

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

Postal Rate and Fee Changes, 2005

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Docket No. R2005-1

OFFICE OF THE CONSUMER ADVOCATE REPLY  
TO THE POSTAL SERVICE'S RESPONSE TO THE OCA MOTION  
TO COMPEL RESPONSES TO INTERROGATORIES  
OCA/USPS-43-54 AND OCA/USPS-T6-14  
(June 22, 2005)

The Office of the Consumer Advocate ("OCA") hereby replies to the "Response of the United States Postal Service to the OCA Motion to Compel Responses to Interrogatories OCA/USPS43-54 and OCA/USPS-T6-14."<sup>1</sup> A motion to be permitted to file this pleading accompanies the Reply.<sup>2</sup>

*Alleged Positive Position of Nonjurisdictional Services is Overstated and Unproven.* The Postal Service argues in its Response that OCA's request for financial details is unnecessary because of the "positive financial effects of the services at issue" and that "overall, the services have generated a net income for the Postal Service."<sup>3</sup> The characterization of the nonjurisdictional revenue stream as positive is based on flawed treatment of the net income derived from the provision to the public of services on behalf of other governmental agencies. Well over half of the net income reported in

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<sup>1</sup> Filed June 16, 2005 (hereinafter "Response"). The Postal Service was responding to "Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-43-54 and OCA/USPS-T6-14," filed June 9, 2005 (hereinafter "Motion to Compel").

<sup>2</sup> "Office of the Consumer Advocate Motion to Request Permission to File a Reply to the Postal Service's Response to the OCA Motion to Compel Responses to Interrogatories OCA/USPS-43-54 and OCA/USPS-T6-14," June 22, 2005.

<sup>3</sup> Id. at 3.

Attachment One to the Postal Service's partial response to interrogatory OCA/USPS-53 for FY 2004 is generated by the Postal Service's acceptance of Passport applications on behalf of the State Department. The Passport application net income for FY 2004 is reported to be \$88 million.

Services performed on behalf of another governmental agency do not have to be scrutinized as carefully as commercial services retailed to the public that have not been subject to review and approval by an impartial outside entity. Since the governmental services are uniquely furnished to the public under the government's sovereign powers, there is little temptation or opportunity to compete with other enterprises in offering these services. This is clearly true of the three governmental services listed in Attachment One – acceptance of Passport applications, receipt of Selective Service registrations, and sale of Migratory Bird stamps on behalf of the U.S Fish and Wildlife Service. No entity other than the federal government can issue passports to American citizens, maintain a standing army, or sell Migratory stamps.

The Postal Service can be expected to attempt to recover significant expenses it incurs in providing these governmental services. Indeed, in the case of Passport applications, the Postal Service apparently exploits its unique position to accept applications in communities throughout the nation by charging fees far in excess of its expenses in providing the service; e.g., in FY 2004, the Postal Service enjoyed a cost coverage of 336% (\$124.7 million in revenues divided by \$37.1 million in expenses). The Postal Service wishes to credit the entire net income of \$88 million obtained by this exorbitant charge to its nonjurisdictional commercial ventures. This is wholly unjustified. A more appropriate treatment of profits and losses from the provision of

governmental services is to apportion the net income between domestic jurisdictional services and nonjurisdictional commercial retail services.

In FY 2004, the Postal Service reported \$0.16 billion<sup>4</sup> in nonjurisdictional commercial revenues and domestic jurisdictional revenues of approximately \$66.5 billion.<sup>5</sup> It would be appropriate to apportion the net income from governmental services using the following shares: credit nonjurisdictional commercial services with 0.24%<sup>6</sup> of the \$86.45 million<sup>7</sup> net income produced by governmental services and allocate 99.76% of the net income to domestic jurisdictional services. This would yield a net income of \$66.7 million<sup>8</sup> for nonjurisdictional services rather than the \$152.9 million claimed in Attachment One.

OCA must remind the Commission, however, that even the lower net income figure includes no recovery of the prior years' losses incurred by nonjurisdictional ventures and no recovery of the start-up and investment costs of such services. The Postal Service persists in its refusal to disclose the information that would permit a true and fair allocation of current and past expenses between domestic jurisdictional services and unauthorized, nonjurisdictional commercial services. Indeed, the most

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<sup>4</sup> Attachment One to the Postal Service's Response to interrogatory OCA/USPS-53 for FY 2004; i.e., \$8 million of Phone Card revenue and \$106 million of Retail revenue for the Window subtotal plus approximately \$44 million for the Non-window subtotal.

<sup>5</sup> Witness Tayman Exhibit 6D, 2004 Actual Revenues, lines 1 -7 and 12.

<sup>6</sup> \$0.16 billion divided by \$66.5 billion.

<sup>7</sup> \$ -1.055 million for Migratory Bird stamps; \$87.6 million for Passport applications; and \$-0.153 million for distributing Selective Service materials.

<sup>8</sup>  $0.24\% \times \$86.45 \text{ million} = \$0.2 \text{ million}$ ; net income of "Nonpostal Products," excluding governmental services is \$6.9 million for phone cards plus \$22.5 million for retail = \$29.4 million Window subtotal; plus \$37.1 million for Non-window subtotal = \$66.5 million total for "Nonpostal Products" in FY 2004; \$66.5 million + \$0.2 million = \$66.7 million

probable assumption is that when start-up and investment costs, and prior years' losses, of nonjurisdictional services are properly allocated to these services, the resulting net income will be negative.

It is instructive to recall the longstanding disagreement between the Postal Service and the Commission with respect to start-up costs for a new service.<sup>9</sup> In the Provisional Packaging Service proceeding, the Postal Service argued that start-up costs need not be recovered fully in the attributable portion of the rate recommended by the Commission. The Commission rejected this notion, holding that such costs should be recovered by the rates charged even during the brief period of time that the Packaging service experiment was in place (2 years). There is every reason to believe that the Postal Service's accounting treatment of nonjurisdictional services conflicts with the Commission's position.<sup>10</sup>

*Withholding of Financial Details for Passport Photos.* Although never explicitly stated, the Postal Service's Response suggests that lax, slipshod accounting for nonjurisdictional services caused the Postal Service to overlook Passport photos entirely and make no mention of this service in the purportedly comprehensive submission of financial information in Attachment One. Alternatively, even though Passport photos are sold extensively in postal retail facilities across the nation, the Postal Service may be espousing the irrational position that since this retail service is not available at every location, it is "local" in character.

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<sup>9</sup> PRC Op. MC97-5 at 44 – 45.

<sup>10</sup> See, e.g., Attachment 1 to the response of the Postal Service to interrogatory OCA/USPS-241, Docket No. R2001-1. Although the interrogatory requested start-up costs, the Postal Service would only provide operating costs.

In defense of this failure, the Response includes the unproven, unsupported assertion that passport “photos are provided at premium prices that do not pose a threat to the private sector.”<sup>11</sup> Due process would be denied OCA if the Postal Service is allowed to defend its withholding (whether intentional or through tax accounting) of financial details for Passport photos based on counsel’s characterization of “premium” prices – price information that has not been furnished.

*New Assertions are Made for Mailing Online.* The Postal Service’s recitation in its Response of the differences between Mailing Online, the jurisdictional service, and Mailing Online, the unauthorized, non-jurisdictional service were not made in the initial Objection.<sup>12</sup> In the Response, the Postal Service challenges the statement in OCA’s Motion to Compel that the essential features of Mailing Online never changed when the Postal Service re-defined it as a nonjurisdictional service. In the Postal Service’s view, turning over management of the service to PosteDigital and requiring PosteDigital to pay the same postage fees as other mailers causes the unauthorized service to be outside the Commission’s jurisdiction. This is a matter debated at length in three recent proceedings concerning nonjurisdictional services -- \* 2003, and Docket Nos. RM2004-1 and RM2004-2.

It is a near certainty that the Commission would find Mailing Online to be a postal service under the definition presented in Order No. 1424<sup>13</sup>:

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<sup>11</sup> Page 5.

<sup>12</sup> “Partial Objections of the United States Postal Service to Interrogatories of the OCA (OCA/USPS-43 – 54)”, filed May 23, 2005.

<sup>13</sup> “Notice And Order Concerning Proposed Amendment to the Commission’s Rules of Practice and Procedure,” issued November 12, 2004, at 52, Docket No. RM2004-1.

Postal service means the receipt, transmission, or delivery by the Postal Service of correspondence, including, but not limited to, letters, printed matter, and like materials; mailable packages; or other services supportive or ancillary thereto.

According to the Postal Service, the current version of Mailing Online consists of mail that “pays the same rates and is subject to the same mailing requirements as all other mailers.”<sup>14</sup> Thus, the Postal Service concedes that Mailing Online culminates in mail just like any other mail. Furthermore, Mailing Online plainly is a service ancillary to the entry of mailpieces. The Postal Service is inextricably connected to this entry mechanism for two reasons: (1) access to Mailing Online is made through the Postal Service’s website; and (2) the Postal Service deliberately gives mailers the impression that they are doing business only with the Postal Service, e.g., the Mailing Online home screen at usps.com states: “Upload a document. Pay online. **We** do the rest!”<sup>15</sup>

In any event, even as a “nonpostal[ ] service . . . based on a strategic alliance,”<sup>16</sup> the Commission would require

the total, annual, accrued direct and indirect costs, separately identified, to provide the service, including, but not limited to, development costs, start-up costs, capital costs, common and joint costs . . . .

A final comment is in order. The OCA did not intend to impugn the integrity of Postal Service employees in its Motion to Compel.<sup>17</sup> Instead, OCA’s point is that summary figures furnished without explanation or support cannot serve as reliable evidence for the Commission’s consideration. An interested participant such as OCA

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<sup>14</sup> Response at 7.

<sup>15</sup> Emphasis added.

<sup>16</sup> Order No. 1394, “Proposed Rulemaking Concerning Reporting Requirements for Nonpostal Services,” issued March 5, 2004, Docket No. RM2004-2.

<sup>17</sup> See Response at 3 – 4.

must have the opportunity to verify the amounts stated and challenge illegitimate accounting practices. Undocumented summary figures such as those provided in Attachment One prevent OCA from exercising this right.

Wherefore, OCA respectfully requests that the Presiding Officer consider these additional arguments in ruling on OCA's Motion to Compel.

Respectfully submitted,

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