

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 (PSA) MOTION TO COMPEL
RESPONSE OF UNITED PARCEL SERVICE TO REQUEST
FOR PRODUCTION OF INFORMATION AND DOCUMENTS
(August 4, 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 28, 2000 ("PSA Motion"). The PSA Motion pertains to PSA interrogatories PSA/UPS-7 (in part), 8, and 9 (in part). These interrogatories were filed on July 5, 2000. UPS objected to them on July 17, 2000, on the basis that the requests are unduly vague and 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 data which measures the UPS achievement of its [ground parcel delivery service] standards" (PSA/UPS-7);
2. a comparison of "the growth of United Parcel Service ground parcel shipments during the 1990s . . . with Parcel Post growth" (PSA/UPS-8); and
3. a comparison of "Parcel Post performance of the standards defining value

of service with UPS' performance of those standards" (PSA/UPS-9).

In its motion, PSA relies on the arguments it made in a motion to compel filed on July 6, 2000, stating that "[t]he issues involved in this particular Motion to Compel are comparable . . ." to those in the earlier motion. PSA Motion at 3. The Presiding Officer has subsequently denied that motion in Ruling No. R2000-1/102, issued July 31, 2000. Because the facts, issues, and arguments in the two motions are essentially the same, this motion should be denied as well.

UPS's primary concern regarding PSA's request is that the information is commercially sensitive, a fact which PSA does not seem to dispute. "Ordinarily, absent a claim of competitive harm, commercial sensitivity trumps the need for disclosure. This general rule, however, may be overcome upon a showing of exceptional circumstances."

Presiding Officer's Ruling No. R2000-1/102, at 3-4 (July 31, 2000). PSA does not present any exceptional circumstances that would justify disclosure in this case.

Therefore, the PSA Motion should be denied pursuant to Ruling No. R2000-1/102.

PSA asserts that the Commission cannot apply the non-cost factors of the statute in recommending appropriate rates for Parcel Post without the detailed information about one of Parcel Post's competitors requested in these interrogatories. However, the Presiding Officer has already determined that it is able to assess the value of Parcel Post with the information in the record. See Ruling No. R2000-1/102 at 3. Indeed, the Commission has been able to apply the non-cost factors of the statute to Parcel Post in the absence of the requested information since the statute was passed 30 years ago. PSA has not identified any changed circumstances which require the Commission to

review this information in this proceeding.

PSA also relies on Presiding Officer's Ruling No. R2000-1/97, arguing that UPS should be compelled to divulge its confidential information because UPS advocates "a major rate change for Parcel Post." PSA Motion at 4. Ruling No. R2000-1/97 has no applicability to this dispute. The basis of the Presiding Officer's decision in that ruling was the fact that "[b]oth [intervenors], as opposed to the Postal Service, are the proponents of proposals that change rates and classifications." Ruling No. R2000-1/97 at 11 (emphasis added). An intervenor's affirmative request for a new classification of mail is vastly different from an intervenor's contention that the level of rates for an already existing service should be higher, based on costs and an evaluation of the non-cost factors. Therefore, the issues involved in this motion are readily distinguishable from the issues addressed in Ruling No. R2000-1/97. Had the Presiding Officer determined it to be appropriate to apply the reasoning of Ruling No. R2000-1/97 to facts similar to those in this dispute, he would have done so in Ruling No. R2000-1/102.

The Presiding Officer in Ruling No. R2000-1/97 did not in any way retreat from the consistent ruling that performance and market share data of competitors has no place in a rate proceeding. Quite the contrary – in Ruling No. R2000-1/97 the Presiding Officer reaffirmed the relevance of the "distinction between the burden of the Postal Service versus a competing private enterprise in providing sensitive business information" in resolving discovery disputes in postal rate proceedings. Ruling No. R2000-1/97, at 11. That distinction controls the outcome of this motion.

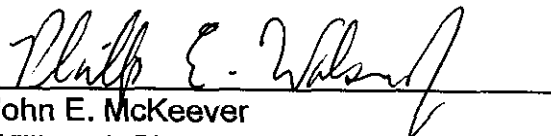
Finally, adopting PSA's approach would have a chilling effect on intervenors in

postal rate proceedings. If every participant that proposed a rate change were required to disclose confidential information, every participant would in essence be required to weigh the value of exercising its right to participate in a case against the cost of divulging commercially sensitive information. For the Postal Service, such disclosure is a fact of life as it is required under the statute. However, for the participants, this disclosure would act as a strong disincentive to participate in a meaningful way.

The Commission has frequently recognized the value that participants bring to these proceedings, and even the Postal Service has acknowledged their contributions to the ratemaking process. PSA's requirement that all participants be subject to full disclosure would potentially put an end to this beneficial involvement.

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

Respectfully submitted,



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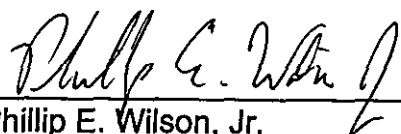
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CERTIFICATE OF SERVICE

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: August 4, 2000
Philadelphia, Pa.

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