

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

: POSTAL RATE AND FEE CHANGES, 2000 :

DOCKET NO. R2000-1

RESPONSE OF UNITED PARCEL SERVICE IN OPPOSITION
TO PARCEL SHIPPERS ASSOCIATION MOTION TO COMPEL
RESPONSE OF UNITED PARCEL SERVICE TO REQUEST
FOR PRODUCTION OF INFORMATION AND DOCUMENTS
(July 17, 2000)

United Parcel Service ("UPS") hereby files its opposition to the Parcel Shippers Association (PSA) Motion to Compel Response of United Parcel Service to Request for Production of Information and Documents, filed July 6, 2000 ("PSA Motion"). The PSA Motion pertains to Parcel Shippers Association interrogatories PSA/UPS-T-1, 4 (in part), 5 (in part), and 6(b)-(e). These interrogatories were filed on June 19, 2000. UPS objected to them on June 29, 2000, on the basis that the information requested is not relevant, is commercially sensitive, and is burdensome to produce.

The PSA Motion seeks to compel UPS to provide:

1. The volume for the most recent period available of parcels and expedited letters carried by UPS, broken down into categories that do not correspond to UPS's service offerings, and then further divided into "the parcel post type packages which are delivered by ground shipment on a non-expedited basis between commercial and residential delivery" (PSA/UPS-T-1);

2. “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” (PSA/UPS-4);

3. “the volumes, the revenue, the costs attributable to and the net income realized from [UPS’s] domestic, non-expedited transportation of parcels” for the past five years (PSA/UPS-5); and

4. “the gross percentage” of parcels UPS carries which receive a discount, the “gross percentage” of parcels which pay a surcharge, and the “average” discount and “average” surcharge (PSA/UPS-6).

Motions practice regarding PSA requests for the type of information sought in these interrogatories has become a fixture of postal rate proceedings; UPS’s objections to those requests have been routinely upheld. See, e.g., Presiding Officer’s Ruling No. R97-1/104 (February 27, 1998); Presiding Officer’s Ruling No. R94-1/64 (August 19, 1994); Presiding Officer’s Ruling No. R90-1/66 (September 7, 1990); Presiding Officer’s Ruling No. R87-1/148 (November 10, 1987). In every instance where the Presiding Officer has been faced with these discovery issues, the outcome has been the same – disclosure was not required. Most recently, the Presiding Officer ruled in Docket No. R97-1 that UPS need not supply similar information. Presiding Officer’s Ruling No. R97-1/104 (February 27, 1998).

As was stated in UPS’s objection to these latest interrogatories, the Presiding Officer has consistently held that this information is “clearly proprietary, and

commercially sensitive.” Presiding Officer’s Ruling No. R97-1/104, at 2 (February 27, 1998). In Docket No. R97-1, PSA failed to “provide a convincing explanation of why any of the specific information it request[ed] [was] sufficiently central to any [of the non-cost factors] . . . to overcome the sensitive business information objections.” Presiding Officer’s Ruling No. R97-1/104, at 3 (February 27, 1998). Nothing has changed since that ruling. PSA has offered no new arguments. Therefore, this latest PSA motion should also be denied.

In the PSA Motion, PSA concedes that the information is commercially sensitive, but argues that whether the information is relevant is still an open question. Motion at 1. In attempting to establish the relevance of this information, PSA incorporates the arguments contained in its R97-1 motion to compel, asserting that it “could not state the arguments for relevance to central issues in this proceeding any better than it was stated in that Brief [filed in support of its motion to compel in R97-1], and we rely on it.” Motion at 2. However, as we have stated, the Presiding Officer there held that the PSA arguments on which it once again relies here failed to “provide a convincing explanation of why any of the specific information it request[ed] [was] sufficiently central to any [of the non-cost factors] . . . to overcome the sensitive business information objections.” Presiding Officer’s Ruling No. R97-1/104, at 3 (February 27, 1998). The only reasonable interpretation of this passage is that, at the very least, the information sought by PSA is not sufficiently relevant to require disclosure.

Even if the relevance issue had not been decided in prior proceedings, PSA has failed to establish that there is a basis to require the production of this information in this

proceeding. PSA's only argument is that the Commission needs the information to determine the impact of Parcel Post rates on UPS under 39 U.S.C. § 3662(b)(4). Motion at 2. But in the absence of special claims of harm not made here, criterion 4 relates to the impact generally of postal rates on private sector competitors. There is ample evidence in the record for the Commission to consider the impact of Parcel Post rates on private sector package delivery firms generally. Both PSA and the Postal Service have already provided information concerning this issue. In his testimony, Postal Service witness Tolley estimates the cross-price elasticities of demand for Parcel Post in relation to the services of its competitors. He also provides information on the package volumes of the Postal Service and others. See Response of Postal Service Witness Tolley to Interrogatory PSA/USPS-T6-1(a), Tr. 9/3651-52. PSA witness Zimmerman also comments on the effect of Parcel Post rates on competition. See PSA-T-1, at 9-13.

Thus, there is already information in the record to allow the Commission to consider the potential impact of the proposed rates for Parcel Post on the private sector. The detailed, UPS-specific information sought by PSA is unnecessary and would, at best, provide a far less than complete and potentially misleading picture. Protective conditions would do nothing to make the information any more relevant.

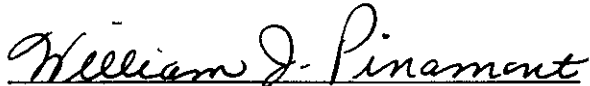
Furthermore, producing the information regarding surcharges and discounts requested in interrogatories PSA/UPS-T-6(b) through (e) would require a special study and thereby impose an undue burden on UPS. While PSA attempts to justify this burden by referring to the burden of providing information imposed on the Postal

Service, the burden imposed on the Postal Service is the result of a statute to which UPS is not subject. See Presiding Officer's Ruling No. R97-1/104, at 2.

Much of the information requested by PSA is not kept in the form requested. However, UPS will be supplying, in response to interrogatory PSA/UPS-8, information on UPS volumes and revenues (but not costs or net income) in readily available, non-confidential categories. Accordingly, in light of the lack of relevance of the requested information, its commercial sensitivity, and the fact that UPS would be required to perform a special study to provide much of the information in the form requested -- and even then may not be able to do so -- the PSA Motion should be denied.

WHEREFORE, United Parcel Service respectfully requests that the Parcel Shippers Association Motion to Compel Response of United Parcel Service to Request for Production of Information and Documents be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document by first class mail, postage prepaid, in accordance with Section 12 of the Commission's Rules of Practice.


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Dated: July 17, 2000
Philadelphia, Pa.

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