

BEFORE THE
POSTAL RATE COMMISSION

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OFFICE OF THE SECRETARY

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RESPONSE OF UNITED PARCEL SERVICE IN OPPOSITION
TO 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 24, 2000)

INTRODUCTION

United Parcel Service ("UPS") hereby files its opposition to the 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, filed July 14, 2000 ("Motion to Strike"). In its Motion to Strike, APMU asserts that the questioning of Dr. Haldi about information from The Colography Group on Priority Mail's position in the market for expedited deliveries should be stricken from the record because "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." Motion to Strike at 1. APMU is wrong on both grounds.

ARGUMENT

APMU's claim that The Colography Group press release at issue is not "tie[d] . . . to any germane object for oral cross-examination" on witness Haldi's testimony is

patently wrong. Much of Dr. Haldi's testimony discusses Priority Mail's market share and overall position in the market. Indeed, in his direct testimony, Dr. Haldi stated that "Priority Mail suffers from declining market share." Tr. 25/11538. He concluded that "Priority Mail is highly vulnerable to competitive inroads," and he suggested that a reduced cost coverage for Priority Mail is necessary "In order for Priority Mail to remain a viable, successful product in the market for expedited delivery." Tr. 25/11551.

Dr. Haldi based his conclusion, at least in part, on market share figures from The Colography Group. Tr. 25/11539, 11730. Thus, Dr. Haldi himself has put at issue Priority Mail's position in the market and The Colography Group's perspective on the market, by relying in part on information from The Colography Group to support his conclusions. Given Dr. Haldi's reliance on information from The Colography Group, it is certainly proper cross-examination to present to the witness other statements from the same organization which:

1. State that the Postal Service is "the undisputed shipment leader" in the domestic air market;
2. Refer to "Priority Mail's growing influence in the marketplace"; and
3. Refer to "the expanding clout of Priority Mail" in the market.

Tr. 25/11731-32.

In short, APMU's assertion that The Colography Group press release has "no nexus to witness Haldi's testimony" (Motion to Strike at 2) clearly misses the mark. The material in question is intended to refute Dr. Haldi's reliance on information from the same organization to support his conclusion that the Commission should moderate Priority Mail's cost coverage because of its market share.

APMU's assertion that "the authenticity of the document was not established" also misses the mark. Motion to Strike at 2. First, "The Administrative Procedures Act, rather than the Federal Rules of Evidence, governs the admissibility of evidence in Commission hearings" Presiding Officer's Ruling No. R2000-1/89 (July 14, 2000) at 4-5. In Docket No. R84-1, the Commission noted its "extreme reluctance to exclude apparently relevant and material evidence that might advance the analysis of postal costs." Order No. 562 (May 30, 1984) at 2. Rather, the "Commission is capable of evaluating the . . . evidence and affording it the appropriate weight." Presiding Officer's Ruling No. R2000-1/89, *supra*, at 10.

All that needs to be done to establish that The Colography Group press release is what it purports to be is to visit The Colography Group's website, which is referenced in the document itself (a copy of which is attached hereto, and which is in the possession of the court reporter marked as cross-examination exhibit UPS-XE-Haldi-6). That website may be found at www.colography.com, and the press release itself may be found at www.colography.com/press/prairty.html, as the document itself indicates. Indeed, at the very beginning of this portion of the cross-examination, the witness himself confirmed that the 1998 market share information contained in the very first sentence of the press release conforms with the 1998 market share information reported in his direct testimony and taken from Colography Group data. Compare Tr. 25/11730-31 with 25/11539.

Given all these circumstances, there is no question but the document is what it purports to be, *i.e.*, a press release issued by the very organization on whose data Dr. Haldi relies in support of his testimony. Even assuming that UPS had asked that the

document be admitted into evidence, then, its receipt into evidence would have been proper.¹ Certainly, it is therefore properly used as a basis for cross-examination.

The Federal Rules of Evidence make clear that the document could properly have been admitted into evidence. Rule 901(a) states, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Fed. Rules Evid. Rule 901(a), 28 U.S.C.A. The requirement may be met based solely on "distinctive characteristics and the like," such as "Appearance, contents, substance, internal patterns, or other distinct characteristics, taken in conjunction with circumstances." *Id.*, Rule 901(b)(4). Indeed, extrinsic evidence of authenticity is not required where there are "Inscriptions, . . . or labels purporting to have been affixed in the course of business and indicating . . . origin." *Id.*, Rule 902(7).

Thus, as noted, even if UPS had requested that the document be admitted into evidence, the press release has been sufficiently authenticated. Consequently, it certainly is properly used on cross-examination, and Dr. Haldi's affirmation of its contents in the light of his contrary testimony on Priority Mail's market position should remain in the record.

CONCLUSION

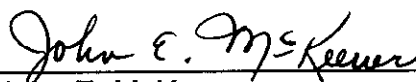
As the Commission recognized in Order No. 1143 (December 12, 1996) at 4, "Striking testimony . . . is unnecessary in administrative proceedings, where decision-makers are able to accord appropriate weight to evidence." UPS's cross-examination of

1. UPS did not request that the press release itself be admitted into evidence. Tr. 25/11736.

Dr. Haldi on the basis of statements in a press release from an organization on whose data Dr. Haldi relies is certainly relevant to Dr. Haldi's testimony on Priority Mail's position in the market. Accordingly, APMU's Motion to Strike should be denied.

WHEREFORE, United Parcel Service respectfully requests that the 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 be denied.

Respectfully submitted,



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POSTAL SERVICE LEADER IN U.S. AIR MARKET IN 1998, COLOGRAPHY GROUP REPORT SAYS

USPS Priority Mail Incorporated Into Firm's Expedited Air Services Traffic Models

ATLANTA, GA USA (August 10, 1999) - The U.S. Postal Service shipped nearly 45% of all U.S. domestic air cargo shipments in 1998, making USPS the undisputed shipment leader in the \$31 billion domestic air market, The Colography Group said today.

According to The Colography Group's annual analysis of traffic and yield trends in the domestic and U.S. air export markets, the U.S. Postal Service moved 1.3 billion Express and Priority Mail shipments during 1998. This represents 44.7% of the 2.8 billion air shipments moved in U.S. domestic commerce last year. FedEx followed with 718.4 million shipments, a 25.6% market share. UPS was third with 436.4 million shipments, a 15.6% share. Airborne was fourth with 316.6 million shipments, an 11.3% share.

Total domestic air shipments in 1998 increased by 7.6% over 1997 levels, The Colography Group said.

The 1998 figures represent the first time The Colography Group has incorporated traffic from the Post Office's Priority Mail two-and three-day delivery service in its calculations.

"The results reflect Priority Mail's growing influence in the marketplace," said Ted Scherck, president of The Colography Group. "The Postal Service has created a unique product ideally suited to the non-overnight delivery needs of many businesses. As USPS enhances Priority Mail's product features and improves delivery reliability, we expect strong growth to continue."

Among other findings in the **U.S. Domestic And Export Air Traffic And Yield Analysis By Competitor And Market Segment** :

- Domestic air revenue of \$31 billion was 7.2% higher than 1997 levels. Tonnage of 19.9 billion pounds marked a 7.3% increase from 1997.
- Packages moving in "deferred"-or non-next-day-service accounted for 60% of all U.S. shipments, 38.6% of all weight, and 30.6% of all revenue. Overnight letters and envelopes accounted for 27% of all shipments and revenue in 1998.
- U.S. air export shipments in 1998 totaled 85.6 million, slightly above the 84.2 million shipments moved in 1997. Air export revenue totaled \$8 billion, of which 36.5% was generated by packages and documents (70 pounds or less).
- FedEx controlled 35.5% of all air export shipments, leading the market. DHL was next with 12.0%. Just over 78% of all air export shipments were packages and documents. The remaining 21% moved as freight.
- Domestic yields, measured in revenue per pound, surged in the latter half of 1998 after trending down in the first half of the year.
- The weight of the average domestic deferred shipment hit a four-year high of 7.9 pounds in mid-year before plunging to 7.3 pounds by year's end. The weight of the average overnight shipment fell from 7.4 pounds in 1995 to 6.9 pounds at the end of 1998.

"On balance, the 1998 results confirmed the continuation of secular trends we first identified several years ago," Scherck said. "These include the rapid growth of deferred services, the expanding clout of Priority Mail, FedEx's dominance of the export market, and the steady decline in average shipment weight and yield."

"One interesting trend, however, was the firming of domestic yields in the latter part of 1998," Scherck continued. "This reflects the carriers' continued emphasis on cost control and the U.S. market's acceptance of higher rates. Carriers appear to have become more selective in the business they pursue and the prices they charge."

Now in its sixteenth year in print, **U.S. Domestic And Export Air Traffic And Yield Analysis By Competitor And Market Segment** relies on The Colography Group's sophisticated data warehouses to deliver an

unmatched analysis of market trends that influence results by competitor and product line.

Besides the addition of Priority Mail data, the 1998 edition contains a new sub-section, "Traffic Characteristics," which provides four-year trend analyses of the three most important measures of industry performance: yield per pound, revenue per-shipment and average shipment weight.

Founded in 1983, The Colography Group delivers primary research, strategic planning and new program development services to businesses and governments worldwide. Its suite of proprietary databases is based on information from thousands of shipper interviews. Through these interviews, The Colography Group extracts market intelligence used by clients to effectively plan business strategies.

Subscriptions to **U.S. Domestic And Export Air Traffic And Yield Analysis By Competitor And Market Segment**, or its companion publication **U.S. Domestic Ground Parcel And LTL Traffic And Yield Analysis By Competitor And Market Segment**, are available by contacting The Colography Group by phone, by fax, or through its web site at www.colography.com

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