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

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OPPOSITION OF UNITED STATES POSTAL SERVICE TO
OFFICE OF THE CONSUMER ADVOCATE MOTION TO COMPEL
RESPONSES TO INTERROGATORIES TO UNITED STATES POSTAL SERVICE
WITNESS MICHAEL K. PLUNKETT
(OCA/USPS-T40-14 (IN PART), 15 (IN PART) AND 19-20)
(September 30, 1997)

The United States Postal Service hereby opposes the September 23, 1997 motion of the Office of the Consumer Advocate (OCA) to compel responses to interrogatories OCA/USPS-T40-14 (in part), 15 (in part) and 19-20 (Motion).

These interrogatories ask witness Plunkett for legal conclusions concerning the regulatory status of the Federal and state governments concerning the Postal Service's insurance service, and the legal status of the Postal Service as a "common carrier" or "bailee". Such interrogatories are well beyond the scope of witness Plunkett's testimony or expertise.^{1/} Moreover, the OCA has not shown that the requested legal analysis is a proper subject of discovery, nor how such analysis would either shorten the hearing process, as the OCA claims, or assist the Commission in recommending fees and classifications for the insurance special service in this proceeding.

Interrogatories OCA/USPS-T40-14-15 ask for the regulatory status of the Postal Service's insurance business, with respect to Federal agencies and state insurance

^{1/} Even if witness Plunkett did have a Postal Service legal memo responsive to the OCA interrogatories, which he does not, such a memo would be protected by the attorney-client privilege.

commissions. In response, witness Plunkett has stated that he is not aware of any state or Federal regulation of the Postal Service's insurance business. That is not the legal analysis that the OCA might seek, concerning whether there is legal authority for any such regulation, but the OCA has not shown why the responses witness Plunkett has provided are inadequate for the OCA's purposes.^{2/}

In any case, the OCA admits it intends to use the responses to interrogatories 14 and 15 for purposes that are beyond the scope of the proceeding. The OCA argues that

[i]f the Postal Service's insurance business is not well-regulated by others, the Commission may have to consider or recommend stringent consumer protection provisions.

OCA Motion at 5. During rate proceedings the Commission recommends classifications and fees for insurance, not "consumer protection provisions."

The OCA claims that its interrogatories OCA/USPS-T40-19 and 20, seeking witness Plunkett's legal opinion and research on the status of the Postal Service as a "common carrier" and "bailee", are intended to explore the status of uninsured mailers who nonetheless believe that the Postal Service should compensate them for loss.

^{2/} The OCA chose to file its Motion to Compel early, on September 23, perhaps in order to take advantage of Postal Service resource constraints during the peak period for responding to discovery. In any case, by filing on September 23, the OCA was not able to review witness Plunkett's responses to interrogatories OCA/USPS-T40-14 and 15, as well as the other responses, which were also filed on September 23. As discussed above, these responses provide information relevant to the OCA's concerns.

OCA Motion at 6. Any connection to the classifications and fees for those mailers who do choose insurance is tenuous.^{3/}

Moreover, in response to interrogatories OCA/USPS-T40-18 and 21, witness Plunkett has stated that the Postal Service defends against claims by mailers for compensation related to loss or damage of uninsured mail matter. Thus, the Postal Service has already provided factual information that appears to be related to the legal analysis the OCA desires, and may satisfy the OCA's immediate needs.

The OCA claims that learning the Postal Service's perspective on these legal issues before the hearings will help to focus the issues at the hearing. Motion at 7. It is not clear how witness Plunkett's answers would focus the hearings. Will the OCA really ask fewer questions at the hearing if, for example, witness Plunkett states beforehand his opinions that the Federal Government but not state governments are authorized to regulate the Postal Service's insurance business, and that the Postal Service is a common carrier but not a bailee?^{4/} The OCA fails to explain how

^{3/} The OCA states that interrogatories OCA/USPS-T40-19 and 20 seek to explore the issue of whether insurance should be provided only to those who choose insurance, or whether all mail should be insured for damage while entrusted to the Postal Service for safe keeping and carriage. Motion at 6. While that issue could arise in trying to decide whether there should be an insurance classification at all, this is a complex policy matter that should be reserved for a separate proceeding. In particular, the increased costs for the Postal Service to insure all mail would need to be addressed, as well as the impact of such costs on raising the rates of postage.

^{4/} The OCA states that if the Postal Service does not reveal its legal position until after hearings, the OCA "would have to assume the worst - that the Postal Service operates its insurance business in a regulatory void." Then witness Plunkett would be subjected to "vigorous cross-examination." But the OCA does not explain why. In fact, if the Postal Service were to reveal, in response to these interrogatories, a legal

(continued...)

learning the Postal Service's legal perspective at this time will shorten oral cross-examination at all. It seems more likely that responses to these interrogatories will open up more lines of questioning (such as, for example, why witness Plunkett cites certain court decisions to support the Postal Service views).^{5/} In any case, even if forcing all parties to state their legal views on the issues before the hearings would focus the hearings more, that is not the way the Commission has organized these proceedings, or what due process generally requires.

In summary, the OCA seeks to raise issues that are beyond the scope of this proceeding. Moreover, the Postal Service has already provided all that is required for

^{4/} (...continued)

position that is "the worst" case, then providing these legal perspectives now apparently would not save witness Plunkett from the lengthy cross-examination the OCA threatens.

^{5/} In this regard, the OCA makes no defense of its requests in OCA/USPS-T40-19 and 20 that the Postal Service provide contrary legal authority for the Postal Service's views. Especially in this respect, the Postal Service should not be forced to do the OCA's legal research.

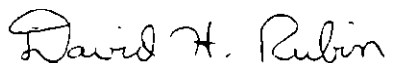
the OCA to proceed with its analysis of the long-established insurance product as "largely virgin territory." Motion at 7. The OCA's Motion to Compel should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

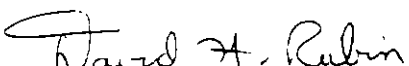
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David H. Rubin

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.



David H. Rubin

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