

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT ON CHARGES FOR THE
BULK PARCEL RETURN SERVICE

DOCKET NO. C99-4

RESPONSE OF UNITED PARCEL SERVICE IN OPPOSITION
TO CONTINUITY SHIPPERS ASSOCIATION MOTION
TO ADMIT EVIDENCE AND REQUEST FOR THE
COMMISSION TO TAKE OFFICIAL NOTICE
(November 15, 1999)

United Parcel Service ("UPS") hereby responds in opposition to the Continuity Shippers Association ("CSA") Motion to Admit Evidence and Request for the Commission to Take Official Notice ("Motion"), filed November 4, 1999.

BACKGROUND

In its Motion, CSA requests that the Commission enter into evidence, or take official notice of, (1) the Postal Service's 1998 Bulk Parcel Return Service Cost Study and a revision to that cost study, (2) the Consumer Price Index - Urban for the 12 month period from September 1998 to August 1999, and (3) the cost and overhead percentages for various classes of mail from the Commission's decision in Docket No. R97-1. UPS opposes the Motion because to admit most of this information into evidence without the opportunity for discovery and cross-examination on its probative value denies due process, is contrary to the Postal Reorganization Act and established

procedure, and would deprive the Commission of the record needed to reach a reasoned and accurate decision in this case.

ARGUMENT

A. The 1998 Bulk Parcel Return Service Cost Study Cannot Be Admitted Without Being Sponsored by a Witness, Discovery, and an Opportunity for Cross-Examination.

CSA's request that the Bulk Parcel Return Service Cost Study be admitted into evidence should be denied for a number of reasons. First, it would be a denial of due process to allow the cost study to be admitted in evidence without a sponsoring witness, discovery, and an opportunity for cross-examination. At a minimum, due process requires notice and an opportunity to be heard. CSA's approach would deny the other parties to this case of an opportunity to be heard.¹

In addition, it would be contrary to the statute and to established Commission procedures to admit such evidence without a sponsoring witness who could be cross-examined on the study. Section 3624 of the Postal Reorganization Act requires that parties be given a meaningful opportunity for a hearing on factual issues. 39 U.S.C. § 3624. In prior proceedings, cross-examination has provided valuable information regarding the methods used to develop cost studies, information that enables the Commission to evaluate the accuracy of cost studies and give such studies proper

1. These same due process concerns have also been raised by the Postal Service. Statement of the United States Postal Service in Accordance with Order No. 1265 and Motion to Dismiss Complaint (October 14, 1999), at 4.

weight when reaching its decision. A sponsoring witness who can be cross-examined on the study is required in this case for the same reason.

CSA seems to assume the accuracy of the cost study and relies on this assumption as a basis for admitting the study without further scrutiny by the Commission and other parties. As the course of prior proceedings reveals, cost studies should always be subject to extensive scrutiny by all parties. Indeed, the Office of the Consumer Advocate has already identified a flaw in this particular cost study. See Office of the Consumer Advocate Response to Continuity Shippers Association Statement on Proposed Schedule (October 1, 1999), at 8. Because the accuracy of the cost study cannot be presumed and has not been established, the Commission must permit discovery and cross-examination on the methods used to conduct the study.²

Accordingly, the Commission should deny CSA's Motion in the absence of a sponsoring witness and an opportunity for discovery and cross-examination of that witness.

B. The Consumer Price Index - Urban Should Not be Admitted Without Expert Testimony That It Is an Appropriate Roll-Forward Factor.

In adopting roll-forward factors in prior proceedings, the Commission has relied on information indicative of changes in postal costs instead of simply adopting more

2. CSA also assumes that any error in the study overstates attributable costs. However, it is also possible that the study *underestimates* attributable costs.

general measures such as consumer price indices. The Commission should determine the appropriate roll-forward factor for Bulk Parcel Return Service costs in the same way.

Increases in postal costs yield a more accurate factor than a rough measure such as the CPIU. Postal costs do not necessarily change in tandem with the CPIU. At the very least, the Commission cannot assume in the absence of expert testimony that the CPIU is an appropriate roll-forward factor here. Without such testimony -- with discovery and cross-examination on it -- the CPIU by itself has no probative value.

Accordingly, the Commission should deny CSA's Motion in the absence of expert testimony supporting the use of the CPIU as a reliable indicator of cost changes for the Bulk Parcel Return Service.³

C. The Commission Has Already Determined that Hearings Should be Held.

Finally, the Commission has already determined that hearings are necessary in this case. In paragraph 1 of its Order of September 3, 1999, denying the Postal Service's motion to dismiss CSA's complaint, the Commission directed that "[p]roceedings in conformity with 39 U.S.C. § 3624 shall be held in this matter." Order No. 1260 (September 3, 1999). Section 3624 requires that an opportunity for a hearing be accorded to the Postal Service and other interested parties. *See Mail Order*

3. CSA also requests that a BPRS cost coverage be based on cost coverages for other services established in the Commission's decision in Docket No. R97-1. Motion at 1. It presents no expert testimony to support its view. The Commission has never set a cost coverage without the benefit of expert testimony. Contrary to CSA's position, establishing an appropriate cost coverage is not merely a legal conclusion left to the discretion of the Commission without some factual foundation showing that the coverage complies with the standards of the statute.

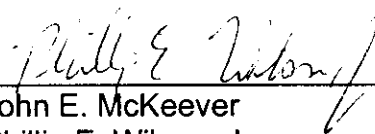
Association of America v. United States Postal Service, 2 F.3d 408, 422 (D.C. Cir. 1993) (stating that, under Section 3624, the Commission is required to hold hearings in rate cases).

This is not a situation where the facts are clear beyond dispute. On the contrary, CSA itself has previously acknowledged that hearings are needed to "enable the Commission to review and determine the adequacy . . . of the . . . mark up, overhead allocation, and ultimately the BPRS rate." Continuity Shippers Association's Request for Permission to File a Response Opposing the United States Postal Service's Suggestion Not to Hold Hearings on the Complaint Regarding The Charges for the Bulk Parcel Return Service, filed August 18, 1999, at 2.

CONCLUSION

WHEREFORE, United Parcel Service respectfully requests that the Commission deny the Continuity Shippers Association Motion to Admit Evidence and Request for the Commission to Take Official Notice.

Respectfully submitted,



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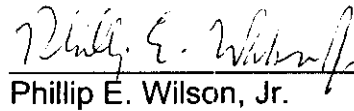
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CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.


Phillip E. Wilson, Jr.

Dated: November 15, 1999
Philadelphia, PA