

ORIGINAL

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

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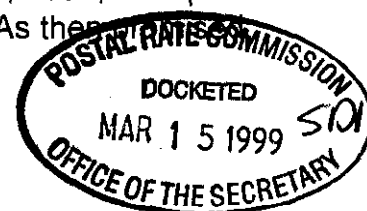
Mailing Online Service)

Docket No. MC98-1

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL RESPONSES TO INTERROGATORIES
OCA/USPS-62-66 and OCA/USPS-ST9-3
(March 15, 1999)

The Office of the Consumer Advocate ("OCA") respectfully requests that the Presiding Officer direct the Postal Service to provide complete responses to interrogatories OCA/USPS-62-66 (hereinafter, "interrogatories 62-66") and OCA/USPS-ST9-3.¹ The Postal Service filed an Objection to interrogatories 62-66 on March 8, 1999, alleging "timeliness, due process, burden, cumulative nature, lack of foundation, and relevance," and that the "totality of what the OCA seeks would risk delay in the procedural schedule by two or more months." The March 8 Objection references arguments previously made by the Postal Service in an earlier Objection filed on February 25, 1999. OCA disputes all of the grounds alleged. Although the Postal Service has never filed a formal objection to interrogatory OCA/USPS-ST-3, it nonetheless has never provided any step-by-step cost development of the estimates contained in the Lim testimony.

¹ OCA notes that a motion to compel with respect to interrogatories 62-66 was made orally before the full Commission during argument held on March 11, 1999, on a prior motion to compel responses to other interrogatories. Tr. 10/2443. As the result of this motion follows up on the oral motion made at that time.



Interrogatories 62-66 seek the cost details associated with the functional component analysis filed by the Postal Service on February 22, 1999, in response to a request by the Presiding Officer (Tr. 8/2027). The Postal Service has been unable or has steadfastly refused to furnish the participants and the Commission any of the cost details underlying witness Lim's testimony, nor will the Service furnish the cost information necessary to give participants the ability to allocate a portion of PostOffice Online ("POL") specific costs to Mailing Online ("MOL").

Postal Service allegations that OCA has failed to act in a timely manner are wholly unfounded. OCA has, with the utmost diligence and alacrity, filed written interrogatories and posed oral questions to obtain this cost information. All of OCA's efforts have been thwarted by the Postal Service. Although a motion to compel a response to interrogatory OCA/USPS-ST9-3 may, at first, appear to be tardy, the recitation of events below will demonstrate that, despite earnest and repeated attempts by the OCA to understand the foundation of witness Lim's testimony, OCA efforts have been completely stymied by the Postal Service's refusal to provide essential information.

Witness Lim's testimony (USPS-ST-9) was filed on January 14, 1999, and constitutes new testimony that "supplants"² the Information Systems cost testimony of witness Stirewalt. At page 3 of USPS-ST-9, witness Lim presents his "methodology for gathering and estimating MOL costs." His methodology consists of the following steps:

² Objection of Postal Service to Interrogatories OCA/USPS-27-36, 39, and 41-61, February 25, 1999.

- Step 1—begin with “Complete POL system which includes both MOL & SOL programs.”
- Step 2—identify “Areas of the complete POL system that are affected by the existence of the MOL program” and analyze them further; segregate areas that are “POL Specific” or “SOL Specific” and exclude them.
- Step 3—break out “MOL Specific” and “Shared” components of the “complete POL system that are affected by the existence of the MOL program;” include “100 percent of [the MOL Specific] areas . . . in the MOL specific costs.”
- Step 4—use a “Cost driver . . . for areas shared with POL to determine cost caused by MOL;” include such “MOL/POL Costs;” exclude “SOL/POL costs.”
- Step 5—combine “MOL Costs” and “MOL/POL Costs” to estimate “Total cost for the MOL System.”

Interrogatory OCA/USPS-ST9-3³ asked for all of the underlying costs and allocation factors employed to make the segregations into MOL, SOL, POL-specific, MOL/POL, SOL/POL, and shared costs. OCA also sought an explanation of the rationale for choosing the particular allocation factors.

Witness Lim answered that his methodology “does not require analysis of POL or SOL costs” and that he only examined “costs affected by the existence of the MOL program.” He agreed that: “Conceptually, there would be costs that are specific to

³ Interrogatory OCA/USPS-ST9-3 was part of a larger set of interrogatories—OCA/USPS-ST9-1-10—submitted to the Postal Service on January 25, 1999. Under the revised hearing schedule established in P.O. Ruling MC98-1/18, discovery on witness Lim’s testimony closed on January 28, 1999. Therefore, the cited set of interrogatories was filed well within the deadline established by the Ruling.

POL that are not allocated to either MOL or SOL However, [he] only looked for costs driven by MOL, and therefore had no occasion to study POL or SOL in detail." Other questions posed to him, he said, were "beyond the scope of [his] expertise and factual knowledge."

Because witness Lim had failed to provide *any* of the assumptions, rationale, calculations, or cost details for the methodology set forth in USPS-ST-9, OCA filed a Motion to Compel Witness Lim to be Prepared to Answer Interrogatory OCA/USPS-ST9-3 at the February 5, 1999, Hearing (motion filed February 3, 1999, two days after receiving the incomplete response). OCA complained that witness Lim had not "provided the detailed series of calculations that must have been involved in generating the 'Total cost for the MOL System' (step 5)." It was OCA's position that, "The Postal Service's withholding of information in 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." OCA summarized what it believed itself entitled to under the Administrative Procedure Act: "each and every aggregate cost, cost separation (or allocation factor), cost resulting from application of the allocation factor, and all underlying calculations"

OCA's Motion to Compel was granted, in part, by P.O. Ruling MC98-1/22 (hereinafter "Ruling 22"), i.e., witness Lim was directed to "be prepared to comprehensively describe all functional components of POL that he concludes are not related to MOL and the reasons for those conclusions at the hearings on February 5, 1999." However, witness Lim was not "required to provide calculations of non-MOL related costs that were not part of his method, and that he did not make."

During the course of oral cross-examination, it became clear that witness Lim had no personal knowledge about the design of either MOL or POL and that his testimony reflected the knowledge, judgment, advice, and opinions of the MOL system designers (and to a much lesser degree, the advice of the POL designers).⁴

In an apparent (though tacit) acknowledgement that witness Lim had not fully satisfied the requirements of Ruling 22, the Postal Service volunteered to prepare in writing, as a "homework assignment," a comprehensive description of "all functional components of POL that he concludes are not related to MOL, and the reasons for those conclusions."⁵ Although a one-week turn-around was promised, the functional component analysis was filed two weeks later, on February 22. It is this analysis that was the subject of interrogatories 62-66.

OCA does not construe Ruling 22 as a bar to interrogatories 62-66. Rather, OCA understands Ruling 22 to have denied OCA's motion to have *witness Lim* answer these questions at the February 5 hearing. The Presiding Officer correctly stated in Ruling 22 that witness Lim only examined the functions of MOL without projecting the costs of non-MOL related functional components. This was borne out in OCA's oral cross-examination of witness Lim. Justifiably, *witness Lim* was not required to testify at length on POL costs that he had never studied. However, this does not excuse *the Postal Service* from providing institutional answers to interrogatories 62-66 and OCA/USPS-ST9-3. The Postal Service has failed to assemble and present the POL

⁴ Tr. 8/1947-63. Counsel for the Postal Service alluded to this at the oral argument on March 11, 1999: "[Witness Lim] went and talked to the people who were involved. He asked them about what they were doing." Tr. 10/2485.

⁵ Tr. 8/2027.

costs, and especially the POL-specific costs, that OCA and other participants may wish to add to the MOL-specific costs estimated by witness Lim.

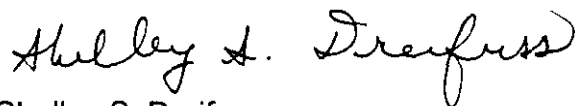
The Postal Service contends in its Objection filed February 25, 1999, (which is referenced and relied upon in the March 8 Objection), that providing detailed POL cost data would require 2 to 3 months. This estimate is a bare allegation; no cataloguing or itemizing of the tasks involved in assembling the POL costs nor of the time required for each task has been provided. Therefore, the time that would actually be necessary to assemble such cost information may be far less than alleged and, therefore, may engender far less delay than foretold.⁶

The remaining arguments presented in the February 25 Objection (and referenced in the March 8 Objection) have been refuted at length in OCA's March 4 Motion to Suspend the Procedural Schedule and to Compel Responses to Interrogatories OCA/USPS-27-36, -39, and 41-61; OCA's March 5 Motion for Oral Argument and Expedited Responses to Motions to Suspend and Compel; and OCA's oral argument on March 11.

⁶ The ballpark estimates sought in the OCA interrogatories apparently would require only 1/3-1/2 the time to prepare. February 25 Objection at 7. However, the Postal Service questions the reliability of such estimates. *Id.* If the Presiding Officer judges that ballpark estimates are reliable enough to form the basis of Information Systems cost estimates, then he may wish to reduce the period of delay by having the ballpark estimates furnished in lieu of detailed cost data.

Wherefore, OCA moves that the Postal Service be compelled to answer interrogatories OCA/USPS-62-66 and OCA/USPS-ST9-3.

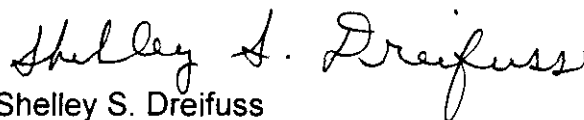
Respectfully submitted,



Shelley S. Dreifuss
Attorney
Office of the Consumer Advocate

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
March 15, 1999