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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

August 13, 1999

Hon. Margaret P. Crenshaw, Secretary  
Postal Rate Commission  
1333 H Street, NW, Suite 300  
Washington, D.C. 20268-0001

Dear Ms. Crenshaw:

This responds to your letter to the Postal Service's General Counsel, Ms. Mary Elcano, dated August 4, 1999 (copy attached). That letter described a request made under the Freedom of Information Act (FOIA) by Mr. John McKeever of the law firm Piper & Marbury, which typically represents United Parcel Service (UPS) in Postal Rate Commission proceedings (copy attached). Mr. McKeever's letter, dated July 15, 1999, asked the Commission to provide to Piper & Marbury a copy of the Commission's *Report to the Congress, 1998 International Mail Volumes, Costs and Revenues* (June 30, 1999)(*Report*), prepared by the Commission pursuant to 39 U.S.C. § 3663. Mr. McKeever further requested "a copy of all data and information supplied by the Postal Service which the Commission used or referred to in preparing this report."

You first brought Mr. McKeever's request to our attention in your letter to Ms. Elcano dated July 28, 1999 (copy attached), which informed the Postal Service of the Commission's response to a similar request submitted by Ms. Katherine Muth on behalf of *Business Mailers Review*. Ms. Muth had asked for a copy of the *Report*, but not for other information supplied by the Postal Service. Your letter of July 28 stated that the Commission would provide to Piper & Marbury an identical copy of the redacted *Report* that was provided to Ms. Muth. It did not, however, mention the balance of Mr. McKeever's request for information and records that had been supplied by the Postal Service to enable the Commission to prepare the *Report*. Your letter of August 4 described the expanded nature of Mr. McKeever's request, and asked that the Postal Service review the additional documentation and provide a written statement indicating what information contained in the materials in question should be withheld from disclosure pursuant to the request.

Prior to the Commission's provision of the redacted *Report* to Ms. Muth, the Postal

Service provided, at the Commission's request, a similar statement identifying information in the *Report* it believed was exempt from mandatory disclosure. This statement consisted of an itemization of information that the Postal Service considered to be derived from confidential, commercially sensitive internal documents that had been provided to the Commission in connection with 39 U.S.C. § 3663. It also included a memorandum outlining the Postal Service's reasoning for concluding that the information should not be disclosed, together with an explanation of the legal justifications that support exempting it from mandatory disclosure.<sup>1</sup> As the Commission has acknowledged, the Postal Service from the outset of Docket No. IM99-1 has maintained that the information provided to the Commission pursuant to section 3663 consists of internal documentation that it would not under good business practices disclose publicly. See Memorandum at 1-3. The Commission relied substantially on the Postal Service's representations in this regard in deciding to delete certain information from the version of the *Report* it provided to Ms. Muth.

The Postal Service believes that the Commission has acted appropriately and in the interests of comity between the Commission and the Postal Service in consulting on Ms. Muth's request. In this regard, the Commission has observed the Department of Justice's guidelines pertaining to FOIA requests for records and information within an agency's custody that originated at another agency.<sup>2</sup> The Postal Service is satisfied that its views have been respected in the Commission's decision to delete information from the copy of the *Report* sent to Ms. Muth.

Mr. McKeever's request raises additional considerations not faced in the request from *Business Mailers Review*. Mr. McKeever has asked, not only for the *Report*, but for all documents supplied by the Postal Service to enable the Commission to prepare the *Report*. In this circumstance, the Postal Service believes that the widespread practice within the federal government of referral of such requests for records to the originating agency for direct response should be observed with respect to many of the materials the Postal Service supplied. These remain internal Postal Service documents, or pages from such documents, that are being retained by the Commission after the completion of the *Report*. In this regard, the *OIP Guidance* describes the typical situation and advises as follows:

Accordingly, the question for FOIA officers now is how best to handle the records of another agency in a given case – by acting independently, by making a full record referral, or by merely consulting with the other agency.

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<sup>1</sup> United States Postal Service Memorandum Concerning Categories of Information that Should Be Deleted from Commission Report to Congress on International Mail Costs, Volumes, and Revenues (Memorandum)(copy attached).

<sup>2</sup> Department of Justice, Office of Information and Privacy, *OIP Guidance: Referral and Consultation Procedures*, FOIA Update, Vol. XIII, No 3 (Summer 1991)(*OIP Guidance*)(copy attached).

The short answer is that the agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act. While this may vary in particular cases, as a general rule the agency that originated the record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it. The primary advantages of record referrals are overall administrative efficiency and consistency of response.

*OIP Guidance at 2.* In a related vein, particularly applicable to many of the commercially sensitive internal records at issue here, the Department of Justice further states:

Consultations are also especially useful in informing an agency of any sensitivity of records originating with entities not subject to the FOIA. Indeed, in the case of confidential business information, such consultations are often mandatory under Executive Order No. 12,600, and its implementing regulations.

*Id.* at 3.

For those documents currently being retained by the Commission that the Postal Service has always considered to be its internal records and commercially sensitive, the Postal Service believes that it is the most appropriate entity to make a determination regarding disclosure under the FOIA. This conclusion is particularly pertinent with regard to application of the specific statutory exemption provided in 39 U.S.C. § 410(c)(2) for information of a commercial nature that would not under good business practice be publicly disclosed. Both the Postal Service and the Commission have concluded that this provision applies under the exemptions provided within the FOIA through 5 U.S.C. § 552(b)(3). In addition, it applies independently to the Postal Service through construction of section 410, and arguably to the Commission independently through 39 U.S.C. § 3604(e). In fact, section 410 and subsection 410(c)(2) embody a clear congressional intent to free the Postal Service from statutory constraints that would inhibit its ability to function in a businesslike fashion. In this regard, it is the Postal Service's status as a governmental business entity, and as a business competitor, that give rise to the interests protected under subsection 410(c)(2). It is the Postal Service, furthermore, that is in the best position to determine what constitutes good business practice so as to exempt commercially sensitive information from mandatory disclosure under the FOIA. In particular, the Postal Service does not believe that Congress intended to create the Commission, or any other agency, as arbiter of which internal Postal Service records should be disclosed to one of its competitors, except to the extent necessitated by the Commission's responsibilities under 39 U.S.C. § 3624. This conclusion is supported by the legislative history and structure of the Postal Reorganization Act and is not contravened by section 3663 or any other provision of title 39, U.S. Code.

In addition, the Postal Service believes that referral to it for direct response would be

completely consistent with the FOIA. As indicated by the Department of Justice guidelines, such referrals constitute a widespread practice among federal government agencies. See cases cited in *OIP Guidance* at 2. See also, e.g., *Peralta v. U.S. Attorney's Office*, 136 F.3d 169, 172 (D.C. Cir. 1998); *Slater v. Executive Office for United States Attorneys*, No. 98-1663 (TFH), unpublished Memorandum Opinion, 1999 U.S. Dist. Lexis 8399, at 6 (D.D.C. 1999); *Senate of the Commonwealth of Puerto Rico v. DOJ*, C.A. No. 84-1829 (CRR), unpublished opinion, 1993 U.S. Dist. Lexis 12162, at 17 (D.D.C. 1993); *Wilson v. DOJ*, C.A. No. 87-2415 (LFO), unpublished Memorandum Opinion, 1991 U.S. Dist. Lexis 12617, at 1-2 (D.D.C. 1991). The transfer of records from the Postal Service to the Commission, within the context of 39, U.S. Code, as explained above, and in light of the Postal Service's repeated representations regarding the internal and exempt nature of the documents, represent circumstances in which referral for direct response would be most appropriate, most efficient, and most consistent with Congressional intent. In this regard, the appropriateness of direct referral would not be outweighed by any inconvenience to the requester or by any detriment to the quality of the substantive review of the records. See *McGehee v. CIA*, 697 F.2d 1095, 1110-11, n. 71, 74.

Having arrived at this conclusion with regard to the Postal Service's internal records which the Commission has retained, we acknowledge that certain material submitted to the Commission in the course of preparing the *Report* consist of answers developed by the Postal Service to respond to written questions directed to it by the Commission. These inquiries took the form of Notices of International Mail Data Requirements, as outlined in the document we are here providing titled, "Proposed Redactions." While answers written in response to Commission inquiries could conceivably be categorized as Postal Service documents, their form could also allow them to be described as Commission records. Consequently, the Postal Service would be satisfied if these written responses were treated in the same fashion as the disclosure of the *Report*, with the Commission making an appropriate determination as to exempt status after consideration of the Postal Service's views on what parts could and should be deleted. Nevertheless, we note that certain of these responses were accompanied by pages from portions of, or complete copies of, internal Postal Service records, which should be referred to the Postal Service for direct response.

In accordance with this approach, we have provided two documents, which, together with the materials supplied in connection with Ms. Muth's request, should guide the Commission's response to Mr. McKeever's request. The first is the document mentioned above titled "Proposed Redactions." This bifurcates the information at issue into two categories: those documents to be referred for direct response, and those to be considered by the Commission for response. With respect to the latter category, it also outlines the nature of the information contained in each written response to the Commission's notices, indicates what information could be disclosed and what should be deleted, and indicates the bases for withholding. The justifications for withholding are in large part contained in the Memorandum provided in connection with Ms. Muth's request and adopted by the Commission in its letter to her dated July 28, 1999. These are

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supplemented by a second document attached here titled, "Elaboration of Justification for Proposed Redactions."

The Postal Service appreciates the Commission's previous handling of the request for its *Report* and respectfully requests the Commission to follow the approach outlined above. As explained, we believe this would lead to the most appropriate disposition of Mr. McKeever's request. We wish to emphasize, furthermore, that the Postal Service proposes this approach in the particular circumstances involved in the instant request for Postal Service records under the FOIA. Specifically, it does not intend to suggest that this practice should necessarily guide subsequent disposition by the Commission of requests for any Postal Service records otherwise submitted in connection with Commission proceedings conducted under 39 U.S.C. § 3624, and in accordance with the Commission's rules and applicable law.

Sincerely,



William T. Johnstone  
Managing Counsel  
International and Rate-making Law

Enclosures

**June 9, 1999**      **Seventh Notice of International Mail Data Requirements**

The comments below refer to the material filed in response to the Seventh Notice enclosed with the *June 11, 1999 Transmittal Letter from William T. Johnstone (re Seventh Notice)*.

1. The text of the response may be disclosed.

5. The text of this response may be disclosed.
6. The text of this response should not be disclosed, as it contains information on product specific pricing strategy (#7). Likewise, the additional material responsive to item 6.c. attached to the *June 2, 1999 Transmittal Letter of William T. Johnstone*, should not be disclosed, for the same reason.
7. The text of this response may be disclosed.
8. All of the figures in the table in this response, which are country-specific and product-specific, should be redacted (#5,6).

**May 25, 1999      Fifth Notice of International Mail Data Requirements**

With respect to each item, the comments below refer to the material filed in response to the Fifth Notice enclosed with the *June 2, 1999 Transmittal Letter from William T. Johnstone (re Fifth Notice)*.

1. The response should not be disclosed as it contains product-specific information, regarding an initiative product, of potential value to competitors (#2).
2. The text of this response may be disclosed.

**June 8, 1999      Sixth Notice of International Mail Data Requirements**

With respect to each item, the comments below refer to the material filed in response to the Sixth Notice enclosed with the *June 15, 1999 Transmittal Letter from William T. Johnstone (re Sixth Notice)*.

1. The text of this response should not be disclosed, as it includes product-specific pricing strategy relating to a specific country (#7). The 1 page of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
2. The text of this response should not be disclosed, as it includes product-specific pricing strategy relating to a specific country (#7). The 2 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.

8. The Postal Service considers the entire subject matter of this item to be extremely sensitive, as it involves product specific information on costs and operations of an initiative product (#2,8). Thus, it is the view of the Postal Service that the entire response consists of material that should not be publicly disclosed or otherwise made available to the Postal Service's competitors.
9. The Postal Service considers the entire subject matter of this item to be extremely sensitive, as it involves product specific information on the process by which the Postal Service develops its product costs for initiative products (#2,8). Thus, it is the view of the Postal Service that the entire response consists of material that should not be publicly disclosed or otherwise made available to the Postal Service's competitors.
10. Because the subject of this item is the response to an item from the Second Notice (Item 19) to which the Postal Service has already objected to disclosure (see above), the response to this item should be withheld on the same grounds.
11. Because the subject of this item is the response to an item from the Second Notice (Item 20) to which the Postal Service has already objected to disclosure (see above), the response to this item should be withheld on the same grounds.
12. The text of this response may be disclosed, but the 2 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
13. The text of this response may be disclosed.
14. The text of this response may be disclosed.

**May 20, 1999      Fourth Notice of International Mail Data Requirements**

With respect to each item, the comments below refer to the material filed in response to the Fourth Notice enclosed with the *May 27, 1999 Transmittal Letter from William T. Johnstone (re Fourth Notice)*, except as otherwise noted below.

- 1.a. The text of this item should not be disclosed, as it relates to internal postal operations and its disclosure could have potential impact on the Postal Service's revenue protection capabilities (#8,9).
- 1.b. The text of this item may be disclosed if all of the specific dollar amounts throughout the response are redacted as product-specific component costs, which in some cases relative to initiative products (#4,2).
- 1.c. The text of this item should not be disclosed, as it relates to internal postal operations and its disclosure could have potential impact on the Postal Service's revenue protection capabilities (#8,9).
2. The text of this item should not be disclosed, as it relates to internal postal operations and its disclosure could have potential impact on the Postal Service's revenue protection capabilities (#8,9).
3. The text of this response may be disclosed.
4. The text of the response filed on May 27th may be disclosed, as well as all of the material filed in response to this item that was attached to the *June 4, 1999 Transmittal Letter of William T. Johnstone*.

19. The Postal Service considers the entire subject matter of this item to be extremely sensitive, as it involves product specific mail characteristics, costs, and operations (#1,4,8). Thus, it is the view of the Postal Service that the product specific unit cost figures of \$5.209, \$3.410, \$2.305 and \$2.953 cited in the question are sensitive information that should not be disclosed, and should therefore be redacted (#1,4). Furthermore, the entire response consists of material that should not be publicly disclosed or otherwise made available to the Postal Service's competitors.

20. The entire text of this response should not be disclosed, as it consists of a discussion of country-specific and product-specific cost component information (#4,5).

21. Because the entire contents of this response have been made publicly available in the redacted version of the Commission's report (July 28, 1999), Table IV-3, page 39, there would be no point in attempting to withhold this response.

22. The text of this response may be disclosed, but because the table contains product specific mailer characteristic information of possible value to competitors in terms of targeting their marketing efforts and market entry decisions, the figures in the table should be redacted.

23. Because the entire contents of this response have been made publicly available in the redacted version of the Commission's report (July 28, 1999), Appendix G, there would be no point in attempting to withhold this response.

**May 5, 1999**

**Third Notice of International Mail Data Requirements**

With respect to each item, the comments below refer to the material filed in response to the Third Notice enclosed with the *May 17, 1999 Transmittal Letter from William T. Johnstone (re Third Notice)*.

1. The text of this response may be disclosed.

2. The text of this response should not be disclosed, as it contains information on product specific pricing strategy (#7).

3. The text of this response should not be disclosed, as it contains information on product specific pricing strategy (#7).

4. The text of this response may be disclosed, but the 1 page of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.

5. The text of this response may be disclosed.

6. The text of this response may be disclosed.

7. The Postal Service considers the entire subject matter of this item to be extremely sensitive, as it involves product specific information on costs and operations of an initiative product (#2,8). Thus, it is the view of the Postal Service that the entire response consists of material that should not be publicly disclosed or otherwise made available to the Postal Service's competitors.

description sheet which contains product specific operational details (#8) and which therefore should not be disclosed.

9. The text of this response may be disclosed, but the 1 page of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.

10. The text of this response may be disclosed, with the exception of the \$547,738.5(000) and \$477,496.7(000) settlement cost figures, which are sensitive information (#1,4) that should be redacted.

11. The text of this response may be disclosed, but the 1 page of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service. (It is also the view of the Postal Service that the product specific cost figures of \$6,151,000 and \$18,913,000 cited in the question are sensitive information that should not be disclosed, and should therefore be redacted – #2,4).

12. With some redactions, the text of this response could be disclosed. Specifically, the Postal Service would redact the following portions of the response. In the first paragraph, the statement that terminal dues are “two-thirds” of the total costs should be redacted as a product specific cost component (#4). All figures in the table should be redacted, as product and country specific revenue and cost information (#1,4,5,6). In the paragraph below the table, the two sentences providing details on the terminal dues agreements with Canada (the second and third sentences of the paragraph) should be redacted, as that information is not publicly available (#7) and could aid competitors in pricing their products. In the first paragraph on Global Package Link, the volume decline figure of “24 percent” should be redacted as disclosing precise volume trends for a particular product initiative (#2). In the paragraph on Global Priority Mail, the \$19 and \$16 million product specific cost figures for an initiative product should be redacted (#2,4).

13. The text of this response may be disclosed, but the 2 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.

14. The text of the response filed on April 19th may be disclosed, as well as all of the material filed in response to this item that was attached to the *April 27, 1999 Transmittal Letter of William T. Johnstone*.

15. The text of this response may be disclosed, but the 8 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.

16. The text of this response may be disclosed.

17. The text of the response filed on April 19th may be disclosed, as well as all of the material filed in response to this item that was attached to the *April 30, 1999 Transmittal Letter of William T. Johnstone*.

18. The text of the response filed on April 19th may be disclosed, as well as all of the material filed in response to this item that was attached to the *April 22, 1999 Transmittal Letter of William T. Johnstone*.

June 11, 1999

*Transmittal Letter from William T. Johnstone*

In addition to material responsive to the Seventh Notice, accompanying this letter were also copies of a revised version of the ICRA (PRC Version) and the ICRA Cost Segments and Components Report (PRC Version).

**April 9, 1999**

**Second Notice of International Mail Data Requirements**

With respect to each item, the comments below refer to the material filed in response to the Second Notice enclosed with the *April 19, 1999 Transmittal Letter from William T. Johnstone (re Second Notice)*, except as otherwise noted below.

1. The text of this response may be disclosed, but the material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
2. The text of this response may be disclosed, but the 68 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
3. The text of this response may be disclosed, with the exception of the product specific component cost figures (#4) – \$78,295,000 and \$78,321,000 – which should be redacted, but the 10 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
4. The text of this response may be disclosed, but the 51 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
5. The text of this response may be disclosed, but the 94 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
6. The text of this response may be disclosed, but the 11 pages of material accompanying this response consists of internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
7. The text of this response may be disclosed, but the ICRA's for FY 1989, 1990, 1991, 1992, 1993, 1994, 1995, and 1996 accompanying this response are internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.
8. In accord with Order No. 1238 (April 21, 1999), it appears that the only material provided in response to this item of which the Commission would have copies is the 3 pages of material attached to the *May 4, 1999 Transmittal Letter of William T. Johnstone*. That material consists of two income statements, each 1 page, which are internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service, and an initial 1-page

## PROPOSED REDACTIONS

The material provided to the Commission by the Postal Service was furnished in responses to a series of notices of data requirements. Therefore, in seeking to identify which portions of the material the Postal Service views as appropriate for public disclosure by the Commission and which it does not, the following discussion is organized by reference to the notice in response to which the material in question was provided. Relevant information category designations are provided in parenthesis.

### **February 16, 1999 Notice of International Mail Data Requirements (First Notice)**

Initially, the material provided in response to the First Notice was transmitted in two sets (March 15 and March 26), and below are listed the materials which were included within each set. Two supplemental transmissions were made in June, 1999, and the contents of the material provided at those times are also indicated below. With respect to the First Notice, the Postal Service considers all of the materials provided and listed below to be internal Postal Service documents, for which the request for disclosure should be referred to the Postal Service.

*March 15, 1999*                      *Transmittal Letter from William T. Johnstone (re First Notice)*

FY 1998 ICRA (PRC Version)  
Workpapers 1A and 1B  
FY 1997 Billing Determinants  
SIRVO Handbook  
SIRVI Handbook  
MIDAS Handbook  
USPS Inspector General Report (FR-AR-99-004)  
FY 1997 ICRA (Postal Service Version)

*March 26, 1999*                      *Transmittal Letter from William T. Johnstone (re First Notice)*

Workpapers 1C, 1D, 1E, 1F, 1G, and 1H

*June 7, 1999*                      *Transmittal Letter from William T. Johnstone (USPS ICRA)*

With this letter, the Postal Service provided copies of the ICRA (Postal Service Version) and two documents explaining certain differences between the ICRA (Postal Service Version) and the ICRA (PRC Version).

response contains some operational detail regarding a specific product, some discussion of the costing procedures applied to that product, and some discussion of the pricing strategy for that product, each such element of the response might not appear all that sensitive in isolation. But the response taken as a whole might provide the attentive competitor with much more clarity regarding the business environment in which that product is offered by the Postal Service. This is particularly true for new and emerging products, such as those included with the "initiatives" category. As those products are at the cutting edge of the Postal Service's attempts to maintain its presence in international postal markets, competitors would be most interested in obtaining disclosure of as much information about those products as possible. It is, therefore, consistent with "good business practice" to seek to avoid indirectly giving away useful information in small bits to the same extent that we seek to avoid giving it away directly in large chunks.

### **INFORMATION CATEGORY DESIGNATIONS**

On the basis of the foregoing discussion, for purposes of ease of reference in the context of specific proposed redactions, the categories identified above will be referred to by the following numbers:

1. Product-specific costs and cost coverages for outbound services
2. Product-specific costs, revenues, and volumes for "initiatives"
3. Costs for inbound services for which the Postal Service negotiates inward charges for individual countries, or unilaterally sets inbound delivery charges by country group
4. Service-specific cost data disaggregated by cost component or element
5. Costs specific to a country or country group for individual outbound services
6. Country-specific revenue and volume data for outbound services
7. Product-specific pricing strategy information
8. Detailed product-specific postal operational information
9. Detailed information on revenue protection procedures

business practice." The Commission furthermore (page 4) accepted that recently-introduced international "initiatives" are especially vulnerable to competitive harm from disclosure because they have yet to become established in their respective markets.

In addition to those categories listed above, the Postal Service submits that there are several other categories of information that should be withheld under the "good business practice" doctrine. One example relevant to this exercise is material which relates to pricing strategy for particular products. Thus, responses which indicate what product cost information is available to the Postal Service, and how that information is used to set prices, are in essence setting out the Postal Service's pricing strategy for the product in question. This type of information could be of substantial utility to competitors in evaluating how to structure their operations, their product offerings, and their product prices in order to be able to divert business from the Postal Service. It certainly is not the practice of such competitors to publicly disclose pricing strategy information.

Another category of information that can reasonably be withheld under the "good business practice" standard is information relating to the postal operations used to handle specific products. For example, to reveal that the Postal Service has (or does not have) dedicated facilities for a particular product or group of products may give competitors insights into how to improve their own operational structures. This is but one of a myriad of examples of the types of operational information that, when presented in the appropriate context, may allow competitors to develop a more comprehensive notion of the strengths and weaknesses of particular service offerings. They can use this information to help them decide which markets to attempt to serve, how to structure their operations in those markets, and how to price their products. Once again, it is obvious that the Postal Service's competitors are very careful about sharing any of this type of information. Moreover, it bears noting that information on operations of potential use to competitors could be included within an otherwise innocuous description of costing procedures. A discussion which provides extensive details on how costs for a particular product are collected will almost inevitably include operational details regarding how the product moves through the postal system.

A category of information that might be useful to entities other than competitors is information that exposes the Postal Service's revenue protection procedures. For example, responses that detail how the Postal Service collects information that may subsequently be used to determine the liability for payment from mailers or other postal administrations could undermine the efficacy of those procedures. Publicly disclosing such information could allow the identification of weak links in the chain of events necessary to ensure full payment for services rendered. Once again, good business practice would suggest that to avoid this potential harm to the Postal Service, this type of information should be withheld.

In assessing any particular response, and trying to evaluate which of the above categories of information it might include, it is also important to remember that the whole can sometimes be greater than the sum of the parts. If a

## **ELABORATION OF JUSTIFICATION FOR PROPOSED REDACTIONS**

In general, the redactions proposed by the Postal Service are based on the principles enunciated in the Postal Service's memorandum provided to the Commission on July 21, 1999, in conjunction with the FOIA request of Business Mailers Review. In its letter to Ms. Katherine P. Muth of July 28, 1999, the Commission mostly accepted the rationale provided by the Postal Service to support the redactions proposed in that context. Because the Commission in the July 28th letter agreed that the below categories of information should be redacted, based on its assessment of "good business practice," the Postal Service does not herein repeat its views as to why such information should not be disclosed:

Product-specific costs and cost coverages for outbound services (July 28 Letter at page 4)

Product-specific costs, revenues, and volumes for "initiatives" (Letter at 4)

Costs for inbound services for which the Postal Service negotiates inward charges for individual countries, or unilaterally sets inbound delivery charges by country group (Letter at 5)

Service-specific cost data disaggregated by cost component or element (Letter at 6-7)

Costs specific to a country or country group for individual outbound services (Letter at 8)

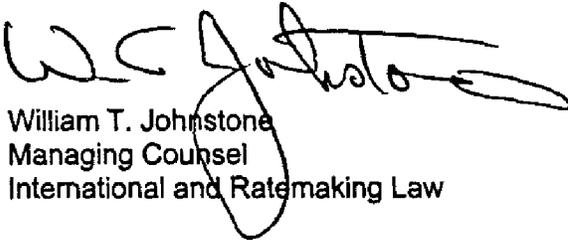
Country-specific revenue and volume data for outbound services (Letter at 8)

The Commission appears to apply several general principles. On page 4 of the letter, the Commission accepts the disclosure (or nondisclosure) practices of private competitors as generally valid applications of the "good business practice" criterion. In particular, the Commission (page 5) views as relevant the "typical business environment" with respect to services for which the Postal Service sets prices and for which competitors exist that might attempt to divert business away from the Postal Service. This is in accord with the Commission's view (page 6) that the Postal Service must be able to identify some plausible scenario under which disclosure of commercial information would cause commercial harm before withholding that information may be considered "good

supplemented by a second document attached here titled, "Elaboration of Justification for Proposed Redactions."

The Postal Service appreciates the Commission's previous handling of the request for its *Report* and respectfully requests the Commission to follow the approach outlined above. As explained, we believe this would lead to the most appropriate disposition of Mr. McKeever's request. We wish to emphasize, furthermore, that the Postal Service proposes this approach in the particular circumstances involved in the instant request for Postal Service records under the FOIA. Specifically, it does not intend to suggest that this practice should necessarily guide subsequent disposition by the Commission of requests for any Postal Service records otherwise submitted in connection with Commission proceedings conducted under 39 U.S.C. § 3624, and in accordance with the Commission's rules and applicable law.

Sincerely,

A handwritten signature in black ink, appearing to read "W. T. Johnstone", with a large, stylized flourish extending from the end of the name.

William T. Johnstone  
Managing Counsel  
International and Ratemaking Law

Enclosures

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

August 4, 1999

Mary Eicano, General Counsel  
United States Postal Service  
Room 6004  
475 L'Enfant Plaza, SW  
Washington, D.C. 20260-1100

Dear Ms. Eicano,

On June 30, 1999 the Postal Rate Commission sent to Congress a report on the cost, revenues, and volumes of international mail handled by the United States Postal Service during fiscal year 1998 as required by 39 U.S.C. § 3663(a). The Postal Service assisted the Commission by providing data and information on international mail as required by 5 U.S.C. § 3663(b). The Service has indicated that it considers much of the information provided to the Commission to be of a commercial nature, including trade secrets, which under good business practices it would not publicly disclose.

Piper & Marbury L.L.P. has requested a copy of this report and a copy of all data and information supplied by the Postal Service which the Commission used or referred to in preparing this report. The Postal Service has already identified the specific material that it believes must be redacted from any copy of the Commission's report supplied pursuant to the Freedom of Information Act in a letter dated July 21, 1999. Please review the information the Postal Service provided to the Commission in Docket No. IM99-1 and provide to this office, by close of business August 11, 1999, a written statement indicating the information that the Postal Service believes must be redacted from any materials provided in response to the request for data and information supplied by the Postal Service.

Please include with this statement a full justification for your position, including appropriate analysis of applicable federal law.

Thank you for your assistance in this matter.

Sincerely,



Margaret P. Crenshaw  
Secretary

U.S. POSTAL SERVICE

AUG 05 1999

RECEIVED BY  
OF THE GENERAL COUNSEL

PIPER & MARBURY  
L.L.P.

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BALTIMORE  
WASHINGTON  
NEW YORK  
RESTON



July 15, 1999

Secretary of the Commission  
Postal Rate Commission  
1333 H Street, N.W.  
Washington, D.C. 20268

Re: Freedom of Information Act Request

Dear Sir or Ms.:

Pursuant to 5 U.S.C. § 552 and 39 C.F.R. § 3001.42, Piper & Marbury L.L.P. ("P&M") hereby requests that the Postal Rate Commission ("the Commission") provide P&M with a copy of the comprehensive report of the costs, revenues, and volumes accrued by the United States Postal Service (the "Postal Service") in connection with mail matter conveyed between the United States and other countries for the past fiscal year, as required by 39 U.S.C. § 3663. In addition, P&M requests a copy of all data and information supplied by the Postal Service which the Commission used or referred to in preparing this report.

P&M is willing to pay and agrees to pay all reasonable search, review, and duplication costs as provided for in the applicable regulations.

Should you determine that some or all of the requested material is exempt from disclosure, please delete those portions which you claim to be exempt and identify in your response the nature of the deleted information and the basis for the deletion. This is intended to facilitate a prompt response and in no way waives any right to receive complete copies of all responsive documents.

Thank you for your attention to this request. Please do not hesitate to contact me at 215-656-3310 with any questions.

Sincerely yours,

John E. McKeever

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

July 28, 1999

Mary Elcano, General Counsel  
United States Postal Service  
Room 6004  
475 L'Enfant Plaza, SW  
Washington, D.C. 20260-1100

Dear Ms. Elcano,

On June 30, 1999, the Postal Rate Commission sent to Congress a report on the cost, revenues, and volumes of international mail handled by the United States Postal Service during fiscal year 1998, as required by 39 U.S.C. § 3663(a). The Postal Service assisted the Commission by providing data and information on international mail as required by 5 U.S.C. § 3663(b). The Service has indicated that it considers much of the information provided to the Commission to be of a commercial nature, including trade secrets, which under good business practices it would not publicly disclose.

On July 14, 1999, the editor of Business Mailers Review filed a Freedom of Information Act request asking that the Commission provide her with a copy of this report. On that day, the Commission invited the Postal Service to provide the Commission with a written statement identifying any information that the Postal Service believes must be redacted from the copy of the Commission's report supplied in response to that request. The Commission received that report on July 21, 1999, and carefully considered the Postal Service's views.

Under the Commission's rules, a response to this request must be provided by July 28, 1999. Today the Commission is providing Ms. Muth with a copy of the Commission's International Mail Report. For the most part, the Commission has accepted the Postal Service's proposed redactions to that Report and its rationale for those redactions. Some data that the Postal Service proposed be redacted from the Commission's Report have been retained in the copy that the Commission is providing Ms. Muth. The Commission's rationale for doing so is provided in my letter to Ms. Muth dated July 28, 1999, a copy of which is enclosed. Also enclosed is a copy of the redacted report provided to Ms. Muth.

Mary Elcano  
Page 2  
July 28, 1999

On July 19, 1999, the Commission received a similar request from John E. McKeever from the law firm of Piper & Marbury. It is expected that the Commission will provide an identical redacted copy of its International Mail Report to Mr. McKeever.

Sincerely,

A handwritten signature in cursive script that reads "Margaret P. Crenshaw". The signature is written in black ink and is positioned above the printed name.

Margaret P. Crenshaw  
Secretary

encls.

**United States Postal Service Memorandum  
Concerning Categories of Information that Should  
Be Deleted from Commission Report to Congress on  
International Mail Costs, Volumes, and Revenues**

On June 30, 1999, the Postal Rate Commission issued its *Report to Congress, 1998 International Mail Volumes, Costs, and Revenues* (Report), pursuant to 39 U.S.C. § 3663. In a preface to the Report, the Commission noted:

This Report contains information that the Postal Service considers to be of a commercial nature, including trade secrets, which under good business practices it would not publicly disclose. The Postal Service provided this information as required by 39 U.S.C. 3663(b), but it requests that this information be kept confidential.

By letter dated July 14, 1999, to the General Counsel of the Postal Service, the Commission informed the Postal Service that it had received a request for a copy of the Report from *Business Mailers Review*. The Commission requested that the Postal Service submit a written statement identifying specifically which parts of the Report it believed should be deleted prior to disclosure, and justifying withholding this information under applicable law. The Postal Service understands the Commission's request to be consistent with Department of Justice guidelines governing inter-agency consultation when an agency receives a request under the Freedom of Information Act (FOIA) for information that originated at another agency. Department of Justice, Office of Information and Privacy, *OIP Guidance: Referral and Consultation Procedures*, FOIA Update, Vol. XIII, No. 3 (Summer 1991).

In Order No. 1228, issued February 16, 1999, the Commission provided an outline of the data and information that it initially considered necessary to prepare a report to Congress pursuant to new section 3663 of title 39, United States Code. The Postal Service responded with its initial submissions on March 15, 1999. Subsequently, the Commission clarified its needs and described additional information in several Notices of International Mail Data Requirements, to which the Postal Service responded by providing additional data and information.

The materials provided on March 15 consisted primarily of the Postal Service's International Cost and Revenue Analysis (ICRA) Report for Fiscal Year (FY) 1998 and supporting documentation. For the past several years, the ICRA has been developed annually as a basic report summarizing and aggregating a variety of data pertaining to the Postal Service's international business. The ICRA Report is roughly analogous to the Postal Service's Cost and Revenue Analysis (CRA) Report pertaining to domestic mail. Pursuant to Commission

regulations, the Postal Service annually files the CRA Report with the Commission. The ICRA Report, however, has never been made publicly available. In this regard, the treatment of the ICRA Report reflects the substantially different status of international mail services, which, unlike domestic services, are not subject to Commission jurisdiction under 39 U.S.C. Chapter 36, subchapter II. In contrast to many domestic services, furthermore, international mail services largely compete with private firms, and in certain respects with foreign postal administrations, for international postal business. See *UPS Worldwide Forwarding, Inc. v. United States Postal Service*, 66 F3d 621, 625, 632-35 (3d Cir. 1995); *Air Courier Conference of America v. United States Postal Service*, 959 F.2d 1213 (3d Cir. 1992).

In its transmittal letter of March 15, 1999, the Postal Service generally described the ICRA as a document that normally would be produced only for internal distribution, and noted that many of the detailed supporting materials had to be developed specially to meet the Commission's needs under 39 U.S.C. § 3663. The letter further emphasized the commercially sensitive nature of the data and information that it had provided:

[T]he Postal Service believes that the materials provided are commercially sensitive, and that they should not be publicly available. It is the Postal Service's judgment that most of the items provided here and to be provided later are internal documents of a commercially sensitive nature that under good business practices it would not normally disclose publicly. The Postal Service has traditionally withheld international cost, revenue, and volume information from public disclosure, particularly given the intense nature of competition in international markets. The Postal Service competes not only with private couriers in the expedited and parcel sectors, but also with foreign postal administrations in the carriage of bulk outbound international letters.<sup>1</sup>

The letter requested that the Commission withhold from public disclosure the international data and information it had provided, and concluded with the following observation regarding eventual issuance of the Commission's report to Congress:

Although the Postal Service submits that it is reasonable for the Commission not to disclose this information pending the production of its report, the Postal Service also understands that the degree to

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<sup>1</sup> Letter to Margaret P. Crenshaw, Secretary, Postal Rate Commission, from William T. Johnstone, Managing Counsel, International Law and Ratemaking, at 2 (March 15, 1999).

which the data and information submitted are specifically incorporated in the Commission's report is a matter that will be subsequently determined. In this regard, the Postal Service notes that nothing in section 3663 requires the Commission to make its report available to the public; rather, the statute merely requires that the Commission "transmit [it] to each House of Congress."<sup>2</sup>

In a subsequent document filed with the Commission, the Postal Service elaborated on the commercially sensitive nature of particular types of information that it had submitted.<sup>3</sup> Specifically, it described the interests protected by withholding country-specific costs, revenues, and volumes, negotiated delivery cost figures, and data and information pertaining to international initiatives. The purpose of providing these descriptions was to indicate "with greater precision the information the Postal Service believes the Commission could fairly exclude from its report, without imposing an administrative burden on the Commission, or depriving it of the ability to perform its statutory functions fairly and comprehensively. *Id.*

By and large, in producing its final Report to Congress, the Commission has respected the Postal Service's recommendations. With certain limited exceptions, the Report does not contain either country-specific data or data pertaining to specific delivery costs negotiated with foreign postal administrations. The Report does, however, contain costs, revenues, and volumes associated with specific international initiatives, such as Global Package Link, Global Priority Mail, Global Direct Entry/Inbound, and International Customized Mail. Furthermore, the Report contains cost data pertaining to specific international services, which the Postal Service believes are commercially sensitive and should not under good business practices be publicly disclosed.

As requested by the Commission, the Postal Service has identified in the accompanying materials each item of information that it believes the Commission should delete from the final version of the Report as requested by *Business Mailers Review*. The Postal Service has provided a document that describes by page, line, and pertinent table, the specific deletions that are proposed, together with a reference to the justifications outlined below for withholding this information. The Postal Service has also provided a copy of the complete text of the Report that highlights the materials to be deleted. Finally, the Postal Service analyzes below the legal support for nondisclosure.

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<sup>2</sup> *Id.* at 3.

<sup>3</sup> Comments of the United States Postal Service on the Commission's 39 U.S.C. § 3663 Report, Docket No. IM99-1 (April 8, 1999).

Generally, the Postal Service believes that the basic commercial nature of the information it proposes to delete is clear and cannot be questioned. For the most part, the material to be withheld consists of numerical data representing current estimates of product and service costs, and in some instances volumes and revenues. Not only do these data encompass the basic elements of pricing determinations and business decisions, both strategic and otherwise, for international mail, but in large part they reflect fundamental measurements of product strengths and weaknesses that would be of immeasurable value to the Postal Service's competitors. In fact, no information or data are more central to the economic viability of the Postal Service's product offerings in the competitive international markets. These observations apply most directly to outbound international mail categories, where relationships with products and services of private competitors and foreign postal administrations are obvious, but they also apply in certain respects to inbound mail categories, where disclosure of specific cost information could lead to economic consequences having a direct bearing on Postal Service business decisions and its financial condition.

Certain of the deleted information (e.g., cost coverage t-statistics) would not in and of itself be of obvious use to a competitor. Such information, however, when combined with other information that is publicly available, could lead to the derivation of more specific data and information that could, for example, expose the cost structures of particular products, as well as illuminate their strengths and weaknesses. In this regard, in evaluating the commercial sensitivity or value of information, it must be kept in mind that often, in an intensely competitive business environment, data and information that might be innocuous independently, could be damaging if combined with other information that might be available through whatever means. This is why, in the competitive marketplace, typically firms are extremely reluctant to share any commercial information whatsoever pertaining to their business decisions. Thus, it is not necessary to fully anticipate potential uses of commercial information to know that in environment where any information at all concerning competitors is scarce, imaginative firms are capable of turning commercial data into competitive advantages. This circumstance alone validates the conclusion that good business practice would not support disclosure of much commercial information at all, and particularly the data that the Postal Service proposes to withhold here.

In the following, the Postal Service has attempted to describe the reasoning underlying its belief that the material it proposes to delete is commercially sensitive and would not in good business practice be disclosed. For convenience of consideration, the material has been categorized, although in several respects the justifications overlap or relate to one another. The table provided describing the proposed deletions associates each category with the discussions below.

A. Attributable costs/contribution, Outbound mail

Much of the data to be deleted indicates costs allocated (attributable costs and contributions to overhead) to each outbound international mail product or service (e.g., Tables II-1, III-2, IV-2, IV-3, C-3, E-1 F-1 through 5, and F-7). The Postal Service agrees to make public such data aggregated by general category (e.g., surface and air subtotals and subtotals for initiatives). The Postal Service believes that disclosure of this specific information would be particularly harmful in competitive situations. Service (product) costs constitute critical business information that firms in the private sector rarely, if ever, make public. These data are routinely treated as trade secrets, because disaggregated cost data provide a pricing road map that would give firms the capability of diverting business from competitors. If a rival business knows its competitors' costs, it can price comparable services at levels which the Postal Service cannot meet. Alternatively, even if competing costs are similar, knowing the range of freedom of pricing decisions in the marketplace could enable competitors to make more informed decisions about enhancing other dimensions of the competitive value of services, such as product features or service performance. For example, if a firm knows that the Postal Service's costs for a particular service are X, it can price its comparable service at or below those levels until the Postal Service must exit the market. The loss in contribution to the Postal Service from this exit, furthermore, would have to be borne by other international services, with the result that rates for those services would need to be higher than they would otherwise be. Moreover, the competitive disparity created by making such information public for one firm (i.e., the Postal Service), but not for other firms would be enhanced in an environment where other firms are under no clear legal obligation not to price products in a predatory manner in the short run exclusively for the purpose of gaining a greater share of the market.

Withholding Postal Service cost information is particularly important, since some data are already publicly available. Competing firms, for example, have access to UPU terminal dues rates and Department of Transportation regulated air transportation rates. The public availability of those data already enhance the ability of rival firms to target prices and divert business from the Postal Service. Keeping the other cost data confidential is thus critical to the Postal Service's ability to compete on an equal footing.

Maintaining the confidentiality of cost and, as discussed further below, contribution data is important, whether a service makes a positive or negative contribution. The Postal Service in all instances tries to price its services to cover costs and make a reasonable contribution to overhead. Sometimes, however, events or circumstances arise to prevent particular services from reaching financial goals. Providing specific cost and contribution data about services that contribute only marginally above their costs can enable rival firms to price their services at levels that effectively impede the Postal Service from placing its services back on track, even if it means pricing at sub-optimum levels.