

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

POSTAL RATE AND FEE CHANGES
PURSUANT TO PUBLIC LAW 108-18

Docket No. R2005-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
OFFICE OF THE CONSUMER ADVOCATE MOTION TO COMPEL RESPONSES
TO INTERROGATORIES OCA/USPS-147a and d, and 148a
(July 13, 2005)

As indicated below, the United States Postal Service hereby responds to an OCA motion to compel responses to certain interrogatories: parts a and d of OCA/USPS-147, and part a of OCA/USPS-148. The subject interrogatory parts, filed on June 10, 2005, read:

OCA/USPS-147. Please refer to the "Affiliates and Alliances" paragraph of Attachment Two to OCA/USPS-53.

- a. Please furnish copies of the 75 linking agreements referred to in the interrogatory. (One of the major purposes for this request is to gain a better understanding of the activities performed by the parties to the agreement, particularly the Postal Service, so as to see whether expenses incurred by the Postal Service in performing its activities have been fully and appropriately accounted for). For each, please indicate whether the purpose of the agreement is: (1) to complement the Postal Service's core product offering; (2) to generate mail; and/or (3) to provide value to our customers.
- d. Please provide copies of the following agreements (if not otherwise provided in response to part a.): Mailing Online; NetPost Certified Mail; and NetPost Card Store.

OCA/USPS-148. Please refer to the "Affiliates and Alliances" paragraph of Attachment Two to OCA/USPS-53 where it is stated: "Today, we limit consideration of Affiliates to those that complement our core product offering, generate mail, and/or provide value to our customers." Also refer to the Electronic Postmark (EPM) paragraph.

- a. Please provide a copy of the Authentidate agreement cited in the EPM paragraph.

The Postal Service objected to these parts on June 21, 2005, on grounds of relevance, proprietary information, and undue burden.

On July 5, 2005, the OCA filed a Motion to Compel Responses, and on July 6, 2005, filed a number of revisions, along with a revised copy of the Motion. The Postal Service hereby responds to the July 6, 2005 Motion as revised.¹

The Motion does not adequately address the grounds of relevance, proprietary information and undue burden raised in the Postal Service's Objection, and should be denied.

In considering production of information, "The Commission also considers the burden of producing this data in relation to its possible value in supporting any potential arguments." (Presiding Officer's Ruling No. R2005-1/37, June 29, 2005). The burden of producing the 75-80 agreements is significant, and the agreements have little value in supporting possible arguments in this proceeding.

Regarding burden, the Postal Service's Objection noted that a number of activities on its part are required to produce the 75-80 agreements sought by the Motion, and indicated that with only several hours required per agreement, hundreds of hours of effort would be required. (Objection at 3 and 4) The only response offered in the OCA Motion is that: "The Postal Service cannot avoid spending some time in preparing the requested agreements for review by the

¹ The July 5 filing date mandates a response by July 12, 2005. However, the revisions filed on July 6 and provision of a revised copy of the Motion to Compel raise a possible argument that certain revisions were substantial enough to mandate a response by July 13, 2005, rather than July 12. Counsel for the Postal Service and the OCA have agreed to a July 13 response.

Commission. The best way to handle the problem is to have the Postal Service provide the agreements in a Library Reference with alleged proprietary details redacted. (This should not take more than a few hours).”

If 180 minutes represents “a few hours”, as the Motion postulates, then it incorrectly suggests that the Postal Service could redact the 75-80 agreements in about two and a half minutes each. This clearly is insufficient to complete the activities described in the Postal Service’s Objection, which anticipates at least several hours per agreement to perform redaction of proprietary information likely to be contained in the agreements. Additionally, these burden estimates focus only on the time needed to deal with possible proprietary information. In identifying the specific agreements, the Postal Service has found there is no one organizational unit or one place in which the agreements reside. Several hundred hours alone will be required simply to locate the requested agreements before any analysis of their contents and related activities can occur.

The Motion then requests that following provision of the agreements for review by the parties and Commission staff, the Commission should address issues of its jurisdiction over the agreements, and should consider arguments whether the Postal Service is incurring costs under the agreements that have improperly been shifted to jurisdictional ratepayers as institutional costs. The Motion argues that to the extent that the agreements are found to be irrelevant to Chapter 36 proceedings, as is the present proceeding, the burden argument asserted by the Postal Service may be greatly reduced.

While this may possibly relate for future proceedings, it does not influence the burden on the Postal Service of producing the agreements for this proceeding.

Furthermore, issues associated with the 75-80 agreements have little relevance in the instant proceeding. In this proceeding, the Postal Service seeks an increase in revenue solely to fund a pending escrow obligation stemming from Public Law 108-18, The Postal Civil Service Retirement System Funding Reform Act of 2003. To accomplish this, the Postal Service seeks a 5.4 percent across-the-board increase for most rates and fees, with certain limited exceptions. The across-the-board increase treats all mail categories and services equally, with costing issues having much less relevance than would be the case in a typical general rate case. Even in the highly unlikely event that the OCA were to find accounting or costing improprieties associated with the services for which it seeks agreements, there would be no impact on the Commission's recommended rates in this proceeding. In this regard, the requested agreements have no substantial relevance to this proceeding.

The issues for which the Motion seeks the requested agreements should not be addressed in this particular proceeding for additional reasons. Recognizing that the issue of whether a service is postal or nonpostal is controversial, the Commission initiated a proceeding specifically to address that issue, Docket No. RM2004-1. That proceeding is pending, and should be permitted to run its course before the issue of jurisdiction over the 75-80 agreements is addressed. There is no need to address the issue in the instant proceeding, because there is no indication that the Postal Service's cost treatments of the relatively small costs

associated with the 75-80 agreements are relevant to the proceeding.

It is noteworthy that the Commission states in its Order 1424 in that Proceeding that: “The rule proposed herein represents an improvement over that proposed in Order 1389 since it makes the Service’s ‘postal service’ duties the touchstone of the definition rather than any specific activities the Postal Service may or may not perform.” Order 1389 at 3. Under the proposed definition, the OCA would not require an understanding of the activities performed in providing the sought 75-80 agreements to determine whether or not they are nonpostal services, a “major” purpose for which it seeks copies of the agreements. OCA/USPS-147a. This suggests that the agreements may have little relevance to the purpose for which the OCA seeks them.

The introduction of issues without substantial relevance to this proceeding decreases the likelihood of settlement of this proceeding by increasing unnecessarily the number of issues to be considered and the likelihood of objection to the settlement by some party. This interferes with implementation of the Commission’s “...longstanding policy in favor of settling issues whenever possible....” Transcript Vol. 1, at 18, lines 21 and 22.

Therefore, for the reasons indicated above, the Postal Service requests that the OCA Motion to Compel Responses to Interrogatories OCA/USPS-147a and d, and 148a be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Frank R. Heselton

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

Frank R. Heselton

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-5204, FAX: -6187
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