

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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SEP 26 1 00 PM '97

Postal Rate and Fee Changes, 1997

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY
Docket No. R97-1

**NEWSPAPER ASSOCIATION OF AMERICA
MOTION TO STRIKE PORTIONS OF TESTIMONY OF
UNITED STATES POSTAL SERVICE WITNESS JOSEPH D. MOELLER
September 26, 1997**

The Newspaper Association of America hereby moves, pursuant to Special Rule of Procedure 1.C, to strike all references contained in the testimony of United States Postal Service witness Joseph D. Moeller to Library Reference LR-H-182. The ground for this motion is Mr. Moeller's reliance on an unsponsored cost "study" that is not evidence in this proceeding.

As such, the issue resembles that posed by Nashua Photo, *et al.* regarding the reliance of Postal Service witness Fronk on an unsponsored cost study filed only as a library reference.¹ The Commission is already examining, through Notice of Inquiry No. 1, the evidentiary status of unsponsored Postal Service library references, particularly those containing cost studies that are not sponsored by any witness. NAA recognizes that the Commission may prefer to decide the status of such library references in the context of that Inquiry. NAA is filing this motion contingently in order to preserve its rights regarding the testimony of Mr. Moeller, which is currently scheduled for Friday, October 10, 1997.²

¹ See Nashua Photo Inc., District Photo Inc., Mystic Color Lab and Seattle Filmworks, Inc. Motion To Strike Testimony of Postal Service Witness David R. Fronk (USPS-T32) (filed Aug. 29, 1997); Reply of the United States Postal Service To Motion of NDMS To Strike Testimony of USPS Witness Fronk (filed Sept. 9, 1997); Presiding Officer's Ruling No. R97-1/20 (Sept. 17, 1997).

² NAA is filing concurrently a motion to reschedule Mr. Moeller's appearance.

In particular, NAA moves to strike page 16, lines 1 through 3, and page 25, line 16 through page 26, line 2 of Mr. Moeller's testimony.³ In these passages, Mr. Moeller cites to "a new cost study" that suggests that "weight is not as significant a cost driver as the pound rate implies." USPS-T36 at 16, lines 2-3. Mr. Moeller himself offers no expert testimony regarding the costs of pound-rated pieces, but merely refers to the "new cost study" filed as Library Reference LR-H-182.

Library Reference USPS LR-H-182 is not sponsored by Mr. Moeller or by any other USPS witness in this proceeding.⁴ See NAA/USPS-T36-15 (filed Sept. 4, 1997) (answer of Mr. Moeller expressly disavowing sponsorship of LR-H-182). As the Commission well knows, such unsponsored library references are not record evidence. See rule of practice 31(b) & Special Rule of Practice 5; see also 39 C.F.R. §§ 31(a), 31(b), and 31(h); see also 39 C.F.R. § 31(k) (conditions for admissibility of a cost study).

LR-H-182 is the *only* "cost study" supporting the Postal Service's proposed reductions in the Standard Enhanced Carrier Route and Regular pound rate. No other cost analysis (much less cost evidence) relates to the Standard (A) pound rate for either ECR or Regular Rate mail. Yet, as in the case of the testimony of witness Fronk, the Postal Service has filed this material not as sponsored testimony, but rather as an unsponsored library reference, and its witness "relies" on its conclusions. This indirect method does not satisfy the Commission's procedural rules or due process.

Library Reference H-182 is a document that purports to provide estimates of unit volume variable cost for Standard (A) Mail by weight increment for carrier-route and other bulk mail separately, using FY96 data. LR-H-182, page 2. It does not provide a standard cost study of the effect of weight on Standard Mail, and does not have

³ NAA would also object to the designation of any written cross-examination of witness Moeller that includes a reliance on LR-H-182.

⁴ Although LR-H-182 on its face bears no sign of authorship, Mr. Moeller's testimony states in passing that it was prepared by Christensen Associates. USPS-T36 at 25, line 17. Whether witness Degen had any role in preparing LR-H-182 is, at best, wholly unclear. See TW/USPS-T12-34 (filed Sept. 23, 1997).

controls typically used to verify such a test. Indeed, LR-H-182 on its face appears to predetermine its results.⁵ The library reference simply assumes away a number of factors having effects on costs – including the amount of dropshipping, the propensity to be automated, and the presort level – as none of these factors were controlled.

NAA has propounded a number of interrogatories to Mr. Moeller regarding the methodology and assumptions made in LR-H-182. To date, Mr. Moeller has answered only three of these interrogatories (NAA/USPS-T36-14-16); all of the questions regarding the assumptions, data, and analysis of the library reference have been redirected to the Postal Service for an institutional response. The Postal Service still has not seen fit to provide a witness to sponsor LR-H-182 or to attest to such answers.

The Postal Service's institutional responses demonstrate why its witnesses should not be allowed to rely upon unsponsored cost studies. In its responses, the Postal Service concedes that many key assumptions were made simply "in interests of simplifying the analysis." See NAA/USPS-T36-17(a); see also NAA/USPS-T36-21 (redirected to the Postal Service) (filed Sept. 4, 1997).⁶ It does so even while it also concedes that assumptions made by LR-H-182 are demonstrably incorrect. For example, although the Postal Service concedes that Standard Mail dropshipping levels vary by weight increment, no adjustment to reflect that fact was made to LR-H-182. NAA/USPS-T36-21 (redirected to the Postal Service) (filed Sept. 4, 1997).⁷ Again, the Postal Service states that this assumption was made "in the interest of simplicity of

⁵ For example, Mr. Moeller's testimony states that LR-H-182 shows that the "most significant cost driver is In-Office Cost System tallies." USPS-T-36 at 25, line 19. This conclusion should come as no surprise when the analysis relies on IOCS tallies as the major basis for spreading many costs.

⁶ These include assumptions that city carrier street costs are piece-related, rather than weight-related, resulting in a distribution of city carrier street costs to weight increments proportionally to mail volume (which is a distribution by pieces). See LR-H-182 at 3 and NAA/USPS-T36-17(a). It is self-evident that if one distributes costs proportionally by piece volumes, the result will be a distribution of costs by piece volumes, not by weight.

⁷ This Postal Service answer compounds the problem by citing to a different library reference submitted in Docket No. MC95-1, an entirely different proceeding.

presentation" (*id.*), although it does not say just who within the 800,000 person organization made this assumption and on what basis. Likewise, the Postal Service has also conceded that, contrary to an assumption made in LR-H-182, "there may be some weight related costs in city carrier street time." NAA/USPS-T36-17(a) (redirected to the Postal Service).⁸ Nowhere does the Postal Service sponsor a witness to defend any of these assumptions or beliefs that are critical to LR-H-182.


As matters stand today, no witness has sponsored LR-H-182, nor has any witness provided a response to questions concerning that document's methodology or assumptions. Accordingly, Mr. Moeller's reliance on that document is impermissible.

For the foregoing reasons, the Newspaper Association of America respectfully moves to strike the cited portions of the testimony of United States Postal Service witness Joseph D. Moeller.

Respectfully submitted,

NEWSPAPER ASSOCIATION OF AMERICA

Robert J. Brinkmann
NEWSPAPER ASSOCIATION OF AMERICA
529 14th Street, N.W.
Suite 440
Washington, D.C.
(202) 638-4792

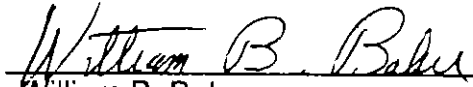
By: 
William B. Baker
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006-2304
(202) 429-7255

⁸ It defends this assumption with the further unsponsored and unsubstantiated assertion that "it is believed that the majority of costs are piece-related."

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the instant document on all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

September 26, 1997



William B. Baker