Postal Rate Commission
Submitted 3/17/2004 4:13 pm
Filing ID: 40068
Accepted 3/17/2004

PRESIDING OFFICER'S
RULING NO. C2003-1/4

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

Complaint on Removal of Collection Boxes Docket No. C2003-1

PRESIDING OFFICER'S RULING CONCERNING VOLUNTARY PROVISION OF INFORMATION RESPONSIVE TO ALLEGATIONS IN COMPLAINT

(Issued March 17, 2004)

In its Answer[1] to the Complaint lodged in this proceeding, the Postal Service presented extensive argument in support of its position that a hearing should not be held in this matter. Recognizing, however, that the Commission might not see fit to dispose of the Complaint solely on the basis of its arguments and factual representations, the Service further stated that it has material highly germane to the Complaint's merits in the form of "proprietary customer satisfaction survey research results."[2] The Service proposed to make the relevant material available under protective conditions, and filed a motion to that effect with its Answer.

In that motion,[3] the Postal Service asserts that the germane material, consisting of a "relatively small portion" of the results of a Customer Satisfaction Measurement (CSM) research survey conducted on its behalf, constitutes data the Service deems to be proprietary business information, for internal use only. With the exception of a single question asking Postal Service customers to rate its overall performance, the Service

[1] Answer of the United States Postal Service, December 20, 2002.

[2] *Id*. at 39.

[3] Motion of the United States Postal Service for the Establishment of Protective Conditions, December 20, 2002.

represents that access to and dissemination of CSM data are strictly controlled, and that such information — whether favorable or otherwise — is shielded from public disclosure.

In view of the Service's position, but also of the potential relevance of the CSM data, I ordered production of the responsive information for *in camera* inspection.[4] Following that review, I found insufficient justification for imposing protective conditions, and denied the Postal Service's motion.[5] The Service sought reconsideration of that ruling, which I granted by certifying the question to the full Commission.[6] The Commission accepted certification of the ruling in Order No. 1379.[7]

After thorough consideration of the Postal Service's arguments, the Commission affirmed the ruling denying the motion for protective conditions.[8] It found the Service's assertion of an "indivisible" claim of "inherent sensitivity" for the entire set of CMS data to be flawed.[9] While recognizing that the sensitivity of data is an element of the balancing test to be performed when ruling on disclosure issues, the Commission rejected a blanket claim of sensitivity for the CSM data premised on commercial business practices or broad industry standards.[10] It found that such general standards lack a direct relationship to case-specific postal issues, and typically do not reflect the unique statutory mandates that underlie Postal Service operations and the Commission's responsibilities.[11]

The Commission was also unpersuaded by other arguments of the Service. It found the Service's reliance on a Presiding Officer's ruling in Docket No. R2001-1 to be

---

[4] Presiding Officer's Ruling No. C2003-1/1, February 12, 2003.

[5] Presiding Officer's Ruling No. C2003-1/2, July 14, 2003.

[6] Presiding Officer's Ruling No. C2003-1/3, July 24, 2003.

[7] Order No. 1379, Order Accepting Certification of Presiding Officer's Ruling No. C2003-1/2, July 25, 2003.

[8] Order No. 1390, Order Affirming Presiding Officer's Ruling No. C2003-1/3, February 4, 2004.

[9] *Id*. at 2.

[10] *Id*. at 2, 4.

[11] *Id*. at 4.

misplaced because of crucial factual differences.[12] Similarly, the Commission found the Service's argument that public disclosure of the CSM data could diminish its "net return" on the related data collection effort to have no direct bearing on this case.[13] The Commission also found the Service's arguments regarding the public's interest in explicit disclosure and available practical alternatives unavailing.[14] More generally, to the extent case law provides guidance in this instance, the Commission found no concrete evidence to support an inference of potential competitive harm with respect to the two CSM responses.[15]

In view of the Commission's determinations in Order No. 1390, it is appropriate to revisit the question of the Postal Service's voluntary provision of information germane to the merits of the instant Complaint. The Service evidently decided against providing the particular survey results at issue without protective conditions, following their return after *in camera* inspection.[16] However, it is possible that the Service may elect to reconsider its position on this material in light of the Commission's Order. Alternatively, the Postal Service may have access to kindred information bearing on the merits of the Complaint that it is prepared to disclose at this time. For example, in comments to the National Telecommunications and Information Administration (NTIA) in 2001, the Postal Service presented extensive consumer-oriented information, including results of customer satisfaction research.[17] For this reason, I shall delay action on the Complaint to allow the Service to provide any such information it chooses to produce in support of its opposition to the instant Complaint by April 5, 2004.

---

[12] *Id.* at 3, 4-5.

[13] *Id.* at 5.

[14] *Id.* at 5-6.

[15] *Id.* at 6-7.

[16] Presiding Officer's Ruling No. C2003-1/2, *supra*, at 5.

[17] See United States Postal Service Comment on ESIGN at 3-5, archived at: http://www.ntia.doc.gov/ntiahome/ntiageneral/esign/comments/usps.htm. A copy of the cited pages is attached as Appendix 1 to this ruling.

RULING

The United States Postal Service shall file any information germane to the instant Complaint it chooses to produce by April 5, 2004.

Tony Hammond
Presiding Officer

APPENDIX 1 TO PRESIDING OFFICER'S
RULING NO. C2003-1/4

(3 pages)

The US Postal Service provides six traditional products lines - correspondence and transactions, business advertising, expedited delivery, publications delivery, standard package delivery and international mail delivery. Besides our traditional method of paper mailings, the US Postal Service is beginning to venture out in the electronic world. Our offerings located on USPS.com consist of several NetPost™ applications, such as, Mailing Online™, USPS eBillPay™, CardStore, Certified Mail, PosteCS™ along with our customers being able to purchase stamps and philatelic items 24 hours a day.

Mailing Online lets mailers electronically (and cost-effectively, too) transmit their documents, correspondence, newsletters and other First-Class Mail and Standard (A), along with their mailing lists, to the US Postal Service via www.usps.com. The electronic files are securely distributed to printers who print, insert, address, apply postage, sort and transport the mailing to the nearest post office for processing and delivery.

USPS eBillPay allows our customers to receive and pay their bills online. A consumer can pay anyone in the US, view and pay bills from anywhere, pay bills automatically, download transactions to personal Financial Management Software and pay from multiple bank accounts.

CardStore is an ideal way to customize the consumers business or personal message. They are able to pick their favorite design, fonts, colors and the first class stamp or they can use their own photo, logo, or artwork for a completely custom card. Once they are personalized the USPS prints and mails the next business day.

Certified Mail the traditional way is now offered via the internet. This service verifies the address, adds the barcode, prints, folds, and completes the certification forms with just a few clicks of a mouse. All the customer has to do is create a document, pay online and send.

PosteCS provides secure online Electronic Courier Service. It augments electronic messaging services to deliver documents across multiple systems to business partners and clients outside the customers corporate Intranet. PosteCS global capabilities allow for universal electronic communications across diverse messaging systems, gateways, and clients.

Market evolution - In 1992, about 5 million Americans had access to the Internet. That number had grown to over 100 million by 1999, an increase of 1,900 percent. To look at that another way - It took 38 years for the telephone to penetrate 30 percent of United States households. The Internet, by contrast, took only 7 years.[(5)] Most surveys show that at least 60 percent of Americans are now online.

3. Consumer Issues

The US Postal service is mandated by law to deliver mail to every household in the United States. Even though studies show 60 percent of Americans have access to the Internet, there are still that 40 percent who do not. As the applications associated with electronic mail evolve, a hybrid mail is emerging. People are realizing that combined use of both hard-copy and electronic mail ensures a balance of cost effectiveness, universal delivery and effective message content delivery.

In this environment, the issues of consumer choice are complex. While some customers may

prefer all of their relevant messages to be in a single format, that segment is likely to remain a small minority. In fact, most consumers will prefer to receive some messages in one format and will prefer other messages in a different format. These preferences may even change for the same customer, depending on circumstances. Research indicates that electronic and hard copy messages are not perfectly substitutable, and depends largely on the specific nature of the application and the context of the message.[(6)]

Recent press reports have highlighted the reluctance of consumers to give up familiar and trusted mechanisms, such as the Postal Service, for critical transactions and information flows. Issues of privacy and security are increasingly important to the public, and a variety of sources suggest that they are many and uncertain about the electronic environment.

There are also issues emerging about the ability of electronic mechanisms to serve as long-term storage for transactions or documents. Regular planned obsolescence of electronic programs, software and media will place tremendous burdens on traditional archival, research, and legal practices.

The US Postal Service has a very high degree of customer satisfaction. The favorable ratings, according to the USPS Customer Satisfaction Studies conducted by an independent contractor, are currently about 92%. The Postal Service is rated as one of the best values for the dollar in comparative surveys of a wide variety of services - including telecommunications - regularly conducted by the Roper Organization. The American Service Quality Center reports that US Postal Service regular mail and counter service as receiving the same ratings as the telecommunication industry, and in fact, the parcel delivery and express mail service (including postal services) is ranked significantly higher than telecommunications services (2000 ACS Index rate of 81 compared to 72 for the telecommunications sector).[(7)]

The US Postal Inspection Service is the law enforcement arm of the Postal Service responsible for investigating criminal acts involving the mails, thus assuring postal customers of the "sanctity of the seal" when entrusting their money, messages and merchandises to the mails.

Mail is still relevant for a wide variety of important applications for most businesses and consumers. It has strong benefits of familiarity, ease of use, privacy, security, image resolution, and storage. The US Postal Service is a trusted and neutral intermediary, with a network that allows low cost universal service.

---

1. Paraphrase of a quote from William J. Henderson, Postmaster General & Chief Executive Officer. Information provided via Postal Facts on USPS.com.

2. United States Postal Service 2000 Annual Report

3. This obviously does not include mobile communications, such as wireless devices, with limited capacity for detailed messaging. While pagers, cell phones, and personal data assistants can display information, most such messages are substitutes for phone rather than for hard-copy messages.

4. US Postal Service Five-Year Strategic Plan FY 2001-2005

5. Source: John Tierny, The US Postal Service (1988); US Internet Council, State of the Internet (1999).

6. See, for example, The Future of Global Mail 2000, The Institute for the Future, 2001.

7. American Customer Satisfaction index, American Society for quality, June 2000