of the challenges to prior rate schedules, will be affected by these future proceedings." *Nat'l Ass'n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 820 n. 14 (1982).

performance; and the failure to meet service standards or satisfy other customer needs may influence the need for a particular level of contingency.

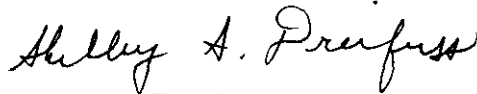
The Postal Service's vague allusion to "more pressing needs related to the other challenges currently facing the Postal Service"¹⁰ is far from the detailed description of burden required under Commission Rule 26(c)¹¹ to be excused from answering a request for information. Indeed, the Postal Service is interposing a blanket objection now, even though there are interrogatories still outstanding that were not objected to as improper when initially submitted.

¹⁰ *Id.*

¹¹ "A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory"

In conclusion, OCA intends to submit timely follow up interrogatories to clarify vague, non-specific, or evasive answers and, when necessary, motions to compel adequate answers. OCA respectfully requests that the Postal Service's motion to be excused from completing earlier initiated, legitimate lines of discovery, be denied.

Respectfully submitted,

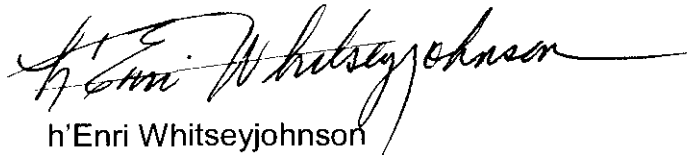


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CERTIFICATE OF SERVICE

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.



h'Enri Whitseyjohnson

Washington, D.C. 20268-0001
January 28, 2002