

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

DOCKET NO. R2000-1

OBJECTION OF UNITED PARCEL SERVICE TO ADMISSION
INTO EVIDENCE OF PORTIONS OF THE TESTIMONY OF
UNITED STATES POSTAL SERVICE WITNESSES HUNTER
AND PAFFORD PERTAINING TO PARCEL POST
(April 10, 2000)

Pursuant to Section 21 of the Commission's Rules of Practice, United Parcel Service ("UPS") hereby objects to the introduction into evidence of (1) those portions of the testimony of United States Postal Service ("Postal Service") witness Hunter that pertain to parcel post, and (2) those portions of Tables 1-3 of witness Pafford's testimony that relate to parcel post.¹

The testimony at issue concerns the Postal Service's revenue, volume, and weight estimates for parcel post, estimates which resulted in a substantial increase in parcel post cost coverage compared to the method historically used by the Postal

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1. To the extent that this motion is considered to be a motion to strike, UPS requests waiver of the requirement contained in Commission Rule 21(c) that "[a]ll motions to strike testimony or exhibit materials . . . be submitted at least 14 days before the scheduled appearance of the witness" UPS was not able to file this motion sooner because the Postal Service refused to provide the foundation data for its BRPW parcel post estimates only a few days ago. UPS received the Postal Service's objection by Express Mail on April 5, 2000. UPS submits that this constitutes "good cause" for waiver of the 14 day rule under Commission Rules 21(c) and 22. 39 C.F.R. § 3001.21(c), 22.

Service and the Commission. These estimates are a product of the first use of both PERMIT/BRPW and DRPW systems to estimate revenues, pieces, and weight for parcel post. Throughout the discovery phase of this proceeding, UPS has attempted to obtain information underlying this new method that would explain how parcel post revenue and volume estimates could increase so drastically from that estimated by the DRPW system alone -- by 15% and 19%, respectively. However, the Postal Service has refused to provide information that is a necessary foundation for the admission into evidence of its BRPW parcel post estimates.

Whether information submitted by the Postal Service in support of a rate request is accurate "is a question of paramount importance to the Commission." Docket No. RM92-2, Order No. 933 (August 18, 1992), at 2; see *also* Docket No. MC97-2, Order No. 1169 (April 14, 1997), at 9 (where the Commission rejected the Postal Service's presentation of changes in attributable costs where the changes were not shown "to be sufficiently accurate, verifiable, and reliable . . ."). See *also* Docket No. R94-1, Order No. 1025 (August 17, 1994), at 5-6 ("The right of participants in § 3622 proceedings to a hearing includes a right to a hearing on the accuracy of, and the basis for, the Postal Service's cost, volume, and revenue projections Hearing rights include the right to test evidence . . . and discovery rights extend to that which is reasonably calculated to test evidence.") (citations omitted).

Moreover, the Commission's mandate is "to conduct its proceedings . . . consistent with procedural fairness to the parties . . ." 39 U.S.C. § 3624(b). As the Commission has recognized, unreliable data undercuts the due process rights of participants. Docket No. R94-1, Order No. 1026 (August 26, 1994), at 2-3. Thus,

participants in a Commission proceeding must have "an opportunity to evaluate existing data in a meaningful way." Docket No. RM92-2, Order No. 1002 (January 14, 1994), at 16.

The Commission's rules (including its rules for the filing of rate requests and its discovery rules) are consistent with this fundamental fairness requirement. Indeed, the concern for assuring the reliability of data and the ability of parties to test that data by requiring an adequate foundation for its admission into evidence pervades the Commission's rules.

Commission Rule 54(j)(4) requires that the Postal Service's formal request for changes in rates and fees "be documented in sufficient detail to allow independent replication" of the revenue estimates contained in the request. 39 C.F.R.

§ 3001.54(j)(4). Rule 31(k)(1) requires that "[t]abulations of input data shall be made available upon request at the offices of the Commission." 39 C.F.R. § 3001.31(k)(1).

Since the BRPW parcel post estimates at issue rely on the PERMIT System data base -- and ultimately on information taken from postage statements that is entered into the PERMIT System data base, USPS-T-5 at 3 (testimony of witness Hunter) -- at the very least, interested parties are entitled to access to the PERMIT System data base, as well as to postage statement information underlying the PERMIT System. The parcel post data in the PERMIT System data and the parcel post postage statements necessary to create those PERMIT System files are required because they are the source data for the BRPW parcel post data. Therefore, they are necessary for replication of the Postal Service's estimates and must be produced upon request pursuant to the Commission's rules.

Commission Rule 31(k) requires that all "studies or analyses" which the Postal Service intends to admit into evidence must be supported by a proper foundation, including input data. 39 C.F.R. § 3001.31(k). For statistical studies and computer analyses, the Postal Service must file a "machine readable copy of the input and output data and the source codes." 39 C.F.R. § 3001.31(k)(3)(i); 39 C.F.R. § 3001.31(k)(2). A "hardcopy of all databases" is "presumptively necessary" to establish this foundation. 39 C.F.R. § 3001.31(k)(3)(i)(d); Docket No. R87-1, Order No. 779 (November 19, 1987), at 3-7 (ordering disclosure of additional foundation material for a computer study and testimony regarding carrier street time variability where participant was unable to replicate results).

The Federal Rules of Evidence similarly require that parties be able to review data underlying reports that purportedly summarize or are derived from large amounts of data, in order to confirm the reliability of the summary or report. See Fed. R. Evid. 1006. The rule provides (emphasis added):

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. *The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place.*

Under Rule 1006, the underlying information must be made available sufficiently far in advance to allow the parties to "'insure [the] summaries accurately reflect the contents of underlying documents.'" *Vasey v. Martin Marietta Corp.*, 29 F.3d 1460, 1468 (10th Cir. 1994), quoting *United States v. Drougas*, 748 F.2d 8, 25 (1st Cir. 1984).

The reliability of the BRPW parcel post estimates is suspect for a number of reasons. First, it is the product of a new system for parcel post; any new system merits

special scrutiny before it is adopted. Second, the vast disparity between parcel post's cost coverage under the long-accepted approach and that under the new approach makes the new method more questionable. Moreover, the Postal Service's Office of Inspector General has issued audit reports which draw into question bulk mail acceptance and inspection practices, including questions concerning the accuracy of postage statements. See USPS-LR-I-176. Indeed, the Inspector General and the Inspection Service apparently deem it necessary or desirable to audit bulk business mail acceptance practices frequently. See audit reports identified in interrogatory UPS/USPS-12 (to be filed April 10, 2000), attached hereto. This too raises questions about the accuracy and reliability of the data relied on by the BRPW system to estimate parcel post revenue, pieces, and weight. In light of these facts, the ability to examine the underlying parcel post data is even more crucial to ensuring fundamental fairness and the due process rights of the parties.²

The change in parcel post's cost coverage is a direct result of the change in the Postal Service's method of estimating parcel post revenue and volume. It is the data underlying this dramatic change that the Postal Service has refused to provide. Review of the PERMIT System data and programs along with postage statement information is the only suitable way to replicate and verify the accuracy of the new parcel post volume and revenue estimates. Without this data, the accuracy and reliability of the BRPW

2 Problems with the reliability of parcel post data are not new. See Docket No. R94-1, Order No. 1026 (August 26, 1994), at 2-3 (noting increasing concern with reliability of parcel post data and error in computer program used to develop parcel post data for the RPW system). The infamous Priority Mail/parcel post rate anomaly issue is yet another example. See Docket No. R97-1, Opinion and Recommended Decision at 485, ¶ 5665.

estimates cannot be confirmed. Therefore, the Postal Service's refusal to provide this information should preclude it from presenting parcel post testimony based upon the BRPW data.

The Postal Service's refusal to provide this requested information is more than ample grounds to preclude evidence on this issue. As the Postal Service has refused to substantiate its BRPW parcel post estimates by providing the data upon which they are based, the Commission has no choice but to refuse to admit those estimates into evidence.

CONCLUSION

The information in question goes directly to the heart of the issue of the reliability of the Postal Service's BRPW parcel post volume and revenue estimates. The only way to assess the reliability of the BRPW parcel post estimates is to examine the data upon which the estimates are based. Only by examining the parcel post data in the PERMIT System data base and programs as well as postage statement information can the Commission be assured that the parcel post estimates derived from the BRPW system are accurate. By refusing to provide that information, the Postal Service has failed to establish an adequate foundation for the admission into evidence of its BRPW-based estimates of parcel post revenue, pieces, and weight.

WHEREFORE, United Parcel Service respectfully requests that those portions of the testimony of United States Postal Service witness Hunter relating to parcel post and

those portions of Tables 1-3 in United States Postal Service witness Pafford's testimony regarding parcel post not be admitted into evidence in this proceeding.

Respectfully submitted,



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Of Counsel.

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UPS/USPS - 12. Provide the following reports listed in Library Reference USPS-

LR-I-181:

a) Office of Inspector General Reports:

Report Date	Report Number	Condition
09/03/98	1222661-AF(1)	Financial Installation Audit, Greenville, SC - work is in progress to move operations and provide the additional space needed to properly perform operations.
6/30/98	1223267-AF(1)	Financial Installation Audit, Boston, MA - Management is reviewing procedures and providing training to ensure proper financial management of the Bulk Mail Entrance Unit.
08/13/98	1223405-AF(1)	Financial Installation Audit, Washington, DC - Management is implementing the Meter Accounting Tracking System. Procedures are being developed for the Bulk Mail Entrance Unit to strengthen internal controls.
07/01/98	1223482-AF(1)	Financial Installation Audit, New London, CT - Management is developing procedures and conducting training in business mail acceptance.
8/19/98	1223262-AF(1)	Financial Installation Audit, New London, CT - Management is developing procedures and conducting training in business mail acceptance.
06/01/98	1223708-AF(1)	Financial Installation Audit, Lancaster, CA - Management is implementing procedures in Bulk Mail Entrance Unit operations.
04/07/98	1229348-AF(1)	Financial Installation Audit, Conshohocken, PA - Management has begun implementing numerous Bulk Mail Entrance Unit procedures.
08/03/98	12405850-AF(1)	Financial Installation Audit, Sioux City, IA - Management is developing procedures to ensure proper financial management of the Bulk Mail Entrance Unit.

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09/02/98	1222998-AF(1)	Financial Installation Audit, South Elgin, IL - Management is acquiring new equipment for Collect on Delivery operations. Training is being given in Bulk Mail Entrance Unit operations.
04/27/98	1223429-AF(1)	Financial Installation Audit, Severna Park, MD - Management is providing training to ensure proper administration of the Bulk Mail Entrance Unit.
07/02/98	1224025-AF(1)	Financial Installation Audit, Clearlake, CA - Management is providing training in business mail acceptance operations.
05/05/98	1229351-AF(1)	Financial Installation Audit, Temple, PA - Management is implementing procedures in business mail operations.
08/25/98	1224037-AF(1)	Financial Installation Audit, Haines, AK - Management is implementing procedures in business mail operations.
06/30/98	1245456-PA(3)	Commercial Mail Receiving Agencies, Long Beach District - Management agreed with the recommendations and will provide attention to improve controls.
02/13/98	1155587-RI(1)	Nonprofit Mailing, Boston, MA - Management has not implemented findings regarding the Nonprofit Permit System.
08/13/98	1223405-AF(1)	Financial Installation Audit, Washington, DC - Management is developing procedures for the BMEU to strengthen internal controls.
06/04/98	1225186-AF(1)	Financial Installation Audit, Atlanta, GA - Management is providing attention to ensure proper administration and collection of fees on mailings.
07/01/98	1245454-PA(3)	Commercial Mail Receiving Agencies, Van Nuys District - Management indicated that training will be provided.
07/28/98	1245455-PA(3)	Commercial Mail Receiving Agencies, San Diego District - Management is working to improve CMRA controls.
03/29/99	1261754-AF(1)	Financial Installation Audit, royal Oak, MI - Management is providing attention to internal controls in the BMEU.
2/26/99	1256273-AF(1)	Financial Installation Audit, Franklin Park, IL - Management is reviewing procedures and providing training for BMEU, employee accountabilities, postage due/business reply mail, post office box/caller service, and COD mail.

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12/18/98	1256726-AF(1)	Financial Installation Audit, Mission Hills, CA - Management is providing attention to ensure proper administration of business mail acceptance procedures.
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b) Inspection Service Reports:

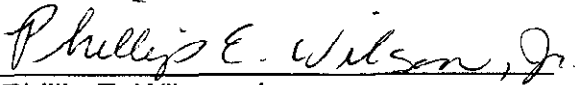
Case/Report Number	Subject Title/Project Type	Location/Contract	Issue Date
011-1256279-AF(1)	A financial installation audit of a post office.		
011-1259853-AF(1)	A financial installation audit of a post office.		
011-1256430-AF(1)	A financial installation audit of a post office.		
011-1256584-AF(1)	A financial installation audit of a post office.		
052-1234653-PA(3)	Commercial Mail Receiving Agencies	Miramar, FL 33027	10/28/98
062-1260835-RI(1)	Standard Mail	Montgomery, AL 36119	11/16/98
069-1266708-RI(2)	Presort Bureaus	Los Angeles, CA 90058	12/18/98
069-1266708-RI(2)	Presort Bureaus	Orange, CA 92868	12/18/98
924-1254111-RI(1)	Presort Bureaus	Santa Ana, CA 92702	10/27/98
046-1245790-PA(2)	Business Mail Entry Units	Washington, DC 20066	11/24/98
006-1250049-RI(1)	Business Mail Entry Unit	Miami, FL 33152	12/23/98
064-1281435-RI(1)	Business Mail Entry Unit	Atlanta, GA 30304	03/15/99
066-1265079-RI(1)	Bulk Mail Acceptance Unit	Forest Park, IL 60130	12/10/98
069-1272194-RI(2)	Business Mail Entry Unit	Fort Lee, NJ 07024	02/22/99
924-1281479-RI(1)	Presort Bureaus	Trenton, NJ 08618	03/19/99
924-1257646-RI(1)	Bulk Mailing Entry Unit	Cleveland, OH 44101	12/01/98
AC-AR-99-001	Plant Verified Drop Shipment System	Postal-wide	9/28/99

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IS 920-1207670-RI(1) and IS 069-1296866-RI(1)	Investigation by inspectors - mailer knowingly underreported additional per-piece charges that were due the Postal Service.		
IS 924-1170790-RI(1)	The investigation that revealed that the mailer routinely understated a portion of the mail requiring additional postage.		
IS 064-1290439-RI(1)	Inspectors identified numerous mailings presented by a third-party mailer claiming unqualified discounts. Analysis showed that the mail was not presorted to the extent claimed.		
064-1289899-RI(1)	Business Mail Entry Unit	San Francisco, CA 94120	5/28/99
066-1284083-RI(1)	Business Mail Entry Unit	Denver, CO 80266	4/07/99
066-1286157-RI(1)	Business Mail Entry Unit	Fortuna, CA 95540	9/10/99
068-1275423-RI(1)	Business Mail Entry Unit	Boston, MA 02205	6/10/99
069-1278476-RI(1)	Bulk Mail Permits and Fees	Rocky Mount, VA 24151	3/05/99
923-1221400-RI(1)	Business Mail Entry Unit	Holliston, MA 01746	9/22/99
923-1274894-RI(1)	Business Mail Entry Unit	Richmond, VA 23232	4/26/99
924-1240141-RI(1)	Business Mail Entry Unit	Seattle, WA 98111	3/25/99
924-1266353-RI(1)	Business Mail Entry Unit	Seattle, WA 98134	3/25/99

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document by first class mail, postage prepaid, in accordance with Section 12 of the Commission's Rules of Practice.


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Dated: April 10, 2000
Philadelphia, Pa.

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