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

POSTAL RATE AND FEE CHANGES, 2000 : Docket No. R2000-1

MOTION TO STRIKE TESTIMONY
OF POSTAL SERVICE WITNESSES
BARON (USPS-T-12) AND RAYMOND (USPS-T-13)
IN BEHALF OF
ADVO, INC.
ALLIANCE OF NONPROFIT MAILERS
AMERICAN BUSINESS MEDIA
ASSOCIATION FOR POSTAL COMMERCE
ASSOCIATION OF AMERICAN PUBLISHERS
COALITION OF RELIGIOUS PRESS ASSOCIATIONS
DIRECT MARKETING ASSOCIATION
DOW JONES & COMPANY, INC.
MAGAZINE PUBLISHERS OF AMERICA, INC.
MAIL ORDER ASSOCIATION OF AMERICA
NATIONAL NEWSPAPER ASSOCIATION
THE McGRAW-HILL COMPANIES, INC.
PARCEL SHIPPERS ASSOCIATION
AND
TIME WARNER INC.
(June 20, 2000)

Pursuant to section 21 of the rules of practice and the Presiding Officer's ruling respecting the timing of this motion at Tr. 18/7066, lines 9-14, the undersigned parties (Movants) hereby move to strike the direct testimony of, written and oral cross-examination responses, and library references sponsored by Postal Service witnesses Baron and Raymond that relate to the Engineered Standards/Delivery Redesign (ES) Study: specifically, USPS-T-12 at 31-37 (Baron), USPS-T-13 (Raymond), Tr. 7368-8000 (Raymond), USPS-LR-I-159 (sponsored into evidence by

Baron at Tr. 7075), and USPS-LR-I-163 (sponsored into evidence by Raymond at Tr. 7357-58).[1]

Standards for Granting Motions to Strike Testimony

"It is axiomatic that striking evidence, particularly in administrative proceedings, is an extraordinary measure." Docket No. R94-1, Order No. 1024, Order Elaborating on Oral Ruling Granting Brooklyn Union Gas Co. Requests for Relief (Aug. 17, 1994) at 3 *(paraphrasing* § 21(c) of the Commission's rules of practice). Regulatory agencies such as the Commission have wide discretion to receive evidence. Unlike the federal courts, they are not bound by the Federal Rules of Evidence but by the more generous standards of admissibility of the Administrative Procedure Act. *See* Docket No. MC96-3, Order Denying Postal Service Motion to Strike (December 12, 1996) (PRC Order No. 1143), at 4-5. Moreover, in carrying out the purposes of an enabling statute, regulatory agencies typically and necessarily engage in a degree of policy judgment and balancing of contending interests that places them at least one step closer to a legislative function, and further from rigid systems of procedural entitlement, than the courts. Bright line rules of inclusion and exclusion that apply in courts may not necessarily apply in quasi-judicial agency proceedings.

Additionally, agencies typically have more freedom than courts to deal flexibly with deficiencies in the form or substance of proffered evidence. Usually, even serious deficiencies in the quality of proffered evidence can be adequately taken account of in determining what weight to give to the evidence. *Id.* at 3-4. Deficiencies in the form, foundation or documentation of testimony often can be remedied through

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[1] Movants have previously addressed the matters raised in this motion in Mailers Intervenors Objection to Admission into Evidence of Certain portions of the Testimony of Witnesses Baron and Raymond (May 8, 2000); Magazine Publishers of America, Inc. Notice of Intention to Object to the Introduction of Evidence (April 18, 2000) (requesting waiver under Commission Rules 21c and 22, for good cause); and at Tr. 18/7355-7357.

extraordinary procedural mechanisms such as extended discovery and supplemental testimony. As the presiding officer in Docket No. R94-1 observed, "It is the purpose of the Commission to evaluate evidence and we will exclude potentially probative materials only in exceptional circumstances." Docket No. R94-1, Tr. 4731 (oral ruling granting Brooklyn Union Gas Co. motion to strike testimony).

However, the hearing requirements of the Administrative Procedure Act, judicial decisions, and the Commission's precedents make clear that there are cases where the Commission has concluded that the option to accept a study's "results into evidence on the theory that its foundational defects can be reflected in the weight it is entitled to is not open to us" and that applicable standards of fair procedure and reasoned decisionmaking require the exclusion of proffered evidence:

> [W]e are required to make our determinations on costing questions in a quasi-judicial context. The parties' right to a meaningful hearing on the record, guaranteed by 39 U.S.C. § 3624(a) and 5 U.S.C. §§ 556-557, must be respected.[2] . . .

Thus, "material *that fails to meet basic evidentiary or due process standards* will not be the basis for recommended rates." Order No. 1024 at 2 (emphasis added).

These cases generally fall into two categories: (1) where the reliability or probative value of the evidence is so irremediably uncertain or unclear that it is impossible to give it any weight, or impossible to determine how much weight to give it;[3] and (2) where, because of the running of the clock or for other reasons, it is

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[2] Docket No. R84-1, Order Granting In Part . . . Motion to Strike Testimony (May 30, 1984) (PRC Order No. 562). *See also MOAA v. United States Postal Service*, 2 F.3rd 408, 429-30 (D.C. Cir. 1993).

[3] *See, e.g.,* Order No. 1024 at 3 ("it became clear that the cumulative weight of the problems associated with the Service's proposal effectively foreclosed any possibility of evaluating the material"); and Order No. 562 at 3 ("The documentation not provided . . . is that which is necessary to *independently* discern what, in fact, the MPCM does, and how it does it. The absence of such

footnote continues on following page

impossible within the compass of the case to cure fundamental defects in the foundation of the testimony or to afford participants a fair opportunity to test and to rebut the testimony.[4] When the Commission strikes testimony, both factors are often present and, to some degree, mutually reinforcing.[5] Where, as here, actions of the Postal Service have "effectively prevented" other participants from analyzing and assessing a significant Postal Service study that would have a substantial--and detrimental--effect on their postage rates, the Commission has held that granting a motion to strike is both appropriate and fair. Docket No. R94-1, Tr. 10/4734-35.

Thus, in cases where "the cumulative weight of the problems associated with [a piece of testimony] effectively foreclose[ ] any possibility of evaluating the materials" (Order No. 1024 at 3), where "a foundation for [proffered testimony], required by the terms of [the Commission's] rules and by the necessity to afford opposing parties a

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information does more than detract from the weight to which the MPCM is entitled. Without it neither the parties, nor the Commission, know whether the MPCM is entitled to any weight at all.").

[4] *See* Order No. 1024 at 12:

> [T]he base which Brooklyn Union needs has changed regularly, to the point where it is aptly described as a "moving target." Aside from the fact that chains of changes do not inspire confidence in the most recent set of potentially final figures, continuing revisions are fundamentally unfair to the intervenor involved..

See also Order No. 562 at 3:

> There is insufficient time remaining in this docket for the Commission to extend discovery on the MPCM--whether formal or informal--and still enable the parties to analyze it and provide their evaluation for the record. Accordingly we have no choice by to strike the relevant portions of witness Merewitz's testimony.

[5] *See* Order No. 562 at 3:

> In this case we are asked to strike testimony because a foundation for it, required by the terms of our rules and by the necessity to afford opposing parties a meaningful hearing, has never been provided. We have tried to allow that foundation to be provided *nunc pro tunc*, but our efforts have not been fruitful.

meaningful hearing, has never been provided" (Order No. 562, Appendix at 1), and where "continuing revisions" (Order No. 1024 at 12) to a study or the continuing "unavailability of essential information about [a proffered study] make effective analysis and rebuttal . . . impossible in the time remaining to complete a 10-month case" (Order No. 562 at 20), the Commission has granted the extraordinary remedy of striking testimony from the record.

Summary of argument

In this case, the Postal Service proffers an Engineered Standards study ("ES study") conducted under the direction of witness Raymond (USPS-T-13) and analyzed by witness Baron (USPS-T-12) as the sole foundation for a dramatic shift in the estimated proportions of load time and access time as a percentage of carrier street time activities, which would hugely increase load time costs attributed to Movants.

With respect to that study and the testimony offered in its support, Movants believe that the first ground for striking testimony discussed above exists now, has existed since the filing of this case, and cannot within the compass of this case be cured by any procedural remedy short of striking the testimony. The study's lack of the minimal foundation, documentation, or similar indicia of reliability, in plain contravention of the Commission's foundational requirements for such evidence (*see* section 31[k][1], [2]and [2][ii][b]), makes it impossible "to *independently* discern what, in fact [the study] does, and how it does it" (Order No. 562 at 3), "effectively forecloses any possibility of evaluating the material," and therefore makes it impossible to judge whether the study "is entitled to any weight at all" (Order No. 1024 at 3).

The reason this is so is that, although the ES study is proffered as a study of carrier street time costs, no study of that subject was ever designed or performed. No sample for the purpose of such a study was ever selected, no data of the kind relevant and essential for such a study was ever described, defined, or collected, no training

for a study of carrier costs was ever conducted, no contemporaneous documentation exists of such a study ever having been undertaken, and no data or statistical analysis have been produced that have any measurable level of confidence or independently verifiable statistical significance with respect to the subject allegedly studied.[6] As MPA witness Hay, the technical editor of the Kearney Data Quality Study, observed in a devastating critique of witness Raymond's study:

> This is an instance of a researcher fitting the observation tallies, i.e., "the answers" into a new set of questions – the six cost categories. How well he has done this is a matter of conjecture and divination. It appears as if the researcher is doing the complete exercise *backwards*. For reasons earlier discussed, it is not possible to offer any level of confidence in the sample or the parameter estimates arising therefrom.

MPA-T-4 at 13.

This situation has only become more apparent since the case was filed, as witness Raymond's inconsistent and constantly shifting explanations of how he "studied" carrier costs have made increasingly clear that the "design" and "methodology" of his "study" are being improvised only now, long after the filing of the study's "results" as testimony.

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[6] Compare this situation to the circumstances described by the Commission in Order 1024 at 15, 17:

> The Service should have supported the McCartney study with a study plan providing a clear description of the survey methodology employed and the confidence limits that can be placed on its major estimates as contemplated by the Commission rules for statistical studies [footnoted omitted]. Not only was there no study plan, there were no documents relating to the study. Tr. 8/194 and 4299. It would have been helpful to the witness as well as this Commission had the witness prepared a study plan including a description of BRMAS processing in the field. This should have included a description in sufficient detail so that features covered by ordinary First-Class Mail processing are separate from unique BRMAS processing features. As late as the final day of hearings, this issue was in doubt. [Citation omitted.]
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> The Service was remiss in not conducting a thorough review of the overall study results and calculations before the study was presented to the Commission.

The second condition discussed above, i.e., fundamental deficiencies in the foundation, explanation or documentation of a proffered study that render it impossible for participants to test and rebut within the compass of the case, necessarily exists if, as we argue above, the study is so defective in its basic conception and design that it is unsuitable for the purpose for which it is offered. Putting aside that consideration, however, the second condition also exists at this time. That is, severe and persistent deficiencies in the way this evidence has been prepared and presented by the Postal Service have made it impossible for the parties to analyze the evidence and present their evaluation of it within the time remaining in this case.[7]

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[7] Compare the circumstances described by the Commission in Order No. 1024 at 11-13:

> The Service's handling of this matter had practical consequences that seriously impaired the orderly conduct of this proceeding. While these may have been unintended, they nonetheless burdened a process that, by statute, allows only ten months to complete a rate case. The McCartney study was supposedly prepared specifically for use in this case, yet the Commission eventually had to schedule hearings to receive testimony from not one, but three witnesses, in order to ensure adequate coverage of all relevant aspects of the proposal [footnote omitted]. In addition, Brooklyn Union, the Commission, and other interested parties were forced to track and evaluate numerous redirected and revised interrogatories. [At 11.]
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> As discussed in more detail below, the Commission's conviction is that the Postal Service's BRM/BRMAS operations have not been described well and that a reasonable study has not been done. Beyond this, the base which Brooklyn Union needs has changed regularly, to the point where it is aptly described as a "moving target." Aside from the fact that chains of changes do not inspire confidence in the most recent set of potentially final figures, continuing revisions are fundamentally unfair to the intervenor involved. [At 12.]
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> [T]he Service's claim that the opportunities it was given to amend the study cured any due process defects is, as Brooklyn Union says, disingenuous. Mr. Foster testified he was assured the study had been reviewed before his testimony was completed, yet the Postal Service has amended its study repeatedly, and has continued to amend its study even after the date set for intervenors to file responsive testimony. In so doing, it has effectively prevented Brooklyn Union from analyzing the study and providing responsive testimony. It is difficult to imagine a clearer case in which a party's rights have been as seriously compromised. [At 13.]

Movants recognize and do not disagree with the Commission's disposition to afford to the Postal Service--as it has to other participants also--every fair opportunity to remedy defects in its initial presentation of evidence, when that can be accomplished without denying fairness to other participants. As the Commission has often recognized, however, this accommodating policy is not costless. At some point, the cost of unlimited opportunity to rehabilitate defective testimony, in the Commission's and the participants' time, attention, and diversion of resources from other demands, becomes exorbitant. Additionally, an excessively accommodating policy becomes a source of what economists call "moral hazard." What was intended as a reasonable opportunity for correcting unavoidable mistakes begins to look more like an opportunity for not taking the trouble to avoid mistakes, or for conducting evidentiary disputes as wars of attrition.[8]

That point, if it has not yet been reached in this case, is rapidly approaching. Time is dwindling for any meaningful opportunity of responding to witness Raymond's endlessly changing, mutually contradictory, frequently misleading and ultimately impenetrable explanations of what the poverty of our language forces us to call his "methodology." The Niagara of information provided by the Postal Service up to this point strongly confirms our initial impression that the witness never formulated any design or adopted any procedures or conducted any analysis that consists of more than devising convenient rules of thumb for sorting data *under the terminological*

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[8] *See* Order No. 1024 at 2, where the Commission discussed "the advantages and shortcomings of the Commission's approach to evaluating Postal Service proposals":

> The main advantage is that material that fails to meet basic evidentiary or due process standards will not be the basis for recommended rates. The main drawback is that when the Postal Service relies on a study that is so poorly conceived and executed that it can not be the basis for recommended rates, it forces interested mailers to expend a considerable amount of time, energy and money to correct for the Service's inadequate internal controls.

See *also* Docket No. R94-1, Tr. 4733-34.

headings appropriate to carrier street time costing and convenient *ex post facto* narratives of alleged but undocumentable method in how the study was conceived and executed. Everything that would lend any confidence to the study's facially improbable results (*see, e.g.*, MPA-T-5 [Crowder] at 34-40) is the product of the witness' undocumented and unsupported recollection (e.g., the verbal instructions allegedly given to data collectors about the meanings of terms[*see id.* at 13-16]). Everything that is documented or tangible or testable, such as the simultaneously conducted time studies and the simultaneously recorded videotapes of the same carriers on the same days, undermines those supposed recollections. And at the very heart of the issue, namely the degree of synonymy between the aggregations of data to which Raymond has attached the traditional terms of carrier costing ("load time," "access," etc.) and the settled meanings of those terms as they have been developed for the purpose of carrier costing over many cases, with the economic and statutory principles that govern the Commission's decisions chiefly in view, Raymond has proved simply incapable of providing a coherent account of work. His sharply different results from previous studies might be explicable if he were redefining key terms, but he insists that he is not.

Discussion

On January 12, 2000, the Postal Service filed a request for an increase in postage rates, in which it sought to increase the rates for all classes of mail by an average of eight 6.4 percent. *See* Notice of United States Postal Service's Filing (January 14, 2000) (Order No. 1279) at 2.

The proposed increases for most classes of mail used extensively by Movants are substantially higher than the overall average. *Id.* As an example, the average increase to be borne by Periodicals mailers is nearly 13 percent, *id.*, and most regular

rate Periodicals mailers appear to be facing increases of around 15 percent. *See* MPA-T-1 (Cohen) at 34-35; ABM-T-1 (Morrow) at 3-4 and Attachments 1-2.

In raw dollars, a postage increase of 15 percent would translate, for Periodicals mailers, into an annual additional total expense of roughly $300 million. And of this $300 million, approximately $70 million (more than 23 percent) would result directly from cost increases calculated on the basis of a 1998-99 Engineered Standards study ("ES study"), conducted under the direction of Postal Service witness Raymond (USPS-T-13) and analyzed by witness Baron (USPS-T-12).

There is no precedent for the approach taken, or the results advocated, by witnesses Raymond and Baron.[9] Indeed, the ES study was originally designed *not* for costing purposes but as a way to "to collect actual activities of the city letter carrier and to develop engineered methods and time standards to establish a workload managing system." USPS-T-13 at 5. Yet instead, at the 11th hour,[10] the unfinished

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[9] As an example, the ES study shows that total load time costs are 60 percent higher than those in Docket No. R97-1, which concluded less than 20 months ago. Conversely, the ES study shows access costs (foot plus curbline) to be 30 percent lower – and collection costs to be 69 percent lower – than in Docket No. R97-1, while load time as a proportion of total street time allegedly has grown from 25.7 percent to 38.1 percent – a 48 percent increase during that same period. For residential park and loop routes (the largest route type), load time as a proportion of total street time supposedly increased from 20.3 percent in Docket R97-1 to 35.3 percent by 1999 – a staggering 74 percent jump. Conversely, the ES study shows that access time (foot plus curbline access) dropped from 56.8 percent to 35.4 percent – a 38 percent reduction. As a result, the study suggests that residential park and loop carriers now spend as much time loading mail into receptacles as they do moving between delivery points – a conclusion that defies common sense.

[10] In early March, witness Raymond testified that the date on which he was made aware that the Postal Service might "use the ES data in its calculation of postal rates" was "[s]ome time in the August – September 1999 time frame." Tr. 18/7607. *See also* Tr. 18/7403 (Response to ADVO/USPS-T-13-19, stating that "all discussions" regarding the use of the ES study for costing purposes "were verbal, and no records were kept of the content of these discussions"). Curiously, however, the Postal Service recently stated that it had originally developed its omnibus proposal for a rate increase so that it could be *filed* "in the fall of 1999" – or, according to witness Raymond, at the very same time that the Service decided for the first time to use his ES data as part of the filing. *See* Reply Comments of the United States Postal Service in Response to Notice of Inquiry No. 2 (May 15, 2000) at 6 ("it must be noted that the Postal Service's Request was originally developed to *file* in the fall of 1999, and that the decision to postpone filing until after the holidays was made relatively late").

ES study was converted into the sole foundation for a huge increase in load time costs attributed by the Postal Service.[11]

It would be difficult to overstate the significance of this change in the attribution of carrier street costs, or its adverse impact on Movants -- or, as a result, the necessity for affording Movants, other parties, and the Commission an adequate, full and fair opportunity to understand, test and challenge the ES study in an on-the-record proceeding. The good faith efforts of Movants to accomplish this crucial task, however, have been unavailing.

Witness Raymond's testimony has been the subject of extensive motions practice since March. Despite Commission orders compelling answers to interrogatories directed to witness Raymond, however, not until earlier this month (more than a month after Raymond left the stand) did Movants receive the last of his answers to interrogatories – most of which were originally posed to him in February and March. Indeed, answers to interrogatories posed by Advo, Inc. (Advo) were filed as many as *ten weeks* after the interrogatories were asked, while answers to Magazine Publishers of America, Inc. (MPA) were filed as many as *eleven weeks* after the questions were submitted. Additionally, some interrogatories were not answered until nearly a month after Raymond had concluded his oral testimony.

Movants have been stymied in their efforts to assist the Commission – or their own positions -- in evaluating the soundness of the ES study (as well as the rate

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[11] Tr. 18/7607. Even for the non-costing purposes for which it was originally intended, the ES study appears carelessly prepared. *See, e.g.,* Tr. 18/7449 (Response to ADVO/USPS-T-13-28) ("There were no documents, recruitment ads, information sheets or written job descriptions provided to prospective [data collectors] that I developed or ever saw. All discussions relative to the positions were verbal."); Tr. 18/7386 (Response to ADVO/USPS-T-13-11) (witness Raymond's company "did not keep records as to the number of [data] collectors out on the routes"); Tr. 18/7387 (Response to ADVO/USPS-T-13-12) ("All instructions were given verbally to the data collectors"); Tr. 18/7388 (Response to ADVO/USPS-T-13-13) ("No written instructions were provided [to the data collectors]; all training was on the job"); Tr. 18/7484 (Response to ADVO/USPS-T-13-45) (the "engineered methods, standards and applications" "were not tested" and "continued to be developed concurrently with the data collection").

increases based on its conclusions), not only because they have faced long (and prejudicial) delays in receiving any answers at all to important questions but also because they have been forced, when those answers finally arrived, to wade through a quagmire of constantly changing confusion. *See* Docket No. R94-1 (Order No. 1024, at 12) ("Aside from the fact that chains of changes do not inspire confidence in the most recent set of potentially final figures, continuing revisions are fundamentally unfair to the intervenor involved").

Witness Raymond's answers to interrogatories have often confused issues more than clarified them – and in some instances sent Movants and other parties down laborious paths whose pointlessness became apparent only on May 9, when witness Raymond took the stand. For example, it was not until nearly four months into this proceeding (just prior to oral cross-examination of the Postal Service's witnesses) that Movants discovered that the dataset supposedly used by the Service as the principal basis for its increased carrier cost attributions was but one of *three* overlapping datasets in the Service's possession. Not until April 28 were the parties and the Commission first advised – through an answer to an interrogatory that had been posed five weeks earlier – that more than one set of data existed. *See* Tr. 18/7940-41. And not until May 9 – at witness Raymond's already delayed hearing – did the parties and the Commission learn that he had answered interrogatories using not one dataset but a series of interchangeable datasets (a third of which was revealed to exist that day), without revealing that fact either to other parties or the Commission.[12]

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[12] *See* Tr. 18/7948-50, 7987, 7998-99. One dataset, which was provided to witness Baron and on which Library Reference LR-I-163 relies, contained references to 844 route days. A second, which was not supplied to Baron, contains references to 981 route days. Tr. 18/7941. A third – the existence of which was revealed for the first time on May 9 -- contains references to 1,020 route days. Tr. 18/7992.

The differences in these datasets, moreover, are hardly insignificant – though witness Raymond's oral testimony did little to assist in sorting out the confusion his earlier answers had engendered, or in determining the basis for his selection of data to be used for costing purposes. Moreover, Raymond has never offered a statistically logical explanation for his choice of the LR-I-163 dataset given to witness Baron, instead explaining his choice tautologically:

> [In my direct testimony] I did not specify which other records are in the entire database that were left out of the dataset. I only have described the data that was [*sic*] given to Witness Baron.[13]

Even when witness Raymond's answers to interrogatories were provided voluntarily, they did little to assist the parties in evaluating the ES study or the conclusions based on it, because they were often inconsistent and contradictory.[14] Moreover, Raymond's just-received answers to questions raised at the hearing about the reasons for excluding numerous route-days of data are not only contradictory but raise serious questions about the validity of route-days that were included.[15] Thus,

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[13] Tr. 18/7936. *Also, compare id.* at 7936 (where Raymond testified that records "have not been purged from our database") *to id.* at 7938 (where, after he was reminded that, in response to MPA/USPS-T-13-48, he had stated that "[r]ecords were purged from the database," witness Raymond testified: "I think I have the opportunity to say that maybe here's another one that I need to make a correction on, because the original dataset we have has all the records in it that were made from the field entries. . . . They were not purged") *and id.* ("Maybe I was confused at this point, but I look at the study as I am going through these interrogatories and I may have got confused between what is in the entire engineering dataset"). *See generally* Docket No. R94-1 (Order No. 1024, at 6) (striking testimony where some of Postal Service's witness's responses "introduced additional confusion" into the case).

[14] *Compare , e.g.*, Tr. 18/7527 (response to ADVO/USPS-T-13-63, filed April 27, 2000) ("A location could have more than one 'CY' code, or site") *to* Tr. 18/7633 (response to MPA/USPS-T-13-18, filed March 2, 2000) ("Site and location mean the same thing").

[15] His response lists a number of route-days that were excluded supposedly because they were "partial route less than 8 hours," "partial scans," or "multiple carriers on route." *See* Response of the United States Postal Service Witness Raymond to Questions Posed at the Hearing, June 7, 2000. But his subsequent post-hearing response shows that most of these route-days ranged from seven to eleven hours long, with from 70 to 110 tallies -- substantially longer and with more tallies than many of the route-days that he included in his LR-I-163 dataset. *Compare* Response of the United States Postal Service Witness Raymond to Information Request Made At Hearing, June 14, 2000 *with* Raymond's response to MPA/USPS-T13-56, Tr. 7915-31.

even at this late date, the basic foundational criteria for Raymond's selection of route-days to be included or excluded is missing.

As a result, as of today – with fewer than five months remaining before the Commission must issue its decision and fewer than three before the parties must rest their cases – Movants remain unable to pierce the incomprehensible inconsistency of witness Raymond's testimony or to comprehend – much less test or replicate – either the ES study itself or the complex and costly conclusions for which it serves as the basis.

This constitutes a denial of due process, and provides both reason and more than sufficient grounds for the Commission to strike all testimony proffered by witnesses Raymond and Baron regarding the ES study, as well as all related library references, from the record of this case.

Conclusion

In an order striking testimony presenting a new Postal Service cost study from the record of the 1994 ombibus rate case, the Commission stated:

> Intervenors are in many respects less well-positioned than the Postal Service. Specifically, the Postal Service is uniquely situated to describe its operations and to perform cost studies of them. Intervenors usually find it difficult to provide basic analyses of Postal Service operations. [footnote omitted] For this reason, they usually begin with the Postal Service's description and analysis. And while they may help in improving that basic analysis, or in uncovering problems with it, they are more likely to help in suggesting questions to be asked, in interpreting results, and in providing guidance on the best way to use the results.

Docket No. R94-1, Order No. 1024 at 11-12.

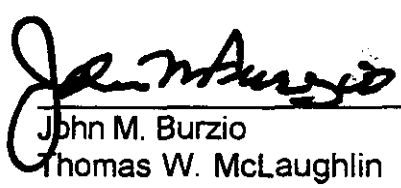
In this case, Movants *have* expended considerable time, energy and money "to correct" (and even just to comprehend) a study that was offered at the last minute, for purposes other than those for which it was designed and conducted, and as the basis for a substantial increase in the postage they will be required to pay. Movants

respectfully submit that, as a result of the study's fundamental flaws as a cost-measuring device, and as a result of the carelessness with which it was proffered, its use in this ratemaking procedure would constitute a denial of their due process rights.

For all these reasons, Movants respectfully move that the Commission strike from the record of this proceeding both the ES study and all testimony provided by witnesses Raymond and Baron that is based on or related to the ES study.

This Motion has been discussed with Postal Service counsel.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with sections 12, 25(a), and 26(a) of the Rules of Practice.

Timothy L. Keegan

June 20, 2000