

# DOCKET SECTION

BEFORE THE  
POSTAL RATE COMMISSION

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POSTAL RATE AND FEE CHANGES, 1997

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## RESPONSE OF UNITED PARCEL SERVICE IN OPPOSITION TO PARCEL SHIPPERS ASSOCIATION MOTION TO COMPEL

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(February 26, 1998)

United Parcel Service ("UPS") hereby opposes the Parcel Shippers Association (PSA) Motion to Compel Response of United Parcel Service to Request for Production of Information and Documents ("PSA Motion"). The PSA Motion seeks to require UPS to divulge confidential information concerning UPS's volumes, revenues, costs, and pricing practices which would, in many cases, be extremely burdensome (if not impossible) to compile and which in any event is not relevant to the issues that must be decided by the Commission in this proceeding.

The PSA Motion seeks to compel UPS to provide:

1. The number of parcels carried by UPS which weighed more than 70 pounds and exceeded 108 inches in length and girth;
2. The volumes, revenues, costs, and "net income earned" by UPS from the delivery of "domestic, nonexpedited parcels"; and
3. The percentage of parcels "on which UPS granted a discount from the published tariff," the percentage "for which UPS imposed a surcharge," and the "amounts" of the "average discount" and the "average surcharge."<sup>1</sup>

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1. The interrogatories at issue are PSA/UPS -4, 5, and 6 (b)-(e).

The issues raised by PSA's Motion are not new. On the contrary, the Commission's Presiding Officer has been forced to rule on similar requests on a number of occasions in the past. On each occasion, the Presiding Officer has denied the motion to compel and has thereby refused to order the production by an intervenor of information of the same type as is sought by PSA here.

Most recently, in Docket No. R94-1, the Presiding Officer declined to order the production of UPS's "costs, volumes and actual prices" despite assertions by PSA (1) that such information is "'manifestly relevant' to establishment of parcel post rates because UPS is [assertedly] the dominant ground carrier in the parcel market" and (2) that such information "cannot be viewed as highly confidential proprietary information." Postal Rate and Fee Changes, 1994, Docket No. R94-1, Presiding Officer's Ruling No. R94-1/64 (August 19, 1994), at page 2. In so doing, the Presiding Officer cited similar rulings in Docket Nos. R90-1 and R87-1. See id. at page 5, footnote 14. PSA nevertheless makes the same arguments which accomplish nothing and result only in a waste of the time and resources of the Presiding Officer and the parties.

In Ruling No. R94-1/64, the Presiding Officer held that "Numerical data revealing the disaggregated volumes, revenues and costs of a business' operations are clearly proprietary and commercially sensitive in character." Id. at page 5. Ruling No. R94-1/64 goes on to state, "Furthermore, information concerning the price discounting policies and practices of a firm are likely to be closely-held proprietary material of intense commercial sensitivity . . . ." Id. As a result, the Presiding Officer ruled that "[e]ven if all [of PSA's] arguments regarding relevance were accepted without rebuttal," PSA's motion should be denied. Nothing of any relevance has changed since that ruling. Instead, Ruling No. R94-1/64 is directly on point here and requires that PSA's motion be denied.

Although Ruling No. R94-1/64 -- as well as Ruling No. R90-1/66 (September 7, 1990) in Docket No. R90-1 and Ruling No. R87-1/148 (November 10,

1987) in Docket No. R87-1 -- effectively ends the matter, we nevertheless briefly respond to the baseless assertions made by PSA in its Motion.

PSA first argues that because the Postal Service is required to provide detailed information about its costs, revenues, and volumes, so too should UPS. That argument is nonsense. It is the Postal Service's rate proposals that are at issue here and that must be evaluated against the policies and criteria of the Postal Reorganization Act, not those of UPS.

PSA also states that the Commission cannot “employ the noncost factors of the Act in fixing parcel post rates if it knows nothing of the size of the market . . . .” PSA Motion at 3. Even if UPS were to produce the requested information, the Commission still would not know “the size of the market,” in light of the many other competitors in the market about which there would be no volume or other information. See, e.g., Tr. 20/10208, 10216 (lines 4-10), 24/13076-77.

Finally, PSA attacks UPS's claim of confidentiality even though PSA's own witness has invoked confidentiality as to similar information about the volumes of its members. See also CTC's Objection to UPS's interrogatories UPS/CTC-T1-3, 8(a), 9, Tr. 20/10187, 10192, 10193.

The string of Presiding Officer's rulings in prior cases on virtually identical discovery requests by PSA in prior proceedings demonstrates beyond doubt that the information sought by PSA in its instant Motion is confidential and need not be disclosed.<sup>2</sup>

WHEREFORE, United Parcel Service respectfully requests that the Presiding Officer deny the Parcel Shippers Association (PSA) Motion to Compel

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2. UPS also maintains its claim of undue burden, since some of the requested information could be obtained (if at all) only through an exhaustive review of millions of billing records, or a special study.

Response of United Parcel Service to Request for Production of information and Documents.

Respectfully submitted,

  
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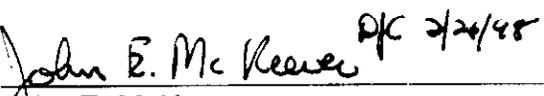
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served the foregoing document in accordance with section 12 of the Commission's Rules of Practice.

  
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John E. McKeever

Dated: February 26, 1998  
Philadelphia, PA