

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO THE OFFICE OF THE CONSUMER ADVOCATE'S SUGGESTION
FOR CONCURRENT APPEARANCE OF ITS TWO WITNESSES
ON THE CONTINGENCY PROVISION
(June 20, 2000)

The Postal Service hereby gives notice of its opposition to the suggestion made by the Office of the Consumer Advocate (OCA) for the appearance as a panel of its two witnesses on the contingency provision.¹ The witnesses at issue are witnesses *Burns (OCA-T-2)* and *Rosenberg (OCA-T-3)*.

The Postal Service believes that the suggested approach could deprive it and other parties of due process. The OCA's suggestion essentially shields the two witnesses from the possibility that one might express an answer to the same question different from the other's. The Postal Service, and other parties, however, have a right to explore that possibility. The ability to do so would be severely compromised, if not eliminated, by the OCA's suggestion.

The OCA argues that because the testimonies are interrelated, the witnesses should appear together. The fact that they are interrelated is all the more reason for

^{1/} Office of the Consumer Advocate Notice of Availability of Witnesses for Hearing and Suggestion for Appearance of Contingency Witnesses as a Panel (June 19, 2000).

them *not* to be allowed to appear together. The purpose of cross-examination is to explore the witness's bases for his opinion; this purpose is defeated if one witness can defer questions clearly relevant to his own testimony to the other witness.

The OCA attempts to analogize references to other witnesses that occurred during hearings on the Postal Service's case. Yet that situation is clearly distinguishable. There, the revenue requirement witness may say, you are really getting into a level of operational detail that the operations witness could better address. Here, the OCA's proposal would allow a witness to refer questions on the very subject matter of his own testimony.

Parties cross-examining these witnesses have a right to know what each witness's opinions are on the subject of his testimony independent of the contemporaneous review and comment by any other witness. This right is not changed because the subject matters of the two testimonies are congruent or overlap to a large degree. After all, the OCA chose to present two separate pieces of testimony on the same general topic. While it has that right, it does not have the right to foreclose full exploration of each witnesses' opinions.

The OCA asserts that counsel may still direct questions to one witness or the other. If that is so, then there is no purpose to their appearing together. In that regard, the Postal Service has no objection to directing the same questions to both witnesses, if necessary. Indeed, it has the right to do so and to receive the separate opinion of each expert. To the extent one witnesses covers a specific sub-topic covered by the other and does not have the expertise to comment on that subject, the witness or his

counsel remains free to suggest that the question might be more appropriately directed to the other witness, and then counsel conducting the cross-examination retains the right to determine whether indeed to pursue the matter with the other witness. Indeed, concurrent appearance of the two witnesses affirmatively deprives cross-examining counsel of the ability to make that determination.

The Postal Service has no objection to, and would endorse, the OCA's request that the two witnesses be scheduled for the same day.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
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Scott L. Reiter

CERTIFICATE OF SERVICE

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



Scott L. Reiter

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