

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

MOTION OF THE ADVO, INC.
TO COMPEL ANSWERS TO INTERROGATORIES
ADVO/USPS-T13-2 and 19(c) TO WITNESS RAYMOND

Pursuant to Sections 26(d) and 27(d) of the Commission's Rules of Practice, ADVO, Inc. (Advo) hereby moves to compel the United States Postal Service to respond to interrogatories ADVO/USPS-T13-2 and 19(c) addressed to witness Raymond. These interrogatories request information directly related to the delivery carrier cost survey that is the subject of witness Raymond's testimony. The Postal Service objected to these interrogatories on March 3, 2000. The challenged interrogatories are repeated verbatim below.

OVERVIEW

The Postal Service's objections to Advo's interrogatories are the latest in a recent series of objections to relevant interrogatories addressed to witness Raymond by several parties. These include objections filed on February 14 to interrogatories of United Parcel Service, on February 18 to interrogatories of the Office of Consumer Advocate, and on February 28 to interrogatories of Magazine Publishers of America. *All of these objections follow the same pattern, and all are without merit.* The Postal Service has apparently decided that stonewalling is the only way to protect its testimony from critical analysis.

The core relevance of Advo's interrogatories to witness Raymond's testimony is indisputable. They seek the kind of basic information that should have been provided when the testimony was filed. The Postal Service's problem with these and

other interrogatories to Raymond is of its own making. As described in the motions to compel filed by UPS and MPA, the specific data collection effort by witness Raymond was part of a broader effort to develop engineered work standards; the data were not collected for postal costing purposes; documentation is thin or non-existent; and the Postal Service through Raymond's testimony attempts to transmute that data for costing purposes. The Postal Service's objections serve only to prolong and impair the ability of the parties to understand and assess Raymond's testimony.

ADVO INTERROGATORY 2.

Advo Interrogatory 2 to witness Raymond asks the following:

"ADVO/USPS-T13-2. With respect to the specific project which generated the data presented in your testimony, please provide the following:

- (a) A full description of your original work plan proposed to the USPS for each contract you performed on this specific project.
- (b) The statement of work and list of deliverables for each contract you performed on this specific project.
- (c) List of reports, analyses, and all other documentation you prepared on each contract you performed on this specific project.
- (d) Contract initiation and completion dates for each contract you performed on this specific project."

This is the kind of basic information routinely requested of, and provided by, the Postal Service with respect to postal surveys and studies that it presents in rate cases. The Postal Service does not challenge the relevance of this information. To the contrary, it concedes that the information sought is "directly relevant to the data used by witness Raymond for purposes of his testimony." USPS Objection at 1.

Despite this dispositive concession, the Postal Service objects to providing relevant information, based on a "scrambled egg" defense. The "scrambled egg," according to the Postal Service, stems from the fact that witness Raymond has worked on various related contracts in several capacities.

"In these many capacities, Mr. Raymond has worked under many contracts, *each contributing to some extent to the generation of the data presented in witness Raymond's testimony.*" Objection at 2 (emphasis added).

The Postal Service claims that the scope of these various contracts "has covered a variety of matters not *directly* relevant to his testimony in this case." *Id.* (emphasis added). The Postal Service then objects to providing *any* information -- even with respect to the specific project which generated the data in his testimony -- on the astounding ground that:

"Because of the difficulty inherent in attempting to unscramble this egg, and the likelihood that any response would disclose sensitive information having to do with matters other than the data relied upon by the Postal Service in this case, the Postal Service must object to provision of the requested information." *Id.*

These Postal Service statements highlight the importance of obtaining the information Advo seeks, and even suggest that Advo's interrogatory was too narrowly framed. The only way for parties or the Commission to determine the extent to which other contracts either "contribut[ed] to some extent to the generation of the data presented in witness Raymond's testimony," or the extent to which they are directly or indirectly relevant to his testimony, is to obtain the documents.

The Postal Service made the "scrambled egg," but has decided to serve only a spoonful of it as justification for a major change in costing, withholding other potentially relevant pieces from view, and even then refusing to provide clearly relevant information on that spoonful it has chosen to present.

We do not mean to suggest that the Postal Service has deliberately concocted a complex series of interrelated contracts for the purpose of avoiding scrutiny of its costing analyses on the record in this rate case.¹ Indeed, the problem appears to be

¹ However, if the Commission were to accept this "scrambled egg" defense, it would create a precedent that might give parties an incentive in the future to intentionally segment studies into multiple parts for the purpose of evading discovery on relevant matters.

just the opposite. These various contracts and studies, including the survey presented by witness Raymond, were *not* intended or designed for purposes of developing postal costs for ratemaking purposes. The decision to try to use them for that purpose came later, after the survey project was completed. Thus, the egg was scrambled before witness Raymond prepared his testimony.

That circumstance, however, cannot be twisted into an excuse to prevent parties from obtaining relevant information in order to understand and test the study and its use by the Postal Service for costing purposes in this case. The Postal Service in the past has championed protection of the due process rights of itself and other parties in Commission rate proceedings. Its objections border on the frivolous, and fall far short of justifying a due process exception for witness Raymond's testimony.

ADVO INTERROGATORY 19(c).

Advo Interrogatory 19(c) to witness Raymond asks:

"ADVO/USPS-T13-19. With respect to the use of the Engineered Standards data for 'support/update' of the Street-Time Survey (STS):

* * *

- (c) Please provide copies of all requests, proposals, instructions and correspondence with the USPS and/or USPS contractor representatives relating to such use of the ES data."

This interrogatory is of central relevance to witness Raymond's testimony. The very purpose of Raymond's testimony is to use data previously collected from the Engineered Standards project (which was not designed with the intent of being used for postal costing purposes) as a proxy for what he terms "support/update" of the Street-Time Survey. Requests, proposals, instructions and correspondence relating to this use of the ES data are undeniably relevant to his testimony. Indeed, this kind of documentation should have been provided at the time Raymond's testimony was filed.

The Postal Service objects to this interrogatory "for a number of reasons" that are equally without merit.

First, the Postal Service claims that Advo's question is "overbroad" because it would require production of all relevant documents, "regardless of how trivial or inconsequential." Objection at 3. Significantly, the Postal Service does not contend that *all* documents encompassed by Advo's request are "trivial." The problem, of course, is that no one can determine whether a particular document is "trivial or inconsequential" until they see it. Moreover, what the Postal Service may deem "trivial" may in fact be of significant consequence to other parties and the Commission in understanding and evaluating Raymond's testimony. The determination of whether a document is trivial or inconsequential is ultimately one for the Commission to decide, not the Postal Service, based upon the record. The Postal Service should provide all responsive documents, as requested.

Second, the Postal Service claims that it would be an "undue burden" for the witness to "have to comb through over one hundred linear feet of documents compiled over the course of his study." *Id.* This general "burden" objection falls short of the Commission's requirement that parties claiming burden must do so with specificity. Moreover, one would assume (and expect) that in a contracted project like this, important documents such as "requests, proposals, instructions and correspondence" would not be scattered randomly amongst one hundred feet of unorganized documents, but would be organized and filed in some coherent manner. Even if these documents are randomly scattered (a circumstance that would call into question the care with which documents were maintained), that is no excuse to withhold relevant information.

Third, the Postal Service obliquely suggests that Advo's question is "unfocused" and that the information sought is of "limited relevance." The question is as focused as possible given the fact that we don't know what documents exist until

they are produced. The "limited relevance" objection is absurd. Requests, proposals, instructions and correspondence relating to use of the ES data for "support/update" of the STS go to the heart of Raymond's testimony. Moreover, this objection suffers the same defect as the "trivial" objection: the degree of relevance cannot be determined by the parties and the Commission until they see the documents, with the Commission being the ultimate arbiter.

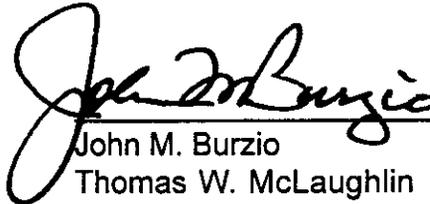
Finally, the Postal Service vaguely objects to Advo's interrogatory "insofar as it could require the disclosure of discussions of litigation strategy, or other privileged communications." *Id.* Notably, the Postal Service does not claim that *all* of the requested documents are privileged.² However, this catch-all objection could, if construed broadly, be used as an excuse to refuse production of almost any document.

The Postal Service should be directed to produce *all* requested documents. If there are any *specific* documents (or portions of documents) for which the Postal Service claims privilege, it must bear the burden to (1) identify each document with specificity (including date, senders and recipients, subject matter, and a general description of the document's content), (2) describe the specific portions of the document for which privilege is claimed, and (3) justify its claim of privilege in each instance. To the extent a privilege claim applies to only a portion of a document, the Postal Service should promptly provide the complete document with only those privileged portions redacted, pending Commission action on its privilege claim. In order to discourage objections raised for the purpose of stalling production pending litigation of privilege claims, the Commission should remind the Postal Service that general claims of privilege will not suffice.

² For example, it is difficult to imagine how documents such as proposals and instructions could be deemed "litigation strategy" or otherwise "privileged."

WHEREFORE, Advo requests the Presiding Officer to overrule the Postal Service's objections to interrogatories ADVO/USPS-T13-2 and 19(c), and order the Postal Service to respond to them in full.

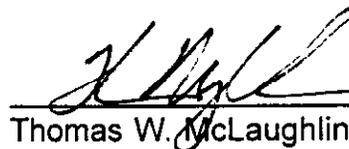
Respectfully submitted,



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CERTIFICATE OF SERVICE

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



Thomas W. McLaughlin

March 9, 2000