

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

Complaint on Removal
of Collection Boxes

Docket No. C2003-1

MOTION OF THE UNITED STATES POSTAL SERVICE
FOR THE ESTABLISHMENT OF PROTECTIVE CONDITIONS

(December 20, 2002)

There is a well-traveled song in country, folk, and even popular music circles known as "The Long Black Veil." In this song, an accused man in a murder trial faces the judge under very difficult circumstances. He is told in no uncertain terms that, if he cannot produce an alibi, he will be convicted and executed. He is, in fact, innocent, and has a compelling alibi, but it is one which he would strongly prefer not to disclose:

The judge said, son, what is your alibi?
If you were some where else, then you won't have to die.
I spoke not a word, though it meant my life,
For I'd been in the arms of my best friend's wife.

In preparing its answer to the instant complaint on collection box removals, the Postal Service finds itself in circumstances which, although neither as stark nor as titillating as those faced by the unfortunate defendant in the song, are at least uncomfortably similar. In order to extricate itself from this situation in a way that protects its own interests while responding to the needs of the Commission, the Postal Service files this motion for protective conditions.

This case is a proceeding initiated not by the Postal Service, but by an individual complainant. The complaint alleges that recent collection box removals have caused a

nationwide change in service, and have likewise caused service to be inadequate. For a wide variety of reasons, it is the position of the Postal Service that these allegations are without merit, and the Commission should decline to proceed with the complaint. Commission Rule 84(b-c) indicates that the Postal Service answer to the complaint shall include the “reasons and facts” which support its position. In its Answer also filed today, the Postal Service has endeavored to do just that.

There is, however, additional information relevant to the allegations of the complaint. That information consists of a relatively small portion of the results of survey research conducted on behalf of the Postal Service for purposes of Customer Satisfaction Measurement (CSM). The Postal Service, however, considers all of its CSM data to be proprietary business information, for internal use only. The only exception to that policy relates to the results of a single independent question asking customers to rate the overall performance of the Postal Service, which are made publically available. Otherwise, access to and dissemination of CSM data are strictly controlled, and that information, whether favorable, unfavorable, or neutral, is shielded from public disclosure.

The reasons why the Postal Service treats CSM data as proprietary internal information should be reasonably well-known to the Commission, as that treatment was the subject of some contention in the last omnibus rate proceeding. Justifications for the Postal Service’s treatment were presented most fully in the “Reply of the United States Postal Service to the OCA’s Response to Motion for Protective Conditions for Results of Consumer Satisfaction Surveys,” filed in Docket No. R2001-1 on November 28, 2001. Attached to that pleading were a declaration from the Postal Service’s Vice

President and Consumer Advocate, and a declaration from a managing partner of the Gallup Organization, the polling firm. Among the reasons they cited were that CSM data have commercial value in the markets in which the Postal Service operates that may be used or misused in a variety of ways, that CSM results are intended to be used by managers to improve service and better understand our markets, and that disclosure would disadvantage the Postal Service competitively. The Presiding Officer accepted such factors as a reasonable basis for the establishment of protective conditions.

Presiding Officer's Ruling No. R2001-1/17 (Dec. 7, 2001) at 11-15.

The Postal Service's interest in avoiding public disclosure of CSM data is therefore well-established. In circumstances similar to those presented in the instant case, however, the Commission has indicated its own views regarding the potential utility of CSM-type data. In its recent Report issued at the conclusion of Docket No. C2001-1, another complaint initiated by Mr. Carlson, the Commission expressed its frustration that, in its view, none of the testimony on the record provided a satisfactory basis to evaluate whether the Postal Service was meeting customer needs and expectations regarding the matters at issue in that proceeding. Commission Report on Complaint on Sunday and Holiday Collections, Docket No. C2001-1 (Nov. 5, 2002) at 44-48. The Commission clearly indicated its preference for survey data addressing customer satisfaction. *Id.* at 48. In fact, the Postal Service has CSM data that would be squarely relevant to similar evaluation of the complaint's allegations in this instance. Just as squarely, however, those data fall within the larger set of CSM data that, as explained above, the Postal Service believes must be shielded from public disclosure.

Hence, the Postal Service faces a dilemma similar to that expressed in "The

Long Black Veil” -- under pressure to provide relevant information in circumstances not of its own making, but having compelling reasons, unrelated to those circumstances, to withhold such information. Obviously, there are critical differences as well. The Postal Service is certainly not suggesting any congruity between the Commission’s procedures for responding to complaints, and the actions of the fictional trial judge that could only most charitably be described as constitutionally questionable.¹ Second, the reluctance of the Postal Service to reveal its information relates not to any intent to conceal illicit misbehavior, but rather to protect legitimate proprietary interests. Lastly, the Postal Service has no intention in this motion to represent the relevant CSM data as either exculpatory or inculpatory. The intention, rather, is to acknowledge that the data are likely to be highly relevant to the Commission’s determination whether to entertain the complaint or not .

The Postal Service views the production of the relevant CMS data under protective conditions as the least unpalatable resolution of this dilemma. Of paramount importance, it protects the interests of the Postal Service by maintaining consistency with its longstanding and well-founded position that such data are not available for public disclosure. Simultaneously, however, it provides the Commission with adequate access to information relevant to the fulfillment of its role under section 3662. The

¹ The song, written in the late 1950s, is indeed a work of fiction. Its co-writer, Danny Dill, described the song as an attempt to weave together elements from three unrelated sources – reports of a murder in New Jersey of a priest under the town hall light which, despite the presence of dozens of witnesses, remained unsolved; a mysterious woman wearing a long black veil that for years frequented the grave of Rudolf Valentino; and the title of a Red Foley gospel tune, “God Walks These Hills with Me.” See Sing Your Heart Out, County Boy, Dorothy Horstman, Pocket Books, 1976, at 400-01.

Postal Service believes that the rationale for protective conditions is well-documented in its above-cited November 28th pleading in Docket No. R2001-1, and hereby incorporates by reference that document and the attached declarations. Such incorporation by reference appears particularly appropriate in these circumstances, because the Presiding Officer, after consideration of substantial argument in opposition from the OCA, found the request for those protective conditions to be meritorious. The Postal Service proposes that substantive terms of the Protective Conditions attached to Presiding Officer's Ruling No. R2001-1/17, applied to CSM data in Docket No. R2001-1, be adopted for use in this proceeding. If this proposal is accepted, the Postal Service would then file a library reference presenting the relevant CSM data that, absent their proprietary nature, would otherwise have been directly included in the Postal Service's Answer.²

The Postal Service notes, however, that it proffers this proposal with substantial reservations. First, we wish to make very clear that this step should in no way be construed as a retreat from our unchanging view that CSM data, whether favorable, unfavorable, or neutral, are intended for internal use only. The Postal Service did not initiate this proceeding, and has no agenda except to have this proceeding terminated. Second, we believe that the facts and arguments already presented in the Answer are independently sufficient to compel the conclusion that the complaint is not justified, and should not be pursued. In many respects, our preference would have been initially to

² The Postal Service notes that although any party is entitled to respond to this motion regarding protective conditions, the Commission's rules regarding complaints (Rules 81-87) do not authorize complainants to respond to the Postal Service's Answer.

refrain from any discussion of CSM data, in order to allow the Commission to focus its attention directly on the inherent deficiencies in the complaint. It is not clear, however, that Rule 84(b-c) would afford that latitude. Lastly, the Postal Service also wishes to make clear its concern that complaints initiated pursuant to section 3662 not simply become a vehicle for access to otherwise unobtainable internal CSM data. (The Postal Service already identified its concern in Docket No. C2001-1 that complaints not be used as a vehicle for access to other types of otherwise unobtainable confidential information, and likewise has concerns that complaints not be used to circumvent other features of information-access provisions.)

Therefore, the Postal Service respectfully requests that protective conditions be established in order to allow the Postal Service to provide CSM results relevant to matters presented in the Postal Service's Answer, while shielding that material from public disclosure.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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