

**ORIGINAL**

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

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MAILING ONLINE SERVICE

Docket No. MC98-1

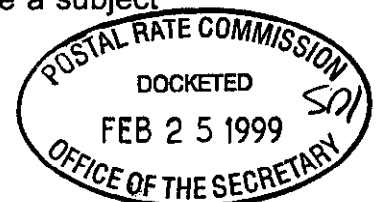
OBJECTION OF UNITED STATES POSTAL SERVICE TO  
INTERROGATORIES OF THE OFFICE OF THE CONSUMER ADVOCATE  
(OCA/USPS-27-36, 39, and 41-61)  
(February 25, 1999)

The United States Postal Service hereby objects to interrogatories OCA/USPS-27 through 36, filed February 18, 1999, and interrogatories OCA/USPS-39, and OCA/USPS-41 through 61, filed February 19, 1999, on the grounds of timeliness, due process, burden, cumulative nature, lack of foundation, and relevance. Moreover, most of the interrogatories stem from inappropriate and incorrect assumptions regarding the Postal Service's direct case, and responding to the totality of what the OCA seeks would risk delay in the procedural schedule by two or more months.<sup>1/</sup>

The period for discovery on the Postal Service's direct case ended on November 6, 1998. Presiding Officer's Ruling No. MC98-1/10, Attachment A. The Presiding Officer extended discovery for limited purposes, but only until January 28,

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<sup>1/</sup> Any extension would run the risk of extending the instant proceeding beyond ten months, the statutory limitation that applies to a Commission proceeding to consider rate and fee changes. Moreover, even were such an extension somehow appropriate, that extension might preclude commencement of any Mailing Online experiment until well into calendar year 2000, because of an impending Y2K freeze on changes to postal computer systems. This latter topic may be a subject addressed in the Postal Service's rebuttal case.



1999. Presiding Officer's Ruling No. MC98–1/18.<sup>2/</sup> Thus, all discovery on the Postal Service should have concluded by now.<sup>3/4/</sup>

The Postal Service now is in the middle of a 3–week period in which to conduct discovery on intervener cases. This period will be followed shortly by hearings on intervener cases. Then, less than 2 weeks later, rebuttal evidence is due. Hearings on rebuttal cases are a week later, and briefs are due in the following 2½ weeks. The Postal Service should be afforded the opportunity to deal with these procedural imperatives without being obstructed by the OCA's misguided and untimely curiosity.

The posing of these questions at this late stage of the proceeding—when the OCA could have explored those avenues many months ago and the procedural schedule is already exceptionally concentrated, raises significant due process concerns. The Postal Service due process rights to conduct discovery on participants' case, and to prepare its rebuttal case, would essentially be curtailed

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<sup>2/</sup> That discovery was limited by the Presiding Officer to “[d]iscovery for the purpose of developing participant evidence, discovery concerning Postal Service supplemental testimony (when filed), and discovery as permitted by Presiding Officer's Ruling MC98–1/17 [concerning the Postal Service's marketing plan for PostOffice Online].” *Id.* at 3.

<sup>3/</sup> There are no Commission rules or special rules permitting follow-up discovery or discovery needed to prepare evidence for rebuttal testimony in this proceeding. Moreover, these interrogatories go well beyond what should be considered follow-up, and none of the interrogatories appears to be designed to lead to evidence which could be used in rebuttal to the cases-in-chief of participants other than the Postal Service. Finally, most of these interrogatories, while styled as interrogatories to the Postal Service, are really directed at witnesses Lim, Seckar, Plunkett, and Stirewalt, so they would not qualify under the Special Rule 2E that applied in previous cases.

<sup>4/</sup> A few interrogatory subparts address nomenclature-related and similar difficulties in understanding contract language; while these could reasonably be addressed through informal inquiry, the requested information does not appear to be material to this proceeding.

were the Postal Service required to respond to the OCA's many hundreds of untimely and largely irrelevant inquiries. The OCA, on the other hand, has already been provided an unusually long 6½ months to conduct discovery on the Postal Service's direct case.

In general, most of the interrogatories to which the Postal Service objects stem from a misunderstanding of what witness Lim presents in his testimony, and its assumed—but nonexistent—nexus with the Compaq contract filed as USPS-LR-29/MC98-1. Witness Lim worked closely with the POL and MOL developers to present estimated MOL information systems costs for the two-year experiment. Hence his testimony effectively supplants that of witness Stirewalt. Since witness Stirewalt needed to base his estimates on a model of the system for the experiment, while witness Lim could rely upon a better defined system architecture, the two testimonies are difficult to compare directly.

Witness Lim did not perform a “top-down” analysis of PostOffice Online costs. Instead, as he states on page four of his testimony, he approached the question of quantifying information systems costs for Mailing Online during the experiment by identifying those areas of PostOffice Online that are affected by the existence of Mailing Online. Notwithstanding, most of the OCA's interrogatories inquire how witness Lim treated each of the contract cost ceilings presented in the **PostOffice Online** contract (USPS-LR-29/MC98-1). Because of witness Lim's approach, he did not need to consider this contract.

These interrogatories stem from an even more fundamental misconception, however. By the very nature of the contracting process, a time and materials contract such as the Compaq contract establishes a series of cost pools against which invoices can be charged, and payment furnished. That does not mean,

however, that the full amount of each cost pool necessarily becomes an actual cost. Some funds are not expended, and in other cases where invoiced costs exceed the ceiling, contract modifications are made to cover those costs. Accordingly, a contract such as the Compaq one would generally be an inappropriate basis for quantifying a given service's costs. This explains why witness Lim had no occasion to study the contract, and derived no costs from it, see Tr. 8/1983. In addition, the incomplete relationship between the Compaq contract and actual Mailing Online costs supports the Commission's mandate that the Postal Service collect and report actual cost data during the conduct of the market test.

Finally, interrogatories OCA/USPS–39 and 41 through 61 ask the Postal Service to explain its classification of contract cost areas as attributable to or not attributable to Mailing Online. However, neither witness Lim nor other Postal Service witnesses provide completely definitive statements regarding which costs are attributable, largely because what constitutes "attributable costs" requires a legal conclusion about which there is incomplete agreement between the Commission and the Postal Service. Accordingly, other terms such as "one-time", "fixed", "incremental", "shared", and "variable" are employed so as to set the stage for discussion of the appropriate attribution in participants' briefs. Yet the OCA insists throughout the subject interrogatories that the Postal Service now begin to use the specific terminology the OCA deems appropriate.

Respective interrogatories are addressed briefly below to elaborate upon how the foregoing arguments apply to each.

Interrogatory OCA/USPS–27 quotes the Postal Service's response to a hearing question, which states:

The Library Reference 7 Netpost contract costs were not included in the total information systems' costs that Witness Lim presents, because the

former are related to the operational and market tests for Mailing Online, rather than the Mailing Online experiment.

The interrogatory then asks how witnesses Seckar and Plunkett treat these contract costs. Since witnesses Seckar and Plunkett updated information based solely upon witness Lim's testimony (*compare, e.g.,* USPS-ST-9, Table 2, as revised February 4, 1999, *with* Worksheet 2 to Response of United States Postal Service Witness Seckar to Question Posed by Presiding Officer at the November 20, 1998 Hearing, As Revised February 4, 1999), their lack of reliance upon Netpost contract costs is clear. These contract costs thus have no impact on their updated information. Hypothetical inclusion of such costs should not be required, since it can be done by the OCA as readily as by the Postal Service. See also, the Postal Service's response to interrogatory OCA/USPS-37, to be filed tomorrow (explaining witness Seckar's presentation in his Exhibit A of operations test and market test costs reflected in USPS-LR-7/MC98-1, and his omission of these costs from his cost update).

Interrogatory OCA/USPS-28 asks for an update of witness Stirewalt's estimate of IS costs expended to date for Mailing Online, and analysis of how such an update has been and could be treated by witnesses Seckar and Plunkett. Responding to this untimely interrogatory would be burdensome, and cumulative because IS costs are to be reported in connection with the market test data collection plan. Witness Stirewalt is no longer available to develop this update. Moreover, witness Lim's lack of reliance on witness Stirewalt's cost analysis or methodology would make it difficult for him to provide such an update. The initial estimate took several days to develop; an update and related analysis to answer the interrogatory would take at least 8 hours.

Interrogatory OCA/USPS-29 asks for total costs for conducting the MOL operations test to date, analysis to break the total down between "one-time" and "variable" costs, and the treatment of that cost estimate by witnesses Seckar and

Plunkett. Generation of these estimates and related responses would be burdensome, requiring an estimated 5 hours, plus the time required to formalize and finalize a written response. Moreover, this interrogatory is cumulative, to a large extent, since an estimate of operations test costs (combined with some market test costs) has already been provided. See the Postal Service's response to interrogatory OCA/USPS-37, to be filed tomorrow (explaining witness Seckar's presentation of operations test and market test costs reflected in his Exhibit A).

Interrogatory OCA/USPS-30 asks for the total costs in conducting the market test to date, analysis to break the total down between "one-time" and "variable" costs, and the treatment of that cost estimate by witnesses Seckar and Plunkett. This interrogatory is cumulative, because it overlaps with the market test data collection plan. To the extent this is included in the market test data collection plan, it will be provided as soon as possible. Moreover, a partial estimate of market test costs has already been provided. See the Postal Service's response to interrogatory OCA/USPS-37, to be filed tomorrow (explaining witness Seckar's presentation of operations test and market test costs reflected in his Exhibit A). Responding to this interrogatory would be burdensome, because providing the information in the form requested would take an estimated 8 hours.

Interrogatory OCA/USPS-31 asks for the total expenditures in operating POL to date, and, if possible, an estimate for discrete POL costs after subtracting MOL-specific and SOL-specific costs. This interrogatory also asks whether witness Seckar included any POL-specific expenditures in his information systems unit cost figures. Since witness Seckar's figures are based directly on witness Lim's results, it is clear that no POL-specific costs are included. To the extent POL-specific costs have been requested as part of the market test data collection plan, the costs will be provided as

soon as possible. Answering this interrogatory would be cumulative, and require a period of time comparable to that required to develop witness Lim's testimony; in light of the fact that POL is considerably more complex than MOL by itself, the Postal Service estimates answering this interrogatory would require 2 to 3 months. Given the difficulty of defining exactly what are POL costs, as compared to MOL and SOL costs, providing a ballpark estimate would require at least 2 weeks, and such an estimate might not be reliable for purposes of a Commission decision.

Interrogatories OCA/USPS–32 through 35 ask whether certain cost information requested by the Commission as part of the market test data collection plan has been collected, and, if so, to provide it. If not, the Postal Service is to explain why not. In addition, interrogatory OCA/USPS–36 asks when the Postal Service will be providing the data requested in the market test data collection plan. The Postal Service understands that the accounting period data collection reports are tardy. The Postal Service had been planning on filing these reports only when complete, but has changed its plan to file those portions that are available as soon as possible. Notwithstanding, collecting all of these data from the various sites around the country has proven challenging. In any event, status reports on the data collection effort are not a proper topic of discovery, at this point in the proceeding.

Interrogatory OCA/USPS–37 mischaracterizes the Postal Service's response to a question raised during the February 5 hearing. The Postal Service is choosing to respond so that it can clarify the record on witness Lim's methodology, as well as the cost information about the operations test and market test that has already been provided.

Interrogatory OCA/USPS–38 asks about the respective contractor identities in the Compaq contract, USPS-LR–29/MC98–1, thus reflecting the OCA's confusion in

understanding the complex information it requested for the first time only during the February 5, 1999 hearing. While this interrogatory might best have been raised informally (since it reflects genuine curiosity arising from a fundamental misunderstanding of postal contracting), the Postal Service is preparing a response to indicate that notwithstanding consolidation in technology firms, the salient point is use of a single master contract number.

Interrogatory OCA/USPS–39 begins a sequence (including OCA/USPS–41 through 61) of interrogatories that focuses upon respective components of the Compaq contract and how the supposed costs reflected therein are “attributed” by witness Lim. Witness Lim did not use the contract to develop his testimony. For the reasons stated in the opening section of this pleading, the Postal Service objects to these interrogatories on the grounds that they violate the Postal Service’s due process rights; lack foundation; and are unduly burdensome, untimely, cumulative in nature, and irrelevant. The Postal Service believes that responding to these questions would require not less than several weeks -- and then only if the key personnel could be redirected full time from their regular duties.

Interrogatory OCA/USPS–40 inquires after copies of attachments listed, but not provided, in USPS-LR–29/MC98–1. Since the Postal Service had intended to provide a complete copy of the Compaq contract, this interrogatory will be answered affirmatively.

WHEREFORE, the United States Postal Service objects to interrogatories OCA/USPS-27-36, 39, and 41-61.

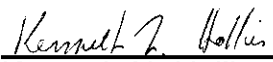


Respectfully submitted,

UNITED STATES POSTAL SERVICE


By its attorneys:

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Kenneth N. Hollies

**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.

  
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