

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OPPOSITION OF UNITED STATES POSTAL SERVICE TO MOTION OF UNITED
PARCEL SERVICE TO COMPEL PRODUCTION OF INFORMATION AND
MATERIALS REQUESTED IN INTERROGATORY UPS/USPS-T29-11
(September 4, 1997)

The United States Postal Service hereby opposes The Motion of United Parcel Service to Compel Production of Information and Materials Requested in Interrogatory UPS/USPS-T29-11, filed August 28, 1997 (*"Motion to Compel"*). Despite UPS's assertions to the contrary, the information sought is entirely irrelevant to this proceeding and consists of pre-decisional material which should not be released. Further, disclosure of the requested information would tend to reveal commercially sensitive mailer volume information and also would have a chilling effect on the Postal Service's and participants willingness to engage in experiments under the Commission's rules.

On August 4, 1997, UPS filed interrogatory UPS/USPS-T29-11, requesting Priority Mail cost, revenue, and volume results of the experiment that ensued from Docket No. MC96-3.¹ On August 14, 1997, the Postal Service filed an objection, which resulted in the instant UPS Motion to Compel.

¹ Actually, UPS requested Priority Mail "cost, revenues, volumes, etc." for the experiment. Perhaps the Postal Service should have objected that the request, as worded, is overbroad. However, the Postal Service does not know what results there might be in addition to costs, revenues, and volumes, and thus is responding on those terms.

Even though the Postal Service is making no proposals concerning the experimental discounts in this docket -- a strong reason in and of itself for deeming the information irrelevant -- UPS attempts to argue that the information is relevant to other Postal Service proposals. In support of its argument, UPS alleges that "the data collected for First Class/Priority Mail pre-barcoded parcels is directly relevant to the Postal Service's request in this proceeding for an *identical* 4-cent per piece discount for Parcel Post pre-barcoded parcels, which appears to be modeled on the experimental First Class/Priority Mail pre-barcode discount." *Motion to Compel* at 3 (*emphasis added*). UPS then goes on to set forth the eligibility requirements for the proposed Parcel Post prebarcode discount, which are similar to those for the experimental First Class/Priority Mail discounts. *Id.*

UPS is mistaken, however, in assuming that because the experimental and proposed discounts are both 4 cents, they are related. As Parcel Post and Priority Mail are different categories of mail, they may well have different characteristics which would influence the level of the appropriate discount. In addition, the Parcel Post discount proposed in this case and the experimental discount were derived differently. As stated by witness Daniel, "[T]he savings generated by mailer-applied barcodes to nonpresorted machinable parcels are calculated as the cost of keying a parcel once, plus ribbon and label costs, less the cost of scanning a customer barcoded parcel once." *USPS-T-29*, at 20. Also, as is clear from Exhibit USPS-29E, page 6 of 6, proportional and fixed adjustments are made in witness Daniel's calculations. As UPS should be aware, since it participated in the case, witness

Garvin's 3.85 cents cost savings in Docket No. MC96-1 was calculated in a different manner. For example, witness Garvin used accept rates and assumed that rejected pieces would default to manual sortation. See *Docket No. MC96-1, USPS-T-3, at 14*.

Further, witness Daniel's calculations are based on productivities for the keyer only (1 person). See *USPS-T-29, at 20, n. 59 and 60*. The keying productivities presented in Docket No. MC96-1 by witness Garvin reflected pieces fed on the SPBS divided by the number of persons per console, which included the keyer as well as persons doing the loading and sweeping. See *Docket No. MC96-1, Tr. 2/218*. In addition, the induction capacity of the primary and secondary parcel sorting machines used to sort parcel post are different from that of the SPBSs used in the experiment, which could contribute to productivity differences.² Thus, UPS's comparison of "identical" 4-cent per piece discounts is misleading. A cup of coffee and a can of soda may both cost \$1.00 and may both contain caffeine, but there the resemblance ends.

UPS's argument concerning the similarity in eligibility requirements between the proposed Parcel Post discount and the experimental discounts is likewise misguided. They are similar, but not identical. As pointed out above, different machines are used to process Parcel Post and the First Class and Priority Mail parcels that are the subject of the experiment. Thus, the machinability requirements

² In Docket No. MC96-1, the Postal Service had stated the induction capacity of the primary and secondary parcel sorting machines as 3,600 pieces per hour and the induction capacity of the SPBS as 2,760 pieces per hour. *Id. at 219*.

likely will be different. As UPS should know from its participation in Docket No. MC96-1, parcels eligible for the experiment could weigh no more than 20 pounds, the maximum weight limit of the SPBS. See *Docket No. MC96-1, USPS-T-4*, at . Parcel sorting machines can process heavier weight pieces.

UPS also argues that the requested materials are not protected under the pre-decisional or deliberative process privilege. UPS argues that only "certain *opinions and recommendations* underlying governmental decisions may be protected from disclosure, so as to encourage open discussion of legal and policy issues and to protect the decisionmaking process of government agencies." *Motion to Compel*, at 5 (*emphasis in original; citations omitted*). UPS urges that the material it seeks is purely factual and thus must be disclosed.³ Although the Postal Service likely could produce "severable facts" concerning the experiment results, there is a real possibility that producing the information prior to postal management making a decision on the future of the experimental discount may tend to suggest a preordained outcome and may allow outside influences to be brought to bear on management's decision. Thus, "open discussion of legal and policy issues" -- the very thing the deliberative process privilege is designed to protect -- will be inhibited. This consideration should be given special weight where the materials sought are so lacking in relevance.

³ *But cf. Presiding Officer's Ruling No. R90-1/29, June 19, 1990* (Postal Service not required to disclose minor configurations of nor additions of cities to the Eagle Network, which were under consideration).

UPS does not even discuss the Postal Service's argument concerning the commercial sensitivity of specific volumes by site that may be associated with particular mailers. Given the limited number of test sites, it is highly likely that no matter how the Postal Service sought to mask any mailer identities, the volumes associated with particular mailers would be relatively simple to decipher. This information would be the equivalent of releasing mailing statements of particular mailers, which the Postal Service considers to potentially fall under exemption 4 of the FOIA, and thus to potentially be subject to withholding. Moreover, UPS's volume information has been protected in past dockets. *See Presiding Officer's Ruling No. R90-1/68, September 11, 1990.* This situation should be treated no differently.

UPS cavalierly dismisses the Postal Service's concerns that revealing this information could have a chilling effect on the Postal Service's willingness to test new products, as well on mailers' desires to participate in future experiments. UPS states, "Information of this type will not reveal the deliberative process of the Postal Service, and production of that information will in no way 'chill' the Postal Service's willingness to test new product offerings or inhibit 'open discussion of legal and policy issues.'" *Motion to Compel*, at 6. As the Postal Service pointed out previously, neither the Commission's experimental rules nor its Recommended Decision in Docket No. MC96-1 established any requirement that the Postal Service

report any results of the experiment.⁴ In fact, during the litigation of Docket No. MC96-1, UPS never urged that any such requirements existed or should be established. To force the Postal Service to reveal the results under these circumstances clearly will curb its willingness, and likely that of mailers, to engage in other experimental endeavors.⁵ Also, should the Postal Service decide to request that the experimental discounts be made permanent, then the data underlying its case will have been released early, to the detriment of its litigating position.

Finally, the Postal Service reiterates its questions about UPS's motives. UPS was a participant in Docket No. MC96-1 and has taken an active role in this docket. In this docket, UPS has reviewed witness Daniel's testimony in enough detail to ask whether the productivities she uses are average or marginal productivity rates. See *UPS/USPS-T29-16*. The productivity figures UPS questions in the interrogatory, in fact, are the very Parcel Sorting Machine figures which are used in witness Daniel's derivation of the 4-cent per piece discount. UPS's confusion concerning the dissimilarities between the proposed Parcel Post discount and the experimental First-Class and Priority Mail discounts is thus quite puzzling. Also, UPS asks only for the Priority Mail experimental results -- an area where it competes with the Postal Service --, not for the First Class results. UPS's behavior suggests goals other than legitimate inquiry into the Postal Service's proposals in this docket.

⁴ This should be contrasted with the Commission's rules on market tests and provisional services, where reporting requirements are established. See *39 CFR §§ 3001.165 and 3001.175*.

⁵ Of course, this may be the very outcome UPS is seeking.


For all of the foregoing reasons, UPS's motion to compel must be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

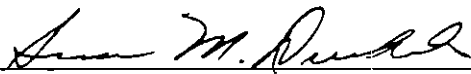
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CERTIFICATE OF SERVICE

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.



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