Postal Rate Commission
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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268–0001

POSTAL RATE AND FEE CHANGES, 2006	Docket No. R2006–1

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO GCA MOTION ON BEHALF OF WITNESS CLIFTON FOR PROTECTIVE CONDITIONS
(November 1, 2006)

On behalf of witness Clifton, GCA filed a motion for protective conditions on October 27, 2006. On October 30, the Presiding Officer issued Ruling No. R2006-1/95, intended to preserve the status quo on an interim basis, and directing that answers to the GCA motion be filed by November 1. The Postal Service hereby responds to that motion. The Postal Service does not oppose protective conditions, but submits that any such protective conditions should be much more narrowly focused than those proposed by GCA and established on an interim basis by the October 30 ruling.

First, it is necessary to clarify that, contrary to the suggestion made in the GCA motion, the Postal Service had already obtained a copy of the materials in question prior to the filing of the GCA motion. Rather than travel to the office of GCA counsel itself, the Postal Service requested that counsel for ANM share a copy of the materials that were provided to him (or at least that portion of those materials which he had copied), and ANM counsel graciously complied with this request. Of course, at this time, there was no hint that the materials would subsequently be the subject of the instant motion. Postal counsel then shared copies of the materials with in-house experts, as well as outside consultants. These developments were stated on the record during hearings at the Commission on October 30, shortly after issuance of Ruling No. R2006-1/95. No

further copies of the materials have been made or distributed since the issuance of the Ruling.

The GCA motion relies exclusively on the declaration of Dr. Clifton to support the motion on behalf of Dr. Clifton. Review of Dr. Clifton's declaration reveals three relevant sets of material. The first is the entire body of material produced on October 23, 2006. Declaration ¶ 6. (In fact, that date appears to be the date that the interrogatory response was filed advising parties that materials would be available for inspection, and it further appears that no documents were actually provided by GCA to ANM until later, but that detail has no bearing on the instant dispute, and therefore the materials will be referred to as the full set of October 23 materials.) The second relevant set of materials is a subset of the first set of materials, a March 31, 2006 Elasticity Study. Declaration ¶ 6. (The Postal Service has copies of approximately 40 pages of material that are not part of the 95-page Elasticity Study.) The third relevant set of materials is a further subset of the Elasticity Study, "estimates of cross elasticities for worksharing mail" that did not appear in the testimony filed by Dr. Clifton in this case. Declaration ¶ 7. The declaration of Dr. Clifton is very specific on what he asserts needs to be protected:

> It is necessary for the Commission to enter a Protective Order so that NAPM/ABA cannot use the March 31, 2006 Elasticity Study in their dispute with me, and cannot benefit by free riding on valuable information on worksharing cross elasticities contained in that study.

Declaration ¶ 8.

While Dr. Clifton is very clear on exactly what information he believes needs to be protected, the draft protective conditions proposed by GCA are much more sweeping. Rather than being limited to the specific information identified by Dr. Clifton,

the “valuable information on worksharing cross elasticities contained in [the March 31, 2006 Elasticity Study],” which is just the third and most limited of the three sets of materials, GCA proposed conditions that would encompass the full set of materials provided on October 23, the first and most expansive of the three sets. The protective conditions should be much more narrowly tailored to fit the instant circumstances.

The Postal Service proposes that adequate protective conditions would:

1) preclude further dissemination of written copies of the March 31, 2006 Elasticity Study,

2) restrict use of that Study to those for purposes of litigation of Docket No. R2006-1,

3) require return of all copies of that Study at the completion of this case, and

4) preclude public reference to the information on worksharing cross elasticities in that Study.

Specifically, however, if it were necessary to refer to information in the March 31 Study other than that regarding the worksharing cross elasticities, either for purposes of cross-examining Dr. Clifton, or for purposes of presenting rebuttal testimony to Dr. Clifton, such use should be permitted. Additionally, any materials within the complete set, but outside of the Elasticity Study, should likewise remain outside the scope of the protective conditions. Dr. Clifton has presented no basis on which to assert that the release of such information (i.e., other than that from the Study and relating to the cross elasticities) would damage him in his collateral dispute regarding payment for the Study. Without such a basis, there is no reason to deprive parties of their ability to use this material for the purposes for which they sought to obtain it. (Alternatively, there is no reason to put parties to the onerous burden of filing materials under seal, or conducting hearings under seal, when the result of these measures would be the protection of

material for which no need for protection has been asserted, much less established.)

As a final note, while the Postal Service has no reason to suggest that the procedural schedule will change, it might be prudent to tie return of materials to the intended triggering event (filing of reply briefs), rather than the actual date on which that event is currently scheduled to occur. Schedules have been known to be adjusted.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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November 1, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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