

ORIGINAL

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

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U.S. DEPARTMENT OF COMMERCE

Mailing Online Service

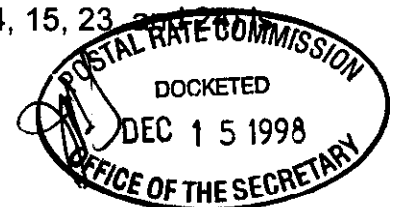
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Docket No. MC98-1

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL RESPONSES TO
INTERROGATORIES OCA/USPS-14, 15, 23, AND 24
(December 15, 1998)

The Postal Service has objected to responding to the interrogatories listed in the caption of this pleading.¹ The Service argues that these interrogatories relate to the direct case of the Postal Service and are therefore tardy. However, each of these interrogatories relates to development of an automated rebate system for presort discounts, a subject first raised in the Commission's Recommended Decision in the Market Test Phase of this proceeding and not discussed at all in the Service's Request or direct testimony. As best the OCA can determine, the sole connection between the subject of the interrogatories and the Service's direct case is that the OCA began asking questions about alternative discount mechanisms prior to the close of hearings on the Service's direct case. In any event, the questions were posed "for the purpose

¹ Objection of USPS to Interrogatories OCA/USPS-14, 15, 17(b-d), and 22 to 24, December 14, 1998 [hereinafter "December 14 Objection"]. The text of the interrogatories for which the OCA seeks compelled answers (14, 15, 23, and 24) is attached.



of developing [OCA] evidence”² on alternative discount mechanisms for Mailing Online and therefore constitute legitimate discovery at this stage of the proceeding.

In essence, the Postal Service seeks to have the OCA penalized for diligence. The theory on which the Service apparently relies is the following: The OCA has posed questions concerning an automated rebate system and other alternative discount mechanisms to Postal Service witnesses. These questions were posed prior to the witnesses’ being excused from the witness stand. Therefore, the OCA is precluded from engaging in further discovery on these issues. The Service’s objection to interrogatory OCA/USPS-14 sets out this theory clearly. The Service argues that “the OCA has already exercised its due process rights concerning the substance of witness Garvey’s *response to issue 2* [of the Commission’s Notice of Inquiry No. 1].”³ Thus, while acknowledging that the subject of interrogatory 14 is the Commission’s NOI (not the Service’s direct case), the Postal Service nevertheless argues that the conclusion of hearings on the Service’s direct case somehow signals the end of discovery on *any* subject raised during those hearings, however unrelated to the Service’s direct case.⁴

There are two defects in the Service’s argument. First, the Service would reward delay. If the OCA had asked no questions concerning the automated rebate system

² Presiding Officer’s Ruling No. MC98-1/18 at 3 [hereinafter “Ruling No. 18”].

³ December 14 Objection at 2 (emphasis added).

⁴ The Postal Service also objects to part c of interrogatory 14 on the grounds that witness Plunkett has already answered the same question. *Id.* at 1-2. Witness Plunkett did not address the crucial point of interrogatory 14c—namely, “distribution” of MOL pieces to print sites *preserves* any presorting accomplished prior to “distribution.” In mathematical terms, interrogatory 14c attempts to establish that for MOL, “presortation” and “distribution” are commutative operations: it doesn’t matter which operation is performed first; the end result is the same. Distribution does not “dilute” presortation.

prior to the conclusion of hearings on the Service's direct case, the Service would have no basis for arguing that the (unasked) earlier questions precluded questions now.

Second, the Service would destroy any boundaries on the Service's direct case.

Acceptance of the Service's argument means that any discussion of any subject by a Postal Service witness "address[es] the Postal Service's direct case,"⁵ even if the subject of discussion is a Commission proposal that the Service's witnesses vehemently oppose.⁶

Interrogatory 15 seeks specific identification of the vague "accounting" or "timing" issues that witness Garvey has raised as objections to an automated rebate system. The OCA is attempting to develop a proposal that will avoid any such problems. Thus, the interrogatory is "[d]iscovery for the purpose of developing participant evidence"⁷

The Service relies on "Special Rule 2D *from prior proceedings*" as the basis for objecting to interrogatory 23.⁸ Special Rule 2D has not been promulgated in this proceeding. There is no time limit on follow-up questions. In any event, interrogatory

See also Interrogatory OCA/USPS-20, December 8, 1998 (to which the Postal Service has not objected).

⁵ December 14 Objection at 1.

⁶ It should be obvious that the real "objection" to interrogatory 14 is that an answer would render groundless one of witness Garvey's arguments against an automated rebate system. In particular, answers to the interrogatory would demonstrate that the discount to which a piece of MOL is entitled is the same for all pieces in a batch and can easily be determined before batches are sorted (or "distributed") to print sites.

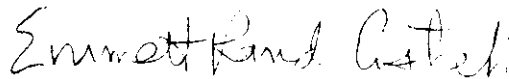
⁷ Ruling No. 18 at 3. The Service also objects to interrogatory 15c on the grounds that it requests a legal conclusion, and the Service should not be required to reveal its position until briefing. December 14 Objection at 2. The procedure proposed by the Service is administratively wasteful. If the Service is aware of a statutory prohibition on exempting MOL from a prepayment "requirement," it should reveal that fact now.

⁸ December 14 Objection at 2 (emphasis added).

23 seeks to specify the vague objections of the MOL system developer to an automated rebate system so that the OCA can propose a system that avoids the problems to which the system developer has alluded. Thus, the interrogatory is “[d]iscovery for the purpose of developing participant evidence”⁹

Interrogatory 24 is, by its own terms, a follow-up to witness Plunkett’s response to the Commission’s Notice of Inquiry No. 1. It does not “address the Postal Service’s direct case,” nor does it violate the nonexistent Special Rule 2D. Again, this interrogatory seeks specific details on presort qualification in order to allow the OCA to propose and defend an alternative automated presort discount allocation mechanism for Mailing Online in response to the Commission’s NOI. The interrogatory is “[d]iscovery for the purpose of developing participant evidence”¹⁰

Respectfully submitted,



Emmett Rand Costich
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Office of the Consumer Advocate

⁹ Ruling No. 18 at 3.

¹⁰ Id.

TEXT OF INTERROGATORIES

OCA/USPS-14. In response to Issue 2 of NOI No. 1 (concerning the feasibility and desirability of dispensing presort discounts through an automated rebate system), Postal Service witness Garvey stated, "[T]he difficulties of tracking and matching *each piece's* origin to its ultimate qualifying rate would multiply the complexity many times over." Tr. 6/1505 (emphasis added).

- a. Please define "origin" as used here.
- b. Please confirm that all pieces of a particular MOL mailing remain in a single batch (whether combined with other mailings or not) prior to presorting. That is, pieces from one mailing will not end up in more than one batch prior to presorting. If you do not confirm, please explain, provide an example of the "splitting" of an MOL mailing among batches, and provide an estimate of the frequency of this phenomenon.
- c. Please confirm that the postage charge for a batch (whether consisting of one or several separate mailings) is the same whether calculated before or after distribution to print sites. That is, since print sites are defined by ZIP Codes, no presort bundles, trays, containers, etc. would be "broken" by distributing to print sites. If you do not confirm, please explain, provide an example of the "breaking" of presort by distributing batches to print sites, and provide an estimate of the frequency of this phenomenon.
- d. Please confirm that the total postage bill, the total number of pieces, and the average postage charge per piece can be determined for each job-type/page-count batch. If you do not confirm, please explain, provide an example of a batch for which this information cannot be determined, and provide an estimate of the frequency of this phenomenon.
- e. Please explain why it would be complex or difficult to determine the postage charge for an MOL mailing by multiplying the number of pieces in the mailing by the average postage charge per piece for the batch with which the mailing was combined.
- f. Please explain in greater detail why it would be complex or difficult to rebate the difference between the ex ante and ex post postage charges (ignoring accounting regulations, which are the subject of another interrogatory).

OCA/USPS-15. In response to a question from Commissioner Goldway (concerning the ability of the Postal Service to provide an ex post postage charge to MOL customers), Postal Service witness Garvey stated, "The problem is that we have a requirement to have payment for postage in hand when we take the mail" Tr. 6/1521.

- a. Please identify the "requirement" to which witness Garvey referred.
- b. Please provide a copy of any document setting forth the "requirement" to which witness Garvey referred.

- c. Is the Postal Service legally precluded from exempting MOL from the "requirement" to which witness Garvey referred? If so, please explain.
- d. Are there reasons other than legal preclusion that would discourage the Postal Service from exempting MOL from the "requirement" to which witness Garvey referred? If so, please explain.

OCA/USPS-23. Please refer to the report of the system developer (Tracor) found at Tr. 6/1382.

- a. The report states, "The system could determine for each batch site where a user's mail was destined and the number of pieces that qualify for automation rates. This *approach* is fraught with at least three major shortcomings." [Emphasis added.] Since the system's capability to track the destination and number of qualifying mailpieces is separate from the uses to which such information could be put, please describe in detail the "approach" referred to in the quote.
- b. The Tracor report identifies as a "shortcoming" "[t]he system resources required to determine these discounts." Please identify the discounts referenced in the quote.
- c. The Tracor report states, "This procedure would also adversely affect the amount of time required to complete the daily batch process for all submitted jobs."
 - i. Please describe in detail the "procedure" referred to in the quote.
 - ii. What is the current average amount of time required to complete the daily batch process for all submitted jobs during the market test?
 - iii. What is the estimated amount of time required to complete the daily batch process for all submitted jobs during each year of the experiment as proposed by the Postal Service?
 - iv. Please provide the increase in time required to complete the daily batch process for all submitted jobs as a result of the "procedure" referred to in the quote.
- d. The Tracor report states, "The developer's estimate is that the amount of physical time required to complete this process would increase by a factor of 2 to 3 times." Please confirm that the "amount of physical time required to complete this process" refers to the estimated time of the developer in establishing the approach described in response to part (a) of this interrogatory. If you do not confirm, please describe in detail the "process" referred to in the quote.

OCA/USPS-24. Please refer to Postal Service witness Plunkett's response to Notice of Inquiry No.1, Issue 1, at Tr. 5/1125, where he states:

The existing automation basic categories are most often applied to the residuum of larger mailings wherein most pieces qualify for deeper discounts. In such cases, the number of pieces to which the automation basic rate is applied may be well below the threshold minimums.

- a. Does the phrase, "residuum of larger mailings," mean that *all* pieces that do not "qualify for deeper discounts" receive the automation basic discount? If not,

under what circumstances would residual pieces of a mailing otherwise qualifying for deeper discounts pay single-piece rates?

- b. Please assume a mailing consisting of 1,000 pieces, with 500 presorted to 5-digit and 400 presorted to 3-digit. Would the remaining 100 pieces receive the Automation Basic discount? How would the depth of sort for this mailing appear on a Qualification Report for Mailing Online? For a mailing submitted in hard copy?
- c. Please confirm that because the above 1,000-piece mailing exceeds the minimum volume requirements for Automation Basic, and "most of the pieces qualify for deeper discounts," the residuum of 100 mailpieces would always qualify for the Automation Basic discount if submitted in hard copy. If you do not confirm, please explain.
- d. Please assume a mailing consisting of 1,000 pieces, with 900 presorted to carrier route. Would the remaining 100 pieces automatically receive the Automation Basic discount? How would the depth of sort for this mailing appear on a Qualification Report for Mailing Online? For a mailing submitted in hard copy?
- e. Please confirm that because the above 1,000-piece mailing exceeds the minimum volume requirements for Automation Basic, and "most of the pieces qualify for deeper discounts," the residuum of 100 pieces would always qualify for the Automation Basic discount if submitted in hard copy. If you do not confirm, please explain.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.


Emmett Rand Costich
Attorney

Washington, D.C. 20268-0001
December 15, 1998