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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. R2000-1/72

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

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING ON OUTSTANDING
DISCOVERY DISPUTES BETWEEN UNITED PARCEL SERVICE
AND UNITED STATES POSTAL SERVICE
CONCERNING RPW DATA SYSTEMS

(Issued May 30, 2000)

Several unresolved procedural disputes in this case involve discovery requests directed to the Postal Service concerning the data systems that are the subjects of testimony sponsored by witnesses Hunter (USPS-T-5) and Pafford (USPS-T-4). Intervenor United Parcel Service has filed four motions to compel responses to interrogatories—two of which alternatively request that testimony be stricken or an existing deadline on discovery be extended—that remain outstanding as of this date.¹ UPS has also lodged an objection to admission into evidence of portions of the

¹ Motion of United Parcel Service to Compel Production of Information and Documents Requested in Interrogatories UPS/USPS-T5-40(c), 58(b)-(c), 82, and 87 to Witness Hunter or, in the Alternative, to Strike Testimony, filed under protective conditions, April 17, 2000; Motion of United Parcel Service to Compel Production of Information and Documents Requested in Interrogatory UPS/USPS-6 or, in the Alternative, to Extend Discovery Deadline on BRPW Parcel Post Estimates, filed April 28, 2000; Motion of United Parcel Service to Compel Production of Documents Requested in Interrogatory UPS/USPS-12, filed May 1, 2000; and Motion of United Parcel Service to Compel Production of Information Requested in Interrogatories UPS/USPS-12A-15, filed May 2, 2000.

testimonies of witnesses Hunter and Pafford,² supplemented by a further pleading identifying the materials UPS seeks to strike.³

I. THE TESTIMONY AT ISSUE

Together, witnesses Hunter and Pafford are responsible for providing all base year revenue, volume, and weight estimates underlying the Postal Service's request in this proceeding. Witness Hunter provides estimates for the major categories of mail captured under the Bulk Revenue, Pieces and Weight (BRPW) accounting system, describes the system's operation, and presents estimates of statistical reliability for the relevant mail categories. USPS-T-5 at 1-2. Witness Pafford describes the Domestic Revenue, Pieces and Weight (DRPW) statistical system and presents summary estimates of mail revenues, volumes and weight and their associated statistical confidence limits. In some instances, the estimates he presents combine DRPW and BRPW results, as well as other data from the RPW Adjustment System. USPS-T-4 at 6.

The systems that underlie the estimates presented by witnesses Hunter and Pafford are components of the Postal Service's long-established Revenue, Pieces and Weight (RPW) system. In addition to generating much of the data supporting the Service's direct case in this proceeding, the RPW system is a basic source of business information routinely collected and used by the Service. In light of the extensive information the RPW system generates concerning postal operations, it is one of the primary sources drawn upon by the Commission's periodic reporting requirements in 39 C.F.R. § 3001.101 and .102.

² 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, filed April 10, 2000.

³ Specification by United Parcel Service of Portion of the Testimony of Postal Service Witnesses Hunter and Pafford to Be Stricken from the Record, filed April 14, 2000.

II. DISCOVERY REQUESTS IN CONTROVERSY

The UPS discovery requests at issue seek extremely detailed information underlying the process that produced the Postal Service's estimates of Parcel Post revenue, pieces, and weight in this docket, plus extrinsic information concerning facilities from which input data for the estimates were derived. UPS states that it seeks access to these materials in order to test the accuracy of the systems used to produce the estimates of Parcel Post volumes and revenues presented by witnesses Hunter and Pafford.

At an earlier stage of this discovery effort, the Postal Service agreed to respond to Interrogatory UPS/USPS-T5-16 to witness Hunter by producing a library reference containing certain input and output data files that were not included in USPS-LR-I-25⁴ on the ground of commercial sensitivity. In light of this concern, UPS moved with the Service's consent for adoption of interim protective conditions for the library reference, USPS-LR-I-194.⁵ I granted the UPS motion in Presiding Officer's Ruling No. R2000-1/10.⁶ Subsequently, UPS moved for removal of protective conditions from the library reference, arguing that none of the information therein is commercially sensitive or otherwise confidential.⁷ Following an examination of the library reference by members of the Commission's advisory technical staff, and receiving their briefing, I concluded

⁴ USPS-LR-I-25 contains a description and computer source code of the BRPW system. It updates the BRPW system documentation filed in the last omnibus rate case as USPS-LR-H-42/R97-1.

⁵ Motion on Consent of United Parcel Service to Adopt Interim Protective Conditions for Input and Output Data Requested in Interrogatory UPS/USPS-T5-16, March 1, 2000.

⁶ Presiding Officer's Ruling Granting the United Parcel Service Motion for Interim Protective Conditions for Library Reference USPS-LR-I-194, March 2, 2000. As provided in that ruling, the interim protective conditions were modified to conform with the final protective conditions issued by the Commission with respect to the testimony of witness Yezer. Presiding Officer's Ruling No. R2000-1/12, March 13, 2000.

⁷ Motion of United Parcel Service to Remove Protective Conditions from Library Reference USPS-LR-I-194, and for Expedited Response Hereto, March 30, 2000.

that materials it contained warranted continued application of protective conditions, and denied the motion in Presiding Officer's Ruling No. R2000-1/34.⁸

In general, the outstanding UPS motions seek production of information that can be grouped into four categories. Each category will be considered in turn in the discussion below.

A. Input Data and Data Processing Information

Many of the interrogatories in controversy seek disaggregated input data underlying BRPW analyses, or detailed information on how such input data were processed and corrected. UPS requests input data in a variety of forms: postage statements in electronic form underlying each input record provided in LR-I-194 [UPS/USPS-T5-58(b)]; a random sample of postage statements from the PERMIT system that underlie the records provided in LR-I-194 [UPS/USPS-T5-58(c)]; copies of postage statements and PS Form 8125s underlying three specified records in the same library reference [UPS/USPS-T5-87]; and raw data from the PERMIT system for all parcel post in the base year, plus information associated with the PERMIT System Validation Study submitted by the Service as LR-I-279⁹ [UPS/USPS-12A-15]. The Postal Service objected to producing these various types of input data on a variety of grounds, including overbreadth, lack of relevance and materiality, undue burden, mailer privacy, commercial sensitivity, and in some instances impossibility.

UPS also seeks production of comprehensive and detailed information regarding the processing of raw input data in the BRPW system. The institutional interrogatory UPS/USPS-6 requests: (a) all programs and other information used to aggregate individual postage statements for each record provided as part of LR-I-194; (b) all

⁸ Presiding Officer's Ruling Denying Motion of United Parcel Service to Remove Protective Conditions from Library Reference USPS-LR-I-194, April 10, 2000.

⁹ In connection with witness Hunter's response to UPS/USPS-T5-43, the Service filed as LR-I-279 a data validation study of the PERMIT and CBCIS Information Systems performed by an independent accounting firm in the FY 1997-98 timeframe. That study analyzed data generated by bulk mail transactions in Postal Quarter II of FY 1997.

programs and other information used in correcting PERMIT system and manual data before aggregation and transmittal to witness Hunter; (c) all programs and other information used to correct the same data after receipt by Mr. Hunter, but before he performs the iterative correction process he described in a technical conference held on March 20; and (d) all programs and other information resulting from the referenced correction process performed by the witness. The Postal Service objected to this interrogatory as untimely, redundant, overbroad, immaterial and unduly burdensome.

Motions to compel. In its motions to compel responses, UPS asserts that the interrogatories at issue are reasonably calculated to lead to the discovery of admissible evidence and otherwise proper. UPS argues that the requested postage statements and other source data are relevant because they are necessary to test the reliability of the information aggregated by the BRPW system to produce Parcel Post volume and revenue estimates. Motion of April 17 at 6-7. Moreover, UPS claims that the requested raw data are required to establish the foundation for receipt of testimony containing the BRPW results. *Id.* at 14-15. Similarly, it argues that the requested processing information is highly relevant to the accuracy of the Service's Parcel Post estimates. Motion of April 28 at 9. According to UPS, the comprehensive nature of its interrogatories is necessary for thorough examination of the Service's estimates, and is not overbroad. Motion of April 17 at 8-9.

UPS also challenges the Service's assertions of undue burden, arguing that the Service's claims are vague and hyperbolic. Motion of April 17 at 7-8; Motion of April 28 at 9-10. Regarding the timeliness of UPS/USPS-6, UPS argues that its submission was timely because it seeks operating information available only from the Service for use in rebutting the direct case of a participant that apparently will advocate decreases in Parcel Post rates. Motion of April 28 at 3-5. Moreover, UPS claims, the Service advances an unduly restrictive interpretation of the term "rebuttal testimony" in section 25(a) of the rules of practice. *Id.* at 5-7.

Postal Service Responses. The Postal Service responded to the motions to compel production of these materials in pleadings filed on April 24¹⁰ and May 5.¹¹ The Service reiterates its position that UPS/USPS-6 was untimely filed, citing Presiding Officer's Rulings in previous rate cases that it argues are apposite here. The Service argues further that UPS' claimed ability to foresee the direct case of another participant is no basis for overturning this substantial body of Commission precedent, and that enforcement of the March 23 discovery deadline would not represent a waste of time in the procedural schedule. Objection and Response of May 5 at 4-6.

With respect to UPS' inquiries generally, the Service takes the position that, "a rate case does not allow sufficient time for a complete top-to-bottom examination of every layer of any longstanding institutional data system upon which the ratemaking process has long relied." *Id.* at 6. The Service represents that the raw data from postage statements sought by UPS does not exist in the form requested, and that constructing the requested file would require several Postal Service mainframe computer technicians in San Mateo to set aside their usual support tasks for business operations for approximately 15 days. Response of April 24 at 9-10. The Service submits that this burdensome effort would be a waste of time and other scarce resources in the context of a ten-month rate proceeding. *Id.* at 10.

Notwithstanding this burden, and the asserted commercial sensitivity and privacy of BRPW input records in the form of postage statements, the Service offers to provide a limited affirmative response in the event responses to the interrogatories at issue are found to be justified. The Service explains that one of its contractors can provide a file containing the data elements necessary to proceed from the electronic equivalent of

¹⁰ Response of United States Postal Service to Objection of United Parcel Service to Admission into Evidence Testimony of Witnesses Hunter and Pafford, as Supplemented, and to Motion of United Parcel Service to Compel Production of Information and Documents, or, in the Alternative, to Strike Testimony, April 24, 2000.

¹¹ Objection of United States Postal Service to Interrogatory of United Parcel Service and UPS/USPS-12A-15; and Response of United States Postal Service to Motion of United Parcel Service to

postage statement data and roll that data up to the point of replicating raw Parcel Post BRPW input files; sensitive information would be protected by redaction of the finance numbers of facilities and any other mailer, clerk, supervisor, or facility information, and submission under protective conditions. The Service estimates this process would take approximately fifteen working days. Objection and Response of May 5 at 8-10.

Considerations underlying the ruling. As an initial matter, I do not accept the assertion of UPS that provision of the requested raw postage statement input data is required to establish a foundation for receipt of the Hunter and Pafford testimonies into evidence in this case. As noted above, the RPW system is a long-established data collection and reporting system relied upon the Postal Service and the Commission in many past proceedings. As the Service argues, witnesses Hunter and Pafford testify in this case as experts in their fields, and as such are entitled to rely reasonably upon information generated by such systems. This practice is consistent, as the Service notes, with the declared position of UPS in the last omnibus rate case.¹² Consequently, I conclude that there is no basis for striking their testimonies for lack of foundation.

Nevertheless, UPS is entitled to conduct reasonable discovery efforts to explore the factual bases of the witnesses' estimates, including input data used to generate them. However, its due process right to discovery is not without limits. As the Postal Service notes, "the capability of reconstructing every layer of information back to postage statements is not plausible in the limited time frame of a ten-month proceeding," Response of April 24 at 3. Furthermore, the Commission has always been cognizant of the potential competitive harm to both mailers and the Postal Service from

Compel Production of Information and Documents in Interrogatory UPS/USPS-6 or, in the Alternative to Extend Discovery Deadline on BRPW Parcel Post Estimates, May 5, 2000.

¹² In addressing the evidentiary status of various Postal Service library references in Docket No. R97-1, UPS argued that certain expert testimony at issue met the test of § 703 of the Federal Rules of Evidence because the library references on which they relied "all use data from the Postal Service's routine data collection systems such as IOCS, RPW, and MODS." Memorandum of United Parcel Service on Motions to Strike Certain Testimony, Library References, and Supplemental Testimony, October 24, 1997, at 4.

requiring the release of individualized sensitive business data and it has never previously found it appropriate to order the production of individual postage statements. For these reasons, it would be neither justifiable nor feasible to order production of all the input data sought in the UPS interrogatories. However, the Postal Service undertaking described in its Objection and Response of May 5 appears to represent a reasonable compromise between the discovery rights of UPS and the feasibility of disclosing a large volume of information based on sensitive mailing statements. Accordingly, I shall direct the Postal Service to perform the tasks described and make the results available under protective conditions.

I also find it appropriate to direct the Postal Service to provide a limited affirmative response to the institutional interrogatory UPS/USPS-6. While that interrogatory was not filed by the deadline for the period of discovery on the Service's direct case, UPS argues—with the support of the "RPW Discovery Chronology" appended as Exhibit B to its Motion of April 28—that it lacked sufficient information to formulate this interrogatory prior to its receipt of earlier responses of the Postal Service on related subjects. In light of this circumstance, and of the ongoing character of UPS's inquiries in this area, I believe it is appropriate to waive application of the nominal discovery deadline with respect to UPS/USPS-6.

However, in the interest of feasibility, I believe it is also appropriate to limit the burden of responding to this interrogatory by conforming the context of the response to the data disclosure effort described in the Service's Objection and Response of May 5. Accordingly, I shall direct the Service to supplement its limited affirmative response to data requests to include provision of the procedures used for aggregating and correcting the data provided. For purposes of the response, it will be sufficient to describe each procedure in detail and demonstrate its operation on the data set to be produced by the Postal Service's contractor.

B. Survey for Estimating Non-Automated Segment of Bulk Mail

In his response to UPS/USPS-T5-7(a), witness Hunter states that a stratum blowup factor used to produce an estimate of the non-automated component of permit imprint Parcel Post revenues and volumes was calculated from a revenue ratio “determined by a recently conducted survey of post offices.” Tr. 2/815. A followup interrogatory, UPS/USPS-T5-40(c), asks the witness to provide the “recently conducted survey of post offices” referenced in the earlier interrogatory. The Postal Service objected on the ground of commercial sensitivity because the survey contains facility-specific and, potentially, customer-specific information.

Motion to compel. In its Motion of April 17, UPS asserts that the requested survey is relevant because it was used to increase Parcel Post revenue, piece, and weight estimates derived from PERMIT system data. In response to the Service’s objection that the study contains facility-specific information and might also contain customer-specific information, UPS argues that this issue could be obviated by redacting the survey, but also that it should be produced under previously-established protective conditions even if redaction is not practical. Motion at 5.

Postal Service Response. In its Response of April 24, the Service initially argues that UPS has otherwise asked for, and the Service has provided, the information elicited by the survey and used to develop the blowup factor in USPS-LR-I-230, which the Service provided in response to UPS/USPS-T5-23. In view of this response, the Service argues that the interrogatory at issue is objectionable on the additional ground of redundancy.

The Service further represents that, beyond the information provided in USPS-LR-I-230, there is no specific survey document responsive to the interrogatory. According to the Service, the survey could conceivably be reconstructed, but doing so would require approximately 200 hours of work searching hard copy records, plus an additional 50 hours of work by witness Hunter to put the information in electronic format.

On the basis of all these considerations, the Service argues that the motion should be denied on the grounds of commercial sensitivity, redundancy, burden, and mootness. Response at 7-8.

Considerations underlying the ruling. I agree with the Postal Service that LR-I-230—which contains a brief but comprehensive explanation of how blowup factors used in the BRPW for the “non-automated office panel” of each subclass were constructed, together with the underlying sample and strata populations—is in part responsive to the UPS interrogatory at issue. However, it does not document the study completely, and does not include the records sampled in the survey.

The Postal Service represents that producing complete documentation of the survey would require 250 hours of work, including more than a week of work to be performed personally by witness Hunter. This is a considerable burden, but one that is not excessive in light of the significance of the volume and revenue effects produced by the blowup factor used by witness Hunter. Consequently, I shall direct the Postal Service to produce a response to the interrogatory. In producing a response, the Service may redact any facility-specific and customer-specific information from the underlying records. Should the Service believe this to be problematical, it may apply for protective conditions prior to submission.

C. Inspector General and Inspection Service Reports

In response to Interrogatory OCA/USPS-7, the Postal Service filed the Semiannual Reports of its Inspector General for the years 1996-1999 as Library Reference USPS-LR-I-181. UPS' institutional Interrogatory UPS/USPS-12, filed on April 10, asks the Service to provide 22 of the listed reports, plus 29 reports produced by the Inspection Service. The Postal Service objected to this interrogatory on the grounds of timeliness, relevance, commercial sensitivity and privacy (in part), law enforcement privilege (in part), and burden.

Motion to compel. In its Motion of May 1, UPS submits that the interrogatory was timely filed under § 25(a) of the rules because the information sought will be used not only to rebut the Service's case, but also to rebut a different claim made by another participant regarding Parcel Post rates. Motion at 3.

With regard to the Service's other objections, UPS argues that the interrogatory seeks relevant information because the requested reports, taken together, purportedly are likely to establish a pattern of departures from standardized processes and procedures that will cast doubt on the accuracy of the Service's PERMIT System-based volume and revenue estimates.¹³ UPS also cites Ruling No. R2000-1/48 as support, inasmuch as the ruling states that audit results concerning the accuracy of data and data collection procedures are relevant information for discovery purposes. Since the titles of the requested audit reports establish that they apply to bulk mail entry units, UPS argues, these materials bear on the effectiveness of the Service's internal operational controls, and thus are directly related to the accuracy of PERMIT system postage statement data. UPS adds that any indications of fraud in the findings of criminal investigations therein likely include falsification of postage statements and intentionally erroneous data entry, which are relevant to the issue of data system accuracy. *Id.* at 4-5.

UPS further argues that its request does not seek information that is commercially sensitive or that would infringe on any individual's privacy rights. It states its willingness to accept responses in which any sensitive information has been redacted, or to access under protective conditions. As for the identities of individuals, UPS cites judicial authority as establishing that postal employees have no expectation of privacy with respect to their names and duty stations, but also agrees to the redaction of employee identities, or to access under protective conditions if redaction is not practical. *Id.* at 5-6.

¹³ UPS withdraws its request for the first report listed in the interrogatory, and also for 8 reports that concern presort bureaus or commercial mail receiving agencies. Motion at 1, n. 1.

UPS also challenges the Service's assertion that some of the audit reports are entitled to exemption from disclosure under the Freedom of Information Act by virtue of the "law enforcement privilege" codified in 5 U.S.C. § 552(b)(7). According to UPS, the reports at issue would be exempt only if their investigations were directed at "specifically alleged illegal acts," not if they were conducted for "general agency internal monitoring" purposes. To the extent any of the reports falls into the former category, UPS states it will withdraw its discovery request. *Id.* at 7-8.

Finally, UPS challenges the Service's claim that production of the reports would be unduly burdensome to review and redact prior to release. According to UPS, the Service's estimate of 5 work hours per report apparently was made without the benefit of actually reviewing the reports, and appears to be overstated. However, even if the estimate were correct, UPS argues that the high degree of relevance associated with the reports justifies their production. Furthermore, UPS notes that redaction could be rendered unnecessary by production under protective conditions. *Id.* at 8.

Postal Service Response. The Service initially notes that the UPS motion is moot as to those reports for which UPS has withdrawn its request, as well as to one of the requested reports that has been provided in response to an OCA interrogatory as USPS-LR-I-176. It also reiterates its objection that the interrogatory was not timely, citing the same rulings it invoked with respect to UPS/USPS-6, and arguing that the possible direction of another participant's direct case is no basis for overturning this substantial body of Commission precedent. Response of April 10 at 2-6.

The Service also argues that the UPS motion should be considered moot with respect to at least some of the reports because they constitute law enforcement records entitled to protection under FOIA Exemption 7. According to the Service, the Office of Counsel in the Inspection Service has confirmed that reports with the designation "RI" in their identification numbers consist of either investigative memoranda prepared for criminal fraud prosecutions and revenue deficiency actions against mailers, or investigative summary reports on how revenue protection can be improved at specific

installations. Consequently, the Service argues that they qualify for the exemption, and that their disclosure could be expected to interfere with current enforcement procedures or result in unwarranted invasions of personal privacy in the absence of appropriate redactions. *Id.* at 6-8.

In support of its objection on the ground of relevance, the Service notes that it has already submitted copies of audit reports concerning the accuracy of BY 1998 postage statements in USPS-LR-I-323, in connection with its compelled response to UPS/USPS-T5-28. The additional reports UPS now seeks, the Service argues, apply only to a handful of postal installations and could not be used to frame conclusions on the reliability of estimates from the entire PERMIT System, which draws upon information from thousands of postal units. Consequently, the Service claims that UPS has failed to demonstrate the relevance of its discovery request. *Id.* at 8-9.

The Service also reiterates that the requested reports contain a variety of commercially sensitive and individually private information that it argues must not be disclosed. Inasmuch as UPS apparently does not move to compel the production of such information, the Service argues that it should be given sufficient time to redact it from reports. *Id.* at 9-10.

Finally, the Service asserts that UPS has not overcome the objection based on undue burden. According to the Service, its initial estimate that review of each report would require 5 work hours is based on Inspection Service Office of Counsel's longstanding experience with performing redactions for FOIA purposes, and this estimate likely would also apply to the documents requested in subpart (a) of the interrogatory. *Id.* at 10.

Considerations underlying the ruling. On reviewing the circumstances under which this discovery request was made, I conclude that the interrogatory was not timely filed, and I shall not compel an answer. Based on movant's rationale for seeking the requested reports—to gather information with which to assess the accuracy of estimates derived from the PERMIT System—UPS/USPS-12 can fairly be viewed as a

continuation of the line of discovery that includes UPS/USPS-T5-28, which culminated in the production of a substantial number of similar reports in USPS-LR-I-323. While the inquiry on the whole is relevant to assessing the accuracy of estimates used in the Postal Service's direct case, as I found in Ruling No. R2000-1/48, this interrogatory was submitted 18 days after the deadline for such discovery. The potential usefulness of responsive information in rebutting the putative direct case of another participant does not change its character.

D. Information Concerning Data Entry Operators

UPS/USPS-T5-82 refers to page 2 of USPS-LR-I-176, then asks for a variety of information about PERMIT system data entry operators employed at the Kearney, New Jersey, Processing and Distribution Center: the total number employed in BY 1998 and FY 1999; copies of their on-the-job evaluations for those years; and their Employee Skills Assessments for the same periods. The Postal Service objected to this interrogatory on the grounds of irrelevance, immateriality, privacy, commercial sensitivity, and impossibility.

Motion to compel. UPS claims that the requested information is relevant because the data entry process is the link between actual postage statements and information entered into the PERMIT System data base; evaluations and skills assessments purportedly would provide valuable insight into the accuracy of such data. In response to the undue burden objection, UPS notes that the Service has not actually assessed the difficulty of producing responsive employee information, and surmises that it is likely to be centrally located in the Kearney facility. The privacy of individual employees could be preserved by redactions, UPS argues, or protective conditions could be applied to responsive documents. Motion of April 17 at 12-13.

Postal Service Response. In its Response of April 24, the Service disputes the relevance of the requested local information to nationwide ratemaking issues, and claims that UPS has made no proffer as to how such information would lead to the

discovery of admissible evidence. The Service also observes that inquiry into local postal personnel records evidently is unprecedented in Commission proceedings. On the issue of burden, the Service states that inquiries suggest that preparing a response would require approximately five days of work with local officials to procure and redact responsive records. Response of April 24 at 10-11.

Considerations underlying the ruling. The potential relevance of the requested information regarding postal employee complement and performance to the issue of PERMIT system accuracy appears to be attenuated at best. The materiality of such indirect and localized information in the context of an omnibus rate proceeding is also questionable, as the Postal Service argues. Additionally, disclosure of the requested materials would raise concerns regarding the privacy of individual postal employees. For these reasons, I shall not direct the Postal Service to respond to this interrogatory.

III. REQUESTED ALTERNATIVE FORMS OF RELIEF

As the introduction to this ruling notes, in two of the pending motions UPS requests alternative relief in the form of striking the testimonies of witnesses Hunter and Pafford, or of extending the period for discovery on the subject of BRPW-based estimates of Parcel Post volumes and revenues. I find no justification for granting either of these alternative requests.

The motion to strike—a request for extraordinary relief in a Commission proceeding—is premised on the argument that, absent the Postal Service's production of the raw source data requested by UPS, the witnesses' testimonies lack an adequate foundation under the Commission's rules to allow admission into evidence. This argument is flawed, as I concluded in section II. A. of this ruling, *supra*: these expert witnesses are entitled to rely upon data generated by a long-established Postal Service system such as the Revenue, Pieces, and Weight System as factual foundation under § 31 of the rules of practice. This conclusion of admissibility is not contingent upon the outcome of a participant's discovery upon the Postal Service.

I also find no justification for departing from the existing procedural schedule by extending the deadline for discovery on the use of the BRPW system to generate Parcel Post estimates in the direct case of the Postal Service. UPS has been afforded, and has availed itself of, ample opportunities to explore this issue through discovery and informal contact with the Postal Service.¹⁴ There has been no convincing showing that the Postal Service has obstructed movant's discovery efforts or been unduly dilatory in its responses. Accordingly, I find no basis for deviating from the discovery deadlines previously established in this case.


RULING

1. The Motion of United Parcel Service to Compel Production of Information and Documents Requested in Interrogatories UPS/USPS-T5-40(c), 58(b)-(c), 82, and 87 to Witness Hunter or, in the Alternative, to Strike Testimony, filed under protective conditions April 17, 2000, is granted in part with respect to UPS/USPS-T5-40(c) and -58(b)-(c), under the terms described in the body of this ruling, and is denied with respect of UPS/USPS-T5-82 and -87.
2. The Motion of United Parcel Service to Compel Production of Information and Documents Requested in Interrogatory UPS/USPS-6 or, in the Alternative, to Extend Discovery Deadline on BRPW Parcel Post Estimates, filed April 28, 2000, is granted in part, under the terms described in the body of this ruling.

¹⁴ I note that UPS addressed its first interrogatories to witness Hunter on his use of the BRPW system on January 21, 2000—nine days after the Postal Service filed its Request in this docket—and that responses to those interrogatories were served on February 4, 2000. Many of the more than 80 responses to UPS interrogatories directed to witnesses Hunter and Pafford and to the Postal Service institutionally have concerned the BRPW System, and the Service has filed several responsive library references, including LR-I-194, 230, 279, and 323.

3. The Motion of United Parcel Service to Compel Production of Documents Requested in Interrogatory UPS/USPS-12, filed May 1, 2000, is denied.

4. The Motion of United Parcel Service to Compel Production of Information Requested in Interrogatories UPS/USPS-12A-15, filed May 2, 2000, is granted in part, under the terms described in the body of this ruling.


Edward J. Gleiman
Presiding Officer