

ORIGINAL

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

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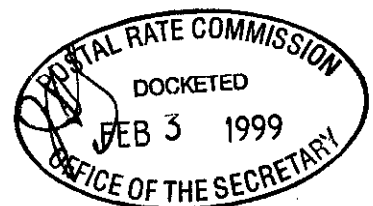
Mailing Online Service)

OFFICE OF THE SECRETARY
Docket No. MC98-1

MOTION OF THE OFFICE OF THE CONSUMER ADVOCATE
TO COMPEL WITNESS LIM TO BE PREPARED TO ANSWER INTERROGATORY
OCA/USPS-ST9-3 AT THE FEBRUARY 5, 1999, HEARING
(FEBRUARY 3, 1999)

The Office of the Consumer Advocate ("OCA") hereby moves that the Presiding Officer compel witness Lim to come prepared to answer interrogatory OCA/USPS-ST9-3 ("interrogatory 3") at the February 5, 1999, hearing. Witness Lim presents, at pages 3-6 of his testimony, the Postal Service's most recent cost estimates for Mailing Online ("MOL") over the course of a two-year, nationwide experiment. Diagram 1, captioned "Methodology," (page 3 of USPS-ST-9), lays out witness Lim's methodology for separating "[c]omplete POL" costs into MOL-affected (i.e., MOL and MOL/POL), costs and non-MOL-affected (i.e., POL, [PostOffice Online], SOL [Shipping Online], and POL/SOL), costs. OCA interrogatory 3 asks witness Lim to present the cost allocations he makes at each step of his methodology. This would include, of course, the "costs of the complete POL system" and each subsequent separation into MOL-affected and non-MOL-affected cost groups.

Witness Lim has not provided the detailed series of calculations that must have been involved in generating the "Total cost for the MOL System" (step 5). In answer to part a. of interrogatory 3, he states that his methodology:



does not require analysis of POL or SOL costs. I only examine costs affected by the existence of the MOL program. Throughout my testimony, detailed information and costs are provided only for areas affected by the existence of the MOL program.

Effectively, the Postal Service has foreclosed any examination of the first part of the cost estimation procedure, by which the various costs of POL have been identified and aggregated to produce the total costs of POL, as well as the subsequent stage of the procedure, whereby total POL costs are separated into MOL-affected and non-MOL-affected. The Postal Service's withholding of information on key portions of the cost estimation process violates both well-established evidentiary principles and requirements imposed by the Commission in its opinion and recommended decision on the market test.

The Postal Service's withholding of the requested evidence deprives OCA of its right to a hearing on the record under §3624(a) of title 39 and §556 of title 5. The Commission has so held when confronted with a similar example of Postal Service recalcitrance. In Docket No. R94-1, the Postal Service refused to answer interrogatories submitted by Federal Express Corporation, which sought details on the Postal Service's cost, volume, and revenue estimates for international mail. The Postal Service argued that, since the Commission had no authority to set international mail rates, the Service need not provide any details of its allocations of shared costs to domestic and international mail services. Rather, the Postal Service contended, it need only supply *summary* international mail cost figures that were the products of a series of separations of international mail costs from domestic mail costs.

In Order No. 1025, the Commission construed a participant's evidentiary and discovery rights under 39 U.S.C. §3622, 5 U.S.C. §556(d), and Commission rule of practice 25(a), to include (1) "the right to test evidence," and (2) and the right to have access to "that which is reasonably calculated to test evidence."¹ The Commission further held, "That right is denied if the hearing is confined to a single, aggregate cost, volume, and revenue figure for international mail."² The Commission determined that "supporting detail . . . is needed . . . to ensure that functionalized costs that international and domestic mail classes share have been accurately separated."³

The same reasoning obtains in the instant case (and was recognized by the Commission in its market test opinion)—OCA needs the cost figures involved in each step of the separation (or allocation) process summarized at page 3 of USPS-ST-9, and, in addition, the specific factors or judgments applied to separate MOL costs from POL and/or SOL costs. OCA must be given an opportunity to see the actual calculations at each step of the allocation process. By denying these computations to OCA, the Postal Service prevents us from determining, for example, whether any mistakes in arithmetic have been made. In withholding a detailed description of the judgments (or less subjective factors) employed to separate MOL costs from jointly incurred POL costs, the Postal Service prevents our assessment of these judgments/factors: are they plausible? self-serving? internally contradictory?

¹ Order No. 1025 at 6.

² *Id.*

³ *Id.* at 2.

In PRC Op. MC98-1 (market test decision), the need for such information was explicitly recognized by the Commission. Over the opposition of the Postal Service, the Commission directed the Service to furnish, "on an accounting period basis," "joint costs that benefit Mailing Online."⁴ The Commission wanted to preserve the option to allocate a portion of joint POL costs to MOL:⁵

[A]ll set up costs and on-going expenses for equipment, software, communications and processing activities that involve Mailing Online should be collected and reported to the Commission. During consideration of the experiment, the issue of how to attribute such costs can be fully considered only if the costs are available.

In addition, the costs of Fast Forward and advertising and marketing (including the costs of Postal Service customer service representatives marketing Mailing Online) were required.⁶ The Postal Service has never filed the above-described information on an accounting period basis (or on any other basis),⁷ as required, and incredibly, will not furnish it to elucidate testimony that purports to present the separation of POL into its component parts.

Wherefore, OCA requests that Postal Service witness Lim (or another knowledgeable Postal Service witness)⁸ be prepared, at the hearing on February 5, 1999, to provide each and every aggregate cost, cost separation (or allocation factor), cost resulting from application of the allocation factor, and all underlying calculations,

⁴ PRC Op. MC98-1 (Decision on Market Test) at 48.

⁵ Id.

⁶ Id. at 48-49.

⁷ Three full accounting periods have elapsed since the commencement of POL on October 30, 1998. See Tr. 6/1408 (response of witness Garvey to interrogatory OCA/USPS-T5-34).

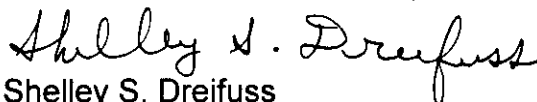
⁸ All OCA interrogatories come with instructions to refer a question to a knowledgeable person when the witness does not know the answer.

that are outlined only in the most summary fashion at page 3 of USPS-ST-9.

Furthermore, even though witness Lim insists that he does not need to separate POL costs from SOL costs (or other costs), the Commission has already reached a different conclusion in its market test opinion—discrete POL costs (if such do exist) must also be identified to preserve the Commission's option to attribute a portion of them to MOL.

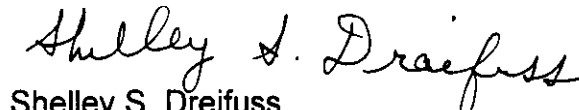
The process of separating POL into its component costs is at the heart of witness Lim's testimony. If he (or someone else) is unable to provide this information at the time of his February 5 appearance, then OCA believes that it will be necessary to recall him after such information has finally been furnished by the Postal Service and examined by OCA staff.

Respectfully submitted,


Shelley S. Dreifuss
Attorney

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.


Shelley S. Dreifuss
Attorney

Washington, D.C. 20268-0001
February 3, 1999