

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT OF THE CONTINUITY
SHIPPERS ASSOCIATION

Docket No. C99-4

RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION ORDER NO. 1271
(December 2, 1999)

In Order No. 1271, the Commission agreed with the Postal Service that it was necessary to have an appropriate evidentiary record to resolve the complaint in this docket. The complainant had sought to have the Commission take official notice of certain information, including the Bulk Parcel Return Service cost study filed by the Postal Service on October 30, 1998, in accordance with the Commission's Opinion and Recommended Decision in Docket No. MC97-4. The Commission found that official notice would not be appropriate for this study, since it is an analysis open to interpretation. Order No. 1271, at 13. The Commission therefore concluded that the study needed to be sponsored by a Postal Service witness, who could attest to the study and answer questions about it. *Id.*

Although the Postal Service agrees that official notice is not appropriate, it maintains its concern that it is inappropriate to shift the burden of proof from the complainant to the Postal Service in a complaint proceeding. Ultimately, it is up to the complainant, not the Postal Service, to move the study into evidence or stipulate to it. The complainant, in fact, has indicated its willingness to stipulate to the results of the study. The Postal Service understands, of course, that in order to protect the rights of

other participants, an opportunity for discovery and cross-examination must be provided, as the Commission's Order anticipates. Based on continuing settlement negotiations, the Postal Service understands that only one participant is likely to be interested in conducting written discovery. Moreover, the Postal Service also understands that the participants do not intend to request oral cross-examination, although they do not waive their ability to participate in cross-examination if requested by another participant.

The study has been on file with the Commission and available to the participants in this proceeding for over a year in connection with Docket No. MC97-4, so there is no need for the Postal Service to file it again in the instant docket. Today, the Postal Service is officially transmitting to the Commission errata to the study which were identified during earlier settlement discussions, as well as the changes needed to reflect the mail processing cost methodology adopted by the Commission in Docket No. R97-1.

The Postal Service is prepared to respond to any interrogatories filed in the instant docket concerning the study, the errata, and the Commission version. The Postal Service will also provide a witness for oral cross-examination, should that become necessary. The Postal Service believes that, following such procedures, if the complainant were to seek to stipulate to the study, as revised, it is likely that there would be no objections to its doing so. Certainly, the Postal Service would not object at that time.

The Postal Service draws this conclusion based on continuing settlement discussions. The Postal Service would like the Commission to know that, although the

settlement discussions have not so far been successful in leading an ultimate resolution of this complaint, they have been quite useful in advancing procedural matters, including the status of the study, discussed by the Postal Service in this pleading. The Postal Service greatly appreciates the cooperation of the parties in this regard.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Scott L. Reiter

CERTIFICATE OF SERVICE

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



Scott L. Reiter

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