

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

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POSTAL RATE AND FEE CHANGES, 2001

Docket No. R2001-1

OPPOSITION OF UNITED STATES POSTAL SERVICE TO OFFICE OF
CONSUMER ADVOCATE'S MOTION TO REQUEST THE PRESIDING
OFFICER TO ACCEPT FOR FILING A REPORT ON QUALITY OF SERVICES
PROVIDED BY THE POSTAL SERVICE TO THE PUBLIC
(March 13, 2002)

On March 6, 2002, the Office of the Consumer Advocate (OCA) filed a motion for the acceptance of filing in the current docket a lengthy report that the OCA has prepared pertaining to quality of postal services, together with four supporting library references.¹ These materials represent a substantial amount of work and obviously reflect potentially significant findings and conclusions worthy of future consideration and discussion.² Nevertheless, at the current stage of the instant proceeding, and considering the status of the pending settlement efforts, the Postal Service believes that it would be inappropriate and would not serve a practical purpose to lodge these documents in Docket No. R2001-1. Rather, the Postal Service would like to seek clarification of certain matters raised in the report and the OCA's motion in the future, and to defer a

¹Office of the Consumer Advocate Motion to Request that the Presiding Officer Accept for Filing a Report on the Quality of Services Provided by the Postal Service to the Public, Docket No. R2001-1 (March 6, 2001).

² The Postal Service has not yet had an opportunity to circulate all of these materials to departments within its organization that would be most affected by the results findings and conclusions, but we intend to ensure that they receive appropriate exposure and consideration in the near future.

decision on the future use of the materials to a time and context outside of the instant docket.

The purpose of these filings is somewhat unclear, particularly in the procedural context of this case. The record in this docket was closed on February 28, 2002, and briefing concluded on March 8, 2002. The filings are offered neither in support nor opposition to any issue in this docket R2001-1, nor in response to discovery. As far as we know, both the substantive thrust of the report and materials, as well as the motion to lodge them at this stage of a proceeding that is moving toward settlement, would be unprecedented in an omnibus rate case. Furthermore, to accept such filings that do not further the litigation of this docket would merely burden the administrative record and leave their status and significance unclear.

Regarding the utility of these materials, the OCA concedes that, as a signatory to the Stipulation and Agreement, it does not challenge the specific rates for services used by the public. March 6 Motion, p. 2. The motion further offers no nexus between the filings and this proceeding, beyond an explanation of the motivations for preparing the report. These consist of three objectives pertaining to cost coverages, the level of the contingency, and the quality of postal services. Each of these, furthermore, arose in the context of issues raised by the Postal Service's request that have been overtaken to a major extent by

the settlement efforts and the OCA's position on settlement. In this regard, we note that the OCA does not seek to place the filings in evidence.³

Moreover, the filings appear to be inconsistent with the Presiding Officer's earlier rulings on the impact of settlement. In Ruling R2001-1/44, the Presiding Officer halted all discovery by signatories to the settlement because it would serve no legitimate purpose. Such data "even if produced, will not be entered into the record." POR 44, at 2.

The OCA has proffered as a basis for the filings "to bring to the attention of the Commission below-par provision of services widely used by the public." While this objective may or may not be a suitable and needed pursuit by the OCA in a general sense, we submit that it is not sufficient justification for filing the materials in Docket No. R2001-1. The OCA has not cited a provision of the Rules of Practice that would warrant the filing of material extraneous to the proceeding.⁴ See Rule 31. At a minimum, the OCA should have provided further explanation or justification for the filing of these materials under the Rules of

³ Although the OCA has not requested that these materials be entered into evidence, it is still worth commenting on their admissibility in the case at this juncture. The OCA as a signatory to the Settlement and Stipulation, has waived its right to present a direct case. See POR 2001-1/44 at 2. Similarly, the Postal Service will not have the opportunity to subject the OCA data to scrutiny or rebut the data's conclusions. Moreover, much of the material at issue relates to surveys and market research that under the Rules of Practice must meet fairly stringent requirements before they may be entered into evidence. Given these shortcomings, it would be inappropriate to admit them into evidence or for the Commission to rely upon them in its recommended decision.

⁴ Nor does the OCA mission, at least on the surface, justify these filings. See March 6 Motion, p.2, fn. 2. The OCA mission is defined being a "vigorous, responsive, and effective advocate for reasonable and equivalent treatment of the general public *in proceedings before the Postal Rate Commission*. (Emphasis added.) See 39 C.F.R. 3002, Appendix A.

Practice, so that the Postal Service and other parties could have knowledgeably responded.

The request for the Presiding Officer to accept the confidential report, filed on March 8, 2002, raises an additional concern. The report at issue is an analysis of data from three library references that the Postal Service provided in discovery and under protective conditions. Recognizing the report's sources as protected data, the OCA's request seeks similar protective conditions. The request, however, does not address the status of the confidential report at the conclusion of the proceedings.⁵

We wish to emphasize that we appreciate the substantial effort that these materials represent and fully appreciate the avowed non-adversarial intent expressed in the OCA's motion. The findings, conclusions, and methodological approaches embodied in the documents might warrant consideration in another context.⁶ In conclusion, however, the Postal Service requests that the Presiding Officer deny the OCA's motions to accept the filings of March 6 and March 8, 2002, in this docket, and that the filings be removed from the Commission's website in association with this docket. In the alternative, the Postal Service requests that OCA be required to clarify and justify the purposed of the filings under the rules of practice, and that the Postal Service and other parties be

⁵ If the Presiding Officer decides to accept the report, then the Postal Service requests that the protective conditions specify that the OCA may not retain a copy. Rather it must certify that the all copies of the report have been returned to the Commission or destroyed. This is the only way to protect the Postal Service's sensitive data.

⁶ In this regard, we note without comment at this time the "expanded role" for the OCA mentioned in the OCA's motion. March 6 Motion, at 2, n. 2.

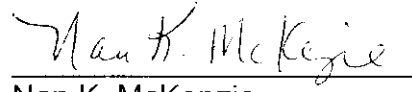
permitted an opportunity to comment after full review and consideration of these lengthy and complex materials. If the Presiding Officer accepts the filing of the confidential report, the Postal Service then requests that the protective conditions be amended as set forth above.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

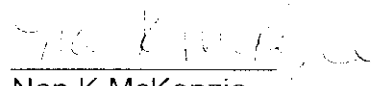
By its attorneys:

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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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March 13, 2002