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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

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

OFFICE OF THE CONSUMER ADVOCATE MOTION TO STRIKE
PORTIONS OF THE REBUTTAL TESTIMONY OF
POSTAL SERVICE WITNESS PAUL LION
(December 10, 1996)

Pursuant to Special Rule 1.C.,¹ the Office of the Consumer Advocate (OCA) hereby moves that portions of USPS-RT-3, Rebuttal Testimony of Paul Lion, be stricken as improper rebuttal to the evidence submitted by the OCA in this proceeding. Specifically, OCA moves that sections II. and IV., i.e., pages 3-10 and pages 16-19, respectively, be stricken. References to these two sections, necessarily, would also have to be stricken, namely:

page 1

lines 2-3, beginning with "(1)" and ending with
"(Section II)"

line 5, delete the "s" in "Sections" and delete "and
IV"

¹ OCA is unable to comply with the requirement that the instant motion to strike be filed at least 14 days before witness Lion's appearance, which will be sometime during the week of December 16, since his testimony was filed approximately 10-13 days prior to his appearance.

lines 8-11

page 2

lines 1-11

Section II. of witness Lion's nominal rebuttal testimony presents arguments and varying measures of post office box shortages based upon his view that full capacity is some level of post office box availability less than 100 percent. There are three grounds for striking all of the Section II. discussion. First, OCA witness Callow never raised the issue of "full capacity" anywhere in his direct testimony or written interrogatory responses. The only statements he has ever made concerning the "full capacity" concept were responses to questions put to him during oral cross-examination by the Postal Service on November 18, 1996. He has never made any affirmative offers of proof concerning this matter. Furthermore, witness Callow's implicit assumption that 100 percent of boxes would constitute full capacity is the **same assumption witness Lion made in his initial testimony**. Consequently, rebuttal of an assumption shared by witnesses Lion and Callow is clearly inappropriate.

A second ground for striking this portion of USPS-RT-3 is that witness Lion has failed to furnish critical documentation

underlying his Table 1. In addition, the Postal Service has neglected to provide, in electronic form, the "SAS code used to derive the capacity utilization tables," (item 1 of USPS LR-SSR-157), nor has any indication been given of the data that were used to generate the capacity utilization tables. Lacking the electronic spreadsheet that the Postal Service is obligated to provide under Commission Rule of Practice 31(k)(3)(f), and the input data, under 31(k)(3)(a)-(c), OCA has been unable to replicate witness Lion's capacity utilization tables. It would be an egregious denial of due process to require the OCA to proceed with oral cross-examination on this issue without the underlying materials to which we are manifestly entitled.

The third ground for striking Section II. of witness Lion's testimony is that the hypothetical exercise he performs in this section (i.e., "What would box shortages be if full capacity is less than 100 percent, say, 90 or 95 percent?") can **never** be determined. The Postal Service has admitted, in USPS-LR-SSR-113, that: "The field # Rentable Today was deleted because reviews of the hard copy returns showed misleading and/or inconsistent reporting" The significance of the LR-113 statement is that, on the record of this proceeding, it is not possible to identify any particular level of utilization that would constitute full capacity, nor will such identification ever be

possible before the record is closed. Witness Lion conceded as much at page 8 of USPS-RT-3, where he states: "We have no direct measure of the percent utilization that represents full capacity for post office boxes" For these reasons, Section II. (and all references to it) must be stricken in their entirety.

In like manner, witness Lion offers a brand-new justification of the need for higher post office box rates in Section IV. of USPS-RT-3. He asserts that "local postal managers base their decisions on a comparison of the costs of expansion with the expected additional revenues." Id. at 16. Witness Lion does not make even a superficial attempt to link the discussion of Section IV. to the testimony of OCA witness Callow; and, indeed, no link is possible. Witness Callow **never** addressed the issue of booked costs vs. market costs anywhere in written or oral testimony; witness Lion's discussion of this matter in Section IV. constitutes entirely new material that could and should have been presented as part of the Postal Service's direct case.

Witness Lion's only reference, in Section IV., to witness Callow's testimony is incongruous since it shows the perfect agreement between Lion's and Callow's positions:

In developing this number, witness Callow used the procedures outlined in my testimony for space provision costs.

Id. at 17, n. 5. Witness Lion makes it abundantly clear that his and witness Callow's earlier testimonies are entirely in accord and that witness Callow followed witness Lion's approach. As this is the case, then what is it that witness Lion needs to rebut? OCA can readily answer that question with a ringing "Nothing!" Witness Callow said nothing in his testimony that warrants any discussion by witness Lion of market vs. booked space provision costs.

Wherefore, OCA respectfully requests that the portions of witness Lion's nominal rebuttal testimony, specified above, be stricken.

Respectfully submitted,

Emmett Rand Gistich
for

SHELLEY S. DREIFUSS
Attorney

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 Land Astich for
SHELLEY S. DREIFUSS
Attorney

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