

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Mail Processing Network  
Rationalization Service Changes,

2012 Docket No. N2012-1

**PUBLIC REPRESENTATIVE'S RESPONSE TO  
THE UNITED STATES POSTAL SERVICE  
MOTION TO STRIKE A PORTION OF THE INITIAL BRIEF  
OF THE PUBLIC REPRESENTATIVE**

**(July 27, 2012)**

On July 20, 2012, the United States Postal Service (Postal Service) filed a motion to strike page 36 (lines 12 – 20), pages 37 – 45, and the technical appendix of the Initial Brief of the Public Representative, filed July 10, 2012.<sup>1</sup> The Postal Service claims the Public Representative improperly attempts to introduce an alternative method for calculating mail processing labor cost savings after the evidentiary record has already been closed. The Postal Service's request conflates argument with evidence and should be denied.

The purpose of the Public Representative's analysis found on pages 36 through 45 of its Brief is to illustrate how the various analytical methods employed by the Postal Service and intervenors, in the Postal Service's case-in-chief and intervenors' rebuttal cases, may be refined or combined.

The Public Representative concedes that the aforementioned analysis is purely argument, not testimonial evidence, as it is part of the Public Representative's Brief filed July 20, 2012.<sup>2</sup> As argument or commentary, such analysis neither requires nor warrants the extraordinary remedy of striking it from the brief. The Public Representative is well aware that the time for intervenor evidentiary testimony in this case closed in mid-June after the hearings to enter rebuttal testimony concluded. It would be as inappropriate for the

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<sup>1</sup> Motion of the United States Postal Service to Strike a Portion of the Initial Brief of the Public Representative, July 20, 2012 (Motion to Strike).

<sup>2</sup> Reply Brief of the Public Representative, July 20, 2012.

Public Representative to assert the aforementioned analysis has evidentiary status as it would be for the Postal Service to assert its recently amended calculations of witness Elmore-Yalch's analysis have evidentiary status.<sup>3</sup>

For the reason that the information contained in the Public Representative's brief is solely argument or commentary based on information provided in the official evidentiary record, the Public Representative requests that the Commission deny the Postal Service's motion to strike the Public Representative's analysis appearing on pages 36 through 45 of its brief.

Respectfully Submitted,

/s/ Christopher J. Laver  
Public Representative for  
Docket No. N2012-1

901 New York Ave, N.W. STE 200  
Washington, DC 20268-0001  
(202) 789-6889; Fax (202) 789-6891  
christopher.laver@prc.gov

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<sup>3</sup> Response of United States Postal Service Witness Elmore-Yalch to Presiding Officer's Information Request No. 9, Question 1, as Amended by Tr. Vol. 12 at 4501, July 20, 2012 (Elmore-Yalch Post-Facto Revision). In what can only be described as irony, the Postal Service filed, on the same day as its Motion to Strike, a corrected estimate to the volume loss estimate presented by witness Elmore-Yalch that attempts to revise testimony presented nearly eight months previous, and draw conclusions based on this correction. See Elmore-Yalch Post-Facto Revision at 6. If the Postal Service's filing is to have any weight, it could only be considered argument that demonstrates significant errors in the testimony produced at "tremendous cost by world class experts." See Initial Brief of United States Postal Service, July 10, 2012 at 92. As this response is not part of the evidentiary record, the Public Representative finds no need to engage in further unnecessary motions practice by requesting the Commission strike the response.