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

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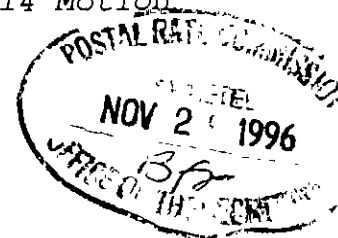
Special Services Fees and Classifications) Docket No. MC96-3

OFFICE OF THE CONSUMER ADVOCATE
ANSWER TO MOTION OF THE
UNITED STATES POSTAL SERVICE
TO STRIKE TESTIMONY OF WITNESSES
BENTLEY AND THOMPSON
(November 29, 1996)

On November 14, 1996, the Postal Service filed a motion either to strike portions of the testimonies of Major Mailers Association (MMA) witness Bentley and Office of the Consumer Advocate (OCA) witness Thompson or, in the alternative, to require production of a Commission staff witness to sponsor library references PRC-LR-1 and -2.¹ The Postal Service "disputes the evidentiary status" of library references PRC-LR-1 and -2 and "all testimony relying upon them[.]"² The Service

¹ USPS Motion to Strike Testimony of Witnesses Bentley and Thompson, or, in the Alternative, for Production of a Commission Witness, November 14, 1996. See also Supplemental Filing of USPS Concerning November 14 Motion to Strike, November 21, 1996; Second Supplemental Filing of USPS Concerning November 14 Motion to Strike, November 22, 1996.

² November 14 Motion at 2.



argues that if witnesses in Commission proceedings can rely on unsponsored library references,³

then it would be an easy task for any participant in these proceedings to shield much of its case from examination simply by hiring two experts—one to perform the study and another to use the results—and only presenting the expert who uses the results.

The Postal Service knows of what it speaks. After all, that is precisely what the Service has done in this and other recent dockets with respect to cost, volume, and revenue estimates. By adopting at the outset of this proceeding the very procedure it now criticizes, the Service implicitly consented to use of the same procedure by others and waived any "due process" complaints it might have.

The ultimate issue raised by the Service's motion is whether an expert—be it a Postal Service expert, a participant expert, or the Commission itself—can rely on extensive numerical calculations that are not themselves evidence. The Postal Service certainly seems to believe that its experts may do so. But if one takes the Service's November 14 motion literally, no one else may do so without violating the Service's "due process" rights. The Postal Service is essentially arguing for a level of

³ November 22 Supplemental Filing at 6.

"due process" rights that far exceeds the level accorded opponents of Postal Service proposals.

I. THE POSTAL SERVICE ITSELF RELIES HEAVILY ON UNSPONSORED, NONEVIDENTIARY LIBRARY REFERENCES

Witnesses Lyons and Patelunas provide cost, volume, and revenue estimates that have no evidentiary basis in the record. The cost, volume, and revenue estimates utilized by witnesses Lyons and Patelunas come from statistical data collection systems.⁴ No Postal Service witness sponsors any testimony on those data collection systems.⁵ No Postal Service witness

⁴ As explained in the *Summary Description of USPS Development of Costs by Segment and Component, FY 1995*,

Costs are derived from the postal system of accounts. Factors *required for their development* are taken, as appropriate, from a variety of postal operational and statistical information sources. Some of these, such as the In-Office Cost System (IOCS) and the Revenue, Pieces, and Weight System (RPW), are ongoing data systems maintained for this purpose. Factors obtained from these systems are updated at least annually.

Library Reference SSR-123 at v (emphasis added). (The Commission may wish to be cautious in relying on this library reference, since no witness explicitly sponsors it. On the other hand, if a passing reference to a library reference by a witness, see USPS-T-5 at 8, places that library reference in evidence, then PRC-LR-1 and -2 are in evidence by virtue of having been referred to by witnesses Bentley and Thompson.)

⁵ Although witness Patelunas described some (but by no means all) changes in data collection and estimation procedures in his testimony, he quickly ceased responding to interrogatories concerning such changes after UPS asked questions about an IOCS

sponsors the library references that purport to describe and document those data collection systems. No Postal Service witness has responded to discovery requesting clarification of apparent inaccuracies in Postal Service library references (although the Service has provided responses as an institution⁶ and has revised one library reference to bring it into closer conformity with reality⁷).

The story of how the OCA has attempted to discover and understand undocumented changes in the Postal Service's cost data collection methodologies is instructive. Library reference SSR-90 purports to document the sample design of the IOCS. No witness sponsors that library reference, although witnesses Lyons and Patelunas rely heavily on IOCS cost estimates. As filed, SSR-90 was inaccurate and incomplete. In spite of two revisions,⁸ and in spite of extensive discovery efforts by the

"tally analysis," special adjustment factors, under-sampling, and potential bias. See Tr. 2/296-304

⁶ See, e.g., tr. 8/2938-75 (responses to interrogatories redirected from witness Patelunas to the Postal Service). But see note 5, supra.

⁷ See *USPS Notice of Filing of Revised Pages for USPS-LR-SSR-90*, October 2, 1996.

⁸ *Notice of United States Postal Service of Filing of Revised Pages for Library Reference USPS-LR-SSR-90*, August 12, 1996; *USPS Notice of Filing of Revised Pages for USPS-LR-SSR-90*, October 2, 1996.

OCA,⁹ SSR-90, as well as other costing-related library references, remains incomplete. Portions of documentation for the statistical systems remain sprinkled throughout the MC96-3 record with no attempt to collect that statistical documentation in one document. The OCA even requested that SSR-90 be updated to include basic sampling system documentation uncovered through the discovery process, but the Postal Service only provided a minimal revision.¹⁰

As originally filed, library reference SSR-90 provided only a crude description of the sample design for the IOCS. For example, the second stage of the IOCS sample design was described as a stratified sample of employee weeks, with strata defined by the 10 CAGs and 5 employee crafts (clerks, mailhandlers, city carriers, special delivery messengers, and supervisors). It turns out that there were other undocumented substrata for some of the CAGs, defined in terms of international activity.¹¹ The OCA made several attempts to learn how these international activity substrata were defined, but was unable to obtain concrete substrata definitions.¹² When the Postal Service

⁹ See, e.g., tr. 8/2799-800, 2869-73, 2897-903.

¹⁰ Tr. 8/2899. The October 2, 1996 revision admits CAG K offices into sample and only roughly described the new international activity strata.

¹¹ Tr. 8/2799-800.

¹² Tr. 8/2869-73, 2898-902.

finally revised SSR-90 on October 2, 1996, only one sentence was added to acknowledge the international activity substrata.¹³

Another purpose of the statistical documentation is to provide a means to judge the sampling error of major estimates from the statistical systems. Tables 4-6 of SSR-90 provided c.v. (coefficient of variation) estimates for IOCS cost estimates. However, the Postal Service did not provide information on how these c.v.'s were produced. It was more than three months into the proceedings before the Postal Service provided the programs that were used to produce the reliability estimates.¹⁴ Further, the c.v.'s could not be produced with originally filed SSR-22 IOCS data files.¹⁵

In spite of the claim that the IOCS estimates "proportions of employee work time spent on various activities,"¹⁶ Tables 4-6 of SSR-90 only show estimates (and c.v.'s) for cost estimates.

¹³ Even this terse revision doesn't accurately characterize the *four* CAG B international activity strata. Tr. 8/2871. The new sentence states, "In some CAG A or CAG B offices, clerks and mailhandlers are further stratified into two groups based on the level of international activities." SSR-90, page 14, as revised October 2, 1996 (emphasis added).

¹⁴ On September 23, 1996, the Postal Service provide these programs as library reference SSR-150. Tr. 8/2824. No witness sponsored this library reference.

¹⁵ On September 26, 1996, the Postal Service filed a new FY 1996 IOCS data file as SSR-151. Tr. 8/2825. No witness sponsored this library reference.

¹⁶ SSR-90, page 14 as revised October 2, 1996 (emphasis added).

In order to produce these cost estimates, cost based weighting factors must be used.¹⁷ No explanation of these cost weighting factors was included in SSR-90, and the actual quarterly costs required to calculate these weighting factors were only provided due to an OCA interrogatory.¹⁸

Incomplete documentation and data problems were not limited to the statistical systems "documented" in library reference SSR-90. For example, the initial filing contained no library reference documenting the TRACS systems sample designs or documenting any changes since the R94-1 documentation.¹⁹ Even if the documentation were complete, the data filed were not. Four quarters of TRACS Highway and Rail Systems data were used to distribute the FY 1995 transportation costs. However, the Postal Service only provided one quarter's worth of TRACS data for these systems to support its FY 1995 transportation costing.²⁰ Further, the TRACS Highway data file for PQ 4 was not even a copy of the file actually used by the Postal Service TRACS programs of SSR-82.²¹

¹⁷ Tr. 8/2799-800.

¹⁸ Tr. 8/2845-50.

¹⁹ In Docket No. R94-1, documentation was provided as G-106.

²⁰ Tr. 8/2877.

²¹ A Postal Service interrogatory response explains that sensitive information was deleted and that the record length was shortened from 250 to 180 for the PQ 4 data file. Tr. 8/2882.

II. WITNESS THOMPSON MAY RELY ON LIBRARY REFERENCES
PRC-LR-1 AND -2.

The creation of PRC-LR-1 and -2 was a ministerial task. Order No. 1134 instructed the Commission staff to produce base year and test year attributable costs using approved costing methodologies.²² The staff was not instructed to develop or implement new methodologies.²³ The staff has performed this task in every general rate case since Docket No. R87-1. Thus, the attributable costs produced in the Commission's library reference are accounting records produced in the ordinary course of Commission business²⁴ and entitled to official notice, provided

²² Order No. 1134, September 20, 1996, at 16.

²³ By the phrase "new methodologies" the OCA means the philosophy or theory that determines what portion of accrued functionalized costs is attributable. For example, several theories have been proposed in prior cases for determining the portion of city delivery carrier access time costs that should be attributed. The Commission settled on the "single-subclass-stop" theory in the Remand portion of Docket No. R90-1. The Commission rejected competing theories such as "multiple-subclass stop" costs and "volume-variable" costs. The Commission appears to have had this concept of "methodology" in mind when it issued Order No. 1120. See Order No. 1120, June 18, 1996, at 2 (referring to "single subclass stop analysis, purchased transportation nonpreferential Alaskan or Hawaiian air analyses, or special delivery messenger fixed attribution").

²⁴ For a demonstration that the implementation of established Commission costing methodologies is well-enough understood by outsiders to be considered routine or ordinary, see Declaration of USPS Witness Richard Patelunas, *Motion of the USPS for Reconsideration of Order No. 1120, and Partial Response*, June 28, 1996, Attachment D, at 2-4 (describing witness Patelunas's understanding of the work to be performed in implementing the

that the Postal Service has an opportunity to show that the Commission staff failed to follow instructions.²⁵ The Postal Service has had over two months to determine whether the Commission staff erred in carrying out the Commission's instructions in Order No. 1134. The Postal Service may very well present rebuttal testimony attempting to show that the attributable costs in PRC-LR-1 and -2 should be changed or corrected. However, the current state of the record is that the Postal Service has made no attempt to date to propose corrections or resolve alleged errors or ambiguities in those library references.²⁶

III. THE COMMISSION MAY RELY ON LIBRARY REFERENCES
PRC-LR-1 AND -2.

The real intent of the Postal Service's November 14 motion appears to be intimidation of the Commission. The uses to which witnesses Thompson and Bentley have put the Commission's library references are not dispositive of the Service's Request in this

Commission's established costing methodologies). See also Order No. 1134 at 8.

²⁵ The Service has already waived its right to dispute the theories underlying Commission costing methodology by failing to include testimony on that subject in its direct case. See Order No. 1134 at 10, 17.

²⁶ See tr. 6/2014-18 (questioning of witness Bentley by Chairman Gleiman indicating that the Postal Service has posed no questions to the Commission staff concerning PRC-LR-1 and -2).

docket. Witness Thompson relied on the attributable costs developed by the Commission staff solely to respond interrogatories posed by the Postal Service.²⁷ Witness Bentley used the costs in LR-PRC-1 and -2 to show that differences in attributable costing methodology affect institutional cost burdens for subclasses.²⁸ But that claim can be verified without reliance on PRC-LR-1 and -2.²⁹ One can only conclude that the Service has devoted significant effort to its pleadings at a time when it is presumably hard at work developing rebuttal testimony in order to convince the Commission that the Commission's library references may not be relied on by anyone (including the Commission) for anything.

The Postal Service relies primarily on the MOAA case³⁰ to support its claim that no one may rely on PRC-LR-1 and -2.³¹ However, the procedural defects identified by the MOAA court do not exist with respect to PRC-LR-1 and -2. In Docket No. R90-1

the Commission's novel access cost methodology was never subjected to scrutiny during the hearing, as required under the Act and, by incorporation, sections 556 and 557 of the APA. It was not until the January 4, 1991 recommended decision that the overlap theory sprang suddenly to life

²⁷ See tr. 5/1405-07.

²⁸ Tr. 6/1896.

²⁹ Id. at 2008-11.

³⁰ MOAA v. USPS, 2 F.3d 408 (D.C. Cir. 1993) [hereinafter MOAA].

³¹ November 14 Motion at 4.

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. . . The parties . . . were afforded no opportunity during the hearing to test, or even examine, the methodology the Commission ultimately adopted or the figures and calculations used to attribute access costs.³²

In Docket No. MC96-3 there is no "novel" methodology, and PRC-LR-1 and -2 lay out all "figures and calculations" needed to attribute, distribute, and forecast costs utilizing the Commission's established costing methodologies. The record demonstrates that that the Postal Service has tested the Commission's calculations to its heart's content³³ and has found only trivial deviations from past practice (presumably the result of the Commission staff's efforts to make its roll-forward model conform to an altered Postal Service roll-forward procedure).³⁴

It is thus difficult to take the Service's alternative motion for production of a Commission witness seriously. The Postal Service knew even before PRC-LR-1 and -2 were issued how

³² MOAA at 429-430 (emphasis added, citation omitted).

³³ See declaration of witness Patelunas, supra note 24, in which witness Patelunas demonstrates full understanding of the mechanics of the PRC-LR-1 and -2. See also Order No. 1134 at 8, 11.

³⁴ See response of the OCA to interrogatory USPS/OCA-T200-29 (in which the Postal Service requests the OCA to confirm that certain minor changes to the Commission's roll-forward model have occurred since the Commission's Docket No. R94-1 opinion on reconsideration).

the Commission's attributions, distributions, and forecasts were developed. (Witness Patelunas's Declaration was filed 54 days before PRC-LR-1 and -2.) If the Service really wanted to pose questions to the Commission staff concerning the mechanics of the Commission's cost model, it had sufficient information to specify its needs immediately after the Commission's library references appeared. Then would have been the appropriate time to petition the Commission for establishment of a procedural mechanism for questioning Commission staff. The fact that the Service made no such request strongly suggests that the Service needed no help in understanding PRC-LR-1 and -2. Those library references can now be presumed to contain more than enough documentation to allow a diligent analyst to understand the workings of the Commission's cost model.³⁵ Even if the Service could demonstrate the need for a witness to sponsor the Commission's library references, the doctrine of laches should be invoked to prevent the filing of a request for a witness at such an inexcusably late date in the proceedings. Both the Commission and the participants have been

³⁵ Indeed, since the original author of the Commission's cost model is now employed by the Service (and was wont to describe the cost model as "nothing but a crank"), the Service would be hard-pressed to establish that it can't understand the mechanics of PRC-LR-1 and -2.

prejudiced by the Service's delay in requesting a Commission witness.³⁶

The Postal Service also suggests that Commission reliance on PRC-LR-1 and -2 is different from reliance on unsponsored DRI forecasts, with the latter reliance permitted but the former prohibited.³⁷ The implication is that DRI's forecasting methodologies are somehow immutable as well as being easier to understand than PRC-LR-1 and -2. Anyone familiar with DRI knows that its forecasting methodologies are subject to constant revision and could never be documented in two library references the size of PRC-LR-1 and -2.

IV. CONCLUSION

The Postal Service is seeking to have the Commission apply a double standard of due process: Postal Service witnesses may rely on unsponsored library references or totally exogenous sources for their numbers, but other participants may not. It should be clear that the Service's complaint is *substantive*, not

³⁶ The participants are prejudiced simply by having to respond to the Service's motion at a time when they are fully occupied drafting briefs. The Commission is prejudiced by the possibility of having to extend the procedural schedule to accommodate a request that could readily have been accommodated at an earlier date without altering the procedural schedule.

³⁷ November 22 Supplemental Filing at 6.

procedural.³⁸ The Service disagrees with the established costing methodology, has exhausted its means of convincing the Commission that the established methodology is faulty, and now seeks to undercut the established methodology by imposing procedural requirements on other participants that the Service itself violates with apparent impunity.

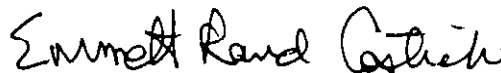
Respectfully submitted,



EMMETT RAND COSTICH
Assistant Director

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 3.B(3) of the special rules of practice.



EMMETT RAND COSTICH
Attorney

Washington, D.C. 20268-0001
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³⁸ See Order No. 1134 at 4, 8-9, 11.