

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

**PARCEL SHIPPERS ASSOCIATION (PSA) MOTION TO COMPEL  
RESPONSE OF UNITED PARCEL SERVICE TO REQUEST FOR  
PRODUCTION OF INFORMATION AND DOCUMENTS**

United Parcel Service has filed objections to PSA/UPS-1, 4 (in part), 5 (in part), and 6(b)-(e). Those interrogatories request the following information about UPS:

1. PSA/UPS-1: The number of parcels and expedited letters UPS carried broken down by the types of services that UPS' Intervenor's Statement says UPS provides and which it says competes with USPS.
2. PSA/UPS-4 requests, in part, that UPS "...provide an estimate of the number of parcels handled by United Parcel Service, in the most recent period for which such data are available, that were in excess of 70 pounds and also how many were in excess of 108 inches in length and girth combined."
3. PSA/UPS-5 requests, in part, the volume, revenue, cost attributable to, and the net income realized from UPS' domestic, non-expedited transportation of parcels.
4. PSA/UPS-6(b)-(e) requests UPS, in part, to provide the percentage of non-expedited ground parcels transported at "contract rates" that were lower than the published rates and the average discount.

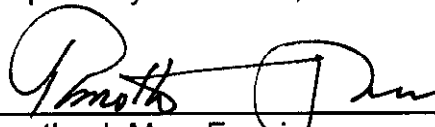
In its Objection UPS points out that the information requests to which it has objected have been the subject of previous Presiding Officer Rulings in R97-1, R94-1, R90-1, and R87-1. PSA concedes that very similar information requests have been the subject of Presiding Officer Rulings as cited. As to all of this information, UPS claims that the Presiding Officers have consistently ruled that the information requested is highly sensitive and commercially protected; that there would be considerable burden to its production; and that it "...is not relevant to the establishment of proper postal rates, and could not possibly lead to the discovery of admissible evidence."

We agree that the cited Presiding Officer Rulings do indeed hold that the type of information requested is commercially sensitive and, moreover, if UPS does not already have such information and data collected, its collection for production would be burdensome. However, in Docket No. R97-1, the Presiding Officer did not, as UPS asserts, rule that this type of information was irrelevant nor did the Presiding Officer rule that it was "not reasonably calculated to lead to the discovery of admissible evidence." Rather, the Presiding Officer found that PSA had not shown a convincing explanation of

why the information was "sufficiently central" to the application of the non-cost factors of the Act "...to overcome either the burden or the sensitive business information objections." Attached hereto is a copy of the PSA Motion to Compel filed in Docket R97-1. PSA could not state the arguments for relevance to central issues in this proceeding any better than it was stated in that Brief, and we rely on it.

If the Presiding Officer believes that it is not relevant to the determination of proper Parcel Post rates, most particularly to the appropriate cost coverage for Parcel Post, to know what the effect on United Parcel Service, the acknowledged dominant competitor, would be from the recommended Parcel Post rates, then we withdraw our request for this information. On the other hand, if the Presiding Officer believes that the impact on United Parcel Service of Parcel Post rates is relevant to the application of Criterion 4 in the assignment of institutional costs, but that the sensitive nature of the information and the burden to UPS are controlling considerations to its production, then PSA would be willing to accept the provision of this information under protective order, and, moreover, in order to alleviate UPS' burden, it requests only information that does not require what UPS alleges would be "a special study, thereby imposing an undue burden on UPS."

Respectfully submitted,

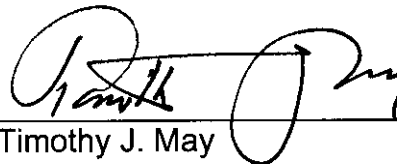


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Counsel for Parcel Shippers Association

#### CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the Postal Service by hand and by First-Class Mail upon all participants in this proceeding requesting such service.



Timothy J. May

Dated: July 6, 2000

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

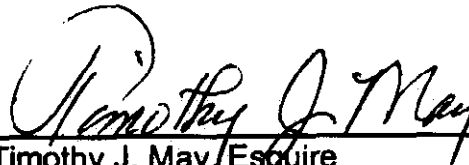
POSTAL RATE AND FEE CHANGES, 2000

DOCKET NO. R2000-1

PARCEL SHIPPERS ASSOCIATION (PSA)  
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO  
UNITED PARCEL SERVICE (PSA/UPS-1, 2, 3, 4, 5 and 6)

The Parcel Shippers Association (PSA) requests United States Postal Service to respond fully and completely to the following interrogatories and requests for production of documents pursuant to Rules 25 and 26 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,



Timothy J. May, Esquire  
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Counsel for Parcel Shippers Association

Dated: June 19, 2000

### **PSA/UPS-T-1**

In its Intervenor's Statement filed January 13, 2000, UPS states that it competes with USPS, and provides the following types of service:

- (a) International delivery services;
- (b) Expedited letter delivery services;
- (c) Parcel delivery services via air operations; and
- (d) Parcel delivery services via ground transportation.

Please provide, for the latest period for which this information is available, the numbers of parcels and expedited letters that UPS transported for customers broken down by the identifiable categories above; and furthermore please subdivide the parcel post type packages which are delivered by ground shipment on a non-expedited basis between commercial and residential delivery.

### **PSA/UPS-2**

On page 1 of its Intervenor's Statement, UPS states that it is a substantial user of postal services. Please provide the total number of parcels and the dollar value of the postage on such parcels that were shipped as Standard (A) mail which met the Postal Service definition of non-letter, non-flat mail. Also, please identify what portion, in volume and revenue, of the parcels shipped in Standard (A) were parcels that had been deposited with United Parcel Service by UPS customers for delivery.

### **PSA/UPS-3**

On page 2 of its Intervenor's Statement, UPS states that, as a competitor of USPS, it will be affected by the USPS changes proposed in this proceeding. Please state for the record whether the Postal Service's proposed priority and parcel post rates

in this proceeding will have an adverse financial impact on United Parcel Service. If the answer is in the affirmative, for either service, please supply specifically the extent of the impact, including the number of packages it anticipates it will lose or gain because of the proposed rates, and the UPS revenues represented by that lost or gained volume.

**PSA/UPS-4**

Please confirm that UPS has a maximum weight and size limit on packages of 150 pounds and 130 inches in length and girth combined, and that the Postal Service limitations are correspondingly 70 pounds and 130 inches in length and girth combined. Please provide an estimate of the number of parcels handled by United Parcel Service, in the most recent period for which such data are available, that were in excess of 70 pounds and also how many were in excess of 108 inches in length and girth combined. Also, please provide the rates UPS charges for parcels in excess of 108 inches in length and girth combined.

**PSA/UPS-5**

Please provide for the last five years UPS revenues, costs, and annual volumes. For this five year period, please identify the volumes, the revenue, the costs attributable to and the net income realized from its domestic, non-expedited transportation of parcels exceeding one pound, and those under one pound. If you are unable to disaggregate under and over one pound parcels, you may combine them in your response.

**PSA/UPS-6**

So that it is possible to compare parcel post rates with the rates charged by UPS for comparable ground transportation service, please supply the following:

- (a) UPS' published tariff for non-expedited ground transportation of parcels;
- (b) The gross percentage of the parcels described above that are carried at so-called "contract rates" that are lower than the applicable rates in the published tariff;
- (c) The average discount from published tariff rates for those parcels identified in (b) above;
- (d) The gross percentage of the parcels described above that are carried at rates higher than the applicable rates in the published tariff; and
- (e) The average surcharge above published tariff rates for those parcels identified in (d) above.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the Postal Service by hand and by First-Class Mail upon all participants in this proceeding requesting such service.

A handwritten signature in black ink, appearing to read 'Timothy J. May', is written over a horizontal line.

Timothy J. May

Dated: June 19, 2000

**DOCKET SECTION**

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

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**POSTAL RATE AND FEE CHANGES, 1997 :**

**DOCKET NO. R97-1**

**PARCEL SHIPPERS ASSOCIATION (PSA) MOTION TO COMPEL  
RESPONSE OF UNITED PARCEL SERVICE TO REQUEST FOR  
PRODUCTION OF INFORMATION AND DOCUMENTS**

United Parcel Service (UPS) has filed objections to PSA/UPS-4, 5, and 6(b)-(e) (dated February 9, 1998 and received by mail while Counsel for PSA was out of town). Those interrogatories request information about UPS that the Postal Rate Commission (PRC) routinely requires be produced by United States Postal Service. Those interrogatories request the following information about UPS:

1. The number of parcels delivered by UPS which weighed more than 70 pounds and were greater in length and girth combined than 108 inches;
2. UPS volumes, revenues, costs of, and net income earned by United Parcel Service from its delivery of domestic, nonexpedited parcels; and
3. The percentage of its parcels on which UPS granted a discount from the published tariff, the percentage of its parcels for which UPS imposed a surcharge, and the amounts of the average discount and the average surcharge.

UPS has been an intervenor in every major PRC proceeding since the first proceeding some 27 years ago and has successfully resisted in all of that time the divulgence of any meaningful information about its own operations, while at the same



time demanding in the most exquisite detail every facet of information about the United States Postal Service, its only competitor for the delivery of domestic ground parcel shipments to residences. All that one can tell from the data that UPS is willing to share with the Commission and intervenors from case to case is that UPS, over those 27 years, has grown into a behemoth of a carrier of parcels, while the Postal Service has in that same period of time become an insignificant factor.

In each proceeding, UPS maintains that the requested data is not relevant to the setting of postal rates; would be burdensome to compile and produce; and is regarded as confidential by the Company. It ill behooves an intervenor who has participated in every PRC proceeding, probably more aggressively over the last several decades than any single party except the Postal Service itself, and has thereupon created untold burdens for numerous intervenors, not to mention the Postal Service, responding to its ravenous appetite for data, to plead burden.

UPS' claim of confidentiality should be seen in the proper context. That context is one where the Postal Rate Commission has repeatedly over the years ordered the Postal Service to divulge to its only competitor for ground transportation of parcels the most fulsome details of every aspect of its operations. Is there anything confidential about the fact that, for example, while United States Parcel Post carries X number of parcels, United Parcel Service carries almost all the rest? Why is it confidential to know what that number is? If it would be so commercially damaging to UPS, why is it not conversely commercially damaging to USPS to disclose that information in a much greater wealth of detail?

One can understand why UPS regards as highly sensitive the amount of discounts it is granting to favorite customers; the penalties it is imposing on others; and the extent to which these practices go on. As to that data we agree that UPS should not be compelled to produce that unless it can be demonstrated that it is clearly relevant to the issues in this proceeding, and necessary to produce a record upon which postal rates can be properly made.

It has long been PSA's contention that the PRC cannot properly establish parcel post rates without an understanding of the small parcel delivery market. Since United Parcel Service is the acknowledged dominator of this market, we do not understand how the PRC can employ the noncost factors of the Act in fixing parcel post rates if it knows nothing of the size of the market and the relative strength of the only competitor in that market. It seems to us fundamental that the Commission must know the relative market share of UPS, that is, its volumes; its costs to service that market; the various prices it charges to different parts of that market; and the effect that may have upon the prices the Commission recommends for parcel post. The PRC needs to know the profitability of UPS' share of the market so that the Commission can determine the impact of its actions upon the only private competitor. The PRC needs to know the size of UPS' market for parcels that exceed 70 pounds and also that exceed the 108 inches in length and girth combined, a market for which UPS is in fact a monopolist because the Postal Service cannot carry such parcels and there is no one other than UPS to provide that service.

The PRC evidently believes this kind of information is relevant. Section 3001.92 of its Rules of Practice and Procedure requests (but does not require) that submissions by intervenors include information about competitor operations. Subparagraph (h) provides that, if the intervenor is a competitor of the Postal Service, the intervenor should define the areas of competition, and provide ". . . a demonstration of the intervenor's ability or inability to meet postal competition." Among other data the Commission's rules request is a five-year record" . . . showing growth in each major segment of the Company's business and a statement of the current rates and all conditions of service applicable to the portion of the intervenor's operations which is affected by comparable service of the Postal Service."

The Commission would like to know the actual rates charged by UPS. The UPS tariff is a meaningless document, to the great satisfaction of favored customers with discounts, and to the consternation of UPS customers when they are told that their rates will be so much more than the published tariff. The Commission wants to know the costs of the competitive services and the rationale by which the intervenor has made the attribution of those costs.

We submit that the Commission's own cited rules establish that the information objected to by UPS is manifestly relevant. While pretending to observe the Commission's request for an intervenor statement, the United Parcel Service response to subparagraph (h) is a mockery of the Commission's rules. (See attached)

UPS does not directly claim the USPS proposals will competitively injure UPS; rather, they cite to their independent consultants, noting those consultants have

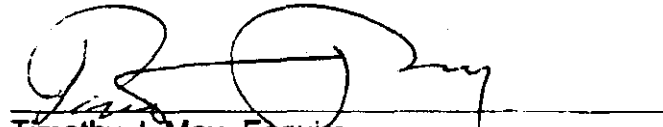
concluded that the proposals would violate the Act and, because of that violation of the Act, UPS will lose volume and revenues, although UPS hastens to say they have no estimates of what that loss might be. (See UPS response to PSA/UPS-3) And, when asked what they base their conclusions of competitive harm on, UPS' hired consultant simply responds that, while he has not investigated the impact of parcel post rates on UPS, it is his testimony that ". . . unfair parcel post rates could injure competitors such as UPS." And this same witness disclaims any knowledge about the parcel post market, stating that he has computed no market shares and therefore is unable to say whether UPS' parcel volumes have increased while USPS' parcel post volumes have declined. (See response to PSA/UPS-T3-5) We do not believe UPS can have it both ways; they cannot hint at competitive injury and hire experts who studiously avoid any knowledge of the market but yet posit competitive harm from "illegal rates," and at the same time shield from the Commission and intervenors any data which might be used to document or rebut such competitive harm. UPS studiously avoids sponsoring any witness who knows anything substantive about UPS.

We would argue that, if UPS persists in hiding behind the claim that this basic data is somehow highly confidential, and therefore privileged, then it foregoes all claims, direct or implied, that the rates to be recommended for parcel post services by the PRC should take into account a competitive impact on UPS.

Wherefore, PSA requests that the Commission order United Parcel Service to fully comply with PSA's request for data contained in PSA/UPS-4, 5, and 6 (b)-(e), or, if it declines to do so on the basis of the confidentiality of the information requested, that

PRC rule that all adverse inferences of the nonresponded to questions be held to have been established contrary to UPS' interests.

Respectfully submitted,

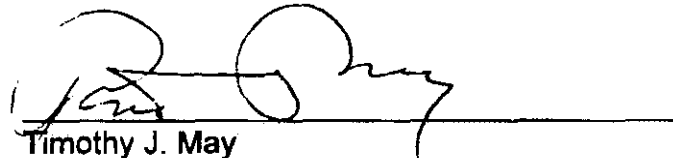


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Counsel for Parcel Shippers Association

Dated: February 18, 1998

#### CERTIFICATE OF SERVICE

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



Timothy J. May

Dated: February 18, 1998

(h) Competitor Operations

Both UPS and the Postal Service accept packages from the public, transport them to their destinations, and deliver them to consignees. While UPS's ground parcel delivery services are often compared with Parcel Post, UPS also delivers many packages of the type handled in other classes and subclasses of mail.

UPS has uniform maximum weight and size limits on packages of 150 pounds and 130 inches in length and girth combined. The Postal Service currently has package limitations for Parcel Post of 70 pounds and 108 inches in length and girth combined. Bound Printed Matter has a weight limit of 15 pounds.

(i) Impact of Rate Changes on Users' Suppliers

UPS has no information on this subject.

(j) Statement of Revenues, Volumes,  
Costs, and Profits

Attachment A is an audited schedule of UPS's revenues, costs (including federal income tax), and net income for the period ended December 31, 1996, and for each of the preceding four years, prepared by the Company's auditors, Deloitte & Touche. Attachment B is a statement of UPS's annual volumes for each of the five years from 1992 to 1996, inclusive.