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PRESIDING OFFICER'S  
RULING NO. R2001-1/42

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

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING  
CONCERNING THE OCA'S MOTION TO COMPEL  
RESPONSES TO OCA/USPS-231 *ET SEQ.*

(Issued January 29, 2002)

The Office of Consumer Advocate (OCA) moves to compel the Postal Service to respond to a series of interrogatories, which, for purposes of this ruling, may be divided into three categories.<sup>1</sup> The first category, consisting of OCA/USPS-231-233, is based on conversations between OCA staff members and Postal Service customer service representatives involving comparisons among Express Mail, Priority Mail, and First-Class Mail. The second category, consisting of OCA/USPS-239-246 and 248-253, inquires about various, relatively recent services offered by the Postal Service such as Post ECS, USPS eBillPay,<sup>TM</sup> and USPS Pay@Delivery.<sup>TM</sup> Third, OCA/USPS-247, prompted by a call from an individual, requests the Postal Service to explain, among other things, how cost methodology and fee design caused fees for size 2 post office boxes to increase over the last three to five years.

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<sup>1</sup> 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 17, 2001. Subsequently, the OCA filed a motion for leave to file an errata to its motion to compel, accompanied by the errata to its motion to compel. Office of the Consumer Advocate Motion for Leave to File Errata to Motion to Compel Responses to Interrogatories OCA/USPS-231-233, 243, 245-47, and 239-42, 244, 248-53, December 18, 2001. The motion to file the errata is granted. Citations herein to the OCA's motion to compel are to its Errata 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 18, 2001 (OCA Motion).

Although it did respond, in part, to certain interrogatories, the Postal Service objects on numerous grounds, the most common being lack of relevance. As discussed below, the motion is granted, in part.

*OCA/USPS-231-233.* These interrogatories are based on conversations between OCA staff members and Postal Service customer service representatives at 1-800-ASK-USPS concerning the comparative advantages of mailing a lightweight item via Priority Mail, Express Mail, or First-Class Mail between specific locations. These multi-part interrogatories seek, essentially, to follow up statements made by the Postal Service representatives, with questions ranging from information available to such representatives to transportation practices. The Postal Service objected to these interrogatories in their entirety, principally on the grounds that they lacked a factual foundation and that the information requested was irrelevant.<sup>2</sup>

In its motion to compel, the OCA indicates that its calls to the ASK-USPS representatives were “for the purpose of testing whether the Postal Service has addressed the Commission’s R2000-1 concerns.” OCA Motion at 4. The OCA concludes that the statements made by the ASK-USPS representatives “were unmistakable signs of policies and practices that were inconsistent with the Commission’s R2000-1 recommendations.” *Id.* at 5.<sup>3</sup> In addition, the OCA asserts that *OCA/USPS-231-233* would be valid even if not predicated on its conversations with Postal Service representatives.

In its opposition to the motion, the Postal Service reiterates and expands on its objection. For example, the Postal Service argues that the declarations submitted by the OCA notwithstanding, a proper factual foundation has not been established because, among other things, the exact dates of the conversations remain uncertain and, more importantly, the full conversations are unavailable. Postal Service

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<sup>2</sup> Objection of the United States Postal Service to *OCA/USPS-231-233*, 243, 245-247, 268-285 and 290 and Partial Objection to *OCA/USPS-239-242*, 244, 248-253, December 3, 2001 at 3-5 (Postal Service Objection). The Postal Service also argued that some questions were overbroad and would be unduly burdensome to answer. *Id.* at 4-5.

<sup>3</sup> The OCA also suggests that the Postal Service may as a matter of policy attempt to steer consumers to Priority Mail over First-Class Mail. *Id.* at 4.

Opposition at 2-3.<sup>4</sup> The Postal Service also challenges the relevance of the information sought, a claim based largely on its assertions concerning the lack of a proper factual foundation. Thus, it contends that nothing probative can be gleaned from the few reported conversations and further that the calls “were not ‘random’ in the statistical sense.” *Id.* at 6.<sup>5</sup> Moreover, the Postal Service argues that some of the Commission’s comments from Docket No. R2000-1 that formed the predicate of the OCA’s questions “were based on a premise that is no longer true.” *Id.* at 7. In support, the Postal Service cites its response to an OCA interrogatory that indicates, as a general matter, that Priority Mail has a higher standard of service than First-Class Mail. *Id.* at 7-8.

*Discussion.* This group of interrogatories is comprised of two types of questions – those that follow up statements attributed to ASK-USPS representatives and those that address the transportation (or processing) implications that flow from those statements. The former group includes questions that are largely conclusory and argumentative. These include, for example, OCA/USPS-231(d),(h), and (l)-(o), which ask, *inter alia*, the Postal Service to confirm that statements made by its representatives are misleading.

Certainly, callers should be provided accurate, unbiased answers. To the extent this may not be happening, it is a matter of concern. As noted below, in Docket No. R2000-1, the Commission urged the Postal Service to assure that customers are properly informed. See PRC Op. R2000-1, para. 5301. How the representatives are trained is management’s responsibility. This is not to suggest that such practices be, in all circumstances, shielded from discovery. In this instance, however, the few examples provided by the OCA do not sufficiently demonstrate the justification for an inquiry requiring the production of any “policy statements, bulletins, scripts,

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<sup>4</sup> The Postal Service suggests that OCA’s remedy is to sponsor testimony so that its recollections, interpretations, and conclusions regarding these conversations may be entered into evidence and subject to written and oral cross-examination. *Id.* at 5.

<sup>5</sup> The OCA took umbrage at the Postal Service’s Objection and filed declarations in support of OCA/USPS-231-233. In its Opposition, the Postal Service indicates that its objection concerned the lack of a factual foundation for the questions without any intent to impugn those who participated in the conversations. Postal Service Opposition at 1-2. For purposes of this Ruling that is how the pleadings were read.

memoranda, directives, training material, or any other type of written statement or document transmitted from any level of the Postal Service to another”<sup>6</sup> on broad operations and policy matters.

Moreover, the OCA’s reliance on the Commission’s comments in Docket No. R2000-1 as justification for these questions is misplaced. For example, the Commission’s discussion of quality of service of Priority Mail hinged on “documented discrepancies between published service standards and actual performance[.]” PRC Op. R2000-1, para. 5300. The Commission commented on the confusion surrounding certain service standards, including urging the Postal Service to “take steps to assure that customers are not misled into purchasing a more expensive product that will not provide added service.” *Id.* at para. 5301. However, its “moderation” of the institutional costs assigned to Priority Mail was based value of service considerations, *e.g.*, reduced market share and static revenues. *Id.* at para. 5302-5304. In contrast, questions exploring comments from a few ASK-USPS representatives lack the necessary nexus to either service standards or value of service considerations to compel the Postal Service to respond. Accordingly, the OCA’s motion is denied with respect to OCA/USPS-231(c)-(e), (l)-(o), 232(a), (d), and 233(a).

The analysis differs somewhat concerning those questions inquiring about the transportation (or processing) of the affected mail. While these questions, *e.g.*, OCA/USPS-231(i) and (j), may refer to a comment made by an ASK-USPS representative, the underlying inquiry seeks data concerning a specific element of service that may influence value of service or other ratemaking criterion. In that sense the OCA is correct, at least concerning some subparts of the interrogatories, that its questions “would be valid even if no specific inquiries had ever been made.” OCA Motion at 4. Not each subpart, however, satisfies this standard. Only those questions attempting to elicit data that might distinguish, for ratemaking purposes, one service offering from another are likely to lead to the discovery of admissible evidence. Thus,

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<sup>6</sup> See, *e.g.*, OCA/USPS-231(m).

questions concerning the transportation afforded, say, Express Mail and Priority Mail are legitimate inquiries since they may have both cost and value of service implications. Accordingly, the Postal Service is directed to respond to the following questions: OCA/USPS-231(a), (b), (i)-(k), (p)(iii)-(iv), and (q)(iii)-(iv);<sup>7</sup> OCA/USPS-232(b), (c), (e)-(h); and OCA/USPS-233(b)-(f).<sup>8</sup>

*OCA/USPS-239-246 and 248-253.* These interrogatories inquire about various services offered by the Postal Service, e.g., Post ECS, USPS eBillPay™ for Consumers, USPS Send Money, and USPS Pay@Delivery.™ They seek sundry information about each service, ranging from a description of the service to certain financial data, including, for example, start-up costs, costs and revenues by fiscal year, and whether rates are compensatory. See, e.g., OCA/USPS-241 and 244. The Postal Service objects, in whole or in part, to these interrogatories. It characterizes the services as nonpostal and thus not relevant to issues in this proceeding.<sup>9</sup> In addition, the Postal Service argues that the information requested is commercially sensitive.<sup>10</sup> The Postal Service, however, did provide certain limited information, i.e., a description of the service and FY 2001 revenues and operating costs.<sup>11</sup>

The OCA contests the Postal Service's unilateral determination that each of these services is nonpostal, arguing that the Postal Service's failure to request a recommended decision does not strip the Commission of its authority to determine

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<sup>7</sup> A response is not required for subparts (f) and (g) because the inquiry, "all instances in which a Priority Mail piece [does (or does not) travel] 'on the same transportation as Express Mail,'" is ambiguous and, even if it could be answered meaningfully, somewhat superfluous given subparts (i) and (j). A similar rationale applies to subparts (p)(i)-(ii) and (q)(i)-(ii) given the information requested in subparts (p)(iii)-(iv) and (q)(iii)-(iv), respectively.

<sup>8</sup> These subparts of OCA/USPS-232 and 233 focus narrowly on transactions between specific zip codes. Limited exploration on this basis is permissible to gain a better understanding of the relationships between various service offerings. This result, however, should not be read to condone general examinations of local or specific transactions without regard for their ratemaking implications.

<sup>9</sup> Postal Service Objection, *supra*, at 5-12.

<sup>10</sup> The Postal Service also objects to OCA/USPS-242, 246, 249, 251, and 253 on the grounds that they call for a legal conclusion. *Id.* at 7 and 10-12.

<sup>11</sup> See, e.g., Response of United States Postal Service to Interrogatories of Office of Consumer Advocate (OCA/USPS-241-42, 244, 248-53), December 17, 2001.

whether a service is postal or nonpostal. OCA Motion at 6-9. The OCA contends that this proceeding is the appropriate forum to address the jurisdictional status of each service and, for those, if any, found to be jurisdictional, to determine whether the rate charged is compensatory. *Id.* at 9. In support, the OCA argues that the Commission's jurisdiction stems, in the first instance, from its mail classification authority under section 3623 of the Act, 39 U.S.C. § 3623. *Id.* at 8-9. The Commission's rate setting authority under section 3622, 39 U.S.C. § 3622, applies for any service determined to be jurisdictional.<sup>12</sup>

The OCA indicates its intent to press the issue of the jurisdictional status of each service before the Commission. *Id.* at 10. Further, the OCA indicates the need to develop the record through discovery. It defends its interrogatories, including inquiries concerning the Postal Service's failure to seek a recommended decision, as "essential to the question whether these services are postal or nonpostal in character." *Id.* at 11<sup>13</sup>

The Postal Service disputes each of OCA's arguments. First, on jurisdictional issues, the Postal Service claims that under the statute it determines, at least initially, what services are postal or nonpostal. Postal Service Opposition at 10.<sup>14</sup> While recognizing the Commission's and Governors' roles concerning classification matters, the Postal Service suggests that Federal District Court is the only forum for challenging its failure to seek a recommended decision concerning any particular service it may offer. *Id.* at 11.

Second, the Postal Service asserts that "the current docket does not lend itself to a determination of the postal/nonpostal character of a variety of services." *Id.* at 11. Rather, it infers that the Commission is limited to "act[ing] on the revenue requirement

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<sup>12</sup> *Id.* at 9-10. The OCA's discussion relies on PRC Order No. 1239, May 3, 1999 as well as the Commission's findings in Docket No. R76-1, concerning its jurisdiction over special services. See PRC Op. R76-1, Appendix F.

<sup>13</sup> Based largely on the information provided by the Postal Service, the OCA postulates that certain services exhibit characteristics that suggest they are jurisdictional. *Id.* at 11-12.

<sup>14</sup> While it acknowledges the Commission's authority to initiate classification proceedings, the Postal Service notes that the Governors make the final determination concerning Commission recommendations. *Id.* at 10-11.

submitted by the Postal Service” since it, not the Commission, initiated this proceeding. *Ibid.*

Third, it theorizes that nonpostal services need not be “compensatory” individually, only in the aggregate. It concludes that there can be no cross-subsidy by postal services as long as nonpostal services cover their costs as a whole. *Ibid.*

Finally, while indicating that the OCA is free to fashion whatever direct case it wishes, the Postal Service argues that it should not be required to provide information “that will assist the OCA in converting this docket into something it is not.” *Id.* at 12. According to the Postal Service, any “referendum” on the character of its services may only be pursued via “another avenue.” *Ibid.*<sup>15</sup>

*Discussion.* The Postal Service is not incorrect that initially it determines the character of a particular service. That determination, however is not dispositive of the Commission’s jurisdiction. To that end, the interrogatories raise an important threshold issue, namely, the jurisdictional status of the various services the Postal Service offers to the public. The question is not merely academic.

Under the Act, the Postal Service has “as its basic function the obligation to provide postal services to bind the Nation together through personal, educational, literary, and business correspondence of the people.” 39 U.S.C. § 101(a). In fulfilling that responsibility, the Postal Service is required to “plan, develop, promote, and provide adequate and efficient postal services . . .” 39 U.S.C § 403(a), and “to provide types of mail service to meet the needs of different categories of mail and mail users[.]” 39 U.S.C. § 403(b).

For its part, too, the Commission has clearly delineated responsibilities, principally its rate and classification authority, 39 U.S.C §§ 3622 and 3623, respectively. Whether the Postal Service seeks a recommended classification or a party at interest suggests that the statutory factors should be applied to a particular Postal Service

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<sup>15</sup> The Postal Service also takes issue with the OCA’s characterization of certain of the services, arguing that the OCA either misinterprets or fails to understand the descriptions provided in response to the interrogatories. *Id.* at 12-13.

product, the Commission must determine whether or not that product is “postal” for jurisdictional purposes.

Under the Act, the Commission has the primary responsibility for interpreting the status of services proposed or offered by the Postal Service.<sup>16</sup> While this necessarily involves the Commission’s mail classification authority, services provided by the Postal Service also have rate implications. The Commission’s oversight will vary depending on whether a service is found to be jurisdictional or not. For example, while the Commission does not claim authority to recommend rates for international mail, it has required the production of cost, revenue, and volume data for international mail given its “undeniable impact on the domestic mail revenue requirement.” PRC Order No. 1034, October 24, 1994 at 4 (footnote omitted); *see also* P.O. Ruling R87-1/78, August 13, 1987 at 2; and PRC Order No. 1025, August 17, 1994 at 4-9. At a minimum, therefore, the services at issue in this dispute must be analyzed similarly to assure that the services are compensatory, *i.e.*, that ratepayers do not subsidize them. Jurisdictional services, of course, are subject to the full panoply of the Commission’s authority under Chapter 36. In either event, however, it remains the Commission’s responsibility to determine the ratemaking implications of any such service.

Exercising that rate and classification authority necessarily requires the Commission to examine the public policy ramifications of Postal Service proposals and services. In doing so, the Commission is required to carefully balance the competing interests of those affected by the Postal Service’s actions, *e.g.*, assessing the effects of the Postal Service’s proposals or services on the public, including both users and competitors. The Commission’s involvement:

insures that an agency independent of the Postal Service will provide for public notice and hearing – input of those affected by the proposed action – and full and on the record, *see* 39 U.S.C. § 3624(a), consideration of pertinent factors and congressionally imposed goals before certain types of decisions are made.

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<sup>16</sup> *See United Parcel Service v. United States Postal Service*, 604 F.2d 1370, 1381 (3<sup>rd</sup> Cir. 1979), *cert. denied*, 446 U.S. 957 (1980).



*United Parcel Service v. United States Postal Service*, 455 F.Supp.857, 869 (E.D. PA 1978), *aff'd*, 604 F.2d 1370 (3d Cir. 1979), *cert. denied*, 446 U.S. 957 (1980).<sup>17</sup>

Because the Commission is charged with protecting the public interest,<sup>18</sup> among the “pertinent factors” it must consider are the effects on competition of Postal Service service offerings. The Commission has observed: “As long as the other options remain and costs are recovered, competition in the marketplace is enhanced. Indeed, one of the purposes of the Postal Reorganization Act was to foster innovative services.” PRC Op. MC86-1, para. 224.

Jurisdictional services, of course, have cost and rate consequences that must be considered. Although non-jurisdictional (or nonpostal) services do not present the same regulatory issues, they are not entirely devoid of ratemaking implications. Inquiries concerning services beyond the Commission’s rate and classification jurisdiction may nonetheless be appropriate to determine whether the revenues generated exceed the costs of providing the service. Without that assurance, the possibility exists that postal consumers, *i.e.*, jurisdictional services, are subsidizing the non-jurisdictional service. If it were established that the services at issue were non-jurisdictional, the type of data provided by the Postal Service may be deemed sufficient.<sup>19</sup> However, that is not yet the case. The Commission has not had an opportunity to consider the nature of the services provided.

Although the Postal Service provides a brief description of the services, its partial responses are insufficient to form a basis for determining their jurisdictional status. There is, for example, an interrelationship among at least some of these services.

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<sup>17</sup> The Court underscored the importance of the Commission’s role by further noting that it was designed, among other things, “to assure that the public is heard from and the public interest represented before rate, classification, and significant service changes are made.” *Ibid*.

<sup>18</sup> *United Parcel Service v. United States Postal Service*, 604 F.2d 1370, 1379 (3d Cir. 1979),

<sup>19</sup> For purposes of this Ruling, it is unnecessary to address the Postal Service’s contention that non-jurisdictional services need only be compensatory in the aggregate.

USPS Online Payment Services is comprised of several services and Pay@Delivery<sup>™</sup> is “a feature of USPS Send Money.” Response of Postal Service to OCA/USPS-248. Revenues, at least for some services, are a combination of postage and fees, plus payments from a third party, e.g., a sender of money using USPS Send Money. *Ibid.*

Nor do the pleadings clarify the issues sufficiently. The OCA describes its perception of the services, which the Postal Service criticizes as inaccurate. OCA Motion at 11-12; Postal Service Opposition at 12-13. Commenting on OCA’s observation that certain services entail the mailing of First-Class or other classes of mail, the Postal Service argues that the legal standards for defining a postal service are not so broad as to encompass “anything which might tangentially ‘involve’ a piece of mail[.]” Postal Service Opposition at 13. This argument is premature. The record is not adequately developed to determine the jurisdictional status of these services.

The Commission’s complementary functions under subchapter II of the Act make this proceeding an appropriate forum to examine the effects of the various service offerings rendered by the Postal Service. Accordingly, the Postal Service’s contention that this proceeding “does not lend itself to a determination of the postal/nonpostal character of a variety of services” is not persuasive. Postal Service Opposition at 11. First, the Commission’s Rules “allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding.” 39 C.F.R. § 3001.25(a); *see also id.* §§ 3001.26(a) and 3001.27(a). Inquiries seeking financial information and details of each service satisfy the requirements of the Rules.<sup>20</sup>

Second, the Commission’s responsibility under the Act is not limited to simply reviewing the Postal Service’s filing. The Postal Service’s Request includes both rate and classification proposals. In noticing the filing, the Commission stated, among other things, that “[t]he Request affects virtually all the Service’s offerings, and is based on important assumptions regarding costs, volumes, pricing and, in some instances,

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<sup>20</sup> In contrast, questions requesting a legal opinion need not be answered. These would include, for example, asking why the Postal Service has not requested a recommended decision for a particular service or whether a service is “ancillary” to a class of mail (or vice versa). Regarding the latter, see PRC Op. R76-1, App. F at 5.

classification changes.” PRC Order No. 1324, September 26, 2001, at 1-2. Thus, the notice alerts interested persons to the sweeping nature of the Postal Service’s filing.

Discovery is the principal means through which participants learn the details of the Postal Service’s case. In addition, however, discovery serves another important objective. It affords participants a means to develop facts to support alternative rate and classification proposals.<sup>21</sup> In that regard, the Commission’s notice emphasizes the possibility that alternatives to the Postal Service’s filing may be considered or that the Postal Service, itself, may seek to amend its original filing.

[P]articipants may propose alternatives to the Service’s proposal, and the Service itself may revise, supplement, or amend its initial filing. The Commission’s review of the Service’s Request, including any revisions, alternatives proposed by others, or options legally within the purview of the Service’s request, may result in recommendations that differ from those proposed by the Postal Service in its initial filing.

*Id.* at 2.

Finally, the Postal Service suggestion that its failure to seek a recommended decision can only be challenged in Federal District Court is misplaced. See Postal Service Opposition at 11. The Postal Service’s failure to request a recommended decision is not the issue. This is a rate case, not a complaint case under § 3662, so the lawfulness of the independent actions by which the Postal Service implemented a service is simply not an issue before the Commission. See PRC Order No. 1239, May 3, 1999 at 13. Rather it is the regulatory implications of the instant services being provided to the public that may be legitimately explored in this proceeding under Subchapter II of the Act. Accordingly, the Postal Service is directed to respond to the following interrogatories: OCA/USPS-241(b), (d)-(q); 243; 244(b)-(h); 245; 248(a)-(d), (f)-(l); 249(a)-(b); 250(a)-(d), (f)-(l); 252(a)-(f), (j)-(q); and 253(a)-(b).

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<sup>21</sup> As noted, to be permissible, discovery requests must be reasonably calculated to lead to admissible evidence.

*OCA/USPS-247*. This interrogatory requests the Postal Service to explain why fees for size 2 post office boxes increased over the last three to five years.<sup>22</sup> The basis for the question is an inquiry from an individual concerning box rents at a facility located in Nebraska. The Postal Service objects, arguing that only the increase in this proceeding is relevant and noting that the fee increases for early periods were fully litigated. Postal Service Objection at 9.

The OCA indicates that after the local (Nebraska) postmaster could not satisfactorily answer the individual's inquiry, he called the OCA. OCA Motion at 13. The OCA contends its interrogatory calls for "a postal expert knowledgeable about the trends in post office box costs and fees to explain this multi-year phenomenon." *Id.* at 14. In its Opposition, the Postal Service reiterates its objection, emphasizing that "the OCA was fully involved in litigating post office box fee increases in those past dockets." Postal Service Opposition at 14.

*Discussion.* Even ignoring the issue of relevance, the Postal Service has a fair point. The OCA actively litigated issues concerning box fee increases in the earlier dockets. Presumably, the OCA is familiar with the relevant Commission findings concerning cost levels, cost methodology, and fee design. Alternatively, the OCA could have suggested that the individual contact the Postal Service's Consumer Affairs Office for a possible explanation.

Certainly, the inquiry from the individual, which gave rise to this interrogatory, merits a response. It does not follow, however, that this is the appropriate forum. Witness Kaneer sponsors the Postal Service's proposed box rent fees, including a classification proposal for an additional fee group. See USPS-T-38 at 1 *et seq.* The OCA directed several interrogatories to witness Kaneer designed to elicit information concerning the proposed box rent changes. In contrast, *OCA/USPS-247* is unrelated to the current proposal. Rather, it seeks an explanation for fee increases for size 2 boxes

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<sup>22</sup> Among other things, the Postal Service is asked to explain PO Box cost methodology and fee design.

“in an area like Stanton, NE” since 1998.<sup>23</sup> The OCA fails to demonstrate any nexus between that information and box rent issues pending before the Commission. It did not, as the Postal Service observes, address the merits of the Service’s objection that fee increases since 1998 were fully litigated. See Postal Service Opposition at 14. Any need for additional discussion of “trends in post office box costs and fees”<sup>24</sup> is not apparent given both the recent litigation and the Postal Service’s specific proposal in this docket. Accordingly, the motion is denied.

*Suspension of Ruling.* A revised Stipulation and Agreement (Settlement) that would effectively resolve all issues in this docket was filed January 17, 2002. A majority of the participants, including the OCA, are signatories. Under these circumstances, there would appear to be no need for the Postal Service to provide the responses ordered herein at this time. Accordingly, the effectiveness of this Ruling is suspended, provided the Settlement remains pending before the Commission for a recommended decision. If support for the Settlement is withdrawn so that it no longer represents a reasonable basis on which to resolve issues in this proceeding, or if the Postal Service withdraws from it, the Postal Service shall promptly advise the Commission and, within ten days thereafter, provide its responses as directed by this Ruling.<sup>25</sup>

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<sup>23</sup> It also asks the Postal Service to explain how cost methodology and fee design “have caused such dramatic fee increases in the [identified] fee group(s) . . . .”

<sup>24</sup> *Ibid.*

<sup>25</sup> Should responses to OCA/USPS-241(b) *et al.* be necessary, the Postal Service may submit them pursuant to the attached protective conditions given its unopposed argument that the information requested concerning these services is commercially sensitive. See, e.g., Postal Service Opposition at 10, n.4.

## RULING

1. The OCA's Motion to Compel Responses to Interrogatories OCA/USPS-231-233, 243, 245-47, and 239-42, 244, 248-53, filed December 18, 2001, is granted, in part, as set forth in the body of this Ruling. To the extent not granted, the motion is denied.
2. As discussed above, this Ruling requiring the Postal Service to respond to certain interrogatories is suspended, provided the Settlement remains pending before the Commission for a recommended decision.
3. Should responses be necessary, the Postal Service may submit its responses to OCA/USPS-241(b), (d)-(q); 243; 244(b)-(h); 245; 248(a)-(d), (f)-(l); 249(a)-(b); 250(a)-(d), (f)-(l); 252(a)-(f), (j)-(q); and 253(a)-(b) pursuant to the attached protective conditions.
4. The Office of the Consumer Advocate Motion for Leave to File Errata to Motion to Compel Responses to Interrogatories OCA/USPS-231-233, 243, 245-47, and 239-42, 244, 248-53, filed December 18, 2001, is granted.

  
George Omas  
Presiding Officer

## STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to materials provided in Docket No. R2001-1 by the Postal Service in response to Presiding Officer's Ruling No. R2001-1/42 (hereinafter, "these materials"). Individuals seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, provide the completed certifications to the Commission, and serve them upon counsel for the party submitting the confidential material.

1. Only a person who is either:
  - (a) an employee of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
  - (b) a participant in Postal Rate Commission Docket No. R2001-1, or a person employed by such participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. R2001-1, shall be granted access to these materials. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any participant's access shall be the earlier of:
  - (a) the date on which the Postal Rate Commission issues its recommended decision or otherwise closes Docket No. R2001-1;
  - (b) the date on which that participant formally withdraws from Docket No. R2001-1; or

- (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R2001-1 participant on whose behalf that person obtains access. The participant immediately shall notify the Postal Rate Commission and counsel for the party who provided the protected material of the termination of any such business or consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.
4. Immediately after the Commission issues its last recommended decision in Docket No. R2001-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall certify to the Commission:
  - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
  - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
5. The duties of any persons obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
6. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.
7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. R2001-1.
8. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 10 through 15, below.
9. Any Docket No. R2001-1 participant or other person seeking access to these materials by requesting access, consents to these or such other conditions as the Commission may approve.



10. The Postal Service shall clearly mark the following legend on each page, or portion thereof, that the Service seeks to protect under this agreement: 'Confidential-Subject To Protective Conditions In Docket No. R2001-1 Before The Postal Rate Commission" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the Postal Service, or as hereinafter provided, no protected information may be disclosed to any person.
11. Any written materials — including but not limited to discovery requests and responses, requests for admission and responses, deposition transcripts and exhibits, pleadings, motions, affidavits, written testimony and briefs — that quote, summarize, or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
12. Any oral testimony, argument or other statements that quote, summarize or otherwise disclose materials protected under these protective conditions shall be received only in hearing sessions limited to Postal Service representatives and other persons who have complied with the terms of the protective order and have signed the attached certifications. The transcript pages containing such protected testimony shall be filed under seal and treated as protected materials under paragraph 11.
13. Notwithstanding the foregoing, protected material covered by paragraphs 11 or 12 may be disclosed to the following persons without their execution of a compliance certificate. Such disclosure shall not exceed the extent necessary to assist in prosecuting this proceeding or any appeals or reconsideration thereof.
  - (a) Members of the Commission.
  - (b) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.
  - (c) Any other person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

- (d) Reviewing courts and their staffs. Any person seeking to disclose protected information to a reviewing court shall make a good faith effort to obtain protective conditions at least as effective as those set forth in this document. Moreover, the protective conditions set forth herein shall remaining in effect throughout any subsequent review unless overridden by the action of a reviewing court.
- 14. A participant may apply to the Commission for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The Postal Service or other person that designated the document or testimony as confidential shall be given notice of the application and an opportunity to respond. To revoke confidential status, the proponent of declassification must show by a preponderance of the evidence that public disclosure of the materials is consistent with the standards of the Freedom of Information Act, 5 U.S.C. § 552(b)(1)-(9), and Commission precedent.
- 15. Subpoena by Courts or Other Agencies. If a court or other administrative agency subpoenas or orders production of confidential information which a participant has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within two business days) notify the Postal Service (or other person who designated the document as confidential) of the pendency of the subpoena or order to allow the designating party time to object to that production or seek a protective order.
- 16. Each person desiring to obtain access to these materials must file a notice with the Postal Rate Commission listing name, title and position at least one day in advance of the day that the person signs a certification at the Commission's docket section in order to receive a copy of the materials. A copy of the notice must also be served in advance on the Postal Service.

### CERTIFICATION

The undersigned represents that:

Access to materials provided in Docket No. R2001-1 by the Postal Service in response to Presiding Officer's Ruling No. R2001-1/42 (hereinafter, "these materials" or "the information") has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in Docket No. R2001-1. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence these materials in accordance with all of the protective conditions set out above.

Name \_\_\_\_\_

Firm \_\_\_\_\_

Title \_\_\_\_\_

Representing \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

CERTIFICATION UPON RETURN OF  
PROTECTED MATERIALS

Pursuant to the Certification which I previously filed with the Commission regarding information provided in Docket No. R2001-1 by the Postal Service in response to Presiding Officer's Ruling No. R2001-1/42 (hereinafter, "these materials" or "the information"), received on behalf of myself and/or the party which I represent (as indicated below), I now affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period these materials have been in my possession. Further, I have complied with all conditions, and have maintained these materials in strict confidence in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R2001-1.
3. I have returned the information to the Postal Rate Commission.
4. I have either surrendered to the Postal Rate Commission or destroyed all copies of the information that I obtained or that have been made from that information.

Name \_\_\_\_\_  
Firm \_\_\_\_\_  
Title \_\_\_\_\_  
Representing \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_