

# DOCKET SECTION

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Postal Rate and Fee Changes, 1997 )

Docket No. R97-1

UNITED STATES POSTAL SERVICE REPLY TO  
OFFICE OF THE CONSUMER ADVOCATE  
MOTIONS TO COMPEL RESPONSES  
TO INTERROGATORIES  
OCA/USPS-T22-12, 20(B), 20(E) (PARTIAL), AND 20(G)

The Office of the Consumer Advocate has filed motions to compel responses to interrogatories OCA/USPS-T22-12, and parts (b), (e) and (g) of OCA/USPS-T22-20.<sup>1</sup> The United States Postal Service responded to these on September 25, 1997 by requesting additional time to respond to the former while indicating that the response to the latter would be incorporated in a single pleading to be filed on September 30.

All of the subject interrogatories seek responses that the Postal Service variously objects to providing on the grounds of commercial sensitivity, deliberative process, and relevance.<sup>2</sup> While several of the OCA's arguments in support of its motions to compel are grossly misleading, this may stem from a failure to read USPS-T-22 rather than specific intent.

Witness Treworgy's testimony (USPS-T-22) presents cost estimates and

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<sup>1</sup>The motion to compel a response to interrogatory 12 was filed September 18, with a separate motion regarding the latter interrogatory parts filed on September 24.

<sup>2</sup>This pleading largely addresses the commercial sensitivity of information since release of responsive information has the potential to cost the Postal Service tens of millions of dollars. The three parts of OCA/USPS-T22-20 involve information provided to inform the decision of the Board of Governors, however, so the requested information is also protected by the deliberative process privilege. Since the Postal Service does not seek to use this latter privilege to shield more than what is also commercially sensitive today, the discussion herein focuses upon commercial sensitivity. In no sense, however, does the Postal Service waive its objection based upon the deliberative process privilege.

projections in support of the proposed delivery confirmation service. His projections are necessary since the lack of experience with this new service offering means that hard cost data are unavailable. This discovery dispute apparently arises from the fact that the Postal Service has determined to implement delivery confirmation service as a strategic necessity, and is accordingly proceeding with various procurement actions in parallel with this case. The OCA has evidently seized upon the public announcement of a contract awarded to Lockheed Martin for procurement of scanners to be used for delivery confirmation as a basis for inquiring both about the Lockheed Martin contract and the earlier underlying decision by the Board of Governors to approve delivery confirmation.

The Postal Service has no difficulty conceding the relevance of cost data that may be available from new procurements as a lens through which to look at Mr. Treworgy's estimates. Accordingly, most of the OCA's interrogatories on this subject have been responded to affirmatively. See Response to OCA/USPS-T22-11, filed September 16, 1997 (explanation of the limited application of the publicly reported \$218 million figure for the Lockheed Martin contract award to Mr. Treworgy's Worksheet C-1); LR-H-247 (summary of the business case made for delivery confirmation to the Board of Governors). Since actual cost data will almost invariably differ in one direction or another from projections, a point which the OCA appears to concede in its motions, the suitability of actual cost information from a single contract for testing testimony based on a variety of estimates, projections, and assumptions, as well as strict output requirements in the form of the Commission's rules, is limited. In the case of the subject interrogatories, more critically, the limited utility of re-working detailed analyses to reflect one piece of actual cost information must be weighed against the substantial

risk of compromising the Postal Service's contract negotiations.<sup>3</sup>

The Postal Service is gravely concerned about the potential costs of compromising its bargaining positions in negotiations that are related to implementation of delivery confirmation service, and this is the single most important reason why it must continue to resist the OCA's efforts to reveal commercially sensitive information. Without exaggeration, there is a potential that revelation of some of the information requested by the OCA could cost the Postal Service tens of millions of dollars if parties to negotiations learn too much about postal estimates. This is precisely the type of situation to be avoided by protecting commercially sensitive information, as the Postal Service requests.

*The Postal Service direct case properly rests upon the projections and estimates presented by witness Treworgy,<sup>4</sup> and the support for and assumptions regarding his testimony are clearly set forth both in his testimony and supporting materials.<sup>5</sup> The OCA has had no difficulty in formulating proper, unobjectionable questions to explore those materials further. See, e.g., Response to OCA/USPS-T22-24 (details of corporate call management costs, filed contemporaneously with this Reply).*

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<sup>3</sup>The OCA's position, moreover, would require a re-visitation of the need to re-calculate spreadsheets each time a new piece of data becomes publicly available. The net effect would be extremely burdensome while, in a best case, furthering the record in this matter but one iota.

<sup>4</sup>The OCA manages both to agree that Mr. Treworgy's testimony is based upon "estimates and projections", September 18 Motion at 4, and to express surprise that this is the case, *id.* at 5; September 24 motion at 3. *This is but an example of the misleading perturbations sprinkled throughout the OCA's motions.*

<sup>5</sup>Notwithstanding the extensive documentation of the sources and support for the USPS-T-22 projections and estimates found in the body of the testimony itself, exhibits, worksheets, library references, and interrogatory responses, the OCA attempts to bootstrap its arguments by characterizing the projections and estimates as "unexplained". September 18 Motion at 4. The OCA then compounds this misleading characterization by insisting that witness Treworgy's projections and estimates of depreciation "must rely on accurate [] contract information." Such outright nonsense should not be tolerated in this forum.

The specific interrogatories are discussed below.

**OCA/USPS-T22-12**

This interrogatory requests an update of Worksheets C-1 and C-2 of USPS-T-22 to reflect the \$218 million contract to Lockheed Martin. As previously indicated in the response to OCA/USPS-T22-11, the \$218 million figure for the contract is not directly analogous to any figure in the spreadsheets. Also, as indicated in the Postal Service objection, any attempt to re-work those worksheets to include the appropriate portion of the \$218 million figure will necessarily require revelation of constituent estimates; since those constituent estimates bear directly upon contract negotiations both with Lockheed Martin and other contractors, they are acutely sensitive to the Postal Service negotiating positions. Negotiations involve additional scanners, options on the original 300,000, as well as a variety of program costs that are not encompassed by the \$218 million figure but are implicated by the worksheets. Especially given the size of the contracts involved, it is difficult to imagine a situation where the commercial sensitivity of Postal Service estimates could be greater.

The arrival of some form of actual data during the Commission's consideration of a request is hardly an anomaly. In the instance of the \$218 million contract award to Lockheed Martin, however, the comparability of data supporting the contract award amount to witness Treworgy's testimony are especially poor. While the OCA points to the fact that Worksheet C-1 indicates capital and program costs of \$185 million, September 18 motion at 3, this figure is not comparable to the \$218 million figure because the former includes program costs while the latter does not. Nor is the \$218 million comparable to the \$65 million addressed in the response to OCA/USPS-T22-11 because the contract does not include information systems, image scanners, or project management costs, all of which are part of the \$65 million. The \$218 million is not even

comparable to the subsections of "Capital Costs" titled "Carrier and box section scanners and support" (middle four lines) because: 1) the \$218 million must be depreciated before any comparison can be made; 2) items in the "Miscellaneous" category such as training costs are included in the \$218 million; and 3) more scanners may well be purchased.<sup>6</sup> Thus, any incorporation of the \$218 million figure in Worksheets C-1 and C-2 would necessarily require major deconstruction and consequent revelation of commercially sensitive estimates.<sup>7</sup>

On page 5 of its September 18 motion, the OCA summarizes its argument on this interrogatory:

In sum, there are important questions to answer regarding whether we know all the capital costs, whether the costs have been properly assigned to DC, whether total costs (whatever they are) are being appropriately depreciated to the test year, and whether other costs are appropriately assigned to other classes of mail.

These are incredible -- and misleading -- characterizations of what is involved in interrogatory OCA/USPS-T22-12. To answer briefly, of course we don't know all the capital costs since witness Treworgy's testimony is based upon projections and estimates, as are all the costs for FY 98 on which the Postal Service's request is based. The Lockheed Martin contract provides an additional piece of cost data, but not in a form comparable to the projections and estimates in the testimony. With respect to the assignment of costs to delivery confirmation, the best available information has been

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<sup>6</sup>The complexity of these ongoing negotiations is one reason that the OCA's ill-advised request that the Presiding Officer set deadlines for postal negotiations, September 18 motion at 7, founders not only on the legal impropriety of the Commission's interjecting itself in postal contracts, but also on factual impracticality.

<sup>7</sup>Worksheets C-1 and C-2 represent a fine balance between the requirements of this case and the postal need to preserve estimates of large contracting costs. As such, the Postal Service would likely resist most efforts to deconstruct those spreadsheets beyond what has already been provided in this proceeding.

provided as part of USPS-T-22 and its supporting documentation, and continued evaluation of non-comparable data serves only to confuse the record. Moreover, the OCA has been free to inquire into whether costs have been properly allocated and depreciated without inquiring into commercially sensitive data, especially since the method of depreciation is quite independent of the costs involved. The claim that an answer to this interrogatory will permit the OCA to determine whether costs are appropriately assigned to other classes of mail is even more distant from the subject of the interrogatory and similarly lacking in merit.

In a further demonstration of its failure to connect the fact that USPS-T-22 involves projections and estimates required by the Rules of Practice whereas the \$218 million figure constitutes a quite different compilations of costs, the OCA asserts that Special Rule 2(c) requires the Postal Service to update its worksheets to reflect the \$218 million. September 18 motion at 6. As shown above, the assumptions that go into developing projections and estimates for use in rate proceedings are quite distinct from those that go into a public announcement of a contract award. The OCA's failures to recognize: 1) that actual cost data almost invariably differ from cost estimates and projections; 2) that the Postal Service testimony regarding delivery confirmation necessarily relies upon the latter but not the former; 3) that the \$218 million and the projections and estimates are inherently not comparable; and 4) that the Postal Service legitimately must protect information highly sensitive to its procurement process, perhaps explain the misleading arguments it posits in support of its extreme position.

The OCA's concluding paragraph provides a final emphasis on the misleading nature of its arguments: "[T]here are discouraging signs that the data in witness Treworgy's worksheets is far from complete." September 18 motion at 7. Yet USPS-T-22 consists of projections and estimates, and absolutely none of the OCA's arguments

indicate that his projections and estimates are incomplete in any way.

**OCA/USPS-T22-20(b)**

This interrogatory is comparable to OCA/USPS-T22-12 in that an affirmative answer would require the Postal Service to reveal the capital and program cost estimates for the scanner infrastructure; since these are the subject of ongoing procurement actions their revelation would compromise Postal Service negotiating positions. As explained above, this information is commercially sensitive and therefore privileged.<sup>8</sup>

**OCA/USPS-T22-20(e)**

This interrogatory seeks the production of attachments to the report filed as LR-H-247. As indicated above and in the response to part (f) of this interrogatory, the report presented the business case for delivery confirmation to the Board of Governors. As such, it is easy to see that it could have contained estimates and projections that are now the subject of ongoing procurement actions -- which in fact it did. This is why the Postal Service redacted the original report before filing it as a library reference, and the reasons governing that action continue to apply. The Postal Service partial objection rests both on commercial sensitivity and relevance;<sup>9</sup> arguments regarding the former are already set out above.

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<sup>8</sup>In another example of misleading argument, the OCA asserts that the Postal Service "has not spelled out exactly how and why contract negotiations would be compromised by revealing actual contract prices." The Postal Service has not objected to providing the actual contract price, indeed, the dollar value of the Lockheed Martin contract was part of the OCA's own interrogatory. The point is that additional negotiations are ongoing both with Lockheed Martin and other vendors. The OCA's further assertion that if the Postal Service were engaged in ongoing negotiations only with Lockheed Martin, then there could be no compromise of negotiating position (September 24 motion at 3-4) is even more ludicrous. If a potential contractor knows how much the Postal Service has projected something will cost, bargaining leverage is lost regardless of the existence of competing contractors.

<sup>9</sup>See *also*, footnote 2, *supra*.

The portion of the attachment relating to cash flow projections for the program in the test and prior years is being provided; it relates to witness Treworgy's testimony and the test year. Cash flow analysis in later years, however, is completely irrelevant to issues in this case. Other material attached to the report contains the same commercially sensitive information that is discussed above (and was redacted from the body of the report -- apparently with no objection by the OCA), and should be shielded for the same reasons. This approach conforms to how such issues have previously been handled.

#### **OCA/USPS-T22-20(g)**

This interrogatory seeks documents relating to the projected return on investment of delivery confirmation. Such documents are not relevant to this proceeding, although the unprivileged material responsive to part (e) is also responsive here and will be provided. To the extent the OCA seeks the "analysis contained in return on investment documents" (September 24 motion at 6), this question is co-extensive with the others previously addressed in this pleading. Hence for the reasons identified above, the Postal Service should not be compelled to produce its commercially sensitive business information.

The OCA's arguments regarding this part simply repeat the misleading ones it has previously posited. Whether the Postal Service has employed the correct "depreciation method" can be inquired of directly without any need to uncover the exquisitely sensitive Postal Service estimates of costs that are still subject to the procurement process. The "capital costs puzzle" exists only in the unfathomable collective consciousness of the OCA. Witness Treworgy has amply demonstrated the assumptions, analysis and data supporting his testimony.



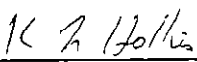
WHEREFORE, the United States Postal Service asks that the OCA's motions to compel responses to OCA/USPS-T22-12, 20(b), 20(e) and 20(g) be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

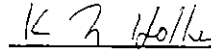
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September 30, 1997

## 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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