

ORIGINAL

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

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MAIL ROOM
UNIT 1

MAILING ONLINE SERVICE

Docket No. MC98-1

RESPONSE OF UNITED STATES POSTAL SERVICE
TO OFFICE OF THE CONSUMER ADVOCATE MOTION TO SUSPEND
PROCEDURAL SCHEDULE INDEFINITELY, AND TO COMPEL
RESPONSES TO INTERROGATORIES OCA/USPS-27-36, 39, AND 41-61
(March 10, 1999)

The United States Postal Service hereby opposes the Office of the Consumer Advocate Motion to Suspend Procedural Schedule Indefinitely, and to Compel Responses to Interrogatories OCA/USPS-27-36, 39 and 41-61, filed March 4, 1999. Presiding Officer's Ruling No. MC98-1/26 (POR 26), issued on March 8, 1999, granted the March 5 Office of the Consumer Advocate's (OCA's) motion for expedition (by noon on March 10) of the Postal Service responses to the OCA's March 4 Motion.¹ The March 4 motion in turn responds to the Postal Service's February 25, 1999, objection, which in anticipation of some need for expedition already explained the Postal Service's position fully enough so that it serves to respond to much of the OCA's motion to compel.² This pleading responds to the OCA's motion to suspend the schedule, and

^{1/} Office of the Consumer Advocate Motion for Oral Argument and Motion for Expedited Responses to Motions to Suspend Procedural Schedule and to Compel Responses to Interrogatories (March 5, 1999).

^{2/} Objection of United States Postal Service to Interrogatories of the Office of the Consumer Advocate (OCA/USPS-27-36, 39, and 41-61). The Postal Service objection to interrogatories OCA/USPS-62-66, filed March 8, 1999, rests on the same grounds.



supplement the arguments in the Postal Service objection in opposition to the OCA's motion to compel, in the time frame specified by POR 26.³

A critical factor underlying the current vortex of motions practice was the unavailability, until now,⁴ of the Accounting Period (AP) reports called for as part of the data collection plan.⁵ Some of the OCA's interrogatories subject to the current motions practice center on that information, either by asking when reports might be made available or by asking for data they might contain. See, e.g., OCA/USPS-32 to 36. Now that these reports are forthcoming, responses to those interrogatories have effectively been provided.

The OCA bases its motion to suspend on the pretense that participants' witnesses have been unable to use the heretofore unavailable data in their testimonies. The Postal Service began filing the first of the required data collection reports on

^{3/} The Postal Service notes that the deadline for response, in conjunction with the start of hearings, has impaired the Postal Service's ability both to respond fully to the OCA's motions, and to prepare for hearings.

^{4/} The Postal Service appreciates that this information has not been provided as quickly as it, and others, originally expected. The process of AP report data collection, while fairly straightforward when viewed from its results, has been a difficult one. The weekly and biweekly reports, by and large, report information generated by the MOL system or is closely related to such information. The AP reports, however, seek information drawn from a vastly wider net of sources. As such, time and resource conflicts between working on the system itself and performing the completely separate analyses needed only to support the data reporting task have all too consistently been resolved in favor of the former, despite repeated and increasingly fervid efforts to impress upon contractors and systems personnel the critical importance of the Commission's need for information.

^{5/} The AP reporting requirement is summarized on page 51 of the Commission's Opinion and Recommended Decision on Market Test as including: "Costs specific to Mailing Online and for selected expenditures common to Mailing Online and other services (Advertising and Marketing, Processing Center, HELP Desk, Communications and Printer Site)." Additional details are provided on pages 48-49 of the Opinion.

December 3, 1998. The participants' testimonies were filed on February 8, more than two months later. By that time, the Postal Service had filed hundreds of pages of data. Yet none of the witnesses uses any of the reported data in testimony. Moreover, none of them indicates any need for anticipated data or even discusses areas that the data, provided or anticipated, might illuminate. In particular, the OCA's testimony does not address, even in a general way, the subjects about which it now professes to be so concerned.⁶ This is so despite the fact that the Presiding Officer already had ruled that witnesses would be permitted to "update their testimony to account for market test results until they appear for oral cross-examination". Presiding Officer's Ruling No. MC98-1/18 at 3.

The OCA's motion generalizes in the extreme from the Commission's language describing data collection during the market test to an imagined requirement that the Postal Service conduct a top-down analysis of PostOffice Online (POL) costs for the experiment.⁷ The Commission has not required the Postal Service to provide all POL costs either for the market test or during proceedings to consider the experiment. Quite independent of any top-down POL cost analysis, the Postal Service on its own initiative has provided supplemental testimony, in part to provide more current details of information systems costs expected during the experiment.

^{6/} The OCA did discuss the treatment of joint marketing costs in response to one issue of Notice of Inquiry No. 1, but that discussion does not suggest any need for actual cost data. Office of the Consumer Advocate Response to Issue No. 5 of Notice of Inquiry No. 1, filed February 8, 1999.

^{7/} In fact, this is at least the OCA's third effort to require a top-down analysis of POL costs. Previous efforts arose during litigation of the market test phase of this proceeding, and later during oral cross examination of witness Lim.

The OCA's argument that the clock for the ten-month statutory limit was restarted by the filing of supplemental testimony (OCA Motion at 4) completely fails to appreciate that the Commission has not required, and does not need, a complete POL top-down cost analysis, and that witness Lim never had a need to perform one. Moreover, the Presiding Officer himself indicated his recognition of these facts:

It is consistent with the purpose of market tests and experimental service offerings to accommodate system design improvements developed while these tests are in progress. All participants recognize that such changes are to be encouraged, and have proposed schedule accommodations intended to minimize the inconvenience necessitated by ongoing modifications to Mailing Online.

Presiding Officer's Ruling No. MC98-1/18 at 3.

Rather than requiring a top-down analysis of estimated costs for the experiment, the Commission created data collection requirements for the market test in order to provide the necessary data on joint costs for Mailing Online and PostOffice Online. Discovery asking the Postal Service to study other costs is irrelevant, burdensome, and too late.⁸ For example, the OCA's interrogatories concerning the Compaq contract are simply untimely. A request for the contract could have been filed at any time during the 6 1/2 month discovery period, but the contract was requested for the first time during hearings on witness Lim. The OCA requested and received other contracts, but expressed no interest in the Compaq contract, despite a reference to it by witness Stirewalt in response to interrogatory OCA/USPS-T3-1, filed way back on July 28, 1998. Tr. 3/733-735 (Compaq contract referred to as Digital Equipment Corporation contract;

^{8/} The Presiding Officer recognized that further inquiries into POL should not extend to costs by stating, "We are talking about functional components and not costing data." Tr. 8/2028.

see also, the Postal Service response to OCA/USPS-37 regarding takeover of Digital by Compaq).

In addition, the Postal Service has not conducted the “top-down” analysis of all POL costs contemplated by the OCA’s questioning of witness Lim. See, *gen’ly*, Tr. 8/1951-62. There is no basis for the OCA to get the Postal Service to redo witness Lim’s analysis the way the OCA may prefer, rather than the way he actually did it. The Presiding Officer has already noted that “[t]he OCA appears to read more into witness Lim’s description of his method than is actually there.” POR 22, at 2. As a result, the Presiding Officer ruled:

It is therefore reasonable to take witness Lim’s representations at face value — that he estimated unit costs only of POL’s functional components that are relevant to MOL. Under these circumstances, witness Lim will not be required to provide calculations of non-MOL related costs that were not part of his method, and that he did not make.

Id. at 3. The OCA is simply requesting that analysis again and is doing so at a procedurally improper stage of the case.

The extreme position which the OCA has taken is demonstrated by OCA/USPS-31, which asks for total POL operating costs. In doing so, the OCA leaps inexplicably from “joint costs that benefit Mailing Online,” described as relevant in the Commission’s Opinion, to all POL costs. Witness Lim’s analysis includes shared MOL/POL information systems costs. The Commission also is receiving market test data, as requested, on those areas of costs that might affect the MOL fees, including such costs as advertising, which are quite independent of information systems costs. Thus, the record permits the Commission to determine how to base MOL fees on joint costs that benefit Mailing Online.

The OCA's argument that contract costs are the best estimate of potential costs amounts to nothing more than the OCA's own conclusion and ignores that witness Lim has already estimated potential costs for the experiment and that he did so without reliance on the contract. In this regard, witness Lim includes almost \$18 million of Compaq (including Marconi) costs in his testimony.⁹ Thus, it appears that witness Lim's cost estimates include more costs than those the OCA has identified through its analysis of the Compaq contract, in interrogatories OCA/USPS-39, and 41 to 61. Witness Lim's testimony apparently includes cost projections by Compaq and Marconi that exceed the amounts already included in the contract.¹⁰ Exclusive reliance on the Compaq contract, as urged by the OCA, would thus tend to understate costs for the experiment. The detailed analysis of the Compaq contract requested in these interrogatories thus would not add to the record, and should not be required.

The OCA complains the Postal Service excluded from witness Lim's testimony operations test and market test costs included by previous witnesses. OCA Motion at 10. This approach is perfectly consistent with the sole purpose of witness Lim's testimony, which is to estimate only those costs expected to be incurred during the experiment. In updating some responses, witnesses Seckar and Plunkett clearly followed witness Lim's approach, as discussed in the Postal Service's February 25 objection. Interrogatories OCA/USPS-27 to 30 are thus cumulative, and responses should not be required. The OCA claims that the information sought in these interrogatories is "fundamental to establishing MOL fees for the experiment", OCA

^{9/} USPS-ST-9, Ex. A, lines 60-65; Ex. C, line 13; Ex. E, lines 16-20; Ex. F, line 22.

^{10/} Witness Lim did not even review the Compaq contract. Tr. 8/1983.

Motion at 10, but the OCA provided no testimony on this "fundamental" subject suggesting a need for this late discovery.

The OCA's reference to § 3624(c)(2) is also misplaced. The plain language and the legislative history¹¹ of this provision set forth the following criteria. The delay must have occurred after the initiation of a case, in circumstances where the Postal Service had been lawfully ordered to take an action, had unreasonably failed to take such action, had been conclusively shown to have caused a delay of a specific number of days, and had been put on notice that its actions could lead to an extension of the case by that many days. Here, no deadline established by the Commission has been missed. No lawful order has been unreasonably ignored. No specific delay has been shown, and no notice on such delay issued. Moreover, as indicated above, the OCA does not come to this controversy with clean hands, having failed to indicate any need for the data in its testimony, or to use the completed 6 1/2 month discovery period to pose the questions for which it now seeks answers.

Accordingly, OCA's motions should be denied. The Postal Service has responded affirmatively to all orders in this case. The Postal Service provided the first weekly data report over three months ago. The flow of AP reports has now begun. Since none of the participants' testimony deals with the market test information, the likelihood of a need for any witness to reflect the AP data in their testimony appears to be quite low. In any event, the data are being collected and reported in sufficient time for the Commission's use when considering the request for an experiment.¹²

^{11/} H.R. Conf. Rep. No. 94-1444 at 17; see H.R. Rep. No. 8603 at 59 (1976).

^{12/} If the Presiding Officer determines that an opportunity for supplementation is appropriate, witnesses could be permitted to do so up until the date for submission of
(continued...)

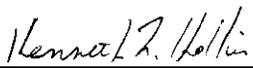
WHEREFORE, the United States Postal Service respectfully requests that the OCA's motions to compel further responses to its interrogatories, and to suspend proceedings, be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

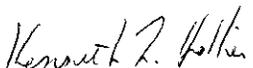
Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



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.



Kenneth N. Hollies

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^{12/} (...continued)

rebuttal testimony, without the need to delay, let alone to suspend, the proceedings.