

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

RECEIVED  
JUL 14 4 27 PM '00

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000 )

Docket No. R2000-1

ASSOCIATION OF PRIORITY MAIL USERS, INC. (APMU)  
MOTION TO STRIKE THE QUESTIONING OF WITNESS HALDI BY UPS  
CONCERNING A PRESS RELEASE BY THE COLOGRAPHY GROUP  
(July 14, 2000)

The Association of Priority Mail Users, Inc. (“APMU”) moves, pursuant to section 21(c) of the Commission Rules of Practice, 39 CFR §30001.21(c), to strike from the record the questioning of witness Haldi (APMU-T-1) at Vol. 25 pages 11730, l. 17, through 11732, l. 6 of the transcript herein, by counsel for United Parcel Service (“UPS”). The grounds for this motion are as follows.

1. On July 11, 2000, during oral cross-examination of APMU witness Dr. John Haldi (APMU-T-1), counsel for United Parcel Service (“UPS”) presented witness Haldi with a press release by the Colography Group, marked for identification as UPS-XE-Haldi-6, and then read from the document, pausing at times to ask witness Haldi to confirm the contents of the press release. Tr. 25/11730-32. A copy of the relevant transcript pages is attached hereto as Exhibit A. Counsel for UPS failed either to authenticate the document or to tie his reading from the document to any germane object for oral cross-examination — *e.g.*, witness Haldi’s testimony or his responses to discovery. The only apparent purpose to this colloquy about the press release was to insert portions of the press release into the record.

2. Counsel for UPS first moved to have the press release transcribed into the record (but not as evidence), but after counsel for APMU objected, withdrew his motion seeking

transcription. Counsel for APMU then moved that the portion of UPS' oral cross-examination which related to this press release be stricken from the record. In response to Presiding Officer Gleiman's request that such a request be made in writing, this motion is hereby submitted by APMU.

3. APMU submits that the efforts by counsel for UPS to read a press release issued by a third party into the record during oral cross-examination of APMU's witness were inappropriate. Rule 30(e)(1) states that cross-examination shall be "limited to testimony adverse to the participant conducting the cross-examination." Thus, oral cross-examination provides intervenors and parties with the opportunity to test a witness' assumptions, as well as to obtain clarification of statements made by the witness during written discovery regarding that testimony. Counsel for UPS had the opportunity to lay a foundation for the relevance of the Colorgraph Group press release with regard to the testimony or statements in written discovery of witness Haldi. However, no such foundation was laid by counsel, and there is no basis for retaining the questioning of witness Haldi regarding this press release in the transcript.

Counsel for APMU made a timely objection at the close of counsel for UPS' cross-examination, there having been no nexus to witness Haldi's testimony established.

4. Obviously, the Colorgraph Group press release is not substantive evidence in this case, and the transcript should not reflect the contents of that document. Furthermore, APMU observes that the authenticity of the document was not established by the testimony of witness Haldi or any other means, and was not offered by any person or party capable of authenticating it. In the absence of such testimony or other corroborating evidence, no foundation, let alone any proper foundation, was laid for the admission of either the document or its selective recitation into the record.


5. UPS would not be prejudiced by the granting of this motion. Commission rules afford UPS adequate opportunities to insert information of this type into the record through its own witnesses. It has failed thus far to make use of such opportunities.

6. APMU acknowledges that a motion to strike is a request for extraordinary relief, but such relief clearly is warranted in this case. Unless this motion is granted, it is highly likely that on brief UPS will refer to, and base arguments upon, this irrelevant and unsubstantiated document, citing to the UPS cross-examination of Dr. Haldi as the record reference to the press release. APMU respectfully urges the Commission not to sanction or permit this abuse of the oral cross-examination process. Based upon the foregoing arguments, it should grant this motion to strike, and by its ruling establish a precedent for the conduct of future cross-examination by counsel.

#### Conclusion

For the reasons stated above, APMU moves that the questioning of witness Haldi, from Tr. 25/11730, l. 17 through 11732, l. 6, with regard to the Colography Group press release be stricken from the transcript and the evidentiary record.

Respectfully submitted,



William J. Olson  
John S. Miles  
WILLIAM J. OLSON, P.C.  
8180 Greensboro Dr., Suite 1070  
McLean, Virginia 22102-3860  
(703) 356-5070

Counsel for the Association of Priority Mail Users, Inc.

1 conscious choice, is that correct?

2 A That is correct.

3 Q Many of them may have just had an 11 or 12 ounce  
4 piece and sent it not making any -- not knowing there was a  
5 choice between First Class and Priority Mail, is that  
6 correct?

7 A We don't know what they did, that's correct.

8 Q Okay. But we do know at least --

9 A There is an estimate by Witness Musgrave, I  
10 believe, of the amount that shifted.

11 Q I think that is right, and that is in the record.

12 A Yes. Yes.

13 Q Now, the market share numbers that you show there  
14 come ultimately from an organization known as the Colography  
15 Group, is that correct?

16 A That is my understanding, yes.

17 MR. MCKEEVER: Mr. Chairman, I believe this is my  
18 last cross-examination exhibit. With your permission, I  
19 would like to present the witness with a copy of a press  
20 release from the Colography Group.

21 Mr. Chairman, I have marked that document as  
22 UPS-XE-Haldi-6.

23 [Cross-Examination Exhibit No.  
24 UPS-XE-Haldi-6 was marked for  
25 identification.]

1 BY MR. MCKEEVER:

2 Q Now, the first paragraph of that document refers  
3 to a Postal Service market share in 1998 of all U.S.  
4 domestic air cargo shipments of nearly 45 percent, is that  
5 correct?

6 A That is what it says.

7 Q And that, looking at your table, the number you  
8 show is 44.7 percent, is that right?

9 A Right.

10 Q That is nearly 45 percent, would you agree?

11 A Right.

12 Q Now, that same paragraph indicates that the Postal  
13 Service is "the undisputed shipment leader in the \$31  
14 billion domestic air market," is that correct?

15 A That is what it states.

16 Q And if you go down to the fifth paragraph, the one  
17 that starts with a quote there, that indicates that the  
18 president of the Colography Group indicated that "the  
19 results reflect Priority Mail's growing influence in the  
20 marketplace." Do you see that?

21 A Yeah, that is what it says.

22 Q If you would turn to the second page, please.

23 A Yes.

24 Q Take a look at -- right above the middle of the  
25 page, there is a paragraph that is not set off, it says, "On

1 balance, the 1998 results," do you see that paragraph?

2 A I see that, yes.

3 Q Okay. In the second sentence in that paragraph,  
4 the quote refers to "the expanding clout of Priority Mail,"  
5 do you see that?

6 A Yes.

7 Q Dr. Haldi, could you turn to page 20 of your  
8 testimony, please?

9 A Okay.

10 Q Lines 7 through 10. There you indicate, and I am  
11 quoting here, that "competition for expedited document and  
12 package delivery services exists at the local, regional and  
13 national level," is that correct?

14 A That's correct.

15 Q I take it you agree then that there are a number  
16 of other smaller competitors of the Postal Service that  
17 compete in the two day expedited delivery market in addition  
18 to the ones that you specifically mention?

19 A I believe that to be the case, yes.

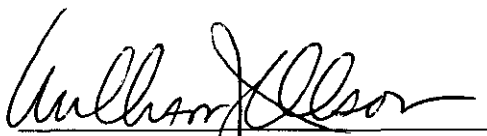
20 Q And those smaller competitors have to compete with  
21 the Postal Service, too, just as the larger competitors that  
22 you mention do, is that correct?

23 A That's correct.

24 Q At the bottom of page 20, top of page 21, you  
25 indicate that because businesses originate so much of

**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.

  
\_\_\_\_\_  
William J. Olson

July 14, 2000