

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

RECEIVED  
SEP 7 4 18 PM '00

POSTAL RATE COMMISSION  
OFFICE OF THE CLERK

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE  
IN PARTIAL OPPOSITION TO THE OCA'S SEPTEMBER 6TH  
DESIGNATION OF MATERIALS FOR INCLUSION IN THE RECORD  
(September 7, 2000)

On September 6th, the OCA filed a designation of materials for inclusion into the record. The Postal Service hereby opposes inclusion in the record of three of the four items designated.

One item is a letter from witness Strasser to the Chairman. The Postal Service sees no benefit to including this brief letter, which contains no new information beyond that contained in his written and oral rebuttal testimony, into the evidentiary record.

The second and third items opposed are two econometric articles relating to the hearing on August 30th. As the OCA's pleading correctly relates, the two articles were the subject of cross-examination of two witnesses. That cross-examination was conducted by the Presiding Officer. Parties were granted the opportunity to follow-up on that examination, but were not afforded any opportunity to conduct their own cross-examination of any witness who purported to sponsor the two articles into evidence. Parties were likewise not afforded the opportunity to present other articles, texts, treatises, or any other material that might discuss the same issues from a different perspective. To the extent that witnesses expressed their views on particular parts of the two articles, those views are already part of the record. It is unclear why other parts of the articles, which perhaps were not discussed, should nonetheless become record evidence.

As a practical matter, it may make little difference whether the articles are admitted or not. To the extent that the OCA is suggesting that parties will be unable to fully develop their arguments concerning these matters on brief, given the current state of the record, the Postal Service disagrees. Parties can be expected to argue freely from all of the materials discussed at the hearings. Appropriate procedure, however, would require that the evidentiary record be limited to the discussion of these materials by the witnesses, and that evidentiary status not be extended to the articles themselves. In the Federal Rules of Evidence, Rule 803(18) on the "learned treatise" exception to the hearsay rule, statements from a learned treatise "may be read into evidence but may not be received as exhibits." The same principle applies here. It should be the testimony of the witnesses regarding these articles that should be evidence, not the articles themselves.

Therefore, the Postal Service respectfully opposes inclusion into the evidentiary record of the above three items designated by the OCA.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:



Eric P. Koetting

### 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.



Eric P. Koetting

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2992, Fax -5402  
September 7, 2000