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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Before the

UNITED STATES POSTAL RATE COMMISSION

In the Matter of: POSTAL RATE AND FEE CHANGES

Docket No. R97-1

VOLUME 30

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ANN RILEY & ASSOCIATES, LTD.
1250 I St., N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES:

2 On behalf of the United States Postal Service:

3 SUSAN DUCHEK, ESQUIRE

4 ERIC KOETTING, ESQUIRE

5 RICHARD COOPER, ESQUIRE

6 MICHAEL TIDWELL, ESQUIRE

7 ANNE REYNOLDS, ESQUIRE

8 DAVID RUBIN, ESQUIRE

9 KENNETH N. HOLLIES, ESQUIRE

10 SCOTT L. REITER, ESQUIRE

11 ANTHONY ALVERNO, ESQUIRE

12 United States Postal Service

13 475 L'Enfant Plaza West, SW

14 Washington, D.C. 20260

15

16 On behalf of American Business Press:

17 DAVID STRAUS, ESQUIRE

18 Thompson Coburn

19 700 14th Street, NW, Suite 900

20 Washington, D.C. 20005

21 (202) 508-1013

22 fax (202) 508-1010

23

24

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of the Association of Alternate Postal Systems:

3 BONNIE S. BLAIR, ESQUIRE

4 Thompson Coburn

5 700 14th Street, NW, Suite 900

6 Washington, D.C. 20005

7 (202) 508-1003

8 fax (202) 508-1010

9

10 On behalf of Nashua Photo, Inc.; District Photo, Inc.;

11 Mystic Color Lab; Seattle FilmWorks, Inc.; ValPak Direct

12 Marketing Systems, Inc.; ValPak Dealers' Association; Carol

13 Wright Promotions:

14 WILLIAM J. OLSON, ESQUIRE

15 ALAN WOLL, ESQUIRE

16 JOHN S. MILES, ESQUIRE

17 JOHN F. CALLENDER, JR., ESQUIRE

18 William J. Olson, P.C.

19 8180 Greensboro Drive, Suite 1070

20 McLean, VA 22102-3823

21 (703) 356-5070

22 fax (703) 356-5085

23

24

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of Readers Digest Association, Parcel Shippers
3 Association:

4 TIMOTHY J. MAY, ESQUIRE

5 Patton Boggs, LLP

6 2550 M Street, NW

7 Washington, D.C. 20037

8 (202) 457-6050

9

10 On behalf of Advertising Mail Marketing Association:

11 IAN D. VOLNER, ESQUIRE

12 Venable, Baetjer, Howard & Civiletti

13 1201 New York Avenue, NW

14 Washington, D.C. 20005

15 (202) 962-4814

16 fax (202) 962-8300

17

18 On behalf of the Dow Jones & Company, Inc.:

19 SAM BEHREND, ESQUIRE

20 MICHAEL F. McBRIDE, ESQUIRE

21 LeBoeuf, Lamb, Greene & Macrae

22 1875 Connecticut Avenue, NW

23 Washington, D.C. 20009

24 (202) 986-8018

25 fax (202) 986-8102

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of the Major Mailers Association:

3 RICHARD LITTELL, ESQUIRE

4 1220 19th Street, NW, Suite 400

5 Washington, D.C. 20036

6 (202) 466-8260

7

8 On behalf of the Office of Consumer Advocate:

9 SHELLEY S. DREIFUSS, ESQUIRE

10 KENNETH E. RICHARDSON, ESQUIRE

11 Office of the Consumer Advocate

12 Postal Rate Commission

13 1333 H Street, NW, Suite 300

14 Washington, D.C. 20268

15

16 On behalf of the United Parcel Service:

17 JOHN E. McKEEVER, ESQUIRE

18 Piper & Marbury

19 3400 Two Logan Square

20 18th and Arch Streets

21 Philadelphia, PA 19103

22 (215) 656-3310

23 fax (215) 656-3301

24

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of Hallmark Cards, Incorporated:

3 DAVID F. STOVER, ESQUIRE

4 2070 S. Columbus Street, Suite 1B

5 Arlington, VA 22206

6 (703) 998-2568

7 fax (703) 998-2987

8

9 On behalf of ADVO, Inc.:

10 JOHN M. BURZIO, ESQUIRE

11 THOMAS W. McLAUGHLIN, ESQUIRE

12 Burzio & McLaughlin

13 1054 31st Street, NW, Suite 540

14 Washington, D.C. 20007

15 (202) 965-4555

16 fax (202) 965-4432

17

18 On behalf of Time Warner, Inc.:

19 JOHN M. BURZIO, ESQUIRE

20 TIMOTHY L. KEEGAN, ESQUIRE

21 1054 31st Street, NW, Suite 540

22 Washington, D.C. 20007

23 (202) 965-4555

24 fax (202) 965-4432

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of the Direct Marketers Association:

3 DANA T. ACKERLY, II, ESQUIRE

4 MICHAEL D. BERGMAN, ESQUIRE

5 Covington & Burling

6 1201 Pennsylvania Avenue, NW

7 Washington, D.C. 20016

8 (202) 662-5296

9 fax (202) 778-5296

10

11 On behalf of the Newspaper Association of America:

12 WILLIAM B. BAKER, ESQUIRE

13 ALAN R. JENKINS, ESQUIRE

14 MICHAEL YOURSHAW, ESQUIRE

15 Wiley, Rein & Fielding

16 1776 K Street, NW

17 Washington, D.C. 20006

18 (202) 429-7255

19 fax (202) 429-7049

20

21 ROBERT J. BRINKMANN

22 Newspaper Association of America

23 529 14th Street, NW, Suite 440

24 Washington, D.C. 20045-1402

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of the McGraw-Hill Companies, Inc.:

3 TIMOTHY W. BERGIN, ESQUIRE

4 Squire, Sanders & Dempsey

5 1201 Pennsylvania Avenue, NW, Suite 500

6 P.O. Box 407

7 Washington, D.C. 20044

8 (202) 626-6608

9 fax (202) 626-6780

10

11 On behalf of the Mail Order Association of America:

12 DAVID C. TODD, ESQUIRE

13 Patton Boggs, LLP

14 2550 M Street, NW

15 Washington, D.C. 20037

16 (202) 457-6410

17 fax (202) 457-6513

18

19 On behalf of David B. Popkin:

20 DAVID B. POPKIN

21 P.O. Box 528

22 Englewood, NJ 07631-0528

23 (201) 569-2212

24 fax (201) 569-2864

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of the Magazine Publishers of America:

3 JAMES R. CREGAN, ESQUIRE

4 Magazine Publishers of America

5 1211 Connecticut Avenue, NW, Suite 610

6 Washington, D.C. 20036

7 (202) 296-7277

8 fax (202) 296-0343

9

10 On behalf of the Alliance of Nonprofit Mailers:

11 JOEL T. THOMAS, ESQUIRE

12 11326 Dockside Circle

13 Reston, VA 20191

14 (703) 476-4646

15 fax (703) 620-2338

16

17 On behalf of the National Newspaper Association:

18 TONDA F. RUSH, ESQUIRE

19 King & Ballon

20 P.O. Box 50301

21 Arlington, VA 22205

22 (703) 534-5750

23 fax (703) 534-5751

24

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of the National Newspaper Association:

3 [continued]

4 SENNY BOONE

5 National Newspaper Association

6 1525 Wilson Boulevard, Suite 550

7 Arlington, VA 22209

8 (703) 907-7900

9

10 On behalf of the National Federation of Nonprofits:

11 CAROLYN EMIGH, ESQUIRE

12 Nonprofit Service Group

13 815 15th Street, NW, Suite 822

14 Washington, D.C. 20005

15 (202) 628-4380

16

17 On behalf of the Florida Gift Fruit Shippers Association:

18 M.W. WELLS, JR., ESQUIRE

19 Maxwell W. Wells, Jr., P.A.

20 105 E. Robinson Street, Suite 201

21 Orlando, FL 32801

22 (407) 422-8250

23 fax (407) 422-8262

24

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of the Recording Industry Association of America,
3 and Advertising Mail Marketing Association:

4 N. FRANK WIGGINS, ESQUIRE
5 Venable, Baetjer, Howard & Civiletti, L.L.P.
6 1201 New York Avenue, NW
7 Washington, D.C.
8 (202) 962-4957

9

10 On behalf of Edison Electric Institute:

11 R. BRIAN CORCORAN, ESQUIRE
12 Oliver & Oliver, P.C.
13 1090 Vermont Avenue, NW, Suite 800
14 Washington, D.C. 20005
15 (202) 371-5656
16 fax (202) 289-8113

17

18 On behalf of American Business Press:

19 STEPHEN FELDMAN, ESQUIRE
20 Ramsey, Cook, Looper & Kurlander
21 c/o Thompson Coburn
22 700 14th Street, NW, Suite 900
23 Washington, D.C. 20005
24 (202) 508-1022
25 fax (202) 508-1010

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of Douglas F. Carlson:

3 DOUGLAS F. CARLSON

4 P.O. Box 12574

5 Berkeley, CA 94712-3574

6 (510) 597-9995

7

8 On behalf of the Alliance of Non Profit Mailers:

9 DAVID M. LEVY, ESQUIRE

10 Sidley & Austin

11 1722 I Street, NW

12 Washington, D.C. 20006-3704

13 (202) 736-8214

14

15 On behalf of the National Association of Presort Mailers:

16 HENRY HART, ESQUIRE

17 Hazel & Thomas

18 P.O. Box 820

19 Alexandria, VA 22313

20 (703) 838-5153

21 fax (703) 836-8062

22

23

24

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of Brooklyn Union Gas Company:

3 MICHAEL HALL, ESQUIRE

4 Cullen & Dykman

5 1225 19th Street, NW

6 Washington, D.C. 20036

7 (202) 223-8890

8

9 On behalf of Niagara Telephone Company:

10 TIMOTHY E. WELCH, ESQUIRE

11 Hill & Welch

12 1330 New Hampshire Avenue, NW, Suite 113

13 Washington, D.C. 20036

14 (202) 775-0070

15 fax (202) 775-9026

16

17 On behalf of the Coalition of Religious Press Associations:

18 JOHN STAPERT

19 Associated Church Press

20 18653 N. 41st Place

21 Phoenix, AZ 85024-3759

22 (602) 569-6371

23 fax (602) 569-6180

24

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1250 I Street, N.W., Suite 300
Washington, D.C. 20005
(202) 842-0034

1 APPEARANCES: [continued]

2 On behalf of the Greeting Card Association:

3 ALAN R. SWENDIMAN, ESQUIRE

4 Jackson & Campbell, P.C.

5 1120 20th Street, NW, Suite 300 South

6 Washington, D.C. 20036-3437

7 (202) 457-1645

8 fax (202) 457-1617

9

10 On behalf of LabOne, Inc., Osborn Laboratories, Inc., and

11 Clinical Reference Laboratory, Inc.:

12 JOSEPH C. BENAGE, ESQUIRE

13 Hillix, Brewer, Hoffhaus, Whittaker & Wright

14 2420 Pershing Road

15 Kansas City, MO 64108-2574

16 (816) 221-0355

17 fax (816) 421-2896

18

19

20

21

22

23

24

25

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Washington, D.C. 20005
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3	THOMAS D. CROWLEY				
4	BY MR. BENAGE	16286			
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7	GILBERT P. BOURK, III				
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19	Gilbert P. Bourk, III, LabOne,		
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4	Neal W. Schmutzler, LabOne, et	
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P R O C E E D I N G S

[9:30 a.m.]

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3 CHAIRMAN GLEIMAN: Good morning. We continue
4 hearings today in Docket R97-1 to receive the direct cases
5 of participants other than the Postal Service, including
6 their rebuttal to the Postal Service. We are scheduled to
7 receive testimony of LabOne et al. -- excuse me, LabOne,
8 Inc., Osborn Laboratories, Inc., Clinical Reference
9 Laboratories, Inc., Witnesses Crowley, Bourk, Rastok and
10 Schmutzler, and Alliance of Nonprofit Mailers, Witness
11 Haldi.

12 Does any participant have a procedural matter to
13 raise at this point in time?

14 [No response.]

15 CHAIRMAN GLEIMAN: If not, let's proceed to
16 receive the testimony of the LabOne witnesses.

17 Mr. Benage.

18 MR. BENAGE: Yes.

19 CHAIRMAN GLEIMAN: Do I have it correct? If you
20 would introduce yourself for the record and also call your
21 first witness so that I can swear him in.

22 MR. BENAGE: Good morning, Commissioners. My name
23 is Joe Benage and I am will the law firm of Hillix, Brewer,
24 et al. in Kansas City, Missouri, and pleased to be in the
25 nation's capital today.

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Washington, D.C. 20005
(202) 842-0034

1 I represent LabOne and Osborn Laboratories and
2 Clinical Reference Laboratory in the captioned LabOne et
3 al., T-1 in Postal Rate and Fee Changes, 1997.

4 Our first witness today is Mr. Thomas D. Crowley.
5 Whereupon,

6 THOMAS D. CROWLEY,

7 a witness, was called for examination by counsel for LabOne,
8 Inc., Osborn Laboratories, Inc., and Clinical Reference
9 Laboratory, Inc. and, having been first duly sworn, was
10 examined and testified as follows:

11 CHAIRMAN GLEIMAN: Please proceed, counsel, when
12 you are ready.

13 DIRECT EXAMINATION

14 BY MR. BENAGE:

15 Q Good morning.

16 A Good morning.

17 Q Mr. Crowley, I am going to hand you what has been
18 styled LabOne et al., T-1, captioned "Direct Testimony of
19 Thomas D. Crowley, President, L.E. Peabody & Associates,
20 Inc." I am going to ask you if these two copies were
21 prepared by you or under your supervision?

22 A Yes, I did prepare these.

23 Q And do you have any corrections of form of T-1 as
24 the same was filed with the Commission?

25 A No, I do not.

1 Q And would your testimony today, if you were on the
2 stand and under oath, be the same as what is reflected in
3 T-1? .

4 A Yes, it would.

5 MR. BENAGE: Mr. Chairman, I would like to hand
6 two copies of T-1 to the reporter and ask that they be
7 admitted into evidence.

8 CHAIRMAN GLEIMAN: Are there any objections?

9 [No response.]

10 CHAIRMAN GLEIMAN: Hearing none, Mr. Crowley's
11 testimony and exhibits are received into evidence and I
12 direct that they be transcribed into the record at this
13 point.

14 [Direct Testimony and Exhibits of
15 Thomas D. Crowley, LabOne, et
16 al.-T-1, was received into evidence
17 and transcribed into the record.]

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LabOne, et al.-T-1

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

February 19, 1997

Postal Rate and Fee Changes, 1997

Docket No. R97-1

DIRECT TESTIMONY

OF

THOMAS D. CROWLEY
President
L. E. Peabody & Associates, Inc.

ON BEHALF OF

LabOne, Inc.
Osborn Laboratories, Inc.
Clinical Reference Laboratory, Inc.

Communications with respect to this document may be sent to:

R. Dennis Wright, Esquire
Hillix, Brewer, Hoffhaus,
Wittaker & Wright, L.L.C.
Fourth Floor
Two Crown Center
2420 Pershing Road
Kansas City, Missouri 64108
(816) 221-0355

Counsel for LabOne, Inc.,
Osborn Laboratories, Inc.,
Clinical Reference Laboratory, Inc.

Due Date: February 20, 1998

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LIST OF EXHIBITS

<u>ITEM</u> (1)	<u>TITLE</u> (2)
Appendix A	Statement of Qualifications

LabOne, et al.-T-1

**DIRECT TESTIMONY
OF
THOMAS D. CROWLEY**

I. INTRODUCTION

1
2 My name is Thomas D. Crowley. I am President of the economic consulting firm of L. E.
3 Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200,
4 Alexandria, Virginia 22314. I have, on numerous prior occasions, presented evidence on
5 economic ratemaking and cost finding principles before the Interstate Commerce Commission
6 (now the Surface Transportation Board), Federal Energy Regulatory Commission ("FERC"),
7 public utility commissions, arbitration panels, and state and federal courts. In addition, I
8 presented evidence before the Postal Rate Commission ("PRC") regarding rates for Third Class
9 Bulk Rate Regular ("TCBRR") and Fourth Class mail in Docket No. R90-1, Postal Rate and Fee
10 Changes, 1990. I also submitted evidence in PRC Docket No. MC95-1, Mail Classification
11 Schedule, 1995 Classification Reform I, regarding the United States Postal Service's ("USPS")
12 rate proposal for Standard (A) mail.

13 I have been requested by LabOne, Inc., Osborn Laboratories, Inc. and Clinical Reference
14 Laboratory (jointly referred to as "LabOne, et al.") to review the USPS' proposed surcharge on
15 Hazardous Medical Materials ("HMM"). LabOne, et al. are the three largest providers of Risk
16 Assessment Testing services to the life insurance industry. Risk Assessment Testing consists
17 of the chemical or biological analysis of blood, urine, or oral fluid samples taken from a life
18 insurance applicant at the applicants' home or place of business. LabOne, et al. does not

1 actually collect the clinical specimens from the applicants, but receives the samples via various
 2 carriers, including the USPS. Samples sent via the USPS are sent by First Class, Business
 3 Reply mail ("BRM"). The clinical specimens sent via the USPS are considered hazardous
 4 materials as described in the Domestic Mail Manual ("DMM") and must meet various
 5 packaging, label and quantity requirements and postal regulations to be accepted.

6 The USPS' surcharge for HMM will have a significant impact on the postal charges incurred
 7 by LabOne, et al. Table 1 below summarizes LabOne, et al.'s volume and average rate for
 8 1997. Table 1 below also quantifies the impact of the USPS' proposed surcharge for HMM.

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Item (1)	Amount (2)
1. Number of Pieces	1,671,842
2. Average Rate Piece	\$0.57
3. Impact of Surcharge	
a. Proposed HMM Surcharge - Per Piece	\$0.50
b. Rate Including Surcharge - Per Piece (L2 + L3a)	\$1.07
c. Percent Increase (L3a ÷ L2)	87%

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20 As shown in Table 1 above, LabOne, et al. mailed 1.7 million pieces in 1997 at an average
 21 rate of \$0.57 per piece. If the HMM surcharge of \$0.50 per piece is applied to the average rate,
 22 the postal rate will increase by 87 percent to \$1.07 per piece.

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II. PURPOSE OF TESTIMONY

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In Docket R97-1, USPS' Witness John V. Currie (USPS-T-42) has proposed two surcharges for certain mailable hazardous materials.^{1/} First, he proposed a \$0.50 per piece surcharge for HMM that would apply to six categories of material currently described as (a) etiologic agents, (b) etiological agent preparations, (c) clinical (or diagnostic) specimens, (d) biological products, (e) sharps, and (f) other medical devices (Currie, page 5).^{2/} Second, he proposed \$1.00 per piece surcharge for Other Mailable Hazardous Materials ("OMHM") (Currie, page 15).

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The purpose of my testimony is to address the lack of cost and volume data supporting USPS Witness Currie's arbitrary proposed surcharge for HMM. Although Witness Currie claims the proposed surcharges for HMM and OMHM "recognize the special costs of handling these materials, improve the alignment of prices with costs, increase the conformity of the Postal Service price structure with industry standards, and provide a means of improving Postal Service data on these materials" (Currie, page 1), he has no support for such claims. Witness Currie attempts to support his claims by allocating unquantified volume variable and institutional costs, by misrepresenting competitors' applicable surcharges, and by improperly evaluating the proposed classifications and surcharges with respect to the criteria of the Postal Reorganization Act.

^{1/} Witness Currie's proposed surcharges are the same as he proposed in PRC Docket No. MC97-2, Parcel Classification Reform, 1997 ("MC97-2"). In fact, his testimony in R97-1 is virtually identical to his MC97-2 testimony.

^{2/} Witness Currie claims "that the current volume of First-Class clinical diagnostic specimens may be in the order of 10 million pieces annually..." (Currie, page 17). However, Witness Currie does not identify any additional volumes for the other five (5) categories of HMM. I have assumed that Witness Currie's discussion is intended to represent all categories of HMM and that the surcharge is not solely related to clinical (diagnostic) specimens.

1 My analysis and response to USPS Witness Currie's testimony are discussed below under
2 the following headings:

3 III. Summary and Findings

4 IV. Lack of Foundation for Proposed Surcharges

5 V. Hazardous Materials Charges Imposed by Competitors Are Not Applicable

6 VI. Classification and Pricing Criteria

7 VII. Surcharges Will Not Provide the USPS With More Refined Data

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III. SUMMARY AND FINDINGS

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Based on my review of the testimony submitted by USPS Witness Currie, his responses to interrogatories and filed library reference/workpapers, I find that Witness Currie's proposed surcharges for HMM are not supported by the evidence of record and, in addition, his testimony does not support the proposed surcharge for HMM for LabOne, et al.'s clinical specimens. My findings are summarized below:

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1. From an economic perspective, a surcharge is applicable in special situations when justified by unusual costs that are incurred, to recognize special market considerations or as a short run adjustment to revenues. The USPS' proposed HMM surcharge as developed by Witness Currie does not meet any of these criteria.

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2. In order for a surcharge to be applied to HMM, the costs of handling that material and the volumes impacted must be known. Witness Currie admits that he does not know the extra costs incurred to handle HMM and does not know the volume of mail that will be impacted by the surcharge (Currie, pages 15-17).

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3. Witness Currie's "special costs" related to the special handling and transportation of HMM are not quantified and he admits the additional handling is not applicable to LabOne, et al.'s clinical specimens because that mail is not treated as "outside pieces" (Currie, pages 8-9).

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4. Witness Currie's costs related to training and handling procedures for HMM are not quantified and he admits that these costs are not "attributed" to individual mail subclasses and special services, but rather accounted for as institutional costs (Currie, page 11).

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5. The proposed surcharge, as applied to LabOne, et al.'s volumes of 1.7 million pieces per year increase USPS' revenues by approximately \$850,000. This surcharge is not applicable to LabOne, et al.'s volumes because Witness Currie's "Summary of Incidents" related to hazardous materials as found in Library Reference PCR-26 does not reflect current data and does not show examples related to clinical specimens that demonstrate the justification of a surcharge.

- 1 6. The lack of a surcharge on HMM, which according to Witness Currie will generate
2 approximately \$5 million per year, will not impact the USPS' proposed rate structure
3 for First Class Mail.
- 4 7. The extra costs for industry surcharges and examples related to air transportation
5 restrictions and airlines' refusals are not quantified by witness Currie and are not
6 applicable to LabOne, et al.'s clinical specimens.
- 7 8. Witness Currie's evaluation of the classification and pricing criteria does not provide
8 justification for a surcharge for clinical specimens.
- 9 9. A surcharge should not be utilized as a means of providing data regarding HMM to the
10 USPS.

1 **IV. LACK OF FOUNDATION FOR PROPOSED SURCHARGES**

2 The surcharges proposed by Witness Currie are totally without support or justification. The
3 proposed surcharges do not agree with the intent of surcharges from an economic perspective,
4 are not supported by cost studies, cannot be justified based on past occurrences of spills or
5 clean-ups, and cannot be rationalized based on other market factors. My discussion of these
6 issues is summarized under the following topics:

7 A. Economic Perspective for Surcharges

8 B. Past PRC Acceptance of Surcharges Have Been Based on Quantified Costs

9 C. Witness Currie's Cost Justification

10 D. Witness Currie's Aggregate Surcharge Calculation

11 E. Clean-up of HMM

12 F. Impact on Proposed First Class Rates

13 G. Other Industry Costs

14 **A. ECONOMIC PERSPECTIVE FOR SURCHARGES**

15 A surcharge is defined as a "charge above the usual or customary charge"^{2/}. From an
16 economic perspective, in order for a surcharge to be justified, the surcharge must reflect the
17 need to recover a cost that the customary charge does not meet, an adjustment to consider the
18 failure of the customary charge to reflect the appropriate market price, or be of a short-term
19 nature to reflect some special situation. For example, in periods of high inflation in fuel prices,

^{2/} Transportation Logistics Dictionary, The Traffic Service Corporation, 1982.

1 trucking companies may impose a surcharge to recoup the increased costs of fuel. Similarly,
2 in periods of inclement weather, taxis may have the authority to increase fees (i.e., apply a
3 surcharge) to recognize significant (and short term) changes in the market for their services.
4 Witness Currie's proposed surcharges do not have the underlying support of cost data or market
5 data to justify the proposed surcharges.

6 **B. PAST PRC ACCEPTANCE OF**
7 **SURCHARGES HAVE BEEN**
8 **BASED ON QUANTIFIED COSTS**

9 Proposed surcharges in the past PRC decisions in R78-1 through R90-1 have been based on
10 USPS cost studies "restricted to the additional costs shown"^{4/} and "in previous cases the
11 Commission has not added any contingency when developing a surcharge...".^{2/} In R84-1, the
12 PRC recommended a \$.10 Nonstandard Surcharge for First-Class mail that was based on a USPS
13 cost study^{6/}. This study was a USPS library reference which updated the cost study supporting
14 the establishment of the Nonstandard Surcharge in Docket No. R78-1.

15 Witness Currie in the R97-1 proceeding states that he does not know the extra costs for
16 handling HMM and therefore the contribution to institutional costs is not known.

17 **C. WITNESS CURRIE'S COST JUSTIFICATION**

18 Witness Currie lists various types of costs that he assumes are associated with clinical
19 specimens specifically and hazardous materials in general (Currie, pages 6-12). He believes

^{4/} Docket R87-1, Opinion and Recommended Decision, Volume 1, pages 450-451.

^{2/} Docket R84-1, Opinion and Recommended Decision, Volume 1, pages 330-331.

^{6/} PRC also recommended a Fourth Class Nonmachineable Surcharge, established in R80-1, based on the USPS' cost study.

1 that the proposed surcharges will recognize the "special costs" that are related to the risks of
2 handling and transporting HMM including the costs of training employees, clean-up costs from
3 spills and contamination and other costs such as those incurred due to air transportation
4 restrictions or an airlines' refusal to transport hazardous material.

5 Witness Currie goes into detail on the current Postal Service regulations for handling HMM
6 and the precautions and practices followed by the USPS, but he never quantifies these associated
7 costs and expenses. For example, Witness Currie claims that the handling procedures for HMM
8 pieces are more costly because HMM cannot be processed on automated equipment and are
9 diverted to the manually-processed mailstream. Also, Witness Currie asserts, without support,
10 that "relative to the other items in the manually-processed mailstream, HMM pieces appear to
11 have higher processing costs because employees are understandably more cautious in handling
12 them." (Currie, page 8) Witness Currie does not offer any information in his testimony or
13 discovery responses to support this assertion. Witness Currie does admit, however, that the
14 special handling of "outside" pieces (i.e., HMM) is not applicable to all medical mailings,
15 specifically clinical specimens (Currie, pages 8-9). In essence, Witness Currie's claimed costs
16 are not applicable to Lab One et al.'s mail.

17 When asked to identify and provide the attributable costs associated with the proposed
18 surcharges that "recognize the special costs of handling these materials, [and] improve the
19 alignment of prices with costs" for the two types of hazardous materials, Witness Currie states
20 that "As noted in my testimony at page 16, the Postal Service has not been able to quantify the

1 costs associated with these two types of hazardous materials."²¹ Nor, as pointed out, have they
2 been able to differentiate which types of HMM the costs are attributed too, specifically clinical
3 specimens like those mailed by Lab One, et al.

4 Witness Currie also asserts that the surcharge should recoup the costs of training employees
5 to handle hazardous material (Currie, page 11). He provides estimates of hourly wages and the
6 amount of time related to the training, but does not provide the number of employees that
7 require training and the aggregate expenses that would be applicable to his estimated 10.5
8 million pieces subject to the surcharge. Furthermore, Witness Currie admits that the "Postal
9 Service training costs are generally not 'attributed' to individual mail subclasses and special
10 services, but rather are accounted for as institutional costs." (Currie, page 11) Thus, training
11 is not a volume variable cost to be recovered by HMM mail, but an institutional cost recovered
12 by all mail.

13 D. WITNESS CURRIE'S AGGREGATE SURCHARGE CALCULATION

14 Witness Currie's Appendix A "Volume and Revenue Assumptions" calculates the
15 revenue expected from the HMM and OMHM surcharges. Besides the fact that the required
16 revenues are not cost based, Witness Currie's revenues are admittedly assumptions and do not
17 provide actual volume, per piece weight and postage, or actual elasticities for HMM in his
18 calculations. Surcharge revenues in Witness Currie's Appendix A are based on a "round
19 number" volume estimates that might be subject to the proposed surcharges based on assumed
20 price elasticities (Currie, Page A-1 to A-2). When asked to show the derivation of his volumes,

²¹ OCA/USPS-T11-1, Docket No. MC97-2.

1 Witness Currie claims that the volumes were estimates "generated judgmentally"^{8/}. Without
2 volume data, Witness Currie must also estimate his average weight per piece of 8 ounces.
3 LabOne et al.'s clinical specimens show that this estimate of weight and, therefore, postage per
4 piece utilized by Witness Currie is higher than LabOne et al.'s average weight per piece of
5 approximately 4 ounces.

6 Witness Currie's price elasticities are also assumptions that are "roughly equal to the
7 Priority Mail price elasticity" (Currie, page A-1) because "Priority Mail appeared to provide the
8 closest available match to the shape, weight, and service characteristics of HMM mail."^{9/} Even
9 accepting Currie's estimate of 8 ounces per piece for HMM, the Priority Mail's average weight
10 per piece of 2.11 pounds^{10/} is not comparable. In summary, Witness Currie's Appendix A
11 incorrectly calculates expected revenues because they are based on assumptions made in his
12 volumes, average weight per piece and prices elasticities.

13 **E. CLEAN-UP OF HMM**

14 Witness Currie attempts to justify the surcharge by showing that HMM packages
15 occasionally fail during handling and transportation resulting in clean-up costs from the spills
16 and contamination. As support, he provides the "Summary of Incidents" reported from October
17 1991 to November 1994 found in Library Reference PCR-26 ("PCR-26"). I have four
18 observations regarding this study. First the data is outdated. LabOne, et al. currently provide

^{8/} Response to interrogatory OCA/USPS-T11-9 in MC97-2.

^{9/} Response to interrogatory OCA/USPS-T11-10 in MC97-2.

^{10/} USPS-T33, page 18.

1 state-of-the art packaging which is frequently updated (and approved by USPS) to prevent
2 leakage and spills.

3 Second, nowhere in the summary in PCR-26 are the costs and expenses related to the clean-
4 up of the incidents provided. Furthermore, the cause of the incidents are often described as the
5 result of handling, equipment failure or unknown and not necessarily a result of poor packaging
6 or labelling of the hazardous material.

7 Third, the summary of incidents in PCR-26 also does not differentiate among the types of
8 hazardous materials as categorized by Witness Currie. The data in PCR-26 contains numerous
9 types of hazardous materials, including what may be HMM.

10 Fourth, the proposed surcharge would add approximately \$850,000 per year related to
11 LabOne, et al.'s mail. The nonapplicable and unquantified costs related to the incidents in PCR-
12 26 do not support the additional charge to LabOne, et al.

13 **F. IMPACT ON PROPOSED FIRST CLASS RATES**

14 USPS Witness Fronk provides the before and after volumes and revenues in his "First-
15 Class Summary: Total Class and Subclass FY 1998 Before and After Rates". If Witness
16 Currie's estimate of the revenues related to the surcharge of \$5.25 million were eliminated from
17 the "After Rates" revenue, there would be no effect on the proposed First Class base rate of
18 \$0.33 per piece. The revenues generated by the proposed surcharge of approximately \$5 million

1 accounts for \$.00005 per piece for First Class mail^{11/}. Such a reduction in First Class revenues
2 would not require an adjustment to the base rates for First Class mail.

3 **G. OTHER INDUSTRY COSTS**

4 Witness Currie also attempts to use the costs related to air transportation restrictions and the
5 costs associated with the airlines' refusal to transport certain hazardous materials as support of
6 the costs the surcharges will cover. In response to OCA's interrogatory OCA/USPS-T11-5 in
7 Docket No. MC97-2, Parcel Classification Reform, 1997, Witness Currie provides a summary
8 of refusal rates by airport and admits that the "refusal rates range widely, from 0 percent to 100
9 percent, depending in part upon the mailers and delivery customers served by a particular
10 facility."^{12/} Nowhere does Witness Currie identify the type of hazardous material that was
11 refused transportation nor does he quantify or offer any of the costs and expenses related to
12 those refusals.

^{11/} \$5 million divided by 101,074 million pieces.

^{12/} OCA/USPS-T11-5, Docket No. MC97-2.

1 **V. HAZARDOUS MATERIALS CHARGES IMPOSED**
2 **BY COMPETITORS ARE NOT APPLICABLE**

3 Witness Currie supports his proposed surcharges on hazardous materials by reviewing the
4 practices of the Postal Service's competitors. By assuming the USPS' costs are similar to the
5 rest of the industry, he claims that the USPS' costs for handling the hazardous materials have
6 increased, similar to the rest of the industry, and that the USPS can "recoup" these increased
7 expenses by applying a surcharge, thus maintaining the same procedures as other carriers.

8 Although Witness Currie may be correct in claiming that the USPS is the only one that does
9 not have a surcharge on hazardous materials, he is incorrect in stating that all the carriers he
10 identifies actually charge all hazardous materials additional fees for their processing, especially
11 clinical specimens. Based on information provided by LabOne, et al., the clinical specimens
12 transported by means other than the USPS do not receive an additional surcharge. Even Witness
13 Currie acknowledges that carriers such as Emery Worldwide will avoid surcharges if packaging
14 and accounts are pre-approved (Currie page 14).

15 However, Witness Currie's discussion misses the point. The choice of the carrier selected
16 is based on total delivered cost and other market factors (such as speed of delivery or the ability
17 to trace a shipment). The comparison of the USPS' proposed surcharge is irrelevant without
18 consideration of the base charge and the quality of the overall service. Therefore, the
19 comparison of the other carriers' charges cannot be the basis for justifying the USPS' proposed
20 surcharge.

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VI. CLASSIFICATION AND PRICING CRITERIA

2 Witness Currie examines 5 classification criteria and 8 pricing criteria in evaluating the
3 proposed HMM surcharge (Currie, pages 14-17). Witness Currie's evaluation of the
4 classification and pricing criteria is erroneous and incomplete as he applies it to clinical
5 specimens. Each criteria is discussed below.

A. CLASSIFICATION CRITERIA

6 First, Witness Currie believes the additional costs offset by the surcharge will no longer be
7 covered by all other mail and therefore will provide "fairness and equity" as described in
8 criterion 1. As explained above, Witness Currie has not presented any quantified evidence
9 related to his cost assumptions nor has he been able to differentiate among which types of HMM
10 that his assumed additional costs are associated with. He also describes some of the costs as
11 institutional costs which are applicable to the entire spectrum of mailers. Aside from the reasons
12 provided on why clinical specimens do not cause the additional costs and why the surcharge
13 should not be applicable to these pieces, it is obvious that a rate increase of 87% for LabOne,
14 et al. pieces due to the surcharge is not fair or equitable.
15

16 With respect to Witness Currie's use of criterion 2, he is correct in that the laboratories'
17 ability to transport their services through the "mail is of considerable value to the sender and
18 recipient..." (Currie, page 14). Yet, other mailing alternatives are not as less convenient or
19 more costly as he portrays when considering all factors such as the speed of delivery or ability
20 to track a package.

1 Criterion 3 and 4 were found by witness Currie to not be relevant to the surcharges. I
2 disagree. Speed and reliability are two components of these criteria. These issues are
3 considered by LabOne, et al. in decisions related to the choice of the USPS versus other
4 carriers.

5 Witness Currie claims that criterion 5 is met because alternative carriers are available at
6 a reasonable cost. I disagree for two reasons. First, the services provided by alternative
7 carriers are not necessarily comparable. Second, Witness Currie's analysis of the cost of
8 alternative carriers is flawed as discussed above and he fails to have any quantitative analysis
9 supporting his claims.

10 **B. PRICING CRITERIA**

11 Witness Currie claims that criterion 1 of the pricing criteria "promotes fairness and equity"
12 because the costs of HMM are not recouped by nonhazardous mail (Currie, page 16). This is
13 false for 2 reasons. First, Witness Currie has not developed the increased costs associated with
14 HMM. Second, some of the areas of unquantified costs discussed by Witness Currie are
15 institutional costs and should be recouped by all mail.

16 Regarding criterion 2, value of service, I agree with Witness Currie that the value of service
17 is high and that mail, such as LabOne et al.'s specimens, travel First Class. However, this does
18 not justify a surcharge for LabOne et al.'s mail.

1 Witness Currie's opinion of criterion 3 leads him to conclude that the additional costs,
2 although not quantified, justify the surcharge. As stated above, additional costs have not been
3 demonstrated so this criterion cannot be utilized to support the surcharge.

4 Criterion 4 refers to the effect on other providers of similar services. Witness Currie asserts
5 that the increased rates due to the surcharge will "presumably be beneficial" on private sector
6 providers (Currie, page 16). I disagree for 2 reasons. First, Witness Currie has assumed this
7 criterion only refers to other carriers of similar services. The proper consideration is the effect
8 on the general public and business mail users. This surcharge will not be beneficial for the
9 people who request tests from LabOne et al. or the businesses that submit the clinical specimens
10 because the increased costs may ultimately be borne by those people or businesses. Second,
11 Witness Currie assumes an average postage rate of \$2 to \$3 per piece. Contrary to this
12 unsupported amount, LabOne et al.'s actual average postage rate is \$0.57 per piece and the
13 proposed surcharge reflects an increase of 87 percent over current rates.

14 For criterion 5, Witness Currie believes no issue exists because alternate means "are
15 available from private sector providers at reasonable costs" (Currie, page 17). As discussed
16 above, Witness Currie has not examined the actual costs of other providers. In addition, his
17 claims of surcharges imposed by other providers is erroneous as related to LabOne et al.'s
18 clinical specimens.

19 Witness Currie claims that criterion 6, mailer preparation, does not apply. I disagree.
20 LabOne, et al. have very specific preparation requirements and the LabOne, et al. mail is clearly

-18-

LabOne, et al.-T-1

1 marked to meet DMM specifications. The clinical specimens mailed by LabOne, et al. have a
2 high degree of mailer preparation.

3 Criterion 7 relates to the complexity of the rate structure. Witness Currie suggests that the
4 application of the surcharges will be simple, however, based on current procedures, the USPS
5 cannot currently identify the number of pieces which will be impacted. Thus, while the rate
6 structure is simple, the application to Lab One, et al.'s mail will potentially require changes to
7 the treatment of LabOne et al.'s mail.

8 Witness Currie does not consider and completely ignores the "scientific and informational
9 value" to the mail recipient as described in criterion 8. Clinical specimens are taken for the sole
10 purpose of providing scientific information to the recipients which is directly related to the
11 health, safety and well being of individuals, families and workplaces. Therefore, criterion 8 is
12 of substantial importance.

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**VII. SURCHARGES WILL NOT PROVIDE
THE USPS WITH MORE REFINED DATA**

3 Witness Currie believes that the surcharge will provide a means of improving USPS data
4 on hazardous materials, (Currie, page 17) but it is evident that better communication between
5 the USPS and its mailers and not arbitrary rate increases would be a better means in providing
6 the necessary information. Any surcharge cannot be imposed until accurate research is done on
7 the costs incurred by the USPS, the impact on the market for HMM and the actual volume that
8 will be subject to the surcharge.

STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering Association.

I have previously participated in various Postal Rate Commission ("PRC") proceedings. I presented evidence before the PRC regarding rates for Third Class Bulk Rate Regular ("TCBRR") and Fourth Class mail in Docket No. R90-1, Postal Rate and Fee Changes, 1990. I also submitted evidence in PRC Docket No. MC95-1, Mail Classification Schedule, 1995 Classification Reform I, regarding the United States Postal Service's ("USPS") rate proposal for Standard (A) mail.

The firm of L. E. Peabody & Associates, Inc. also specializes in solving economic, marketing and transportation problems. As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in

STATEMENT OF QUALIFICATIONS

include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected both railroad terminal and line-haul facilities used in handling various commodities to various destinations in all portions of the United States. These field trips were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal, both inbound raw materials and outbound paper products to and from paper mills, crushed stone, soda ash, aluminum, fresh fruits and vegetables, TOFC/COFC traffic and numerous other commodities handled by rail.

I have presented evidence before the Interstate Commerce Commission ("ICC") in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the ICC for the development of variable costs for common carriers with particular emphasis on the basis and use of Rail Form A. I have utilized Rail Form A costing

STATEMENT OF QUALIFICATIONS

principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.^{1/} I have also analyzed in detail, the Uniform Railroad Costing System ("URCS") and presented the results of my findings to the ICC in Ex Parte No. 431, Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations. I have been involved in the URCS process, either directly or indirectly, since the first interim report of the contractors was released.

I have frequently presented both oral and written testimony before the Surface Transportation Board (and its predecessor, the Interstate Commerce Commission), Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations, including interest. I have also presented testimony in a number of court and arbitration proceedings concerning the level of rates and rate adjustment procedures in specific contracts.

^{1/} Rail cost finding has been the cornerstone of this firm. Dr. Ford K. Edwards the senior partner of the firm Edwards & Peabody*, was the major architect in the development of Rail Form A. Mr. Peabody carried on this tradition of innovative cost finding until his retirement in 1983. Mr. Peabody's work included participation in the Tennessee Valley Authority's ("TVA") computerization of Rail Form A. Mr. Peabody was a member of a committee of transportation consultants which was organized to assess the TVA procedure in order to make available more complete and simplified input data for the Rail Form A computer program.

* Subsequent to the retirement of Dr. Edwards in 1965, the firm name was changed to L. E. Peabody & Associates, Inc.

Appendix A
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STATEMENT OF QUALIFICATIONS

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity, and cost-based ancillary charges. In particular, I have advised shippers on the theory and application of different types of rate adjustment mechanisms for inclusion in transportation contracts. As a result of assisting shippers in the eastern and western portions of the United States, I have become familiar with operations and practices of the rail carriers that move traffic over the major rail routes in the United States as well as their cost and pricing practices.

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.

Date: February 20, 1998.



R. Dennis Wright

1 CHAIRMAN GLEIMAN: Only one participant has
2 requested oral cross-examination of this witness, and that
3 is the Postal Service. Does anyone wish to cross-examine
4 the witness?

5 [No response.]

6 CHAIRMAN GLEIMAN: If not, then Mr. Hollies.

7 CROSS-EXAMINATION

8 BY MR. HOLLIES:

9 Q Good morning, Mr. Crowley. I am Ken Hollies on
10 behalf of the United States Postal Service. I have a few
11 questions. I don't imagine they will detain you long. I
12 would like to start by inquiring briefly into the
13 circumstances under which your testimony was prepared. When
14 were you contacted by LabOne et al. regarding the
15 possibility of testifying?

16 A In January.

17 Q Can you be any more precise?

18 A I don't recall the specific date.

19 Q Was it towards the beginning of the month, the end
20 of the month?

21 A Towards the end of the month.

22 Q Was that contact by counsel or by the client?

23 A By counsel.

24 Q When did you begin work on your testimony?

25 A The day I was contacted by counsel.

1 Q If I am correct, you filed no other testimony in
2 this case, is that correct?

3 A I personally have not.

4 Q That was my question. Thank you. Had you been
5 following our Docket No. 97-1 prior to the contact with
6 LabOne et al.?

7 A Yes.

8 Q And on what date did you start following it?

9 A When it was filed.

10 Q So were you familiar with the issues that
11 concerned LabOne when they contacted you?

12 A No.

13 Q When was your testimony completed?

14 A The day before it was filed.

15 Q Have you ever previously filed Commission
16 testimony?

17 A Yes, sir.

18 Q I think you say -- there are a couple of examples
19 there in your -- in the first paragraph of your testimony.
20 Have you ever done so approximately 50 days later than
21 called for by the procedural schedule?

22 A No, sir.

23 Q If you would turn for a moment to Table 1 on page
24 2, which appears to summarize LabOne et al.'s volume and
25 average postage. How did you compile this data?

1 A The information that appears on the first two
2 lines were provided by the three laboratories.

3 Q Did you document how you compiled it so that
4 reviewers could verify it?

5 A It has not been filed with the Commission.

6 Q So you did prepare some documentation which is not
7 part of your testimony?

8 MR. BENAGE: Mr. Chairman, if I may interject just
9 for a second. Mr. Chairman, I may need to clarify something
10 here. LabOne, Osborn and Clinical are all competitors in
11 the industry and so, to the extent that there is individual
12 information here about their operations, it has not been
13 provided in that form. What seems to be important here is
14 the aggregate information and the aggregate rates. So we
15 have not provided to the Commission specific information as
16 to each individual intervenor here and would request that it
17 not need to be provided for confidentiality and proprietary
18 and competitive reasons.

19 CHAIRMAN GLEIMAN: Well, I am not sure exactly
20 where Mr. Hollies is headed and you just may have
21 anticipated a question that he was about to ask, or a
22 request that he was about to make, and if he makes it, then
23 we will rule on it at that point.

24 BY MR. HOLLIES:

25 Q So to go back a moment, you did prepare

1 documentation?

2 A Yes, sir.

3 Q And does it conform with the rules of practice?

4 A Yes, sir.

5 Q Rule 31K, in particular, it conforms with?

6 A I am not sure what Rule 31K is.

7 Q Have you had occasion to provide documentation of
8 your testimony on the previous occasions when you have
9 appeared?

10 A Yes, sir.

11 Q I'm sorry, I couldn't hear the answer.

12 A Yes, sir.

13 Q And was that documentation provided as part of
14 your testimony or perhaps in a Library Reference?

15 A It was provided either as part of the testimony or
16 in response to Interrogatories.

17 MR. HOLLIES: I will not be asking for the data.
18 I can appreciate that it might be sensitive, and I am not
19 sure that it would really assist us here.

20 MR. BENAGE: Thank you.

21 BY MR. HOLLIES:

22 Q Two of your fellow witnesses present firm specific
23 values for the average postage paid on a mailed parcel.
24 Witness Bourk on behalf of Osborn reports an average of 88
25 cents, while Witness Schmutzler -- I hope I am pronouncing

1 that correctly.

2 MR. SCHMUTZLER: Correct.

3 MR. HOLLIES: Okay. Thank you.

4 BY MR. HOLLIES:

5 Q Provides a figure of 68 cents for Clinical
6 Reference Lab. Are these figures comparable to your 57
7 cents?

8 A Yes, sir.

9 Q And what is the basis for your conclusion that
10 they are comparable?

11 A As we were putting this together, those were the
12 gentlemen that provided me the data that I aggregated and
13 show in Table 2. So we were, my staff and their staffs were
14 in communications over this data.

15 Q Okay. So if they are comparable figures, does
16 this mean that LabOne, Inc.'s own mail is entered at an
17 average postage amount substantially less than the 57 cents?

18 A I think you can deduce that from what we are
19 talking about. I don't know what the exact number is, but I
20 think mathematically you can solve for that.

21 Q Thank you. I don't intend to go to the point of
22 asking about volumes which would permit us to do that.
23 That, I don't think is necessary. Thank you.

24 Did the information provided to you in any way
25 inform you regarding how much LabOne et al.'s customers pay

1 for a single transaction, including postage, product and
2 services?

3 A No.

4 Q Do you have any idea approximately what that range
5 might be?

6 A No, I do not.

7 Q With respect to the statement on page 14, lines 15
8 through 16, to the effect that the choice of carrier is
9 based on total delivered cost, speed of delivery and tracing
10 ability, do you have any information that indicates whether
11 the surcharges would or would not trigger LabOne et al. to
12 change carriers?

13 A No, I do not.

14 Q Turning for a moment to page 17, lines 14 through
15 18, you take issue there with Witness Currie's assertion
16 that alternate private shippers are available at reasonable
17 cost, where you argue that he has not examined the actual
18 costs of other providers. Have you examined them?

19 A No, sir.

20 Q Given that Witness Currie has wide experience in
21 the shipment of hazardous materials, including the types
22 shipped by your clients, the broader scope of materials
23 affected by the proposed fees, and the still broader scope
24 of other non-mailable hazardous materials, and given that he
25 has lengthy experience arranging and paying for the shipment

1 of such materials, what is the basis then for your
2 criticism?

3 A Witness Currie has not studied whether or not
4 these surcharges are justified, and that is the basis for my
5 criticism. He has presented no evidence to support his
6 proposed surcharges.

7 Q I understand what you are saying. That is not,
8 however, responsive to my question. Your criticism of
9 Currie was that he had not studied costs, yet he has lengthy
10 experience in the industry. Why would he need to study the
11 costs in specific if he has been in the industry most of his
12 professional life? Now, we are talking not about postal
13 costs but about other costs, the costs of other carriers,
14 for which you are criticizing his analysis.

15 A Well, his -- Witness Currie does a lot of things
16 that I criticize. When he evaluates another carrier, he
17 evaluates a component of that carrier, ^{and} ~~or~~ he does it without
18 any empirical data. I am not sure you can draw a
19 conclusion, as Witness Currie has, as to whether or not a
20 surcharge is even valid. There is nothing in his testimony,
21 work paper, or Library References that support his
22 conclusions, other than -- other than rhetoric and his
23 experience.

24 Q Could perhaps your criticism be paraphrased as he
25 has failed to develop a bottom-up cost model?

1 A I wouldn't characterize it that way. I would
2 characterize it as he has failed to provide any empirical
3 data, any model, bottom-~~down~~^{up} or top-~~up~~^{down}, it doesn't make any
4 difference, he has done nothing.

5 Q Looking at the last paragraph there on page 17,
6 you criticized Witness Currie on the grounds that his
7 description of surcharges by other providers is inaccurate.
8 There are a variety of other firms in the parcel shipping
9 business, correct?

10 A Yes, sir.

11 Q And Witness Currie's testimony indicates who some
12 of them are, right?

13 A Yes, sir.

14 Q One point made by Witness Currie is that as a
15 general matter, all shippers have restrictions or surcharges
16 on the types of materials they will carry; is that correct?

17 A It's correct that Witness Currie makes that
18 statement; it's not correct in application.

19 Q So there's a shipper that doesn't have any
20 restrictions or surcharges on the types of materials they
21 will carry?

22 A Well, absolutely, by definition.

23 Q Could you give me an example?

24 A I think the individual laboratory witnesses are
25 better to do that, but anyone -- any carrier other than the

1 post office that these people use do not charge surcharges.
2 So it goes across a wide range of folks.

3 Q Yes. My question, however, was at a broader
4 level. Are you suggesting that there are carriers in this
5 country that have no restrictions and no surcharges on the
6 types of materials they will carry?

7 A Well, there's a difference between what's in their
8 tariffs and what they actually apply. I'm sure that if you
9 review the tariffs of the carriers, you will see surcharges.
10 But what we're talking about is the actual application of
11 those tariffs to the movement of the product, and what I'm
12 suggesting to you is that for the three laboratories that
13 are here today, they're not paying surcharges to other
14 carriers.

15 Q Yes, you do keep going back to that point, but
16 that's not my question. I'm at a broader level, I'm talking
17 about shippers in general, which, of course, is what Witness
18 Currie testifies about.

19 You still stick to the proposition, then, that any
20 carrier will carry anything, or at least there's one carrier
21 that will carry anything?

22 A Anything covers an awful lot of ground.

23 Q That is my question.

24 A I don't -- I cannot answer that question.

25 Q So you would imagine that each of these carriers

1 would, for example, be happy carrying plutonium?

2 A I am not in a position to answer that question. I
3 have not studied that.

4 Q Well, let's assume for a moment, then, that
5 there's at least one carrier out there that won't carry
6 plutonium.

7 No, strike that. I'm going to move on.

8 The section heading for Section 7 in your
9 testimony reads, quote, "Surcharges will not provide the
10 USPS with more refined data," does it not?

11 A Is that what the heading is, is that your
12 question?

13 Q That is my question.

14 A Yes, sir, that's it.

15 Q And that's a fairly straightforward declarative
16 sentence, right?

17 A Yes.

18 Q Now, the placement of an assertion in a section
19 heading as opposed to the same information appearing, oh,
20 say, in a sub-section heading or perhaps only as a topic
21 sentence somewhere, suggests that a section heading conveys
22 a rather important point, correct?

23 A I am sorry, I didn't follow that.

24 Q I'm just trying to point out that a section
25 heading is a relatively prominent location in which to put

1 an assertion as compared with those other possibilities I
2 presented.

3 A I think that depends on the writer of the piece.
4 You can put your assertions most anyplace. I don't think
5 there is a grammatical rule that one follows that says you
6 have to put it in the topical heading.

7 Q I would agree with that. What's the purpose of a
8 heading to you?

9 A The purpose of a heading, particularly in written
10 testimony, is to separate the testimony into component
11 parts. At least that's the way I attempt to do it.

12 Q So a section heading in some sense announces
13 what's going to be discussed in that section?

14 A In very general terms, yes.

15 Q How many lines of text actually comprise this
16 section?

17 A Six.

18 Q That's what I count. And it's a grand total of
19 two sentences, right?

20 A Yes, sir.

21 Q On the clause that begins on line 3 of page 19 and
22 continues into line 4 -- that's the opening text in the
23 section -- you note that Witness Currie testified to the
24 effect that the surcharges will provide a means of improving
25 Postal data; isn't that correct?

1 A That's Mr. Currie's belief, as I understand what
2 he wrote.

3 Q Thank you. That's what I asked.

4 And that's a statement about the future, right?

5 A I believe that's what he's pointing to, yes.

6 Q And your rebuttal of that testimony, at least as
7 it appears in the remainder of the first sentence of Section
8 7, consists of a comparison between, quote, "better
9 communication between the USPS and its mailers," unquote,
10 and the less preferred alternative, at least as I understand
11 it, less preferred from LabOne's perspective, quote,
12 "arbitrary rate increases," unquote. Is that correct?

13 A We would prefer communications to rate increases,
14 if that's what your question was.

15 Q And in the second sentence, you make a pitch for
16 the collection of better information prior to the imposition
17 of a surcharge, right?

18 A Yes, sir.

19 Q Now, returning to the section heading for a
20 moment, if you would, Mr. Crowley, which states, as we said,
21 "Surcharges will not provide USPS with more refined data,"
22 is it fair to say that the heading asserts a lack of causal
23 connection between surcharge and better information?

24 A No.

25 Q Could you explain?

1 A You want me to explain the heading versus the
2 first sentence?

3 Q Okay. I didn't mean -- this is not intended to be
4 confusing. I'm not trying to pull some unusual stunt here.
5 But surchargers will not provide the USPS with more refined
6 data -- that statement asserts the lack of a causal
7 connection between imposition of a surcharge and the
8 collection of better information, that is, the converse of
9 what Witness Currie asserts, right?

10 A I apologize, but I'm having difficulty following
11 you.

12 MR. BENAGE: Your Honor, I'm -- or Chairman, I'm
13 sorry, I know he's entitled to ask the questions, but maybe
14 I'm a little slow here, but I'm -- it's not evident to me
15 where he's leading. Is he trying to -- I guess if he has a
16 specific question, I guess I would like to have it asked.

17 CHAIRMAN GLEIMAN: Well, he is asking a question,
18 and perhaps he can rephrase the question a little bit. As
19 far as where he's going, we'll find out when the Postal
20 Service files its brief, I guess.

21 BY MR. HOLLIES:

22 Q If we go back to what Witness Currie says, he says
23 that the surcharges, as we discussed a moment ago, will
24 provide a means of improving Postal data, right?

25 A Yes, sir.

1 Q Okay. So in some sense, there's a causal link
2 between the surcharges and the collection of better data
3 under his assertion?

4 A In Mr. Currie's assertion, yes.

5 Q And you're basically asserting the opposite of
6 what he is?

7 A Yes.

8 Q Okay. And I presume because Mr. Currie's
9 statement is in the future tense, you also intend yours to
10 be a negative form of future tense; is that correct?

11 A I'm an economist, not an English major.

12 Q Okay. We'll move on.

13 Can you show me where in Section 7 you actually
14 address the causal connection between surcharges and data
15 collection?

16 A Well, I guess I'm basing this on my experience,
17 and I guess if it's causing you this much confusion, I
18 wasn't clear in my point, and maybe I can articulate a
19 little more what I was talking about to help clarify the
20 situation.

21 Q Well, that may be appropriate on redirect. At the
22 moment, I'm asking you where you actually talk about the
23 causal connection in that two-sentence paragraph.

24 A I don't address a causal connection per se.

25 Q Thank you.

1 Now, you've been involved in matters before this
2 Commission in the past, as we discussed. In fact, that has
3 been true for many years; is that right?

4 A Yes, sir.

5 Q That perhaps might be related to why you studied
6 this case before your services were retained?

7 A No, sir. We represent other people or other
8 mailers in this proceeding. My firm does. I don't
9 personally.

10 Q Can you summarize in a paragraph or so what kinds
11 of issues you have testified regarding, preferably providing
12 a somewhat greater level of detail than provided in the
13 first paragraph of your testimony?

14 A In the -- and again, I'm going to be addressing
15 what I specifically have testified to --

16 Q That is what I'm asking for, thank you.

17 A In Docket R90-1, it was -- I represented third
18 class bulk rate regular mailers, and my testimony, as I
19 recall it, was concerned with rate design, and that -- it
20 doesn't come tripping to mind. In MC95-1, I was addressing
21 cross subsidies and elasticities of demand, I believe in
22 response to a Witness Crandell, again on behalf of the
23 Standard A mail or the old third class mail.

24 Q Okay. Do you follow Commission proceedings to the
25 point where the Postal Service implements the outcome?

1 A Yes.

2 Q Have you any familiarity with what the Postal
3 Service does when it implements new rates classifications or
4 fees after a Commission recommendation?

5 A I'm not sure I could articulate it as I sit here
6 today.

7 Q Well, no, I'm not asking for specifics. Are you
8 generally familiar with what --

9 A Generally we follow that sort of thing, yes.

10 Q Do you have any familiarity with the standard
11 reporting requirements imposed by Commission rules on the
12 Postal Service?

13 A As a general -- again generally, yes.

14 Q What about the data systems that generate the
15 information that is reported? Are you familiar with those?

16 A Generally yes.

17 Q Are you familiar with the domestic mail
18 classification schedule, also known as the DMCS?

19 A Generally yes.

20 Q Part of what the Commission puts in a
21 recommendation is recommended DMCS language, isn't it?

22 A What they put in their recommendation?

23 Q Yes.

24 A Yes, I believe that is correct.

25 Q And if the Governors of the Postal Service

1 determine to implement a Commission recommendation, then
2 those DMCS provisions are adopted, right?

3 A I believe so. That's correct.

4 Q Well, Mr. Crowley, given your background and
5 experience, would it surprise you if the Postal Service
6 modifies its data systems and data collected in response to
7 changes in the DMCS?

8 A No, sir.

9 Q What do you suppose the Postal Service would do
10 were the Commission to recommend shell classifications that
11 are subsequently implemented? Would the data systems be
12 modified?

13 A I don't know.

14 Q Let's assume that they are. Would it be fair to
15 state that any changes in postal data systems that might be
16 made, say were the Commission to recommend the HMM surcharge
17 would be causally connected to those new surcharges?

18 A I don't know. I would have to look at the
19 specifics of what was proposed or implemented to answer that
20 question.

21 Q Okay. Well, let's go back to Mr. Currie's
22 testimony.

23 He asserts a causal connection between surcharges
24 and the collection of information. I have now just taken
25 you through a sequence of questions --

1 A Well, he believes that. He asserts that -- I
2 don't know. He doesn't have any basis for making the
3 statement as I can see it, but it is a belief and I think
4 that is what I testified to.

5 MR. HOLLIES: I have no further questions at this
6 time.

7 CHAIRMAN GLEIMAN: Does anyone have follow-up?
8 Questions -- whoops. I'm sorry.

9 MS. DREIFUSS: Mr. Chairman, I do have one
10 question.

11 CHAIRMAN GLEIMAN: Ms. Dreifuss.

12 CROSS-EXAMINATION

13 BY MS. DREIFUSS:

14 Q Do you know whether the Postal Service --

15 CHAIRMAN GLEIMAN: Could you please identify
16 yourself for the reporter?

17 MS. DREIFUSS: Certainly. Shirley Dreifuss for
18 the Office of the Consumer Advocate.

19 BY MS. DREIFUSS:

20 Q Do you know whether the Postal Service could
21 collect data on hazardous materials without imposing a
22 surcharge? Do you have the impression that they could
23 implement such a data collection and still not implement a
24 surcharge?

25 A Well, I don't want to quibble with your question

1 but I think you asked me can they collect data on a
2 surcharge without --

3 Q I'm sorry, on hazardous material, on the number of
4 hazardous pieces.

5 A Yes, sir -- yes, ma'am, I believe they can. They
6 are the people that handle the data and they are the people
7 that charge the laboratories for the movement of the data,
8 and so I am sure they have all the information that would be
9 necessary.

10 Q Right. In fact, if they chose to they could even
11 implement a discount and collect the number of pieces that
12 would qualify for the discount, couldn't they?

13 A Yes. If you did the studies properly, a discount
14 is certainly within the realm of possibility.

15 MS. DREIFUSS: Thank you.

16 CHAIRMAN GLEIMAN: Is there any further follow-up?
17 [No response.]

18 CHAIRMAN GLEIMAN: Questions from the bench?
19 [No response.]

20 CHAIRMAN GLEIMAN: I just have one question. Mr.
21 Hollies asked you about plutonium.

22 Do I understand correctly that your testimony is
23 directed towards the medical materials surcharge and not the
24 other hazardous material surcharge?

25 THE WITNESS: Yes, sir.

1 CHAIRMAN GLEIMAN: So that to the extent that we
2 were talking about plutonium from some reactor facility or
3 something that had a non-medical purpose you wouldn't have
4 any sense of that or you wouldn't be talking about that in
5 your testimony?

6 THE WITNESS: That's correct. I am not addressing
7 that in this piece.

8 CHAIRMAN GLEIMAN: So it is only medical plutonium
9 that might come into play here?

10 THE WITNESS: I am not addressing plutonium at
11 all.

12 CHAIRMAN GLEIMAN: Okay. Just wanted to make sure
13 I understood the limits of your testimony.

14 If there are no further questions from the bench,
15 Mr. Benage, that brings us to redirect.

16 Would you like a couple of minutes with your
17 witness?

18 MR. BENAGE: Yes, I would, Mr. Chairman.

19 CHAIRMAN GLEIMAN: All right. Five minutes? Ten
20 minutes? However long?

21 MR. BENAGE: It won't take five minutes.

22 CHAIRMAN GLEIMAN: Okay. Thank you.

23 [Recess.]

24 CHAIRMAN GLEIMAN: Mr. Benage, whenever you are
25 ready.

1 MR. BENAGE: Mr. Chairman, I have no further
2 questions.

3 CHAIRMAN GLEIMAN: Well, if there is no redirect,
4 then that brings your appearance before us today to a close,
5 Mr. Crowley. We appreciate it -- your appearance here today
6 and your contributions to our record and if there is nothing
7 further, you are excused.

8 THE WITNESS: Thank you, sir.

9 [Witness excused.]

10 CHAIRMAN GLEIMAN: Mr. Benage, whenever you are
11 ready to introduce your next witness.

12 MR. BENAGE: Mr. Chairman, I am ready.

13 CHAIRMAN GLEIMAN: Call your witness.

14 MR. BENAGE: Mr. Gil Bourk.

15 CHAIRMAN GLEIMAN: Mr. Bourk, I apologize for
16 mispronouncing your name earlier, and if you would please
17 raise your right hand.

18 Whereupon,

19 GILBERT P. BOURK, III,
20 a witness, was called for examination by counsel for LabOne,
21 Inc., Osborn Laboratories, Inc., Clinical Reference
22 Laboratory, Inc. and, having been first duly sworn, was
23 examined and testified as follows:

24 CHAIRMAN GLEIMAN: It's apparently going to be the
25 first of several apologies. Please be seated.

1 DIRECT EXAMINATION

2 BY MR. BENAGE:

3 Q Good morning.

4 A Good morning.

5 Q Mr. Bourk, I am going to hand you what has been
6 styled LabOne, et al. T-2, captioned "Direct Testimony of
7 Gilbert P. Bourk, III, Vice President and General Counsel,
8 Osborn Laboratories, Inc."

9 I am going to ask you if it was prepared by you or
10 under your direction?

11 A Yes, I prepared this.

12 Q And do you have any corrections that you would
13 like to make to the form of T-2 as it was filed with the
14 Commission?

15 A No.

16 Q And would your testimony today on the stand and
17 under oath be the same as what is reflected in T-2?

18 A Yes, that's correct.

19 MR. BENAGE: Mr. Chairman, I would like to hand
20 two copies of T-2 to the reporter and ask that they be
21 admitted into evidence.

22 CHAIRMAN GLEIMAN: Are there any objections?

23 Hearing none, Mr. Bourk's testimony and exhibits
24 are received into evidence and I direct that they be
25 transcribed into the record at this point.

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[Direct Testimony and Exhibits of
Gilbert P. Bourk, III, LabOne, et
al.-T-2, was received into evidence
and transcribed into the record.]

LabOne, et al. T-2

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

RECEIVED
FEB 20 10 31 AM '98

Postal Rate and Fee Changes, 1997

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Docket No. R97-1

DIRECT TESTIMONY

OF

**GILBERT P. BOURK III
Vice President and General Counsel
Osborn Laboratories, Inc.**

ON BEHALF OF

**LabOne, Inc.
Osborn Laboratories, Inc.
Clinical Reference Laboratory, Inc.**

Communications with respect to this document may be sent to:

R. Dennis Wright, Esq.
Hillix, Brewer, Hoffhaus,
Whittaker & Wright, L.L.C.
2420 Pershing Road, Suite 400
Kansas City, Missouri 64108
(816) 221-0355
FAX (816) 421-2896

Counsel for LabOne, Inc.,
Osborn Laboratories, Inc.,
Clinical Reference Laboratory, Inc.

Due Date: February 20, 1998

1

DIRECT TESTIONY

2

OF

3

GILBERT P. BOURK III

4

5 My name is Gilbert P. Bourk III. I am Vice President and General Counsel of
6 Osborn Laboratories, Inc., in Olathe, Kansas. I have been with the laboratory for 9 ½
7 years. My primary responsibility is to manage and direct the legal affairs of Osborn
8 Laboratories. Included in my responsibilities is regulatory compliance. In 1989 I was
9 asked to review packaging requirements for clinical specimen collection kits for both
10 the private courier industry and the United States Postal Service (USPS). I have been
11 involved with the USPS ever since.

12 This testimony is in opposition to the USPS' proposed \$.50 per piece surcharge
13 for Hazardous Medical material (HMM) to be levied on our clinical specimen collection
14 kits. Osborn Laboratories has enjoyed a fine working relationship with the Shawnee
15 Mission, Kansas Branch of the USPS. I have worked with a number of local sales
16 representatives and management personnel for the last 9 years. I have traveled to
17 Washington, D.C. to meet with Bob Adams at the USPS headquarters to discuss
18 packaging requirements for clinical specimens. I have visited our local sorting center
19 and postage due dock to view the handling of our packages to understand how the
20 USPS handles our volume of business.

21 Osborn Laboratories analyzes blood, urine and saliva specimens for the
22 insurance industry. In reviewing a potential insured in the underwriting process, an
23 insurance company attempts to understand the risks of insuring persons. Information

LabOne, et al. T-2

1 pertaining to the health or condition of a potential insured is a key element in assessing
2 the risks of insuring certain persons, and we provide that information to insurance
3 companies by testing specimens from potential insureds. We manufacture the specimen
4 collection kits used to transport specimens to our laboratory. We receive thousands of
5 specimen collection kits every day from across the United States. The specimen
6 collection kits are delivered to us by private courier and the USPS. Our inbound
7 shipments fully comply with all HMM packaging requirements of the Domestic Mail
8 Manual. As evidence of our compliance, I have attached a few recent packaging
9 approval letters from our regional Rates and Classification Service Center.

10 Our inbound packages are delivered via first class business reply. Under this
11 approach, each first class business reply piece is to be weighed, and the applicable
12 charge assessed to us (the shipper). The fees are an accumulation of classification
13 charges (e.g., small per piece charges and/or fees for business reply, an accounting fee,
14 a handling fee, dimension charges, etc.) and weight charges (e.g., a fee for the first
15 ounce, and each ounce thereafter). In our case, due to our extremely high volume, the
16 USPS has developed an average pound rate. Several years ago, the USPS informed us
17 that it is not cost effective for them to weigh each piece. The USPS has told me this
18 process allows them to handle our volume much quicker. In this process, the USPS
19 computes a new average pound rate every month. This is accomplished with the USPS
20 taking what they feel is a representative sample of the different types of inbound
21 specimen collection kits (we have several different types of specimen collection kits),
22 comprising one pound. Then, the USPS takes each individual piece in the one pound,
23 and computes the first class business reply rate (identified above) for each item, and

LabOne, et al. T-2

1 adds them all together to get an average pound rate. Our most current pound rate is
2 \$8.75 per pound.

3 In processing our volume of inbound packages at our local Post Office, the
4 USPS uses the average pound rate to process our business in bulk. For example, on
5 any given day our first class business reply will be accumulated by the USPS in large
6 bins or hampers, and weighed in total. The weight of the hampers are deducted and the
7 pound rate applied to the remaining weight.

8 If the surcharge was applied to the processing of our volumes of packages, the
9 USPS would not be able to continue its economies of utilizing an average pound rate.
10 The surcharge, as currently proposed, would be levied on a per piece basis. At the
11 present time our first class business reply is all processed in bulk; i.e., we pay on
12 weight and not on a per piece basis. If the per piece surcharge was implemented, the
13 USPS would have to change its present procedure to count each piece.

14 I have read the testimony of John V. Currie on behalf of the USPS. There are
15 several aspects of Mr. Currie's testimony which are misconstrued, or simply not
16 correct. My initial reaction to Mr. Currie's testimony was that he seemed to provide
17 conclusionary comments without specific data to support his findings, and in some
18 respects I feel he must have been proceeding on stale or old information. He seems to
19 indicate a situation of constant danger posed to USPS personnel as the result of leaking
20 packaging (Currie, page 9). While there may have been limited leakage in some
21 packaging 10 years ago (I'm simply relying on memory for this, as I have no data on
22 leakage 10 years ago), there is no evidence of leakage in today's environment. Our
23 local Post Office maintains a leaker log to track leaking packages in our local

LabOne, et al. T-2

1 processing center, and I have no knowledge that our local representatives have
2 contacted us regarding leaking packages caused by inadequate packaging.

3 Mr. Currie stated in his testimony that private couriers impose a surcharge "on
4 commodities that are regulated as hazardous materials", and also charge a lab pack fee
5 (Currie, page 12). That statement is not correct. We currently utilize Airborne to
6 bring us thousands of packages per day. Airborne does not charge us a hazardous
7 material charge or a lab pack fee. Prior to our use of Airborne, we contracted with
8 FedEx to bring packages to us. FedEx did not impose a hazardous material charge or
9 lab pack fee.

10 The proposed surcharge is not acceptable, and would have a material adverse
11 effect on us. According to our local USPS representative, our estimated per piece rate,
12 based on our current pound rate is \$.88. Adding the surcharge to our individual pieces,
13 would result in a 57% increase in cost to us - which is not acceptable.

FROM : OLI

816 4212896

12-16

17:15

#529 P.07/08

RATES AND CLASSIFICATION SERVICE CENTER



February 5, 1998

Gib Bourk
 Osborn Laboratories
 14901 W 117th St.
 Olathe, KS 66062-9307

Dear Mr. Bourk:

This is in response to your request for review and approval of the packaging for the ORF oral fluid collection kit to be used in the mails.

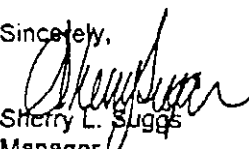
The kit is provided for insurance companies to submit saliva specimens for HIV screening. It consists of the EpiScreen HIV-1 Oral Specimen Collection Device by EpiTope Inc., an EpiScreen instruction pamphlet, a specimen test order form which includes a page of instructions for preparing the package for mailing, a 3 1/4" by 6 1/8" piece of absorbent material, and an 8 1/2" by 11" white envelope containing two sealable pockets.

The collection device consists of a plastic stick with a swab on the end which, after use, is placed in a plastic tube containing a small amount of blue stabilizing fluid. The tube is sealed with a friction stopper that has two sealing rings on the cap. The oral specimen tube and absorbent material are placed in the back pocket of the envelope and the documentation is placed in the front pocket. The envelope is sealed by removing the two protective tapes to allow each pocket to be sealed separately when the flap on the envelope is closed properly.

Based on our review, this specimen collection kit meets the basic requirements for shipment via the Postal Service and is approved. Please be aware that full responsibility rests with the mailer for any violation of Law, Title 18 United States Code, section 1716, which may result from placing kits containing clinical specimens in the mail.

If you have any questions, please contact Chuck Steinau at 630-978-4312.

Sincerely,


 Sherry L. Suggs
 Manager

cc: Manager, Marketing, Mid-America District
 Manager, Business Mail Entry, Mid-America District
 District Safety Manager, Mid-America District
 Postmaster, Shawnee Mission, KS 66202-9998
 All RCSCs
 RCSC30:CSS:C023:508670

FROM : OLI

816 4212896

1-2-16

17:14

#529 P.06/08

RATES AND CLASSIFICATION SERVICE CENTER



February 6, 1998

Gib Bourk
Osborn Laboratories
14901 W 117th St.
Olathe, KS 66062-9307

Dear Mr. Bourk:

This is in response to your request for review and approval of the packaging for the URN urine specimen collection kit to be used in the mails.

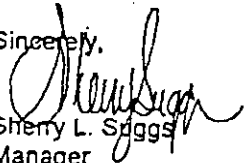
The kit is provided for insurance companies to submit urine specimens for HIV screening. It consists of a specimen cup with thermometer, two 12 milliliter vials with screw-on caps (one with yellow label and cap, one with blue label and cap), a pamphlet titled *Urine Testing for Antibodies to HIV-1*, a specimen test order form which includes a page of instructions for preparing the package for mailing, a 3 1/4" by 6 1/8" piece of absorbent material, and an 8 7/8" by 10 7/8" white envelope containing two sealable pockets.

The kit, when returned through the mail, consists of the envelope with the two plastic vials, absorbent material and order form enclosed. The vials, with the caps securely screwed on, and absorbent material are placed in the back pocket of the envelope and the documentation is placed in the front pocket. The envelope is sealed by removing the two protective tapes to allow each pocket to be sealed separately when the flap on the envelope is properly closed.

Based on our review, this specimen collection kit meets the basic requirements for shipment via the Postal Service and is approved. Please be aware that full responsibility rests with the mailer for any violation of Law, Title 18 United States Code, section 1716, which may result from placing kits containing clinical specimens in the mail.

If you have any questions, please contact Chuck Steinau at 630-978-4312.

Sincerely,




Sherry L. Sagggs
Manager

cc: Manager, Marketing, Mid-America District
Manager, Business Mail Entry, Mid-America District
District Safety Manager, Mid-America District
Postmaster, Shawnee Mission, KS 66202-9998
All RCSCs
RCSC30:CSS:C023:508667

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.

Date: February 20, 1998.



R. Dennis Wright

1 CHAIRMAN GLEIMAN: The only participant who
2 requested oral cross-examination is again the Postal
3 Service. Does any other party wish to cross-examine the
4 witness?

5 [No response.]

6 CHAIRMAN GLEIMAN: If not, Mr. Hollies, fire away
7 when ready.

8 MR. HOLLIES: Thank you, Mr. Chairman.

9 CROSS-EXAMINATION

10 BY MR. HOLLIES:

11 Q Mr. Bourk, I am Ken Hollies for the Postal
12 Service. This will be quite quick.

13 On pages 1 and 2 of your testimony you describe
14 what appears to be a relatively extensive history of
15 involvement in postal issues as they relate to your firm, is
16 that correct?

17 A That is correct.

18 Q And this history includes development of suitable
19 packaging and packaging techniques, right?

20 A Correct.

21 Q Why was and is suitable packaging necessary?

22 A Well, our approach is fairly simple. We try and
23 follow what is required in the Domestic Mail Manual.

24 I assume it is for safety, OSHA, things such as
25 that, and so the packages could be moved in transit.

1 Q What risks is one trying to avoid by packaging
2 material correctly?

3 A Security, so the package stays secure, so it
4 doesn't leak, things like that.

5 Q What might happen if a leak occurs?

6 A Well, if a leak would occur they would have to
7 ~~clear~~ ^{clean} it up. The materials that we ship do raise some
8 concerns.

9 Q Could you spell those out a bit for us, please?

10 A Well, most of the shipments that -- well, all of
11 the shipments that are in consideration in this hearing have
12 to do with specimens from the human body -- blood, urine,
13 saliva, things such as that -- and everyone is concerned
14 with regard to what those specimens are.

15 Q So there is a safety question?

16 A Yes.

17 Q Do the -- I'm going to call them "customers" --
18 that may not be a technically correct use -- to the
19 customers who provide the sample sources, not the insurance
20 companies, face any risks from poor packaging?

21 A The specimen donors?

22 Q Yes.

23 A No, I wouldn't think so.

24 Q So if you sent them a kit I guess is what happens
25 and the kit were to arrive having been crushed, there is no

1 risk at all to the donor?

2 A Typically in our situation when we sell specimen
3 collection kits to a third entity which we refer to as a
4 paramedical type firm, they contract with an insurance
5 company to draw a specimen from a proposed insured, so the
6 entity which purchases the kit is not the entity which
7 donates a specimen.

8 Q Okay. That probably doesn't surprise me.

9 You acknowledged a few questions back that there
10 basically is a safety question underlying the design of
11 packages.

12 A Sure.

13 Q Yet you seem to be saying that the donor faces no
14 safety risk. Is that really what you are saying?

15 A With regard to packaging after -- what I thought
16 you meant was is there a risk to the donor once the specimen
17 is drawn and it is shipped to the lab. I thought that is
18 what you meant.

19 Q Well, that was a fair answer to that question.
20 That is not what I meant.

21 Go back to the point before the donation has
22 occurred.

23 If the kit arrives in a less than functional way,
24 is there any kind of a safety question for the donor,
25 would-be donor?

1 A I guess it would be feasible. Kits -- depending
2 on the type of kit in question, we ship our kits out in bulk
3 to these paramedical firms. The paramedicals which draw the
4 specimens are independent contractors. They are supplied
5 the kits by their parent company. They then usually go to
6 the location of the proposed insured to draw the specimen,
7 so it is usually the paramedical^{who} has had an opportunity to
8 view the contents of the kit prior to the donation of
9 specimen.

10 Q So under that scenario the medical technician
11 might face perhaps a greater risk than the actual donor?

12 A Correct.

13 Q Focusing on the safety aspect, safety is important
14 to everybody involved in shipping packages, right?

15 A Sure.

16 Q So that would include the shipper and the
17 shipper's employees?

18 A Sure.

19 Q Maybe even the shipper's equipment?

20 A Yes, sir.

21 Q What about the workers at Osborn Labs?

22 A Yes.

23 Q In addition to the management of what are
24 basically safety and dollar risks, would it be fair to say
25 that processing advantages or, to put it in other terms,

1 reducing the risk of poor processing is also a goal of
2 proper packaging?

3 A I am not -- could you repeat the question?

4 Q Sure. Take a look at page 2 of your testimony. I
5 didn't put down a number.

6 MR. BENAGE: Do you still have that?

7 THE WITNESS: No. Page 2?

8 BY MR. HOLLIES:

9 Q Yes.

10 A Is there a certain line you want me to --

11 Q Not in particular. But you are talking there
12 about a problem that might arise from -- I'm sorry. Just a
13 second.

14 Looking at lines 17 and 18, you say there, quote,
15 "The USPS has told me this process allows them to handle our
16 volume much quicker."

17 A Correct.

18 Q So that's the spring -- that's where I am jumping
19 from for the question. I am just trying to paraphrase that.

20 A Okay.

21 Q As reducing the risk of poor processing through
22 packaging techniques. Is that a goal for your firm?

23 A Well, what I meant in this statement is -- I was
24 trying to explain why they have gone to an average weight
25 charge, and that's all I was trying to go to. I mean what

1 they have explained to us is very simple, I mean they
2 haven't ~~go into~~ ^{gone to} a lot of extent as to why they have done it
3 this way, but this is why they have done it. That's the way
4 they have explained it to us.

5 Q And in the course of that explanation, was there
6 some discussion about packaging or packaging techniques?

7 A I don't think so.

8 Q One message of your testimony, though, is that
9 Osborn Laboratories has made great progress in managing
10 these various risks we have been talking about, through
11 development of appropriate packing materials and techniques,
12 is that right?

13 A Correct.

14 Q You have been employed with Osborn for 9-1/2
15 years?

16 A Yes, sir.

17 Q Were you ever employed by any of the other firms
18 appearing under the mantel of LabOne et al.?

19 A No, sir.

20 Q Is it fair to assume that you are at least
21 generally familiar with the operations of the competing
22 firms that you joined with in this proceeding?

23 A I generally suppose so, I have never been in their
24 buildings.

25 Q But you understand them to be your competitors, is

1 that correct?

2 A Correct. Correct.

3 Q And at least in that limited sense, they probably
4 face some of the same kind of challenges you do?

5 A I would say that is true.

6 Q Are you familiar with how other firms have
7 responded to the challenges of proper packaging?

8 A No, sir.

9 Q Do you have any reason to believe that everybody
10 has been as successful as Osborn has?

11 A I don't know. I talked to our rep. and he would
12 tell -- we talk about what we do, and that's -- I don't
13 follow what other people do.

14 Q And rep. in this case is a postal person?

15 A Yes, sir.

16 Q On page 3 or 4 of your testimony, you indicate
17 that you are not aware that the Postal Service has recently
18 contacted your firm regarding leaking packages. I take it
19 you would expect such reports would make their way to your
20 office, is that right?

21 A Yes, sir.

22 Q So I take it you are leaving room for the
23 possibility that there may have been such an incident that,
24 for whatever unlikely reasons, didn't cross your event
25 horizon, is that right?

1 A Right. And I checked with our local representative
2 before making that statement, and he confirmed that.

3 Q Okay. Both you and Mr. Crowley provide average
4 per piece costs that are then used to calculate percentage
5 increases. What I would like to explore is what the
6 percentage increase that would be seen by your customers,
7 those who pay you, if the HMM fee was implemented and if
8 Osborn passed the entire cost onto its customers. What
9 would the percentage increase be for them, do you know?

10 A I do not know. I don't know what we charge our
11 customers for inbound transportation.

12 Q Could you repeat that answer, please?

13 A I don't know what the percentage increase would be
14 to our customers if we passed the charge on, because I don't
15 know what we charge our customers for inbound
16 trnasportation.

17 MR. HOLLIES: Thank you. I have no further
18 questions.

19 CHAIRMAN GLEIMAN: Follow-up?

20 [No response.]

21 CHAIRMAN GLEIMAN: Questions from the bench?

22 [No resonse.]

23 CHAIRMAN GLEIMAN: I have a couple, Mr. Bourk, if
24 you could help me out. You were referred by Mr. Hollies to
25 page 2, line 17, give or take a couple of lines of your

1 testimony. I am going to give you a moment to look at that.

2 THE WITNESS: Okay.

3 CHAIRMAN GLEIMAN: Do I understand correctly that,
4 at that point in your testimony, you are talking about the
5 manner in which the Postal Service assesses postage, how you
6 go about figuring out what the bill is?

7 THE WITNESS: Yes, sir.

8 CHAIRMAN GLEIMAN: And that that section doesn't
9 relate to any hazard or safety issue?

10 THE WITNESS: Yes, sir.

11 CHAIRMAN GLEIMAN: Okay. Now, you were also asked
12 by Mr. Hollies was there any reason to believe that others
13 have been as successful as Osborn in terms of not having
14 leakage. And then he followed it up and he asked you
15 whether there may have been a problem that didn't cross your
16 desk, and you indicated that you assumed that if it happened
17 that you would hear about it, and that you didn't hear about
18 anything from your rep.

19 THE WITNESS: That's correct.

20 CHAIRMAN GLEIMAN: Who would have known about a
21 leakage problem that perhaps the paper work got lost
22 somewhere in your company.

23 THE WITNESS: Right.

24 CHAIRMAN GLEIMAN: You have been there how long?

25 THE WITNESS: Since '88, September 6th.

1 CHAIRMAN GLEIMAN: Nine and a half years. I was
2 looking at the Postal Service clips the other day. They do
3 press clips and they are kind enough to send them to us. An
4 article in the Milwaukee Journal-Sentinel dated February
5 21st, 1998, "Detecting Dangerous Materials is Tough, Packing
6 Services Say." And it quotes a Postal Service spokesperson,
7 Mark Saunders, and Mr. Saunders says that he knew of no
8 infectious materials leakign from packages for more than 10
9 years. Is that consistent with your experience at Osborn?

10 THE WITNESS: Yes.

11 CHAIRMAN GLEIMAN: Thank you. I have no further
12 questions.

13 Redirect with your witness?

14 MR. BENAGE: I have just a couple of questions,
15 Your Honor -- or Mr. Chairman.

16 CHAIRMAN GLEIMAN: You don't need any time?
17 You're ready to proceed then?

18 MR. BENAGE: I'm ready.

19 REDIRECT EXAMINATION

20 BY MR. BENAGE:

21 Q Counsel for the Postal Service has made much of
22 safety and cost considerations. Have you had occasion to
23 observe the handing of your incoming packages by the local
24 branch of the Post Office?

25 A I have gone to our branch and every time I have

1 been there, it has been at a time when there is no activity.
2 I have seen the bins where they throw our -- where they
3 place our kits, and I -- there's no -- so I don't see them
4 culling them or, you know, distributing them, or handlign
5 them. I have seen them when they are already in the bins.

6 Q Do you have knowledge where they handled in bulk
7 as parts of large bags or individually?

8 A Yes. That's the way -- that's the way I saw it
9 and that is the way it was described to me.

10 Q How did you and Osborn Laboratories learn about
11 these proceedings?

12 A I had received a phone call from our local
13 represntative, Mr. Soriano, and he said ~~he said~~ he had some
14 people that were in from headquarters and from Rates and
15 Classifications in Chicago and he asked if he could bring
16 them by. He said he was going -- they were going to be in
17 Kansas City, and I said sure. So they came by our offices
18 and I think I met with them on the 22nd of January. That
19 was when I learned of this.

20 Q And did they state any opinions about these
21 proceedings?

22 A Well, during our conversation, the representative,
23 the Post Office represntative from Washington asked if I had
24 heard about a potential surchrage, and I said no. And she
25 handed me a document that talked about the potential

1 surcharge and she -- at that time she didn't know if it was
2 in effect, if it wasn't in effect, or if the public comment
3 period had expired, but that I should probably check it out.
4 So that's when we started checking it out.

5 Q And did the local representative have any comment
6 about the surcharge?

7 A Yes. I have had -- on that day, he was in the
8 dark as much as I was, and he -- prior to filing of this
9 testimony, I had some conversations with him and he -- I did
10 talk to him about it and he had some opinions on it.

11 Q Would you mind stating what those are?

12 A Well, he --

13 MR. HOLLIES: Objection. Objection. We're way
14 beyond the scope of cross and now we're delving deep into
15 hearsay.

16 CHAIRMAN GLEIMAN: I'm afraid I'm going to have to
17 rule in favor of the Postal Service on that one, Mr. Benage.

18 MR. BENAGE: Okay.

19 CHAIRMAN GLEIMAN: Do you have more questions you
20 want to proceed with?

21 MR. BENAGE: I have just a couple other questions,
22 Mr. Chairman.

23 CHAIRMAN GLEIMAN: Certainly.

24 BY MR. BENAGE:

25 Q Is Osborn Laboratory charged a surcharge by any of

1 the alternative carriers?

2 A No.

3 Q Would the amount of this surcharge likely cause
4 Osborn Laboratories to look to alternative means of
5 transporting those packages which are now transported by the
6 Postal Service?

7 A Yes.

8 MR. BENAGE: I have no further questions.

9 CHAIRMAN GLEIMAN: Recross, Mr. Hollies?

10 MR. HOLLIES: I do have one question.

11 RECCROSS-EXAMINATION

12 BY MR. HOLLIES:

13 Q Do you have any feel for the volumes that might
14 ultimately be shifted were the hazardous medical materials
15 surcharge implemented?

16 A What percentage of our volume --

17 Q Yes.

18 A -- would change?

19 Q Yes.

20 A Well, I don't know, because we haven't looked at
21 what those numbers are and what the cost impact would be. So
22 it would be a factor of that.

23 Q I recognize that there is going to be some
24 imprecision here, but can you give us an estimate?

25 A Well, I don't think I could at this point because

1 I don't know what the numbers are.

2 CHAIRMAN GLEIMAN: I have a couple of questions I
3 need to ask you based on the recross. First, I need to
4 understand a little better, Osborn Labs stands where roughly
5 in the ranking of entities that are in the business that
6 Osborn is in?

7 THE WITNESS: It's our understanding that we are
8 the second largest insurance testing lab.

9 CHAIRMAN GLEIMAN: Okay. You have mentioned that
10 you were visited on January the 22nd. Was that 1997 or
11 1998?

12 THE WITNESS: 1998.

13 CHAIRMAN GLEIMAN: So the Postal Service didn't
14 come visit you in 1997 before they filed a case that was
15 subsequently withdrawn, the parcel reclass case that had
16 surcharges in it?

17 THE WITNESS: No.

18 CHAIRMAN GLEIMAN: And you're the second biggest
19 business in the industry pretty much?

20 THE WITNESS: Yes.

21 CHAIRMAN GLEIMAN: And they never talked with you
22 about what the situation was and that they were going to
23 file this case?

24 THE WITNESS: No, sir.

25 CHAIRMAN GLEIMAN: I have no further questions.

1 Is there any follow up as a consequence of
2 questions from the bench?

3 MR. HOLLIES: Yes.

4 FURTHER RECROSS-EXAMINATION

5 BY MR. HOLLIES:

6 Q You understand -- I understand that you said
7 Osborn is number two. In what business specifically?

8 A I refer to it as insurance testing.

9 Q Insurance testing. Do you have any idea what
10 portion of overall hazardous medical materials is sent by
11 that industry?

12 A Are you asking me what percentage of our business
13 is by the post office?

14 Q No. I'm moving up one level.

15 A Okay.

16 Q What percentage of the total volume of hazardous
17 medical materials is for the insurance business?

18 MR. BENAGE: Are you referring to all six
19 categories of hazardous medical materials?

20 MR. HOLLIES: I guess I would like to hear both
21 halves of that, the single with which your firm is most
22 familiar as well as if you have any knowledge about the
23 general scope of hazardous medical materials.

24 THE WITNESS: All I know about is what we send. I
25 don't know what everybody else does.

1 BY MR. HOLLIES:

2 Q Okay. Do you know how much of the mail volume of
3 hazardous medical materials of the one type you send, how
4 much the insurance industry -- I see you're nodding your
5 head no as I --

6 A I don't know.

7 Q -- head into this question, so I'm not sure
8 struggling --

9 MR. BENAGE: Counsel, I think you need to lay some
10 kind of foundation that he knows anything about all these
11 other categories of hazardous waste.

12 MR. HOLLIES: That's a nice suggestion, thank you,
13 but I will decline the offer. I have no further --

14 MR. BENAGE: Well, then I object -- okay.

15 MR. HOLLIES: -- questions.

16 CHAIRMAN GLEIMAN: He has withdrawn. Are there
17 any further questions?

18 [No response.]

19 CHAIRMAN GLEIMAN: If there are no further
20 questions, then Mr. ^{Burke}~~Burke~~, I want to thank you. We
21 appreciate your appearance here today and your contributions
22 to our record, and if there's nothing further, you're
23 excused, sir.

24 THE WITNESS: Thank you.

25 [Witness excused.]

1 CHAIRMAN GLEIMAN: Mr. Benage, as soon as people
2 shuffle around, you can call your next witness.

3 MR. BENAGE: The next witness is Mr. Tom Rastok.
4 Whereupon,

5 THOMAS RASTOK,
6 a witness, was called for examination by counsel for LabOne,
7 Inc., Osborn Laboratories, Inc., and Clinical Reference
8 Laboratory, Inc. and, having been first duly sworn, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BENAGE:

12 Q Good morning.

13 A Good morning.

14 Q Mr. Rastok, I'm going to hand you two copies of
15 what has been styled LabOne, et al., T-3. It's captioned
16 Direct Testimony of Tom Rastok, Director of Logistics,
17 LabOne, Inc.

18 A Thank you.

19 Q Was T-3 prepared by you or under your supervision?

20 A Yes, it was.

21 Q And do you need to make any corrections to that
22 document from the form that was filed with the Commission?

23 A No, I do not.

24 Q And would your testimony today on the stand and
25 under oath be the same as what is reflected in T-3?

1 A Absolutely.

2 MR. BENAGE: Mr. Chairman, I would hand two copies
3 of T-3 to the reporter and ask that it be admitted into
4 evidence.

5 CHAIRMAN GLEIMAN: Are there any objections?

6 Hearing none, Mr. Rastok's testimony and exhibits
7 are received into evidence, and I direct that they be
8 transcribed into the record at this point.

9 [Direct Testimony and Exhibits of
10 Thomas Rastok, LabOne, et al.-T-3,
11 was received into evidence and
12 transcribed into the record.]

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LabOne, et al. T-3

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

RECEIVED
FEB 20 10 31 AM '98

Postal Rate and Fee Changes, 1997)
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Docket No. R97-1

DIRECT TESTIMONY

OF

**TOM RASTOK
Director of Logistics
LabOne, Inc.**

ON BEHALF OF

**LabOne, Inc.
Osborn Laboratories, Inc.
Clinical Reference Laboratory, Inc.**

Communications with respect to this document may be sent to:

R. Dennis Wright, Esq.
Hillix, Brewer, Hoffhaus,
Whittaker & Wright, L.L.C.
2420 Pershing Road, Suite 400
Kansas City, Missouri 64108
(816) 221-0355
FAX (816) 421-2896

Counsel for LabOne, Inc.,
Osborn Laboratories, Inc.,

Clinical Reference Laboratory, Inc.

Due Date: February 20, 1998

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DIRECT TESTIMONY

OF

TOM RASTOK

My name is Tom Rastok and the following testimony is given in opposition to the United States Postal Service ("USPS") proposal to assess a 50 cent per piece surcharge on Hazardous Medical Materials ("HMM"). The surcharge would adversely affect our costs for mailing clinical specimen collection kits used for insurance risk assessment testing. I am the Director of Logistics for LabOne and have been with the Company for about eight years. The majority of my responsibilities with LabOne have involved specimen transportation. Our main focus in this area is the timely delivery of the specimens along with maintaining the integrity of the sample. LabOne is headquartered at 10310 West 84th Terrace, Lenexa, Kansas.

Our core business is serving the insurance industry which accounts for the majority of our USPS packages. LabOne, Osborn Laboratories and Clinic Reference Laboratory do most of the risk assessment testing services for the life insurance industry. Generally speaking, risk assessment testing consists of the chemical or biological analysis of blood, urine or oral fluid samples taken from a life insurance applicant. In a typical situation, an applicant for life insurance completes an application and the insurance company in turn requires that the applicant submit blood, urine or oral fluid specimens for testing as a condition to the issuance of its policy. Normally a paramedical examiner is dispatched by the insurance company to the applicant's home or workplace to obtain the specimens. The specimens are contained in USPS approved

1 specimen collection kits and are sent via the United States Postal Service, or by private
2 contractors, to LabOne's laboratory in Kansas.

3 Focusing on maintaining the integrity of the specimens, we submit all packaging
4 to the USPS for approval after we have tested the packaging and are satisfied that it will
5 transport safely and intact. The USPS reviews the packaging, and after approval in
6 writing, we place our packaging into production.

7 We supply our kits to the clients with a preprinted Business Reply Mailer
8 (BRM). These kits are returned to us via BRM. The postal service handles these as
9 bulk rate mail while charging our lab first class mail plus the BRM fee. Our packages
10 are bulk weighed and picked up at the post office by a LabOne driver.

11 The Postal Service has been automating the USPS operations. As a result of
12 this automation and the USPS inability to cull out all of our pre-approved packages, the
13 Postal Service has destroyed some of our packages. To aid the Postal Service with this
14 issue, we discussed options to eliminate this problem. The final resolution was a
15 different size outer package, increasing the ability of the postal worker to better identify
16 our kits. We scrapped our current approved packaging in favor of the new approved
17 version at our laboratory's expense.

18 We currently track both secondary leakage (leakage that appears on the outside
19 of the package) and primary leakage (leakage contained between the primary and
20 secondary leak proof container) upon receipt. Set-up personnel enter primary leakage
21 data through a Kit Content inventory touch screen. To the best of my knowledge, there
22 have NOT been any kit packages that arrived at our laboratory with visible outer
23 leakage or secondary leakage since introducing new packaging in 1993.

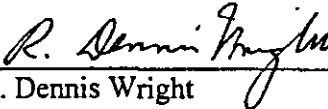
LabOne, et al. T-3

1 LabOne traditionally uses Airborne and Fedex for a great number of our
2 specimen transportation that require faster delivery and tracking. Since specimens are
3 not known to be infectious and are used for insurance risk assessment, we are not
4 charged any additional rates (i.e., surcharges). These packages require no extra
5 handling.

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.

Date: February 20, 1998.



R. Dennis Wright

1 CHAIRMAN GLEIMAN: Only one participant, the
2 Postal Service, has requested oral cross-examination. Does
3 anyone else wish to cross-examine the witness?

4 [No response.]

5 CHAIRMAN GLEIMAN: If not, Mr. Hollies, proceed
6 when you're ready.

7 CROSS-EXAMINATION

8 BY MR. HOLLIES:

9 Q Good morning -- Mr. Rastok?

10 A Good morning. Yes, that's correct.

11 Q I would like to inquire briefly into the
12 circumstances under which your testimony was prepared. When
13 were you contacted by the LabOne, et al. coalition regarding
14 the possibility of testifying?

15 A Actually, the -- I was probably the one who
16 initiated that. The visit from the Postal Service to the
17 Kansas City area. We were working with the Postal Service
18 over several years, since I've been at LabOne, for over nine
19 years or so, and we were in the process of working on some
20 packaging approvals, and the Postal Service, it's my
21 understanding, had gone through some internal changes. Our
22 original rep that used to -- not representative, but the
23 person in Washington, D.C. that used to approve our
24 packaging, he was replaced and they changed the process for
25 disseminating the packaging approvals to the regional areas,

1 it's my understanding. So the approval used to be in
2 Washington, D.C. for the packaging, has now changed for our
3 area to the Chicago branch of the U.S. Postal Service.

4 Q Would that be the Chicago RCSC?

5 A Yes, sir, I believe that's correct.

6 As a factor of that process changing, the Chicago
7 branch was doing some educational processes on their behalf
8 and the packaging we were proposing for approval was put off
9 for several months while they went through several -- what I
10 understood, some courses in packaging. The meetings we had
11 for them in September and October were subsequently changed
12 because they weren't prepared to meet, through no negatives
13 other than the fact that they just weren't prepared to meet
14 and they just put it off, and we were working on packaging
15 for them to begin with, so it was okay.

16 But they eventually came in in January,
17 approximately a Friday -- I think it's around the 22nd --
18 and we proposed our packaging at that time and sent --
19 subsequent to that, had had those additional packaging
20 approved for production in the immediate future, but at that
21 time is when they shared with us the fact that there was
22 this big Postal Service proposal.

23 At that time, in my office at LabOne in January,
24 they said we still had until March for rebuttals or
25 testimony was my impression of what they told us.

1 Subsequently they came back and said there was an error in
2 that statement.

3 Q Thank you. I have been wondering how this all
4 happened as several phone calls came in --

5 A Blame me. I am not an English major, either. I'm
6 an operations person. I'm not an economist, either.

7 Q If you would turn to page 2, lines 11 through 17
8 of your testimony, you discuss there a situation --

9 A Excuse me. Could I get one, please? I'm sorry.
10 Turn to where?

11 Q Page 2, lines 11 to 17. I think that's a
12 paragraph.

13 You have discussed there a situation that arose
14 where apparently mail processing equipment destroyed some of
15 LabOne's packages; is that correct?

16 A Absolutely.

17 Q And the --

18 A I have also, in answer to a question to the
19 previous witness, I have seen actually the detailed process
20 of the U.S. Postal Service procedure as it pertains to our
21 packages.

22 Q And the situation discussed in the paragraph there
23 on page 2 was resolved by working with Postal officials and
24 modifying your packaging right?

25 A Yes, sir. And, I will add, at our expense.

1 Q Seeing as how you added that, I'll add that that
2 is the norm. We don't --

3 A Well, it is the norm except that most large
4 carriers that handle our packages, and the U.S. Postal
5 Service is one, they do tend to take into consideration
6 their clients, and when they do change packaging, they tend
7 to try and up-front tell people or at least prepare them and
8 let them know that things are going to change rather than
9 unilaterally starting to change equipment, creating --
10 causing damage.

11 This is, in probably twelve years in this type of
12 industry, it's the first time I've had anything of this
13 nature happen where a client has not come to me, me the
14 client, and actually informed us that they were changing
15 their equipment their processing that would then, indeed,
16 destroy or damage my packages. I was very concerned.

17 Q The contents of your packages do present a safety
18 concern, albeit not a very serious one; is that right?

19 A Well, just to clarify the earlier statements, we
20 are in the risk-assessment business, and by no stretch of
21 the imagination is this testimony in regards to hazardous as
22 it regards plutonium or hydrochloric acid, just for
23 clarification. In the risk-assessment business the
24 specimens are not known to be infectious, and in 99.99
25 percent of the cases, there is no possibility.

1 I heard earlier where they said something about in
2 the last nine or ten years they haven't seen any infectious
3 materials spilled. Well, this stuff is not infectious, and
4 it's a different classification altogether. That's the
5 particular testimony I have, I'm stating in here is the
6 extra, the 50 cent which pertains specifically to our
7 industry.

8 Q Is there any danger to your lab workers if a
9 package breaks open?

10 A There is always a possibility.

11 Q And I guess that risk would also extend to -- that
12 remote risk would also extend to others who might handle the
13 package; is that correct?

14 A I would say that any package, whether it be
15 infectious or not, I guess there's a possibility of some
16 safety regulations or some safety possibilities.

17 Q In connection with the incident you discuss there
18 on lines 11 to 17 of page 2, do you know if the mail
19 processing equipment required repairs?

20 A No, they did not.

21 Q Do you ever have breakage of your test kit samples
22 or suffer packaging failures in the labs?

23 A In the laboratory? No.

24 Q Anywhere else?

25 A In over 9-1/2 years with our lab I've never had

1 any of our packages leak in transport due to packaging.
2 You'd have to be a little more specific as far as breakage.

3 Q But in that paragraph on page 2, don't you
4 acknowledge there was at least one incident?

5 A That wasn't due to packaging.

6 Q Ahhh. That was the mail processing equipment?

7 A Absolutely. It was the fact of the inability to
8 cull out our product, which is nonmachineable. And it was
9 also the use of the new equipment that they put in process.

10 Q Does the information available to you or known to
11 you indicate how much LabOne et al.'s customers pay for a
12 single transaction including postage, products, and
13 services?

14 A I'm sorry, could you repeat that?

15 Q You've heard the questions I've been through
16 earlier this morning. This is a theme that we've been
17 through at least once.

18 CHAIRMAN GLEIMAN: Just ask the question over,
19 because he didn't hear the question.

20 MR. HOLLIES: Fair enough.

21 BY MR. HOLLIES:

22 Q Does the information available to you or known to
23 you indicate how much LabOne's customers pay for a single
24 transaction including postage, product, and services?

25 A I'm aware of what we charge the client for

1 postage, and I'm aware of what we get charged for postage.
2 I'm not sure what you want for me to answer.

3 Q Okay. I'm not looking for numbers necessarily
4 here, but I'm looking for a broader response, not just
5 postage-focused. Your product is not just postage; is that
6 right?

7 A Absolutely correct.

8 Q Okay. And I'm looking to find out approximately
9 how much one transaction, one test kit, costs the customers.

10 MR. BENAGE: Mr. Chairman, I'm going to object to
11 that as being proprietary, confidential, and not very
12 relevant and material to what we're dealing with here today.

13 CHAIRMAN GLEIMAN: Sustained.

14 MR. HOLLIES: Fair enough.

15 BY MR. HOLLIES:

16 Q If the HMM fee proposed by the Postal Service was
17 implemented, and if Osborne passed the -- LabOne passed the
18 entire cost on to its customers, in what range would the
19 percentage be to them?

20 A I don't necessarily feel that's the way we would
21 probably go.

22 Q I can appreciate that, but please assume the facts
23 I've asked.

24 A We would pass on all of it. It eventually goes
25 down to the client.

1 Q Okay. And roughly what would the percentage
2 change in price be?

3 MR. BENAGE: Mr. Chairman, I'm going to object for
4 the same reasons I objected to just a minute ago, that
5 that's confidential, proprietary, and not very relevant or
6 material.

7 CHAIRMAN GLEIMAN: Sustained.

8 MR. HOLLIES: No further questions.

9 CHAIRMAN GLEIMAN: Followup?

10 [No response.]

11 CHAIRMAN GLEIMAN: Questions from the bench?

12 [No response.]

13 CHAIRMAN GLEIMAN: Would you like a couple of
14 minutes with your witness for redirect?

15 MR. BENAGE: I have just a couple of questions,
16 but I don't need any time with the witness.

17 CHAIRMAN GLEIMAN: Proceed, Mr. Benage.

18 REDIRECT EXAMINATION

19 BY MR. BENAGE:

20 Q Mr. Rastok, do any of your alternative carriers
21 charge you a surcharge?

22 MR. HOLLIES: Objection. Beyond the scope of
23 cross-examination.

24 MR. BENAGE: It's certainly something that's dealt
25 with in the -- it's certainly material and relevant.

1 CHAIRMAN GLEIMAN: Well, you're on redirect now,
2 and redirect has to do with the followup to the
3 cross-examination, so we're going to have to pass on that
4 one.

5 MR. BENAGE: I have no further questions for this
6 witness.

7 CHAIRMAN GLEIMAN: That being the case, Mr.
8 Rastok, I want to thank you. We appreciate your appearance
9 here today and your contributions to our record. And if
10 there's nothing further, sir, you're excused.

11 THE WITNESS: Thank you for your time.

12 [Witness excused.]

13 CHAIRMAN GLEIMAN: I'd like to take a ten-minute
14 break now. We'll come back at five of the hour.

15 [Recess.]

16 CHAIRMAN GLEIMAN: Mr. Benage, if you want to call
17 your next witness.

18 MR. BENAGE: Thank you, Mr. Chairman.

19 The next witness is Neal Schmutzler.

20 CHAIRMAN GLEIMAN: Here I go with my second
21 apology of the day -- Mr. Schmutzler --

22 THE WITNESS: It's fine.

23 CHAIRMAN GLEIMAN: Did I get it right then?

24 THE WITNESS: Yes, sir.

25 CHAIRMAN GLEIMAN: If you would please raise your

1 right hand.

2 Whereupon,

3 NEAL W. SCHMUTZLER,

4 a witness, was called for examination by counsel for LabOne,
5 Inc., Osborn Laboratories, Inc., and Clinical Reference
6 Laboratory, Inc. and, having been first duly sworn, was
7 examined and testified as follows:

8 CHAIRMAN GLEIMAN: Please be seated.

9 DIRECT EXAMINATION

10 BY MR. BENAGE:

11 Q Good morning.

12 A Good morning.

13 Q I'm going to hand you two copies of what has been
14 styled LabOne, et al. T-4, captioned, "Direct Testimony of
15 Neal W. Schmutzler, Facilities Manager, Clinical Reference
16 Laboratory."

17 Was that prepared by you, under your direction?

18 A Yes, sir.

19 Q And do you know of any corrections that need to be
20 made to that from the form that was filed with the
21 Commission?

22 A No, sir. No corrections.

23 Q And would your testimony today on the stand and
24 under oath be the same as what is reflected in T-4?

25 A Yes, sir.

1 MR. BENAGE: Mr. Chairman, I'd hand two copies of
2 T-4 to the reporter and ask that it be admitted into
3 evidence.

4 CHAIRMAN GLEIMAN: Are there any objections?

5 Hearing none, Mr. Schmutzler's testimony and
6 exhibits are received into evidence, and I direct that they
7 be transcribed into the record at this point.

8 [Direct Testimony and Exhibits of
9 Neal W. Schmutzler, LabOne, et
10 al.-T-4, was received into evidence
11 and transcribed into the record.]

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LabOne, et al. T-4

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

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Postal Rate and Fee Changes, 1997

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Docket No. R97-1

DIRECT TESTIMONY

OF

**NEAL W. SCHMUTZLER
Facilities Manager
Clinical Reference Laboratory, Inc.**

ON BEHALF OF

**LabOne, Inc.
Osborn Laboratories, Inc.
Clinical Reference Laboratory, Inc.**

Communications with respect to this document may be sent to:

R. Dennis Wright, Esq.
Hillix, Brewer, Hoffhaus,
Whittaker & Wright, L.L.C.
2420 Pershing Road, Suite 400
Kansas City, Missouri 64108
(816) 221-0355
FAX (816) 421-2896

Counsel for LabOne, Inc.,
Osborn Laboratories, Inc.,
Clinical Reference Laboratory, Inc.

Due Date: February 20, 1998

LabOne, et al.- T4

DIRECT TESTIMONY OF NEAL W. SCHMUTZLER

1
2 My name is Neal W. Schmutzler and I am the Facilities Manager at Clinical
3 Reference Laboratory, located at 8433 Quivira Road, Lenexa, Kansas 66215. I have
4 been with the laboratory for about four years and it is my responsibility to produce the
5 clinical specimen collection kits ("kits") we supply to our clients and to distribute them
6 for insurance risk assessment purposes. I also manage the various services we use to
7 return the kits to the laboratory such as Airborne Express, Federal Express, U.S.
8 Mails, commercial flights, and private couriers. This testimony is given in response to
9 the United States Postal Service ("USPS") proposal to assess a \$.50 per piece surcharge
10 on our kits, which are considered Hazardous Medical Materials (HMM).

11 Clinical Reference Laboratory has worked closely with the various personnel at
12 the U.S. Post Office to assure that our mailing pieces meet or exceed USPS'
13 requirements. We have been submitting our kits for approval since we began in 1988.

14 Over the years, we have received a number of suggestions on our mailing pieces
15 by USPS representatives and have, in all cases, changed our pieces to meet the
16 requirements of the USPS. We have gone to a brighter color of purple on our mailing
17 envelope in order to make it easier for Post Office personnel to spot them in the mail
18 stream. We have also gone to a plastic bag, which has welded seams and a patented
19 leakproof seal. This packaging change was three to five times more expense than the
20 regular plastic bag used before. We have also changed our instructions in some kits at
21 the suggestion of the Postal Department to make it easier for our clients to package our
22 kits properly for mailing.

LabOne, et al.- T4

1 We have worked closely with Mr. Robert J. Garcia, supervisor of Mails, GPO
2 Box Section, Kansas City, Missouri where we have our business reply permit. A hold
3 out bin is assigned to Clinical Reference laboratory, and this is where we pick up our
4 mail. We monitor the Leakage Logs kept by the Maintenance Department of the GPO
5 to ensure the integrity of our mail pieces, with the help of our Sales Consultant, Mr.
6 Eric Soriano of the U.S. Postal Service. Clinical Reference Laboratory has had no
7 incidents reported in the Leakage Logs for the last three years.

8 There is considerable discussion, in Mr. Currie's direct testimony, of hazardous
9 material charges imposed by other carriers (Currie pp 12-13). The rationalization is
10 put forth that the surcharge will increase the conformity of the Postal Service price
11 structure with private contractors. Mr. Currie's assumptions here are mistaken. The
12 majority of clinical specimens sent to laboratories is by Federal Express or Airborne
13 Express in special lab packs. For all laboratories with any appreciable volume, these
14 lab packs are provided at no charge, not the \$.75 each that Mr. Currie infers is a
15 hazardous materials charge. In fact, express carriers have actually realized significant
16 processing savings to themselves plus service enhancements to the customer by using
17 lab packs.

18 Mr. Currie , in his direct testimony at page 16, assumes that the majority of
19 clinical/diagnostic specimens average \$2.00-\$3.00, and states that the level of the
20 surcharge has been set with these typical prices in mind (Currie p 16). Our average
21 postage charge per package for clinic specimens is \$.68 and this proposed surcharge
22 represents a 74% increase to Clinic Reference Laboratory. If we put aside the adverse
23 economic consequence of a 74% increase, the fact remains that clinical specimens

LabOne, et al.- T4

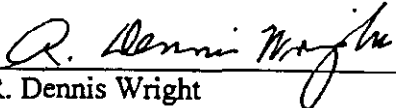
1 simply do not contribute to the special handling, training, and clean-up costs as
2 assumed in Mr. Currie's testimony. Clinical specimens should not be grouped together
3 with truly hazardous materials such as solvents, medical wastes, and etiologic agents.

4 We at Clinical Reference Laboratory have worked very hard to be a good
5 business partner with the U.S. Postal Service. The proposed surcharge of \$.50 per
6 piece of HMM mail would have a very adverse economic impact on us.

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.

Date: February 20, 1998.



R. Dennis Wright

1 CHAIRMAN GLEIMAN: Once again the Postal Service
2 is the only party that has requested oral cross-examination
3 in advance.

4 Does any other party wish to cross-examine?

5 [No response.]

6 CHAIRMAN GLEIMAN: If not, Mr. Hollies, when you
7 are ready.

8 CROSS-EXAMINATION

9 BY MR. HOLLIES:

10 Q Good morning, Mr. Schmutzler. I am Ken Hollies on
11 behalf of the Postal Service.

12 At page 1 of your testimony you identify several
13 package shippers, generally expedited ones, with whom you
14 deal in the course of your duties.

15 A Yes, sir.

16 Q Do you also deal with UPS?

17 A Yes, sir.

18 Q Do you ever ship to residences via UPS?

19 A No, sir.

20 Q On page 2 of your testimony you refer to, quote,
21 "The majority of clinical specimens sent to laboratories" --
22 that is the beginning of a sentence -- end quote -- that is
23 the beginning of the sentence.

24 I take it from this phrase you believe you can
25 speak for mailers beyond your employer, is that correct?

1 A Only to the extent of the three that are in this
2 testimony, and in our lab's case the other shippers are
3 larger than the USPS.

4 Q So when you speak of or, excuse me, I guess it is
5 written in the testimony, "the majority of clinical
6 specimens" your universe there is just the three labs
7 participating in the LabOne et al. umbrella?

8 A Really in my testimony I am speaking about
9 clinical reference laboratories. I am not making a general
10 statement encompassing everyone.

11 If you are referring directly to my testimony,
12 it's strictly to clinical reference laboratories.

13 I did not spell out the full name.

14 Q And how many such labs are there?

15 A For clinical?

16 Q Yes.

17 A One -- or excuse me. Clinical reference
18 laboratories -- there's one.

19 Q How much of your firms packages go by mail?
20 Percentage-wise, I'm not asking --

21 A Are received in?

22 Q Well, let's talk about going out and coming in,
23 separately.

24 A Shipping out by mail, 1 percent. Receiving,
25 packages received in, 10 percent, maybe 9, but in that

1 general range.

2 Q You identify an average postal amount of 68 cents
3 on page 2. To which mail does this apply?

4 A To business reply mail, kits being returned.

5 MR. HOLLIES: I have no further questions.

6 CHAIRMAN GLEIMAN: Is there any follow-up?

7 [No response.]

8 CHAIRMAN GLEIMAN: Questions from the bench?

9 [No response.]

10 CHAIRMAN GLEIMAN: Redirect?

11 MR. BENAGE: Just a couple of questions, Mr.
12 Chairman.

13 CHAIRMAN GLEIMAN: Remember now, it is redirect.

14 MR. BENAGE: I'll see how far I get.

15 [Laughter.]

16 CHAIRMAN GLEIMAN: You might make a good Postal
17 Service attorney one of these days with that attitude.

18 REDIRECT EXAMINATION

19 BY MR. BENAGE:

20 Q Mr. Schmutzler, you said that you do business with
21 carriers other than United Postal Service.

22 A That's correct.

23 Q Do any of them charge you a surcharge?

24 A No, sir.

25 MR. BENAGE: I have no further questions.

1 CHAIRMAN GLEIMAN: Mr. Schmutzler, that brings
2 your appearance here today to an end. We appreciate you
3 being here and your contributions to our record. And if
4 there is nothing further, you are excused.

5 [Witness excused.]

6 CHAIRMAN GLEIMAN: And I want to thank you, Mr.
7 Benage, too.

8 MR. BENAGE: Thank you for your hospitality today.

9 CHAIRMAN GLEIMAN: Our last witness today is Dr.
10 John Haldi. He is already under oath. He is here appearing
11 on behalf of the Alliance of Nonprofit Mailers, sponsoring
12 his response to Presiding Officer's Information Request No.
13 13.

14 Mr. Levy, if you would introduce your witness and
15 enter his direct testimony into the record.

16 MR. LEVY: Certainly.
17 Whereupon,

18 JOHN HALDI,
19 a witness, was called for examination by counsel for the
20 Alliance of Nonprofit Mailers and, having been previously
21 duly sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LEVY:

24 Q Dr. Haldi, would you state your name for the
25 record?

1 A Yes, I am John Haldi.

2 Q Are you same John Haldi who has previously
3 testified in this case for the Alliance of Nonprofit Mailers
4 and multiple other parties?

5 A Yes, I am.

6 Q I am handing you two copies of a document marked,
7 Response of Alliance of Nonprofit Mailers to Presiding
8 Officer's Information Request No. 13, dated February 26,
9 1998. Do you recognize this document, Dr. Haldi?

10 A Yes, I do.

11 Q Is this, in fact, Response to Presiding Officer's
12 Information Request No. 13, prepared by you?

13 A Yes, it is.

14 Q This was prepared by you or under your -- directly
15 or under your supervision?

16 A Yes, it was.

17 Q Do you have any changes you wish to make at this
18 time to the response?

19 A No, I do not.

20 Q If you were to testify orally today on the
21 subject, would your answers be substantially the same?

22 A Yes, they would.

23 MR. LEVY: Mr. Chairman, with that, I would hand
24 the two copies to the reporter and ask that the document be
25 transcribed into the record and admitted into evidence.

1 CHAIRMAN GLEIMAN: Are there any objections?

2 [No response.]

3 CHAIRMAN GLEIMAN: Hearing none, Dr. Haldi's
4 testimony and exhibits are received into evidence and I
5 direct that they be transcribed into evidence at this point.

6 [Direct Testimony and Exhibits of
7 John Haldi, ANM/POIR-13, was
8 received into evidence and
9 transcribed into the record.]

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WASHINGTON, DC 20268-0001

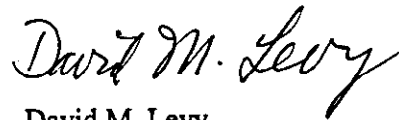
Docket No. R97-1

Postal Rate And Fee Changes, 1997

**RESPONSE OF ALLIANCE OF NONPROFIT MAILERS
TO PRESIDING OFFICER'S INFORMATION REQUEST NO. 13**

The Alliance of Nonprofit Mailers ("ANM") hereby submits the response of its witness, John Haldi, to Presiding Officer's Information Request No. 13. The request is stated verbatim and followed by the response.

Respectfully submitted,



Joel T. Thomas
1800 K Street, N.W., Suite 810
Washington, D.C. 20006
(703) 476- 4646

David M. Levy
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, DC 20006
(202) 736-8214

Counsel for Alliance of Nonprofit Mailers

February 26, 1998

REQUEST

At pages 42 and 43 of witness Haldi's testimony, he provides a rationale for shifting 7.85 percent of mail processing tallies from nonprofit mail to commercial mail, adjusting for piggybacks as necessary.

a. The 7.85 percent estimate does not distinguish between piece volumes for Standard (A) Nonprofit regular and Standard (A) Nonprofit Enhanced Carrier Route subclasses. Does the 7.85 percent estimate apply equally to both subclasses? If not, how should the costs in each subclass be adjusted, and what is the basis and rationale for these different adjustments?

b. Does the mail processing tally misidentification problem extend to carrier in-office tallies? If so, should carrier in-office costs be adjusted? Please provide a procedure and a rationale for any such adjustments you recommend.

c. What assumptions does witness Haldi make concerning shape of mail by subclass? Please discuss the reasonableness of those assumptions.

d. The total volume of bulk mail entered by nonprofit organizations is estimated on page 42 as 13,769 million. Please confirm that it is calculated by starting with the FY 1992 volume of third-class nonprofit mail and assuming a 3.5 percent annual growth factor through FY 1996. The corresponding volume total on page 43 is 13,249 million and apparently reflects the elimination of the 520 million pieces with regular rate evidencing. Please confirm. Please provide a rationale for removing this volume from the total on page 42 before calculating the percentage of volume that paid commercial rates but contained nonprofit markings.

RESPONSE

a. Yes, my estimate of 7.85 percent, and 1,040 million pieces, as developed at page 42 of my testimony, applies to both the Regular and ECR subclasses. It is suggested that costs be adjusted via the following procedure.

1. Use the billing determinants in LR-H-145 to develop the volumes of nonprofit mail by subclass and shape for FY 1996 (see Table 1, part A, attached).
2. Develop the distribution of nonprofit mail by subclass and shape for FY 1996 (see Table 1, part B, attached).
3. Using the percentage distribution in Table 1, part B, distribute the estimated volume of commercial rate mail with nonprofit evidencing (1,040 million pieces) by subclass and shape (see Table 2, attached). For discussion concerning assumptions about shape, see my response to part c, *infra*.
4. Estimate the total volume of mail with nonprofit evidencing of postage by adding the volume in Table 2 to the volume in Table 1, part A (see Table 3, attached).
5. Partition the direct mail processing IOCS tallies at MODS 1 & 2 offices by subclass and shape (see Table 4, attached). In Table 4, tallies for cards are included with letters, and tallies for IPPs and parcels are included with non-letters.
6. Divide the total volumes with nonprofit evidencing of postage (Table 3) by the respective tallies (Table 4) to

obtain the number of pieces per tally (see Table 5, attached).¹ Non-letters are tallied somewhat more frequently than letters, as noted by the fewer number of pieces per tally.

7. Divide the number of pieces of commercial rate mail with nonprofit evidencing (Table 2, attached) by the number of pieces per tally (Table 5, attached) to estimate the number of tallies incorrectly charged to letters and non-letters within each subclass of nonprofit mail (see Table 6, attached).
8. Reduce direct costs of the nonprofit Regular and ECR subclasses (and letters and flats within each respective subclass) in proportion to the tallies in Table 6 as a percentage of the tallies charged to each subclass and the shapes within each subclass.²
9. Make appropriate adjustments to nonprofit mail processing costs arising from (i) other, non-direct tallies, such as "not handling" and "handling empty equipment," that are distributed on the basis of direct

¹ The total tallies are shown at page 27, Table 9, of my testimony, ANM-T-1. To be conservative, administrative and window service tallies have been omitted.

² This will require pooling and averaging the costs associated with direct tallies.

tallies, as well as (ii) piggybacked indirect costs from other cost segments, based on reductions in direct costs.

b. When a nonprofit organization enters mail at the commercial rate, but with nonprofit evidencing of postage, if such mail is sampled it is almost certain to be incorrectly recorded as nonprofit mail, regardless of whether the tally is taken in a mail processing operation or a carrier in-office operation.

It should be noted, however, that a portion of nonprofit mail is delivered by rural carriers, and that portion is not subject to being tallied and misidentified in city carrier in-office operations. Further, letter mail that is delivery point sequenced at plant and distribution centers is unlikely to be subject to carrier in-office tallies.

Of the total volume of nonprofit mail estimated to have been entered at commercial rates with nonprofit evidencing of postage in FY96 (1,040 million pieces), I estimate that some 45 percent, or 468.64 million pieces, would have been subject to in-office processing by city carriers. On this basis, the indicated adjustment to city carrier in-office costs would be somewhat less than the indicated adjustment to mail processing costs. The above volume breaks down as follows (millions):

Non-carrier route letters:	
Delivery point sequenced on CSBCSs	75.24
Sequenced manually	113.32
Carrier route letters	145.40
Non-letters	<u>134.68</u>
TOTAL	468.64

The volumes shown above are derived from Table 7, attached. The data in Table 7 were developed as follows. First, the percentage breakdown between nonprofit letters and non-letters, shown in column 4, was developed from the FY 1996 billing determinants in LR-H-145. These percentages were applied to the grand total (1,040 million pieces) to obtain the more detailed breakdown in column 3.

Second, the percentage distribution of nonprofit mail as between city and rural carriers was developed by comparing costs of city and rural carriers attributed to nonprofit mail in Base Year 1996.³ These percentages were used to distribute the estimated volume of letters and non-letters between city and rural carriers.

Cost Segment	Attributable Cost (\$)	Distribution (%)
6&7 City Carriers	238,902	74.0
10 Rural Carriers	83,844	26.0
Total	322,746	100.0

³ USPS-T-5, Exhibit USPS-5A, pp. 1 and 3.

Reasonableness of the above percentage breakdown between city and rural carriers was cross-checked against the total number of routes at the end of A/P 1 in FY97.⁴

	Number	Distribution
Delivery Routes	170,852	75%
Rural Routes	57,674	25%
Total	228,526	100%

Third, the total volume of letters handled by city carriers (634.92 million, column 1) was distributed to carrier route and non-carrier route presort using the distribution in FY 96 billing determinants, LR-H-145. As shown in column 1, 489.52 million letter-shaped pieces were estimated to be non-carrier route presort. Of these, 23.15 percent (9.48% + 13.67%) were estimated to be sequenced manually by virtue of being non-upgradable to automation status.⁵ The remaining letters are considered to be automatable and subject to delivery point sequencing. Some of these automatable letters will be sequenced by clerks and mailhandlers on large BCSs, while others may be sequenced by carriers on CSBCSs. I have assumed an 80/20 split between BCS/CSBCS sequencing to be conservative with respect to the number likely to be handled by city carriers.

⁴ Financial and Operating Statement, p. 1.

⁵ See response of witness Daniels to ANM/USPS-T29-20; also Exhibit USPS-29B, page 1 (revised 2/24/98).

c. The practice of using nonprofit bulk permits to enter bulk mail at commercial rates in FY96 appears to have been quite widespread, geographically,⁶ by size of mailing, and by type of organization.⁷ The mail recorded in Exhibit 1, column 3 of my testimony is known to have included both letter and non-letter (flat) shapes.⁸

Mail entered by nonprofit organizations at commercial rates may have included some offer involving travel, insurance or finance (*e.g.*, affinity credit card), or some other prohibited back-end offer or questionable reference (*e.g.*, to VISA or MasterCard). It seems unlikely that mail with such offers or "commercial" references would consist only of a card, or be a parcel or an IPP. Aside from discounting these particular shapes, which account for a very small percentage of nonprofit mail, in the absence of more definitive data I assume that the mail in question resembles the profile of nonprofit mail as shown in the FY 1996 billing determinants, LR-H-145. In other words, although the mail in question was entered at commercial rates, nevertheless I assume that it resembled the profile of nonprofit bulk mail, and not the profile of ordinary commercial rate bulk mail.

⁶ My Exhibit 1, column 3, contains 49 responses that indicated use of a nonprofit permit to enter bulk mail at commercial rates with nonprofit evidencing of postage. Of those 49 responses, 25 were received from organizations in different states, ranging as far east as Massachusetts and as far west as Hawaii; also, as far north as North Dakota, and as far south as Florida.

⁷ Colleges and universities, farm organizations, health organizations, museums, religious groups, and symphony orchestras are included among the 49 respondents to the survey discussed in footnote 5, *supra*.

⁸ Less information is available concerning presort condition. Some respondents are said to have indicated that their mailing(s) reported in the survey was prepared by a commercial vendor and they did not know the presort condition.

d. The statements in this part of the POIR concerning the derivation of the numbers shown on page 42 of my testimony are confirmed. Also, see my response to USPS/ANM-T1-21.

The rationale for removing one-third of the volume is discussed in my response to USPS/ANM-T1-27. The resulting estimate that costs are overestimated by 7.85 percent is about 10 percent less than, but in the same general ballpark as, the 8.6 percent estimate derived using a different methodology with CRA unit cost data for five years on pages 25-26 of ANM's pretrial brief and in my response to NFN/ANM-T1-1.

Table 1

**A. Recorded Volume of Standard A Nonprofit Mail
GFY 1996**

	Letters (1)	Non-letters (2)	Total (3)
Required Presort:			
Minimum rate	2,515,688,954	316,080,131	
Pound rate		135,167,048	
Subtotal	2,515,688,954	451,247,179	2,966,936,133
3/5 Digit Presort			
Minimum rate	5,154,123,939	888,795,191	
Pound rate		290,611,151	
Subtotal	5,154,123,939	1,179,406,342	6,333,530,281
Carrier Route Presort			
Minimum rate	2,276,784,568	506,943,016	
Pound rate		124,889,680	
Subtotal	2,276,784,568	631,832,696	2,908,617,264
TOTAL	9,946,597,461	2,262,486,217	12,209,083,678

**B. Distribution of Nonprofit Standard A Mail
GFY 1996**

	Letters (1)	Non-letters (2)	Total (3)
Required Presort:	20.61%	3.70%	24.30%
3/5 Digit Presort	42.22%	9.66%	51.88%
Carrier Route Presort	18.65%	5.18%	23.82%
Total	81.47%	18.53%	100.00%

Table 2

Mail Entered by Nonprofit Organizations at Commercial
Rates and with Nonprofit Evidencing
GFY 1996 (millions)

	Letters (1)	Non-letters (2)	Total (3)
Required Presort:	214.3	38.4	252.7
3/5 Digit Presort	439.0	100.5	539.5
Carrier Route Presort	193.9	53.8	247.8
Total	<u>847.3</u>	<u>192.7</u>	<u>1,040.0</u>

Table 3

**A. Total Volume of Standard A Mail with
Nonprofit Evidencing of Postage
GFY 1996**

	Letters (1)	Non-letters (2)	Total (3)
Required Presort:	2,729,981,573	489,685,532	3,219,667,104
3/5 Digit Presort	5,593,164,987	1,279,871,097	6,873,036,084
Carrier Route Presort	2,470,726,719	685,653,771	3,156,380,490
Total	10,793,873,279	2,455,210,399	13,249,083,678

Table 4

Direct Mail Processing Tallies for Mail with Nonprofit
Evidencing of Postage at MODS 1&2 Offices
GFY 1996

	Letters (1)	Non-letters (2)	Total (3)
Regular Presort: Required & 3/5 Digit	1,639	723	2,362
Carrier Route Presort	111	61	172
Total	<u>1,750</u>	<u>784</u>	<u>2,534</u>

Table 5

Pieces of Nonprofit Mail per Direct
Mail Processing Tally
GFY 1996

	Letters (1)	Non-letters (2)
Regular Presort:		
Required & 3/5 Digit	5,078,186	2,447,520
Carrier Route Presort	22,258,799	11,240,226

Table 6

**Estimated Number of Tallies of Mail with Nonprofit
Evidencing that Paid Commercial Rates**

	Letters (1)	Non-letters (2)
Regular Presort: Required & 3/5 Digit	129	57
Carrier Route Presort	9	5

Table 7

**Distribution of Mail Entered by Nonprofit Organizations at
Commercial Rates with Nonprofit Evidencing**

	City Carriers (1)	Rural Carriers (2)	Total (3)	Dist. (%) (4)
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
LETTERS:				
Non-Carrier Route:				
DPS'd at P&DC's	300.96			
DPS'd on CSBCSs	75.24			
Sorted manually	113.32			
	<u> </u>			
Subtotal	489.52	171.99	661.52	
Carrier Route				
	145.40	51.09	196.48	
	<u> </u>	<u> </u>	<u> </u>	
Subtotal	634.92	223.08	858.00	82.5%
NON-LETTERS:				
	134.68	47.32	182.00	17.5%
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Total	769.60	270.40	1,040.00	100.0%
	=====	=====	=====	
 Distribution - %	 74.0%	 26.0%	 100.0%	

1 CHAIRMAN GLEIMAN: Does any party have written
2 cross-examination for Witness Haldi?

3 [No response.]

4 CHAIRMAN GLEIMAN: There is none.

5 MS. REYNOLDS: Mr. Chairman, the Postal Service
6 does not have any written cross-examination or oral
7 cross-examination regarding Dr. Haldi's response to POIR 13.
8 However, at this time we do have some additional
9 designations of some Interrogatories that were filed late
10 last week. I have two copies for the witness to review, if
11 this would be an appropriate time to do this.

12 CHAIRMAN GLEIMAN: I think --

13 MR. LEVY: We have no objection to that. We have
14 discussed it with counsel.

15 CHAIRMAN GLEIMAN: Thank you.

16 If you would please approach the witness.

17 MR. LEVY: Mr. Chairman, while the witness the
18 witness is looking at that, the reporter has a question.
19 Should the Information Response be given an exhibit number?
20 Is that -- I don't know the convention here.

21 CHAIRMAN GLEIMAN: It does not need to have an
22 exhibit number on it. It is designated by the POIR number.

23 MS. REYNOLDS: Dr. Haldi has reviewed the
24 Interrogatory responses to USPS/ANM-T-1 41 through 44.

25 CHAIRMAN GLEIMAN: Dr. Haldi, if these questions

1 were asked of you today, would your answers be the same as
2 those you previously provided in writing?

3 THE WITNESS: Yes, they would.

4 CHAIRMAN GLEIMAN: That being the case, Ms.
5 Reynolds, if you would hand the copies to the reporter, I
6 will direct that the designated written cross-examination of
7 Witness Haldi be received into evidence and transcribed into
8 the record at this point.

9 [Additional Designation of Written
10 Cross-Examination of John Haldi,
11 ANM-T-1, was received into evidence
12 and transcribed into the record.]
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**RESPONSE OF ALLIANCE OF NONPROFIT MAILERS WITNESS HALDI TO
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE**

USPS/ANM-T1-41: Please provide all survey responses (i.e., to questions 1-10, as well as any additional comments given for each respondent to the Alliance of Nonprofit Mailers survey of nonprofit organizations). Include any responses received since 12/30/97 and not reported in ANM-T-1.

RESPONSE

Insofar as this interrogatory asks for the identity of or information that could lead to the identity of respondents to the ANM survey of nonprofit mailers, an objection has been filed. Insofar as it seeks other information, copies of the survey responses are being filed by ANM as Library Reference ANM-LR-1, with the identities of any respondents and any information that might lead to the identity of any respondent redacted. The responses provided include those received after December 30, 1997.

**RESPONSE OF ALLIANCE OF NONPROFIT MAILERS WITNESS HALDI TO
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE**

USPS/ANM-T1-42: Please provide the FY 1996 regular rate and nonprofit Standard(A) volumes for all mailers sent surveys, indicating which mailers responded to the survey and which did not respond.

RESPONSE

ANM has previously objected to this interrogatory insofar as it asks for the identification of mailers who responded to survey. That includes those ANM members who did not respond, as the removal of those names from the list of ANM members would leave a list of those members who responded. Moreover, as ANM has previously indicated, it does not know all of the individual organizations to which the survey was sent. Finally, some but not all respondents to the survey indicated either or both of their regular rate and nonprofit rate Standard Mail (A) volumes. Those numbers, if provided, are shown on the individual survey responses being filed as Library Reference ANM-LR-1.

**RESPONSE OF ALLIANCE OF NONPROFIT MAILERS WITNESS HALDI TO
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE**

USPS/ANM-T1-43. What efforts were made to ensure that all mailers responded to the survey, even if all their nonprofit mailings for FY 1996 were accepted at the nonprofit rate?

RESPONSE

Response to the survey was purely voluntary. Owing to the lack of time and resources, no provision was made to follow-up with organizations that did not respond. For a fully representative survey, one would need a random sample of the entire universe of mailers that entered mail at nonprofit rates in FY1996. Only the Postal Service has that information, and the Service neither undertook such a study in support of its rate request nor produced the information to ANM in response to its discovery requests.

RESPONSE OF ALLIANCE OF NONPROFIT MAILERS WITNESS HALDI TO
INTERROGATORIES OF THE UNITED STATES POSTAL SERVICE

USPS/ANM-T1-44.

- (a) Are volumes reported in Exhibit ANM-T-1 for all of FY 1996, or do they represent one mailing for each respondent?
- (b) Did survey respondents indicate how many mailings were ruled ineligible for the nonprofit rate during FY 1996? If so, please provide the data reported, by mailer.

RESPONSE

(a) *The Postal Service will have to draw its own conclusions from the answers provided on the individual responses. It appears to ANM that some responses clearly reflect more than one mailing or a direct mail campaign that was carried on over a number of days. ANM also assumes that many of the volumes reported represent more than one mailing and may, at least in some cases, reflect all of the respondent's mailings.*

(b) The survey response forms submitted as ANM-LR-1 in response to USPS/ANM-T1-41 provide all information in the possession of ANM.

1 CHAIRMAN GLEIMAN: Is there any other designated
2 written cross-examination?

3 [No response.]

4 CHAIRMAN GLEIMAN: And there is no oral
5 cross-examination. So there can't be any follow-up and
6 there can't be any redirect.

7 Dr. Haldi, that brings to a close your appearances
8 here before us in this round of hearings. We appreciate
9 your appearance today and your contributions to our record,
10 wearing various and sundry hats. And if there is nothing
11 further, you are excused.

12 [Witness excused.]

13 CHAIRMAN GLEIMAN: And this round of hearings are
14 hereby adjourned. We will see you all again in the hearing
15 room sometime toward the middle of the month for the
16 rebuttal phase.

17 You all have a pleasant day.

18 [Whereupon, at 11:04 a.m., the hearing was
19 recessed, to reconvene at 9:30 a.m., Monday, March 16,
20 1998.]

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