

UNITED STATES OF AMERICA
Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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OFFICE OF THE SECRETARY

Postal Rate and Fee Changes

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Docket No. R2000-1

OFFICE OF THE CONSUMER ADVOCATE RESPONSE
TO MOTIONS OF UNITED STATES POSTAL SERVICE
REQUESTING WAIVER OF NEW COMMISSION RULES
WITH RESPECT TO CATEGORIES 1, 2, 3, AND 5
LIBRARY REFERENCES
(January 24, 2000)

The Office of the Consumer Advocate hereby responds to the four motions of the United States Postal Service ("USPS") requesting waiver of the new Commission rules with respect to categories 1, 2, 3, and 5 library references filed in separate documents with the USPS application in this proceeding on January 12, 2000.¹

Each of the four motions includes a listing of the library references designated for the respective library reference categories together with partial additional explanatory information as to whether an electronic version has been filed and/or the witness to which the reference relates, if applicable. The Postal Service does not request waiver

¹ "Motion of the United States Postal Service Requesting Waiver of the New Commission Rules with Respect to Category 1 Library References", "Motion of the United States Postal Service Requesting Waiver of the New Commission Rules with Respect to Category 2 Library References", "Motion of the United States Postal Service Requesting Waiver of the New Commission Rules with Respect to Category 3 Library References", and "Notice of the United States Postal Service Concerning Provision of Information Pursuant to Commission Rule 54(a)(1), and Motion Requesting Waiver of the New Commission Rules with Respect to Category 5 Library References."

of specific portions of the Commission's library reference rules but, more generally, requests waiver "to whatever extent it could be argued that its filing does not actually or substantially comply with all of the requirements of Rule 31(b)(2) with respect to the above Category...."

It is unfortunate that the USPS did not comply more fully with the new rules. The information provided is an improvement over past practice and the Commission and the OCA staff can make their way through the application materials with the information provided and the filing of additional interrogatories. As filed, however, the OCA does not believe the USPS has provided sufficient information in its notices to comply with the new rules. The new rules are not merely for the convenience of the Commission or the OCA staff, but also serve to assist the parties and participants in reviewing the materials in a timely fashion without unnecessary delay and hardship. Therefore, the USPS should be required to revise the category lists it filed to provide missing information. This could be accomplished with a minimal amount of effort and would better meet the requirements of the rules as well as comply with the spirit of the rules.

The USPS also requests relief from filing separate notices. The OCA does not object to including more than one library reference within a single notice.

Although the requirements of the library reference rules apply equally to all categories, the OCA will address the four motions seriatim.

I. Motion for Waiver of Category 1 Library Reference Rules

Category 1 relates to Reporting Systems Material. The USPS has designated 61 different library references in this category comprising primarily 1998 cost and revenue

analyses, IOCS documentation, carrier cost systems and CCS-Codes documentation (naming witness Harahush (USPS-T-3) as sponsor), domestic revenue, pieces and weight documentation, bulk mail documentation, the permit system information, TRACS, and ODIS documentation. Also included in this Category 1 listing are FY98 billing determinants and Origin-Destination Information System.

The USPS points out that most of these materials are created by many individuals over several years which makes it difficult to identify persons who contributed to the material. Part of its request therefore effectively seeks waiver of Rule 31(b)(2)(iv)(D) which provides that the library reference notice shall "identify authors or others materially contributing to substantive aspects of the preparation or development of the library reference." The Rule makes no exception for particular categories of reference material. However, the OCA is sympathetic with the general point raised by the USPS. Nevertheless, the Commission should remind the USPS that it should be prepared to name persons who can testify to the material if any participant wishes to cross-examine on those library references.

The USPS appears to comply with several subparts of Rule 31(b)(2)(iv). The notice complies with Subpart (A) (reasons why the material is being designated as a library reference). The requirements of Subpart (C) (how the material relates to the case or issues) appear to be met by the library reference titles if the information required by Subparts (E) and (F), discussed below, are supplied. Subpart (G) (whether the library reference is an update to another library reference) seems to be inapplicable to library references filed with the application, assuming the rule applies only to library references filed in the current docket.

However, the listing of library references for Category 1 does not comply fully with the requirements of several other subparts of Rule 31(b)(2)(iv): subpart (B), regarding the presence of survey results; subpart (E), to the extent practicable, the identity of the documents such as testimony or exhibits to which the references relate; subpart (F) to the extent practicable, other library references relied upon or referred to in the material; and subpart (H), to the extent feasible, portions expected to be entered into the record and the expected sponsor.

Subpart B-surveys

The USPS has not indicated if any surveys are present in the designated material. The rule does not require a specific affirmation of the absence of surveys, but because a general waiver has been requested it is not clear whether any surveys are included in the material. If so, the USPS ought to be required to indicate which references include surveys or provide a blanket statement that no surveys are in the Category 1 references.

Subpart D-authors

Subpart D is discussed above.

Subpart E-identify documents such as testimony and exhibits to which the material relates.

The material listed in Category 1 is more general than the material in the other categories, but the material filed is clearly the basis for the workpapers, exhibits and testimony of many of the witnesses to the case. Although the rules state that the documents to which the references relate should be identified, "to the extent practicable," the USPS has included the name of a witness in only 5 of the 61 library

references (all identify witness Harahush, USPS-T-3). The USPS should be able to provide more information for each of the library references as to the witnesses who draw upon output from the specific data systems in preparing their testimony and exhibits. In the OCA's view, the USPS should be required to make a greater effort to relate the library references to the testimony of particular witnesses. The USPS notes that many of these library references are filed in each case. If that is so, the burden of preparing similar information in future cases will be lessened as this Reporting System material supports essentially the same subjects of testimony from case to case. This is also true to the extent witnesses testify on the same material in successive cases.

Subpart (F)-other library references or testimony relied upon or referred to in the designated material

Except for the references to witness Harahush, there are no cross-references to other materials. It is unlikely that this is actually the case. The USPS should review the material and provide the references required by this rule. The references would not need to be extensive--the form of the Harahush reference seems sufficient at this time.

Subpart (H)-portions expected to be entered into the record and the expected sponsor

Just as with the matter of surveys, the silence of the USPS as to whether it expects to enter any portion of the library references into the record suggests that it does not expect to do so. One might also reasonably assume that as to those library references filed with the application, if the USPS intended to enter the material into the record as part of its case, it would have included the information within the testimony and exhibits of a witness. However, inasmuch as the USPS is seeking a blanket

waiver, the USPS ought to make the affirmative statement that it does not expect to enter any portions of the library reference material into the record. Otherwise, it should so indicate those portions and name the expected sponsor.

Rule 31(b)(2)(vii)-electronic versions

Electronic versions of the library references are required by rule, Rule 31(b)(2)(vii), absent a showing why an electronic version cannot be supplied. Not all of the USPS designations indicate whether an electronic version has been filed, nor has the USPS made any showing why an electronic version cannot be filed in any of the cases in Category 1. However, if the USPS is requesting a waiver of the electronic version requirement, it should so state and explain for each deficiency why electronic versions cannot be supplied.

II. Motion for Waiver of Category 2 Library Reference Rules

Category 2 relates to Witness Foundational Material. The USPS has designated 85 library references in this category and in each designation has noted the witness involved. The titles of the references provide useful information but only two of the designations reference surveys (USPS-LR-I-85 and USPS-LR-I-87). Subpart F of Rule 31(b)(2)(iv) requires, to the extent practicable, the identification of other library references or testimony relied upon or referred to in the designated material. This information is not provided. Some of the foundational material must draw upon other material in other library references and testimony. Although the rule requires identification only "to the extent practicable" it would be more in keeping with the spirit

of the rule for the USPS to make a greater effort to provide the Subpart F information in its notice.

As with Category 1 library references discussed above, the USPS has not identified any portions of these references that are expected to be entered into the record. The USPS should offer blanket assertion that this is the case, rather than seeking waiver of the rule.

Also, as in Category 1, many of the designations are identified as electronic files, but many are not so designated. The USPS should indicate if any of these library references are not available in electronic form and otherwise comply with Rule 31(b)(2)(vii) regarding the electronic versions.

III. Motion for Waiver of Category 3 Library Reference Rules

Category 3 material relates to Reference Material (previously published material). The USPS has designated 6 library references in this category. Apparently none of this material has been made available in an electronic version. The USPS does indicate generally that "electronic versions of most Category 3 references cannot be provided because the materials have been obtained from an external source only in hard-copy version." (Motion at 3.) Although this may be an adequate explanation required by Rule 31(b)(2)(vii) for an individual library reference, the USPS does not specifically state this is the case with respect to the materials designated in its blanket notice. The Commission should require compliance with Rule 31(b)(2)(vii).

Library reference USPS-LR-I-154 is labeled as "Three USPS Operations Handbooks: PO-411, PO-412 and PO-424 (Miller, USPS-T24)." This cryptic designation ought to at least include the subject matter of the handbooks.

IV. Motion for Waiver of Category 5 Library Reference Rules

Category 5 relates to Disassociated Material not associated with the testimony of any witness. The USPS designated 20 library references involving the alternate cost information using PRC approved methodologies as required under Rule 54(a)(1). The USPS says that no USPS witness will attest to the accuracy or validity of their contents or answer any question about them, but that the USPS as an institution will respond to questions to the extent that it is able.

The USPS indicates that the vast majority of the library references consist entirely of electronically-formatted material. Although the list in the motion does not indicate whether electronic files are available, review of the Commission's web site indicates that apparently six (6) of the library references do not have electronic files (USPS-LR-I-131, 131,134, 138,139, and 140). The USPS has not specifically indicated why no electronic file is available for these references as required by Rule 31(b)(2)(vii).

V. Conclusion

For the above reasons, the Commission should deny each of the four motions pending receipt of further explanations of the material from the USPS for the following:

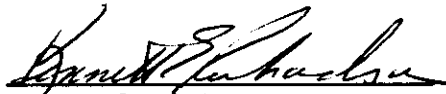
- (1) the presence of surveys in the material;

- (2) the relationships of the library references to each other and the testimony of witnesses;
- (3) the expectation of placing any of the material into the record; and
- (4) the reason for the lack of availability of electronic versions for each library reference where no electronic version has been filed.

The OCA suggests the additional required information should be provided by the USPS in revisions to the lists included with its motions. The master list may also be modified consistent with the Commission's requirements.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE

A handwritten signature in black ink, appearing to read "Ted P. Gerarden", is written over a horizontal line.

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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 12 of the rules of practice.


STEPHANIE S. WALLACE

Washington, D.C. 20268-0001
January 24, 2000