

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

Postal Rate and Fee Changes, 20051 )

Docket No. R2005-1

OFFICE OF THE CONSUMER ADVOCATE  
MOTION TO COMPEL RESPONSES TO INTERROGATORIES  
OCA/USPS-60 and OCA/USPS-118  
(June 15, 2005)

Pursuant to Rules 21, 26(d) and 27(d) of the Rules of Practice of the Postal Rate Commission, the Office of the Consumer Advocate (“OCA”) hereby moves to compel Postal Service responses to those portions of interrogatories OCA/USPS-60 and 118<sup>1</sup> to which the Postal Service has filed partial objections. The Postal Service filed “Partial Objection of the United States Postal Service to Interrogatory of the Office of the Consumer Advocate (OCA/USPS-60)”<sup>2</sup> and “Partial Objection of the United States Postal Service to Interrogatory of the Office of the Consumer Advocate (OCA/USPS-118).”<sup>3</sup> The grounds articulated for both objections are similar, i.e., “privilege,” “commercial sensitivity,” and “relevance.”<sup>4</sup>

In the most recently filed objection, the Postal Service contends that the disaggregation of the data requested by OCA would result in the disclosure of

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<sup>1</sup> See attachment.

<sup>2</sup> Hereinafter, “Objection to 60,” on June 1, 2005. Interrogatory 60 asked for a breakout of Express Mail and Package Service volumes, by day delivered, over a 15-day period, from ODIS, EMRS, and EXFC, and any other applicable data system. The Postal Service provided data for First-Class and Priority Mail from ODIS, EXFC, and PETE.

<sup>3</sup> Hereinafter, “Objection to 118,” on June 13, 2005. Interrogatory 118 asked for a breakout of volumes, by day delivered, over a 20-day period for specific Package Services, i.e., Parcel Post, Bound Printed Matter, Media Mail, and Library Mail.

<sup>4</sup> Objection to 60 at 3; Objection to 118 at 1.

“privileged, commercially sensitive data for a range of competitive services.”<sup>5</sup> The Postal Service further argues that “disaggregation of data beyond the service standard range . . . is immaterial to the issues in this proceeding.” The Postal Service also indulges in hyperbole while making an unfounded, invalid characterization of OCA’s request as an “obsess[ion] on minutiae.”

The intensity of the Postal Service’s resistance to providing the data itself proves that the information requested is both material and significant, the opposite of the Postal Service’s depiction of the data as irrelevant minutiae. Characterizing the information sought by OCA as “minutiae” implies that the information is trivial, so it is logical to conclude that release of such allegedly trivial information should be harmless. In fact, the Postal Service alleges no harm from release of the data.

In the Objection to 118, the Postal Service also makes a bare assertion of privilege. What is the privilege that the Postal Service is invoking? The pleading never states the privilege. It is impossible for OCA to reply to such a vague, unsupported, and unexplained assertion. OCA requests that the Presiding Officer eliminate “privilege” as a ground for upholding the Postal Service’s objection. If privilege is not eliminated, then OCA asks that it be permitted to file a pleading in reply to the Postal Service’s response to the instant motion.

Chapter 36 of title 39, which contains Congress’ views of the processes to be followed by the Commission in determining prices for the mail classes and services, contains no indication that privileges exist for *any* classes and services so as to exempt them from application of subparts (1), (2), and (5). Indeed, the opposite is true, Congress clearly stated that the Commission “*shall make a recommended decision on*

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<sup>5</sup> Objection to 118 at 1.

the request for changes in rates and fees in *each class of mail or type of service in accordance with . . . the following factors . . .*”<sup>6</sup> The information OCA seeks for Express Mail and Package Services is directly related to the (b)(2) consideration of fairness, equity, and the value of service actually provided to Express Mail and Package Service senders and recipients, and the alternative means of sending and receiving mail matter at reasonable costs. The latter consideration undoubtedly means having the Commission consider the length of time for delivering Express Mail and Package Services *and their degree of lateness*, so that they may be compared to one another and to First-Class and Priority Mail.<sup>7</sup>

The Postal Service refuses to recognize that there is a critical distinction between being slightly late and being very, very late. With respect to Package Services, which have a 2 – 9-day service standard, data indicating that close to 100 percent of packages are delivered by the end of the 10<sup>th</sup> day is radically different from data showing that a large proportion of packages is delivered 20 days late. Potential purchasers may be able to live with lateness that is only 10% worse than their expectations, but lateness that is more than two times what the Postal Service leads the purchaser to believe can result in serious hardship.

For example, businesses that are considering shipping merchandise via parcel post, who inform their customers to expect a purchased item up to 9 days after shipping, are not likely to receive a large number of inquiries if the item is delivered on the 10<sup>th</sup> day. On the other hand, as lateness grows to 18, 19, and 20 days following

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<sup>6</sup> 39 U.S.C. §3622(b) (emphasis added).

<sup>7</sup> The Postal Service did not object to, and provided, the requested information for First-Class and Priority Mail. See partial response to interrogatory 60, filed June 10, 2005.

shipment, the probability that customers will contact them to inquire and complain increases. Every telephone or e-mail inquiry made because of late delivery adds greatly to the mailer's expense of fulfilling the order. In some cases, mailers may find themselves sending out a second package containing a replacement for the same item previously shipped. Customers might then be instructed to return one of them (if the item eventually arrives), which also adds greatly to the mailer's (and oftentimes, the recipient's) expense in completing the transaction.

Similar adverse effects are triggered in consumers' usage of Express Mail and Package Services. While consumer mailers may not have to incur a labor charge for fielding an inquiry about whether a package was sent and when it will arrive, they may have to expend valuable personal time in remediating a Postal Service failure to provide the service represented. As with business mailers, consumers might find themselves sending out an item a second time, incurring both the expense of the second item and doubling the postage they expected to pay. In the period following the last rate case, OCA learned of such instances.<sup>8</sup>

OCA received complaints from consumer organizations, one of which reported to OCA that it routinely had to incur the expense of re-printing newsletters and double postage charges because the Postal Service regularly (7 out of 12 months of the year) took 30 days to deliver copies of a locally mailed newsletter, even though the service standards provided by the Postal Service in its Rule 54(n) compliance statement (for Periodicals mail) clearly state that the mail involved, which was intra-SCF entered at the SCF, should have been delivered the next day.

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<sup>8</sup> The example cited above grew out of egregiously late delivery of Periodicals mail, not package service mail.

While, admittedly, the example involves the Periodicals Class, not Package Services, the hardship imposed on mailers is comparable. When the Postal Service takes 10 times (in the example cited, 30 times) longer to deliver mail items than it represents is the service “standard,” mailers who rely on these misleading representations may very well find that they need to double all mailing and production expenses to have the items finally placed in the hands of recipients. The Postal Service’s claim that the *extent* of the lateness is immaterial is flatly wrong. The fact that lateness is routine and occurs a large percentage of the time (information the Postal Service is willing to provide) is important, but information about lateness far in excess of the Postal Service’s published service “standard” is equally, if not more, critical.

The relevance to postal ratemaking is irrefutable. The Postal Service correctly identifies pricing factor §3622(b)(2) (of title 39) as implicated in the lateness question;<sup>9</sup> but its contention that disclosing only the percentage of mail that is late is “sufficient” is completely without merit. Value of service is diminished more and more with every day of lateness, until it finally reaches the point of being completely worthless to the mailer. Therefore, the extent of lateness is a vitally important fact about which the Commission must be informed. As well, OCA’s duty to investigate the extent to which Express Mail and Package Service mail are delivered late and formulate arguments to the Commission concerning the degree of lateness will be thwarted by the Postal Service’s refusal to disclose the information requested.

It is important to note that the Postal Service has furnished comparable data for some classes of mail – see, e.g., volume of Priority Mail and First-Class Mail, by day

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<sup>9</sup> Objection to 118 at 2.

delivered, for each of 12 days beyond the service window.<sup>10</sup> Since the Commission's application of the pricing factors of the Act is, to a large degree, a comparative exercise, it is necessary to have congruent sets of data for Express Mail and Package Services in order to make meaningful determinations for each of the classes of mail of how "late" each one is and how value of service has been impacted, and for comparing each against the others. The Postal Service's arguments fail to recognize that lateness is a 2-dimensional issue: (1) the first dimension is "how much mail is subject to lateness? i.e., the percentage of mail that suffers from lateness;" and (2) "how severe is the lateness in terms of its deviation from the length of time represented by the Postal Service in its public statements?" The Postal Service does not object to providing information on the first dimension, but refuses to provide information on the second.

The Postal Service has also alleged that the information requested is "commercially sensitive." Certainly, to the extent that Express Mail and Package Services fall seriously short of publicized service standards, the Postal Service is right to be concerned about the public's displeasure. Nevertheless, the Postal Service may not withhold information that reflects unfavorably on its provision of Express Mail and Package Services from the Commission and participants in this proceeding. The Commission requires such information to make the meaningful pricing comparisons and determinations outlined above. While Congress exempted the Postal Service from disclosing commercially sensitive information in §410 of title 39, no such exemption from disclosure was included in chapter 36. On the contrary, Congress intended that the Commission would have complete access to the information necessary to exercise its responsibilities in a §3622 proceeding.

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<sup>10</sup> Partial response to interrogatory 60.

Wherefore, for the reasons set forth above, OCA respectfully requests that the Presiding Officer direct the Postal Service to provide all of the Express Mail and Package Service information requested in interrogatories 60 and 118.

Respectfully submitted,

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Attachment to OCA Motion to Compel Responses to  
Interrogatories OCA/USPS-60 and -118

OCA/USPS-60. For each of the past three years and for each category or type of (a) Express Mail, (b) Priority Mail (c) Package Services and (d) First-Class single piece letters, please provide nationwide data from ODIS (Origin-Destination Information System), EMRS (Electronic Marketing Reporting System), EXFC (External First-Class (Mail system)) and any other applicable data systems showing the volume of mail delivered after the number of days specified by the applicable service standard. Please provide the frequency – volume, percentage and average – for mail delivered within one to fifteen days after the applicable service standard, broken out for each of the fifteen days. In your response, please include the full calculation for each figure requested, including a description of each figure used in the calculation. Please provide cites to source documents for all figures presented in calculations and provide copies of any documents that have not been previously filed in this docket. (For reference purposes, please refer to Docket No. R2001-1, OCA/USPS-103.)

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OCA/USPS-118. Please refer to the Postal Service's response to OCA/USPS-103 in Docket No. R2001-1, and the attachments thereto. For Fiscal Year (FY) 2002, 2003, 2004, and the available quarters of FY 2005, please provide the ODIS-based percent and frequency (i.e., "known delivery days" volume) delivered within 1 to 20 days for

- a. Parcel Post;
- b. Bound Printed Matter;
- c. Media Mail; and
- d. Library Mail.