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POSTAL RATE COMMISSION  
OFFICE

PRESIDING OFFICER'S  
RULING NO. R2001-1/57

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

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING DENYING OCA MOTIONS FOR  
ACCEPTANCE OF FILINGS OF MATERIAL ON QUALITY OF SERVICES

(Issued March 21, 2002)

On March 6, 2002, the Office of the Consumer Advocate (OCA) filed a motion requesting that I accept for filing in this docket a document entitled Report of the Consumer Advocate on Quality of Services Provided by the Postal Service to the Public, together with four supporting library references, which it has designated OCA-LR-J-2, -3, -4 and -5.<sup>1</sup> On March 8, 2002, the OCA filed a motion requesting that I also accept for filing in this docket a "*Confidential Report on Quality of Service Provided by the Postal Service to the Public,*" together with supporting library references USPS-LR-J-162, -197, and -201.<sup>2</sup> The Postal Service opposes these motions.<sup>3</sup>

The public material covered by the March 6 motion consists of statistics on, and evaluation of, service performance for a number of postal products (Express Mail, Priority Mail, First-Class Mail, Certified Mail and Return Receipt, and Insurance). It also contains public survey and focus group data seeking to gauge customer satisfaction with these products and with general dimensions of service such as window service. The confidential material covered by the March 8 motion consists of customer

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<sup>1</sup> Office of the Consumer Advocate Motion to Request that the Presiding Officer Accept for Filing A Report on Quality of Services Provided by the Postal Service to the Public, filed March 6, 2002.

<sup>2</sup> Office of the Consumer Advocate Motion to Request that the Presiding Officer Accept for Filing a Confidential Report on Quality of Services Provided by the Postal Service to the Public, filed March 8, 2002.

<sup>3</sup> 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, filed March 13, 2002.

satisfaction surveys conducted on behalf of the Postal Service covering much the same subject matter, and an analysis of courier service and parcel delivery market growth and competitor market shares.

The OCA's March 6 motion explains that originally there were three purposes for gathering and reporting on this quality of service information during the hearing phase of Docket No. R2001-1. The first two were to assess how quality of service might bear on cost coverages and on the determination of an appropriate contingency amount in this docket. The OCA concedes that it has signed a settlement agreement in this docket in which it agreed not to litigate further the record basis of the rates to which it has stipulated. It states that it does not intend to litigate further issues of the cost coverages or the contingency that are associated with the rates that it has agreed to. March 6 Motion at 2. The third purpose for compiling these quality of service reports, according to the OCA, was to "bring to the attention of the Commission below-par provision of services widely used by the public and upon which, in many cases, the public is highly dependent." The OCA asserts that the goal of focusing "attention on unacceptable service quality, remains." *Id.* It continues, at 3:

It is the hope of the OCA that, by drawing attention to problems faced by the public in benefiting from postal services that have been purchased, these services may be improved. The report filed today is not intended to be adversarial in nature. When the Postal Service offers high quality services to the public, everyone wins—the public does by receiving services that reflect the value of what has been paid and the Postal Service does, as well, by sustaining high Brand Equity and Customer Equity [footnote omitted]. This may, in turn, ensure a high, dependable revenue stream that could lead to a reduced need for a contingency.

The Postal Service acknowledges that these quality of service reports reflect a substantial effort that would warrant serious consideration and discussion in another context. Opposition at 1. However, it observes, these reports do not seem to have a bearing on any issues that remain to be litigated in this docket. It notes that the OCA has signed a comprehensive settlement agreement, and disclaimed any intent to further

litigate the record basis of those rates. It emphasizes that it is unclear what the OCA believes would be accomplished by associating these reports with Docket No. R2001. It notes that this docket is in the final stages of settlement, that the OCA has agreed not to file a direct case, that the factual record is closed, and that the issues have been briefed. It observes that the OCA has not cited any Commission rule of practice that would warrant the filing of material that is extraneous to the record. It asserts that it has not had adequate time to digest these lengthy and complex reports, and questions whether the market research upon which they rely would meet the admissibility requirements of the Commission's rules if they were to be offered in evidence. Opposition at 2-3.

Primarily because they have no apparent bearing on the issues that are left to be resolved in this docket, the Postal Service concludes that this docket is not the proper context for filing these materials. It asks that these materials not be accepted for filing in this docket and that they not be associated with this docket on the Commission's website. It also asks that all copies of the confidential report and associated library references in the possession of the OCA be returned to the Commission or destroyed, as the protective conditions that the OCA agrees are applicable to them would require. *Id.* at 3-4.

The quality of service reports that the OCA seeks to file in this docket reflect considerable effort on its part. It is to be commended for this ambitious undertaking. These reports are potentially significant and useful both in stimulating a general policy debate, and in prompting inquiries into the value of service of specific postal products. Because of the settlement posture of this docket, however, it does not provide an appropriate platform for either the general policy debate that the OCA seeks, or for inquiries into the value of service of specific postal products.

The quality of service issues that these reports address have been rendered moot in Docket No. R2001-1 by the settlement agreement. The settlement agreement to which the OCA is a party includes an agreement not to further litigate the adequacy of the record to support the stipulated rates. This aspect of the agreement is

comprehensive, covering issues regarding the extent to which quality of service might or might not support the rates agreed to. The issues that were litigated after the settlement agreement was finalized are unrelated to quality of service.

The evidentiary record was closed on February 28, 2002, prior to the filing of the OCA's motions. Short of reopening the record, there is no procedural mechanism by which the Commission could consider the materials covered by the OCA's motions in evaluating the proposed settlement, without infringing on the due process rights of other participants. Reopening the record would defeat the objectives of the settlement agreement, and the OCA has not suggested it.

While the OCA recognizes that there is no further opportunity to litigate quality of service issues as they relate to cost coverage and the contingency, it suggests that there is still an opportunity in this docket to address the issue of "unacceptable service quality" of various postal services. It does not suggest that the Commission could base formal findings or conclusions with regard to the settlement on these quality of service reports. This appears to leave only the possibility that the Commission could make advisory or prospective findings or conclusions of some kind (*obiter dictum*) in connection with the stipulated rates, based on the material that the OCA seeks to file.

The Commission finds itself in the same position as the Postal Service and other participants. These reports and library references constitute a large and complex body of material. Even to express some useful *dicta* concerning quality of service based on these reports, the Commission would require more time than is available to digest and evaluate them.

The OCA has offered these reports after the record has been closed and the issues have been briefed, when the only phase of the proceeding that remains is Commission deliberation. By offering these materials for consideration at this stage of the proceeding, the OCA's purpose seems to be to institute a public discussion of the quality of postal service, both in general, and with respect to particular services. Perhaps it also hopes to advance the starting point of quality of service discussions that will inevitably occur in the next general rate proceeding.

These are laudable goals. To achieve them, however, it is not necessary to burden Docket No. R2001-1 with this considerable quantity of extraneous material. These purposes can be served equally well by publishing the non-confidential portions of this material on the Commission's website in the same manner that the Commission publishes other research papers on matters of postal policy. Accordingly, the motions of the OCA of March 6 and March 8 to accept its quality of service reports and supporting library references for filing as part of Docket No. R2001-1 will be denied.

The issues that the OCA seeks to address are likely to be revisited in future Commission proceedings. However, the OCA has acknowledged that its confidential report on quality of service should be subject to the same protective conditions as the confidential library references upon which it is based. March 8 Motion at 1. Under those protective conditions, the OCA is obligated to destroy all copies of the confidential material or return them to the Commission. See, e.g., Attachment to Presiding Officer's Ruling No. R2001-1/3, at page 2 of 6. Those conditions, however, apply to material that has been filed with the Commission. Since the OCA will not be filing its confidential report with the Commission, at the conclusion of this docket it may elect to either destroy all copies of its confidential report or place two copies in the custody of the Postal Service. If the OCA elects to place two copies of its confidential report in the custody of the Postal Service for safekeeping, the Postal Service is directed to retain them until the conclusion of the next general rate proceeding. This will enable the OCA and other participants to seek access to them, subject to appropriate protective conditions, in that, or another appropriate proceeding.

#### RULING

1. The Office of the Consumer Advocate Motion to Request that the Presiding Officer Accept for Filing a Report on Quality of Services Provided by the Postal Service to the Public, submitted March 6, 2002, is denied.

2. The Office of the Consumer Advocate Motion to Request that the Presiding Officer Accept for Filing a *Confidential* Report on Quality of Services Provided by the Postal Service to the Public, submitted March 8, 2002, is denied.
  
3. At the conclusion of this docket the OCA may elect to destroy all copies of its confidential report, or to preserve two copies and place them in the custody of the Postal Service. If the OCA elects to place two copies of its confidential report in the custody of the Postal Service for safekeeping, the Postal Service is directed to retain them until the conclusion of the next general rate proceeding.

  
George Omas  
Presiding Officer