

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

Postal Rate and Fee Changes, 2006

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Docket No. R2006-1

**OPPOSITION OF THE GREETING CARD ASSOCIATION
TO MOTION OF THE UNITED STATES POSTAL SERVICE
TO STRIKE PORTIONS OF THE TESTIMONY DOCUMENT
(GCA-T-1) OF GCA WITNESS CLIFTON**

(September 20, 2006)

The United States Postal Service (“Postal Service”) has moved to strike¹ portions of GCA witness Clifton’s testimony, in particular the supporting declaration of Professor Kelejian (*i.e.*, Appendix C of GCA-T-1) “plus all references to the contents of that material in the text of GCA-T-1.” (Motion To Strike at 1) The Postal Service’s motion has no basis in fact and law and should be denied accordingly.

The Postal Service objects to witness Clifton’s reliance upon Professor Kelejian’s opinion as “extraordinary.” (*Id.* at 4). As a threshold matter, careful examination shows that the Postal Service seeks to strike a number of pages worth of matter in witness Clifton’s testimony that either make no mention of Professor Kelejian’s declaration or refer to the declaration as additional support for witness Clifton’s otherwise wholly independent observations. The Postal Service’s attempt to strike this wholly independent matter is inequitable and improper.

¹ Motion of the United States Postal Service to Strike Portions of the Testimony Document (GCA-T-1) of GCA Witness Clifton (filed September 13, 2006) (“Motion To Strike”).

With respect to the declaration itself, and specific testimonial cross-references to the declaration, as shown below (§ II, *supra*), federal courts permit testifying expert witnesses to rely upon the opinions of non-testifying experts as a supporting basis for their testimony.

The Postal Service further objects to Dr. Clifton's reliance upon a second opinion as "patently unfair." (*Id.* at 1) But the Postal Service makes no showing whatsoever as to why it cannot cross-examine witness Clifton as to his understanding and reliance upon the Kelejian material or challenge Professor Kelejian's largely mathematical analysis by means of rebuttal testimony. The Postal Service's Motion To Strike is an improper attempt either to: i) severely prejudice GCA's case by striking essential testimony and supporting material; or ii) dictate the manner in which GCA presents its case and force it to incur tens of thousands of dollars in additional litigation expense by presenting Professor Kelejian as an additional testifying witness.

I. Witness Clifton's Wholly Independent Testimonial Statements Cannot Be Struck Simply Because the Kelejian Declaration Provides Additional Support

Among the material the Postal Service seeks to strike is all of pages 32-33 of witness Clifton's testimony and portions of pages 43 and 50 which include dozens of lines of Dr. Clifton's testimony that nowhere refer to Professor Kelejian or his declaration, or make limited cross-references to the Kelejian declaration only as an additional ground for witness Clifton's position. Given the import of the issue, set forth below is all of the challenged Clifton testimony on pages 32 to 34, line 2 with underlining to show the few interstitial references (if any) to the Kelejian declaration therein.

The weakest link of witness Thress's single piece demand –equation is, that he purports to employ a "Box-

Cox” transformation but in fact does not do so. His transformation is not a Box-Cox transformation. The weakest element of witness Thress’ choice among estimations of this model is his intuitive use of a one-dimensional selection criteria: lowest mean-squared-error (MSE). I discuss each of these in turn, and rely in part on the declaration of Prof. Harry Kelejian dated September 5, 2006, appended to this testimony.

The Internet transformation utilized in Mr. Thress’ single piece demand model is simply an arbitrary non-linear version of the ISP variable, ISP to the power of lambda. For a correct specification of the Box-Cox transformation, see the declaration of Prof. Harry Kelejian noted above. The Thress model uses this transformation more as a matter of mathematical preference and conformity since the use of logarithms for all other variables other than seasonal variables renders those non-linear.

Why is this issue important for correctly estimating the own price elasticity of single piece letters? The impact of witness Thress’ arbitrary imposition of a non-linearity on his ISP variable in the R2005-1 model is that it creates a heavily downward biased estimate of the own price elasticity of First Class single piece letters. As I explain more fully in later sections of this testimony, without witness Thress’ mis-specification of Box-Cox, the own-price elasticity of single piece letters using the ISP variable as specified in R2005-1 is substantially higher. This is a material issue of economic accuracy and relevance of the model, not an issue of “preference” or “conformity.”

In R2001-1, the estimated coefficient, lambda for witness Thress’ non-linear transformation of the Internet variable was 0.560; in R2005-1, it was 0.326; and in R2006-1, the value has fallen to 0.122. His non-linear transformation of the Internet variable is tending to a lambda of zero. In terms of mathematics, any variable to the power of zero equals one. This is the same as saying the Internet has no impact on the demand for single piece letters. This is an *a priori* absurd result which further points to the weakness of Mr. Thress’ approach to the demand for single piece mail in the presence of strong competing substitutes.

Equally problematic is Mr. Thress’ choice criterion among twenty-three different models. Mr. Thress chose

among these models the one with the lowest mean-squared error. However, as Prof. Kelejian has pointed out in his Declaration, Mr. Thress' choice criterion "could very well lead to an incorrect model." (Declaration, page 9). Because Mr. Thress did not employ any formally accepted procedure in his choice among models and instead used an intuitive approach, one cannot rely on the model he chose as being the best model estimating the single piece demand equation, even if we accepted his non-linear approach to modeling with several problematic transformations. The likelihood that Mr. Thress chose an incorrect model is strong, because as Prof. Kelejian points out his procedures for imposing his symmetry conditions are such "that the resulting estimates are unreliable." (Declaration, page 6).

(GCA-T-1: 32-34 l.4)² Even if the underlined references to the Kelejian declaration are removed, all of the sum and substance of witness Clifton's observations on pages 32 and 33 of his testimony stand as his own independent testimonial statements. These include two fundamental criticisms of witness Thress' work, including his failure to use a formally accepted procedure for choosing the model that is the basis of his FCLM elasticity estimates. The material the Postal Service seeks to strike at page 50 of Dr. Clifton's testimony makes no reference whatsoever to Professor Kelejian or his declaration. To like effect, the material on page 43 line 24 going on to page 44 line 6 constitutes stand-alone testimony by witness Clifton regardless of what the "Kelejian [declaration] also indicates," (GCA-T1 at 44 line 3) (emphasis supplied) and even if the references to Kelejian and the declaration are omitted. "Also," means "in addition to," a surplusage.

The Motion to Strike improperly puts at issue dozens of lines of Clifton testimony that make no reference whatsoever to Professor Kelejian or his declaration (or contain

² For convenience two footnotes have been omitted. The footnotes make no reference to Professor Kelejian or his declaration.

references that can be excised) but which are vital to GCA's case and show that witness Thress's econometric modeling is fundamentally unsound. The Postal Service's Motion to Strike, and its objections to the Kelejian declaration, stand exposed as an improper and overreaching attempt to strike pages worth of witness Clifton's independent testimony and opinions. Its Motion To Strike can properly, and should be, denied in whole for this reason alone.³

II. Courts Permit A Testifying Expert Witness To Rely Upon the Opinion of Another Non-Testifying Expert

The Postal Service contends that "It is well-established that parties wishing to rely on the testimony of experts must make those experts available for cross-examination, or their testimony cannot be admitted." (Motion To Strike at 4). As written, this assertion is pointless. GCA will make witness Clifton available for cross-examination. And contrary to the very core of the Postal Service's objection, many courts have held that a testifying expert witness can rely upon the opinion of another non-testifying expert. "Such reliance is permissible." *Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A.*, No. 93 Civ. 6876, 2000 U.S. Dist. Lexis 16402, *5 (Nov. 9, 2000 S.D.N.Y.) (denying objection that the "expert ... will rely on the opinions of other experts"). See also *Arkwright Mutual Ins. Co. v. Gwinner Oil, Inc.*, 125 F.3d 1176, 1182 (11th Cir. 1997) (engineer's expert testimony based in part on accident report of gas industry expert admissible); *Gess v. United States*, 991 F. Supp. 1332, 1338 (M.D. Ala. 1997) (expert properly testified on causation of lidocaine poisoning based in part on "a

³ Even *assuming arguendo* the Postal Service's objections to the Kelejian material were sound (and as shown in §§ II-IV they are not), they could not support anything more than the deletion of Appendix C and those specific clauses in the Clifton testimony that reference Professor Kelejian and the declaration.

review of the findings and conclusions of the other doctors and investigators who reviewed these cases”); *Antoine-Tubbs v. Local 513, Air Transp. Div.*, 50 F. Supp. 2d 601, 609 (N.D. Tex. 1998) (proper for testifying expert to rely on “tests, reports and opinions of other doctors”) (citing *Moore v. Ashland Chem., Inc.*, 126 F.3d 679, 690-91 (5th Cir. 1997), *rev’d en banc*, 151 F.3d 269 (5th Cir. 1998)), *aff’d*, 190 F.3d 537 (5th Cir. 1999).

Witness Clifton is an economist, and a former Associate Professor. (*E.g.*, GCA-T1 at 1-3). Professor Kelejian is also an economist and econometrician. (GCA-T1, App. C., curriculum vita). Economists frequently consult with one another and rely upon one another’s work. Professor Kelejian’s curriculum vita lists some 50 odd co-authored papers published in prestigious and peer-reviewed journals, such as the Journal of Econometrics. The Postal Service’s own consulting econometrician, witness Thress, relies upon an elasticity model rooted in the work of his colleague Dr. Tolley, and his testimony purports to employ modeling techniques designed by Mr. Box and Mr. Cox. In relying, in part, upon Professor Kelejian’s report, GCA’s testifying witness, Dr. Clifton, is doing nothing atypical.

III. The Postal Service Can Test The Evidence At Issue

The Postal Service suggests that its due process rights cannot be protected unless Professor Kelejian is made available for cross-examination or its Motion To Strike is granted. But the Postal Service makes no showing whatsoever that it cannot obtain all the information it needs to defend its position by directing discovery or cross-examination to GCA witness Clifton. The Postal Service has had ample opportunity to test witness Clifton’s reliance upon Professor Kelejian’s declaration, but made no effort

to do so. Thus far, it has propounded some 55 interrogatories (with additional subparts) to witness Clifton, but not one of them appears to be directed towards witness Clifton's reliance upon, or understanding of, Professor Kelejian's declaration. Before and since its Motion To Strike, the Postal Service could have propounded interrogatories to GCA witness Clifton concerning the Kelejian declaration, and Dr. Clifton would have answered (or would be working to answer) the discovery independently, or in consultation with his staff, and/or with Professor Kelejian, whom he has retained. There is nothing that prevents the Postal Service from getting answers to any questions it may have concerning Professor Kelejian's declaration by directing interrogatories to GCA witness Clifton.

In large part, the Kelejian declaration sets out mathematical analysis. For example, in assessing witness Thress's work, Professor Kelejian explains "that the calculated value of the volume ratio, or the log of that ratio, is not equal to the actual ratio of volumes appearing in II.5 and so a specification error is introduced. That is, both equations can not be correct at the same time!" (GCA-T1, App. C at 6). Mathematics is hard edged: statements are true or false. Professor Kelejian's observation is either true or false, and the Postal Service has abundant means to inquire into, challenge or otherwise attempt to rebut the accuracy of his statement. Beyond its rights to conduct discovery, and cross-examine witness Clifton, the Postal Service has the ability to present rebuttal evidence in response to all other parties. Given the circumstances here, the Postal Service's due process claims rest upon nothing.

IV. GCA Will Be Severely Prejudiced If The Evidence At Issue Is Struck

According to Commission Rule 23(c), a motion to strike “requests ... extraordinary relief.” The Postal Service’s Motion To Strike pays lip service to this point. But GCA will be severely prejudiced if it is not permitted to present the Kelejian material, and the Commission will be deprived of important information. The Kelejian declaration identifies severe and fundamental problems in Postal Service witness Thress’s econometric modeling of first class elasticities. In some 10 pages of single spaced material, Professor Kelejian, a noted econometrician, identifies core mathematical and econometric problems with Postal Service witness Thress’s modeling. According to Professor Kelejian’s declaration, given Thress’s “method of estimating a model” “the resulting estimates are unreliable.” (GCA-T1, App. C at 6). Stated otherwise, and to paraphrase the language of the federal court’s, Professor’s Kelejian work, and witness Clifton’s own testimony reflecting, besides his own analyses, reliance upon Professor Kelejian’s work, serves to demonstrate that witness Thress’ s testimony concerning first class elasticities is unsound econometrics.

The Postal Service raises absolutely no objection to the soundness of the Kelejian material. It does not contest his expertise, his analysis, the materials he relies upon or his conclusions. Instead, it is attempting to force GCA into litigating the case in a manner to the Postal Service’s liking. Its Motion To Strike threatens GCA with the loss of valuable evidence or the burden of substantial additional litigation expenses.

CONCLUSION

The Postal Service’s Motion To Strike should be denied. GCA has shown that testifying experts properly rely on the reports and opinions of other non-testifying

experts, and that the Postal Service has ample means to test and challenge the Kelejian material. No other party has filed in support of the Motion To Strike or raised independent objections to the Kelejian material. However, to the extent GCA is forced to present witness Kelejian as a testifying expert (and it will do so if need be)⁴, the Postal Service should be required to reimburse GCA for the costs of Professor Kelejian's time spent in preparation and testifying.

Respectfully submitted,

/s/ James Horwood _____

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⁴ If GCA is required to present Professor Kelejian as a testifying witness (a result the Postal Service does not object to) GCA would not oppose a reasonable extension of discovery on that testimony. (See Motion at 5)