

# DOCKET SECTION

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

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

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OPPOSITION OF UNITED STATES POSTAL SERVICE  
TO OCA MOTION TO COMPEL RESPONSE TO INTERROGATORIES  
OCA/USPS-T32-57b and OCA/USPS-8  
AND TO OCA MOTION FOR EXPEDITED RULING AS TO OCA/USPS-8,  
AND TO OCA MOTION FOR LATE ACCEPTANCE  
(September 25, 1997)

On September 18, 1997, the OCA filed a motion to compel a response to interrogatory OCA/USPS-T32-57b. The OCA also, somewhat surprisingly, filed a motion to compel a response to OCA/USPS-8, to which an objection had been filed on *July 28, 1997*. Given the extreme tardiness of this latter motion, the OCA filed a motion asking that its belated attempt to seek production be accepted. And, in a remarkable show of temerity, the OCA further requested that an expedited ruling be issued with respect to its dilatory motion to compel.

Before moving to the substantive merits of the various OCA motions, the Postal Service wishes to state its strong opposition to the OCA's request that its untimely motion to compel a response to interrogatory 8 now be heard, as well as its opposition to the OCA's request for expedition. The OCA has not stated a single reason, valid or otherwise, why its motion to compel could not have been timely filed. Indeed, the OCA concedes that "ideally a Motion to Compel should have been filed some time ago." OCA Motion at 9. To reward such a cavalier approach to the Commission's rules, rules which

are needed to allow this complex litigation to proceed in a fair and orderly fashion, would not only work a hardship on the Postal Service, but would encourage other parties to similarly disregard the Commission's deadlines, and thereby frustrate the possibility of an expeditious and orderly hearing. If the rules are to have any meaning, they certainly must be enforced on an occasion such as this, where no cause whatever has been stated which might excuse their wanton violation.

Furthermore, to hear the motion now, when discovery against the Postal Service is at its zenith, and litigation resources are so strained as to prohibit a full response to the OCA's arguments, would be to prejudice the Postal Service as well as impair its ability to respond to discovery requests and motions that were filed in accordance with the Commission's rules of practice. The Postal Service beseeches the Commission to summarily deny the completely unjustified motion for late acceptance.

The Postal Service also strongly opposes the OCA motion for an expedited ruling with regard to interrogatory 8. The OCA argument for expedition, while entertaining in its boldness, nevertheless suffers from a fatal internal inconsistency. What the OCA is asserting is that because it dithered with respect to requesting production of information which it now considers to be of crucial importance, the Postal Service and the Presiding Officer now should dance. Wholly overlooked in this assertion is the question that if the information now sought by the OCA were of such paramount importance, why did the OCA fail to take timely action in response to the Postal Service's legitimate objections, and instead wait *over a month and a half* before finally getting around to seeking further action? The answer is patent: Far from being vitally needed, the information sought by the OCA was an afterthought, thrown, on a lark, into a timely motion to compel on a different interrogatory. Not only do these circumstances weigh heavily against the OCA's motion for late acceptance, but they completely undercut the OCA's specious

and hubris-encrusted request for expedition. The motion for expedition therefore must be denied.

We turn now, in the limited time available to us, to the substance of the motions to compel.

**Interrogatory OCA/USPS-T32-57b**

This interrogatory asks:

Does the Postal Service plans to introduce USPS Library Reference H-226 as a part of its testimony in this docket ? If not, why not? If so, who will sponsor it?

For the reasons explained below, the Postal Service has not planned to have a witness testify concerning Library Reference H-226.

The Postal Service's objection to OCA interrogatory T32-57(b) was premised upon its belief that motion practice, as opposed to interrogatory questions and answers, was the appropriate forum for addressing issues concerning the obligations of parties to sponsor direct testimony on specific issues. Resolution of such matters can require that parties seek clarification of Commission rules and orders, and Presiding Officer's rulings. More sensitive than most to the burden of extensive motion practice, the Postal Service, nevertheless believes that some procedural conflicts between parties can sometimes only be resolved -- when the parties must resort to paper -- outside of the context of providing responses to interrogatories. The question of whether to provide a witness to testify on a particular matter (putting aside the issue of the consequences of a party's decision one way or the other) is a matter often driven by that party's interpretation of the Commission's rules and rulings, and that party's litigation strategy. Interrogatories which ask whether a party intends to "sponsor" particular material as testimony can involve legal and other due process issues for which interrogatory responses are often

not the best medium for communication. Thus, the Postal Service objected to responding to the questions posed in OCA/USPS-T32-57(b) in the medium selected by the OCA.

At page 3 of its motion to compel, the OCA requests that the Postal Service be compelled to respond to this interrogatory under the same reasoning used by the Presiding Officer in Ruling No. R97-1/20 (September 18, 1997).

Library Reference H-112, the subject of Ruling No. R97-1/20, is relied upon by the Postal Service to support the First-Class Mail nonstandard surcharge proposals of witness Fronk (USPS-T-32).

In contrast, Library Reference H-226 was not relied upon by witness Fronk in the development of his Prepaid Reply Mail proposal. Library Reference H-226 is a report by Price Waterhouse which reflects its work in conducting a survey of representatives from 10 businesses about alternative prepaid reply mail concepts. The report describes how the survey respondents were selected, includes summaries of the interviews, and includes characterizations, summaries, and analysis of the interviewed individuals' statements by Price Waterhouse.<sup>1</sup>

The OCA requests that the Postal Service be compelled to state whether it will produce a sponsoring witness for the reasons set forth in Ruling No. R97-1/20, but the circumstances are different. In the situation involving USPS-LR-H-112, the Postal Service, by proposing rates based upon the Library Reference, embraced the analysis and conclusions of its author. In contrast, with respect to USPS-LR-H-226, neither witness Fronk nor any other postal witness refers to or relies upon the factual information compiled by the Price Waterhouse survey. Witness Fronk explains why he did not rely on it in response to OCA/USPS-T32-90, filed September 16, 1997.

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<sup>1</sup> For instance, see USPS Library Reference H-226, Summary section 3.0, pages iii-iv and Conclusions section 7.0, pages 38-40.

The Postal Service believes that PRC Order No. 772 (August 14, 1987) offers more relevant guidance to the resolution of the controversy at hand. In that case, the Commission concluded that the “[t]he Postal Service is entirely justified in insisting on its prerogative to accept or reject the recommendations of its consultants.<sup>2/</sup> Accordingly, although the Commission ordered the production of a witness because the factual information contained in a Library Reference was relied upon by postal witnesses, the Commission made clear that it was not directing the compelled witness to

attest to or adopt those portions of the . . . study that consist of analysis, conclusions, or recommendations. Only those factual portions of the study, as opposed to the interpretation or analysis of those facts by its authors, need be sponsored.

PRC Order No. 772, at 4. With respect to USPS-LR-H-226, the situation of witness Fronk is the opposite of the witnesses in Docket No. R87-1. Their reference to the disputed study and reliance upon the factual material it contained led to the Commission’s decision that the Postal Service produce a witness in that proceeding. See PRC Order No. 772, at 2-3 and 4. The Postal Service neither relies upon nor refers to USPS-LR-H-226 in support of its Docket No. R97-1 Request. Consistent with the rationale of PRC Order No. 772, the Postal Service should not be required to produce a witness concerning USPS-LR-H-226.

Alternatively, if the Postal Service is required to produce a witness concerning the interviews, that witness should be limited to authenticating USPS-LR-264, which contains interview transcripts,<sup>3/</sup> and verifying only those portions of USPS-LR-226 which

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<sup>2</sup> PRC Order No. 772, at 3.

<sup>3</sup> Transcripts of nine of the 10 telephone interviews were provided in USPS Library Reference H-264. The tenth interview subject objected to having the telephone conversation taped.

explain how the interviews subjects were selected and how the interviews were conducted.

### **Interrogatory OCA/USPS-8**

The full text of this interrogatory is included in the OCA Motion to Compel. In short, the interrogatory seeks information regarding citations to the library references in Postal Service testimony, the identity of witnesses sponsoring them, the identity of witnesses relying upon them, the identity of witnesses contributing to their production, information regarding the identity of consultants and Postal Service employees who worked on them, and communications detailing the work to be performed by contributors to them.

The Postal Service objected to this interrogatory on several grounds. First, the interrogatory is not reasonably calculated to lead to the production of admissible evidence. The OCA now confirms this when it indicates that the whole point of the interrogatory is to force the Postal Service to help the OCA complete a misguided attempt to create a comprehensive matrix linking library references to witnesses. This effort not only will not add anything to the evidentiary record, but is doomed because it proceeds from the false premise that all library references filed by the Postal Service in a rate case are relied upon by the Postal Service in its filing and have some association with the Postal Service's witnesses. As the Postal Service attempted to explain in its objections, not all library references have this function. Some are filed simply to conform with the Commission's rules.<sup>4/</sup> Some are filed simply because a party requests back

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<sup>4</sup> Throughout its Motion, the OCA falsely attributes to the Postal Service the assertion that some library references are "useless background" or "useless documentation." While it is possible that some of the Commission's filing requirements lead to the production of library references which are not used by anyone in the case, and may

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ground information on a subject which is not addressed by a Postal Service witness. Moreover, the Commission's rules do not require that all library references be sponsored by witnesses. Those witnesses which rely on particular library references indicate as much in their testimonies, and the OCA has a responsibility to look for such references. However, should the OCA come to the expected conclusion that some library references are not referenced by witnesses, that should not entitle the OCA to compel the Postal Service to engage in a meaningless and futile attempt to assign the unassignable. In short, neither the Postal Service's case, nor the Commission's rules contemplate that particular library references must "fit into the Postal Service's overall Request," however much the OCA might wish it to be so. See OCA Motion at 5, 8.

A prime example of a library reference produced by, but not relied upon by the Postal Service, is Library Reference H-196, "Rule 54(a)(1) Alternate Commission Cost Presentation (Base Year)." As the OCA is aware, this library reference was prepared solely pursuant to revised Rule 54(a)(1). The revised rule does not require that the alternate cost presentation be submitted in a particular format or that it have a sponsoring witness.<sup>5f</sup> Thus, Library Reference H-196 does not require a sponsoring witness,

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<sup>4</sup>(...continued)

need to be revised so as to minimize the burden of production on the Postal Service, the Postal Service did not in its objections denigrate the Commission's rules in the manner carelessly suggested by the OCA.

<sup>5</sup> Moreover, in enacting the revision, the Commission specifically stated:

The primary purpose of proposed rule 54(a) is not to preserve access to record cost data. . . . The purpose of Rule 54(a) is to ensure that parties and the Commission have timely notice of the effect that the Postal Service's proposed changes in rates and attribution would have on cost coverages. . . . Because the alternative cost presentation required by Rule 54 is not needed to supply an evidentiary basis for applying established attribution principles, *the*

(continued...)

nor do the identities of those persons responsible for preparing it need to be revealed. In response to the OCA's statement that "we are asking who will be able to answer questions as to whether [the Postal Service] has done its job correctly" with respect to this library reference, the Postal Service asserts, once again, that having made the good faith effort required by the rule, it is required to do nothing more. The controversy over the Postal Service's duties with respect to library references such as LR-H-196 has been litigated *ad nauseam*, to the end that, at least with respect to this library reference and others not integral to the Postal Service's case, the Motion to Compel must be denied.<sup>6/</sup>

The information sought in the interrogatory is also irrelevant insofar as it would require for every library reference identification of portions prepared by contractors or

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<sup>5</sup>(...continued)

*alternate cost presentation may be provided in the form of either a library reference or sworn testimony.*

The NPR emphasized that *the Postal Service would not be required to affirm either the theoretical or the practical merits of established attribution principles*. It is merely to affirm that it has made a good faith effort to give notice of what the impact would be of its proposed departures from established attribution principles. Order No. 1146 at 10 [61 FR at 67762]. Such an affirmation would not require the Postal Service to adopt a litigating position against it [sic] will, except to the extent that any proponent must carry the burden of going forward, and the burden of persuasion, if its proposals are to prevail.

Order No. 1176, Docket No. RM97-1, May 27, 1997, at 23-24.

<sup>6</sup> See, e.g., Objection of the United States Postal Service to Major Mailers Association Interrogatories MMA/USPS-T5-1 and 6(b), MMA/USPS-T25-1(B) and (C), MMA/USPS-T30-3(A) through (D), 4(A) through (D), 6, 7(A)(2) and 8(C)(1) through (3), AND MMA/USPS-T32-15(b), filed August 25, 1997; Opposition of United States Postal Service to Major Mailers Association's Motion to Compel Answers to Certain Interrogatories and the Office of the Consumer Advocate Reply in Support Thereof, filed September 15, 1997; and Opposition of the United States Postal Service to Major Mailers Association Motion Requesting Leave to File a Reply or, in the alternative, Motion for Leave to Respond to the Reply, filed September 24, 1997.



consultants, portions prepared by Postal Service employees, and the like. The record of this case will be burdened, rather than benefitted, if, with respect to documents not relied upon by the Postal Service, the specific contributors are identified. The OCA has failed to state a single reason why such information would be of benefit to the Commission in evaluating the Postal Service's proposals, and there is no such reason.

The Postal Service's undue burden objection must also be sustained. Given the lack of relevance and misguided nature of the OCA's quest, the several days it would take to even attempt to comply with the OCA request would be a wasted effort, and

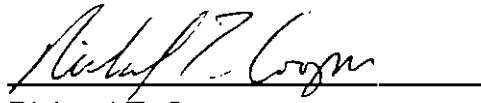
would substantially impair the ability of the Postal Service to litigate its case at a time when the burdens imposed on the Postal Service are at their peak.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

A handwritten signature in cursive script, appearing to read "Richard T. Cooper", written over a horizontal line.

Richard T. Cooper


A handwritten signature in cursive script, appearing to read "Michael T. Tidwell", written over a horizontal line.

Michael T. Tidwell

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September 25, 1997

**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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