

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

RATE AND SERVICE CHANGES TO IMPLEMENT
BASELINE NEGOTIATED SERVICE AGREEMENT
WITH BOOKSPAN

Docket No. MC2005-3

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF THE OFFICE OF THE CONSUMER ADVOCATE
TO STRIKE THE TESTIMONY OF WITNESS YORGEY OR,
ALTERNATIVELY, SUSPEND THE PROCEDURAL SCHEDULE
(September 28, 2005)

1

The United States Postal Service hereby opposes the motion of the Office of the Consumer Advocate to Strike the Testimony of Witness Yorgey or, Alternatively, Suspend the Procedural Schedule, filed on September 21, 2005. The OCA filed this motion following the filing of witness Yorgey's answers to OCA interrogatories to which the Postal Service had objected and the Presiding Officer ruled that the witness should respond.¹ Witness Yorgey reported that the data sought was not publicly available.²

First, notwithstanding the OCA's fiery rhetoric, the Postal Service wishes to assure the Presiding Officer that the chain of events regarding the interrogatories at issue was most decidedly neither a "stratagem" to "throw down the gauntlet to the Presiding Officer" nor a an act of "defiance." OCA Motion at 1, 3. The OCA's clear

¹ Presiding Officer's Ruling No. MC2005-3/6 (September 13, 2005).

² Compelled Response of Postal Service Witness Yorgey to Interrogatories of the Office of the Consumer Advocate (OCA/USPS-T2-11c.-e.) (September 20, 2005).

insinuation that undersigned counsel deliberately failed to assert a privilege in the original objection so that he could eventually file a “falsely captioned” response to the interrogatories, *id.* at 2-3, is utterly baseless.³ Had the sensitivity of the underlying data been apparent, it would have been raised in the objection.

In any event, the OCA’s motion has no factual or legal support and should be denied. Rather than being based on facts, it is based, in the OCA’s own words, on “suspicion”: “If [witness Yorgey] has, as OCA suspects, a record of year-after-year financial failures in developing ICM agreements with private sector partners, ... OCA has a right and a duty to explore the issue whether the Commission can rely on her testimony in this proceeding.”⁴ The facts are otherwise. First, although the OCA asserts that witness Yorgey says “she was the Program Manager for International Customized Mail agreements from 1996 to 2003,” witness Yorgey says only that she was selected as the program manager *in* 1996. She elaborated on the duties of that position in her response to OCA/USPS-T2-11a-b: “In 1996, as Program Manager for International Customized Mail agreements, my initial duties included: developing a process to negotiate agreements; creating profile worksheets for USPS Sales Specialist to complete; facilitating the development of agreements with International Pricing, International Operations and International Product Managers; developing communication to USPS District offices to implement agreements; and developing a data tracking reports.” She provided a separate list of duties that she has performed

³ Moreover, it could fairly be taken as personal insult, which should have no place in these proceedings, and which is belied by many years of cordial and cooperative dealings with the OCA Director and her staff, even in the face of marked differences of opinion.

⁴ OCA Motion to Strike at 4.

subsequent to her program manager duties in 1996: “Over the past 9 years, I have continued to work on the implementation process, tracking data to ensure agreement compliance, and providing customer service support by assisting customers with specific international mailing issues.”⁵ The OCA apparently assigns a presumed end date of “2003” by misapplying witness Yorgey’s statement that her position was moved to the Pricing and Strategy group in 2003 as part of a Marketing reorganization. This sentence, however, says nothing about a change in responsibilities in 2003; it reports only a shift in organizational chart applicable to her.

The facts show that witness Yorgey was responsible for administrative duties related to the program, including “developing a process” for negotiations. As a staff level employee she neither developed policies nor set volume thresholds. Moreover, volume projections do not need to be made in entering into ICMs, because they are based on pre-established minimum volumes or revenues and the discounts are applied to all of the customer’s mail if the set minimums are met.⁶ Thus, they are unlike the NSA in this case and the others that have been before the Commission for which volume thresholds are established individually for each customer based on its historic and projected volumes. Therefore, contrary to the OCA’s erroneous inferences, witness Yorgey hasn’t done such projections for ICMs because they are not done for ICMs.⁷ Thus, the data the OCA seeks regarding ICMs would not, as the OCA has claimed, help

⁵ USPS-T-2, at ii.

⁶ International Mail Manual section 297.2. For ease of reference, this section can be found on the webpage located at http://pe.usps.gov/text/imm/immc2_025.html.

⁷ Unfortunately, the OCA’s factual error misled the Presiding Officer: “OCA asserts that information concerning the financial performance and success of previously implemented agreements *negotiated by witness Yorgey* could impeach the credibility and reliability of her projections under the Bookspan NSA.” Ruling No. 6, at 1.

evaluate “the credibility of the financial projections presented in this case” and “the accuracy of ... NSA forecasts.”⁸

Furthermore, to support its motion, the OCA misinterprets data provided by the Commission to Congress, based on the FY 1998 ICRA report. The OCA states that “the Commission reported that ICM agreements that apparently were drafted and analyzed under witness Yorgey’s direction, had a cost coverage of only 86.6 percent.”⁹ Unfortunately for the OCA’s argument, the cited report gives an aggregate cost coverage for a group of “Initiatives,” which included ICMs and several other programs. OCA’s statement that “ICMs are among the biggest money-losers of any postal service, domestic or international, in recent decades, with witness Yorgey driving the train” is completely baseless. There is no factual support for the OCA’s conclusion that ICMs are among the “biggest money-losers,” and, in any event, witness Yorgey wasn’t “driving the train.”

Finally, it is ludicrous for the OCA to claim that the witness’s answers to the interrogatories at issue have deprived the OCA “of the opportunity to challenge the soundness and reliability of her analysis” in this docket.¹⁰ The OCA had, and availed itself well of, the opportunity to conduct discovery on the analysis that witness Yorgey actually presents in her direct testimony. The OCA had from July 14 through September 7 for written discovery, including an opportunity to follow up, and will have a forthcoming opportunity for oral cross-examination. Moreover, the differences in kind

⁸ OCA Motion to Compel Responses to Interrogatories OCA/USPS-T2-11(c)-(e) at 2 (September 1, 2005).

⁹ OCA Motion to Strike at 3-4.

¹⁰ *Id.* at 3.

between the facts of witness Yorgey's actual duties and the analysis at issue in this docket are so great that there is no possible grounds for the "extraordinary relief"¹¹ of striking her testimony. The Presiding Officer's finding that there is sufficient similarity to allow an interrogatory if it is reasonably calculated to lead to admissible evidence does not establish that the data has sufficient weight to support a motion for the extraordinary relief of striking testimony, or for any attempt to seek public disclosure of protected information.¹² There is no need for such relief because witness Yorgey's testimony and the value of the Bookspan NSA can and should be evaluated on its own merits, as the OCA and others have done during the discovery period and can, and presumably will, continue to do in upcoming hearings.

For these reasons, the OCA's motion to strike witness Yorgey's testimony should be denied. Its alternative motion to suspend the procedural schedule is completely unnecessary. There is more than sufficient time between now and the beginning of hearings for this controversy to be resolved. The OCA's motion should therefore be denied in all respects.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Scott L. Reiter

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
September 28, 2005

¹¹ Rule 21(c).

¹² As noted by the Presiding Officer, there is a distinction between discoverability and weight. Ruling 6, at 2-3.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

Scott L. Reiter

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2999, Fax -5402
scott.l.reiter@usps.gov
September 28, 2005