

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

Rate and Service Changes to Implement )  
Baseline Negotiated Service Agreement ) Docket No. MC2005-3  
with Bookspan )

OFFICE OF CONSUMER ADVOCATE  
MOTION TO HAVE THE PRESIDING OFFICER  
STRIKE THE TESTIMONY OF WITNESS YORGEY OR,  
ALTERNATIVELY, SUSPEND THE PROCEDURAL SCHEDULE  
(September 21, 2005)

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The Office of the Consumer Advocate (OCA) hereby requests that the Presiding Officer take one of two steps proposed by OCA to rectify a gesture of defiance made by the Postal Service yesterday. Following OCA's Motion to Compel a Responses to Interrogatories OCA/USPS-T2-11(c) – (e),<sup>1</sup> the Presiding Officer directed the Postal Service to respond to the subject interrogatories.<sup>2</sup> Yesterday, the Postal Service filed a document that is falsely captioned "Compelled Response of Postal Service Witness Yorgey to Interrogatories of the Office of the Consumer Advocate (OCA/USPS-T2-11c.-e)." The Postal Service has not provided even the smallest shred of an answer to OCA's questions, but chose instead to throw down the gauntlet to the Presiding Officer. Never having asserted any privileges in its Objection,<sup>3</sup> the Postal Service's so-called compelled response to OCA's request for information consists only of: "[Witness

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<sup>1</sup> Filed on September 1, 2005.

<sup>2</sup> Presiding Officer's Ruling No. MC2005-3/6, "Presiding Officer's Ruling on Office of Consumer Advocate Motion to Compel Response to Interrogatories OCA/USPS-T2-11(c)-(e)," issued September 13, 2005.

<sup>3</sup> "Objection of the United States Postal Service to Interrogatories OCA/USPS-T2-11(c)-(d)," August 15, 2005.

Yorgey's] understanding is that data concerning international revenues and costs are not provided publicly by the Postal Service, but are made available for the Commission under seal."

The Postal Service persists in its refusal to furnish the information sought in interrogatories 11(c) – (e). OCA wishes to point out that the interrogatories ask nothing about the public or non-public character of international revenues and costs; nor did OCA ask whether such information is provided under seal. On the contrary, OCA asked for detailed information about the success (or lack of success) of International Customized Mail agreements (ICMs) for the years that witness Yorgey was the Program Manager for such arrangements in the International Business Unit. OCA also asked for detailed information about techniques and methods witness Yorgey employed to estimate ICM volumes and ensure profitability.

The Postal Service raised the issue of the "non-jurisdictional" character of ICMs in its Objection.<sup>4</sup> This was weighed by the Presiding Officer and rejected. The Presiding Officer explained that, not only were the questions framed to provide potentially probative evidence of witness Yorgey's skill and experience, but that, "Negotiated Service Agreements are similar enough to ICM agreements to potentially shed light on the accuracy of the financial projections of the Bookspan NSA."<sup>5</sup>

If the Postal Service wished to claim any privileges that would excuse it from answering the subject interrogatories, it should have done so in its Objection. It should

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<sup>4</sup> At 1.

<sup>5</sup> P.O. Ruling No. 6 at 3.

not be allowed to benefit from such a failure by using the stratagem of having the witness assert the privilege as an “answer” to the questions posed.

OCA asks the Presiding Officer to employ one of two measures to deal with the Postal Service’s act of defiance: (1) strike the testimony of witness Yorgey or (2) suspend the procedural schedule until the Postal Service files the response compelled in Ruling No. 6. Striking witness Yorgey’s testimony is fitting since OCA has been deprived of the opportunity to challenge the soundness and reliability of her analysis. Witness Yorgey is a vital witness in the instant proceeding who furnishes support for the following proposed facts. She:<sup>6</sup>

- presents the specific terms and conditions of the new baseline Negotiated Service Agreement (NSA)
- presents the analytical support used to develop the NSA
- explains the financial implications of the NSA
- defends the provisions that are intended to minimize the risk associated with forecasting volumes for a single mailer, and
- explains the steps the Postal Service has taken to understand the market in which Bookspan operates

According to witness Yorgey, she was the Program Manager for International Customized Mail agreements from 1996 to 2003. This included the period 1998 that was the subject of the Commission’s first International Mail Report.<sup>7</sup> In a table captioned “Summary of Volume, Revenue, and Attributable Cost for Section 3663 International Mail Services,”<sup>8</sup> the Commission reported that ICM agreements, that

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<sup>6</sup> USPS-T-2 at 1.

<sup>7</sup> *Report to the Congress, 1998 International Mail Volumes, Costs and Revenues*, issued June 30, 1999.

<sup>8</sup> *Id.* at 9.

apparently were drafted and analyzed under witness Yorgey's direction, had a cost coverage of only 86.8 percent. The ICMs are among the biggest money-losers of any postal service, domestic or international, in recent decades. It is understandable that the Postal Service wishes to avoid having to make public what might well have been a long train of such money-losing ICMs, with witness Yorgey driving the train. It is very important that OCA, the Commission, and other intervenors have the opportunity to judge how reliable and trustworthy witness Yorgey's analysis is, based on her past experience performing similar analyses for ICMs. If she has, as OCA suspects, a record of year-after-year financial failures in developing ICM agreements with private sector partners (which, the Presiding Officer recognizes, are similar to NSAs), OCA has a right and a duty to explore the issue whether the Commission can rely on her testimony in this proceeding.

As an alternative measure, the Presiding Officer may wish to suspend the procedural schedule until the Postal Service provides the answers compelled in Ruling No. 6. This would consist of pushing back every date in the procedural schedule<sup>9</sup> by the number of days that elapse before the Postal Service provides (if it does) the responses compelled by Ruling No. 6.

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<sup>9</sup> P.O. Ruling No. MC2005-3/1, "Presiding Officer's Ruling Establishing Procedural Schedule," Attachment A, August 16, 2005.

WHEREFORE, OCA respectfully requests that witness Yorgey's testimony be stricken from the record or, alternatively, that the procedural schedule be suspended until such time that the Postal Service furnishes the answers compelled by Presiding Officer's Ruling No. 6.

Respectfully submitted,

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