

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, 2001

Docket No. R2001-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE  
TO UPS INTERROGATORY UPS/USPS-T30-8  
REDIRECTED FROM WITNESS SCHERER  
(December 11, 2001)

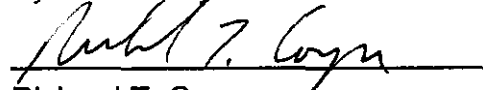
The United States Postal Service hereby provides its responses to the following interrogatory of United Parcel Service: UPS/USPS-T30-8, filed on November 30, 2001. This interrogatory was redirected from witness Scherer.

Each interrogatory is stated verbatim and is followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:



Richard T. Cooper

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2993; Fax -5402  
December 11, 2001

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**UPS/USPS-T30-8.** Refer to the Postal Service's answer to OCA/USPS-60(c) and (d) regarding the legal costs of defending Priority Mail advertisements, in which the Postal Service states that "these costs were not 'charged to Priority Mail' because...there was no appropriate accounting or economic basis for doing so."

- (a) Confirm that these legal costs would not have been incurred if the Postal Service did not offer the Priority Mail service. If not confirmed, explain fully and identify the other products that caused these legal costs to be incurred.
- (b) Explain fully how an "appropriate accounting...basis" for attributing costs is established.
- (c) Explain fully how an "appropriate...economic basis" for attributing costs is established.
- (d) If the legal costs were caused only by the existence of Priority Mail, is this not an "appropriate economic basis" for attributing these costs to Priority Mail? If your answer is anything other than an unqualified "yes," explain fully.

**RESPONSE:**

a. Not confirmed. The nature of the various legal services performed for the Postal Service do not suggest that individual particular products are the "drivers" of a significant portion of the Postal Service's legal expenses. Certainly, as a governmental entity with hundreds of thousand of employees and vehicles and tens of thousands of facilities supporting its nationwide retail, processing, transportation, and delivery networks, the Postal Service would have legal costs with or without offering any one particular product, including Priority Mail. There is no reason to believe that adding individual products would necessarily affect the total level of the Postal Service's legal costs. While the Postal Service has not engaged in any comprehensive analysis of what its legal costs would be in the absence of any of its individual products, including Priority Mail, in the judgment of the Postal Service, it is appropriate to consider legal costs in general as common fixed costs.

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The instant question, however, inquires not about the overall effect of Priority Mail on the Postal Service's legal costs, but about the effect of particular litigation on the Postal Service's legal costs. In that case, the question is not whether the addition of a product (e.g., Priority Mail) causes changes in total legal costs, but whether the addition of a particular one-time legal activity necessarily causes changes in total legal costs. Given the fact that the Postal Service employs hundreds of lawyers who are FLSA-exempt and who are paid on an annual rather than hourly basis, it is entirely plausible that an additional piece of one-time litigation (or any other type of specific legal activity) could be absorbed with no increase in accrued legal costs. Therefore, even in instances in which a particular one-time legal activity appears to relate to a specific postal product, it does not follow that some particular amount of legal costs have been incurred that would not have been incurred if that activity had not taken place. There is no firm causal link between engagement in the activity and the necessary incurrence of costs. Moreover, in reality, across the entire panoply of postal legal activities, the proportion of legal activities that even arguably relate exclusively to one product is quite low. Taken in conjunction, these two factors explain why it is reasonable for the Postal Service not to take systematic efforts to identify all such litigation or projects and segregate their costs from all other legal costs.

The litigation specified in the OCA question is a good example of why the costs of so few legal activities can be assumed to relate exclusively to one

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product. Even litigation initiated in the context of one specific product can involve broad issues of general applicability. Much of the focus of the litigation in question involved a very broad jurisdictional issue regarding the ability of parties to challenge postal advertising of any kind under a particular federal statute. The level of resources given to such litigation under such circumstances will be a function of the Postal Service's overall institutional concerns, rather than necessarily related to the individual product that gave rise to the litigation. Thus, it is impossible to link all or a specific portion of the total costs of this one-time litigation (even if they could be identified, which they cannot) to Priority Mail or any other product.

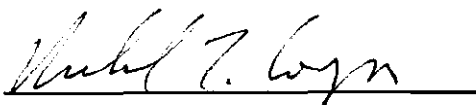
b. An appropriate accounting basis to attribute costs would have numerous dimensions, and cannot possibly be discussed in any comprehensive fashion in response to this interrogatory. In the context of the instant subject, however, the bare minimum requirement for an accounting system adequate to the task apparently intended by the line of questions would appear to be comprehensively tracking the expenses of each legal activity in which the Postal Service is engaged. No such accounting system exists, nor has any compelling reason to create one been identified. Consequently, in this instance, it is not possible to go back in time and segregate any measure of the total costs of the litigation in question from all other Postal Service legal expenses over that period of postal history.

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- c. Please see the testimony of Prof. Panzar , USPS-T-11, in Docket No. R97-1, as well as the Summary Description (USPS-LR-J-1).
- d. Yes, but as discussed above, no firm basis to reach this conclusion has been established. Specifically, not only does no historical record exist to know the amount of time postal lawyers spent on this particular litigation and no basis exists to know what the effect of that time might have been on actual accrued legal expenses (i.e., “the legal costs” are not defined), but much of that time was devoted to the protection of institutional interests, rather than those specific to Priority Mail.

**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.

A handwritten signature in cursive script, appearing to read "Richard T. Cooper", is written over a solid horizontal line.

Richard T. Cooper

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Washington, D.C. 20260-1137  
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