

BEFORE THE  
POSTAL REGULATORY COMMISSION

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PERIODIC REPORTING  
(PROPOSAL FOUR)

: Docket No. RM2016-12  
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UNITED PARCEL SERVICE, INC.'S MOTION FOR ACCESS  
(September 7, 2016)

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United Parcel Service, Inc. ("UPS") respectfully submits this Motion for Access pursuant to Commission Rules 3007.21 and 3007.40, requesting access for its outside counsel and consultants to a non-public library reference (USPS-RM2016-12/NP1), which the United States Postal Service ("Postal Service") filed with the Commission on August 22, 2016, as part of the Postal Service's Proposal Four regarding the treatment of purchased highway transportation costs within the Cost and Revenue Analysis report.

UPS also seeks access to other datasets, programs, and analytical results referenced in the Postal Service's filing that appear to have formed the basis of the Postal Service's conclusions and recommendations but that, to UPS's knowledge, have not been made available.

UPS seeks access to this library reference and this additional data for its outside counsel and consultants to assist it in making informed comments regarding Proposal Four. See PRC Dkt. No. RM2016-12, Order No. 3482 ("Order No. 3482") (August 24, 2016) (inviting comments). These outside counsel and consultants are identified in Exhibit 1, attached hereto, and each has executed a copy of the Commission's standard protective order conditions.

**I. ACCESS TO THE REQUESTED MATERIALS IS NECESSARY FOR UPS TO PARTICIPATE EFFECTIVELY IN THIS PROCEEDING.**

In determining whether to grant access to non-public data, the Commission “shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).” 39 C.F.R. § 3007.42. UPS’s request clearly satisfies this test. The requested non-public library reference is directly relevant to Proposal Four, and UPS has a substantial interest in this proposal.

The Commission has initiated a rulemaking proceeding to consider a proposal to change analytical principles relating to the methodology for calculating attributable purchased highway transportation costs. See Order No. 3482. Presently, attribution of purchased highway transportation costs is based on estimated variabilities between transportation capacity (expressed in cubic-foot-miles) and cost. In its proposal, the Postal Service seeks to incorporate additional parameters – the variability between the cubic volume of mail and purchased capacity. See Petition Of The United States Postal Service For The Initiation Of A Proceeding To Consider Proposed Changes In Analytical Principles (Proposal Four) (“Proposal Four”) at 1, Dkt. No. RM2016-12 (Aug. 22, 2016).

In the past, the variability of capacity with respect to volume was assumed to be 100 percent, implying direct proportionality between capacity and volume. But in response to a Commission decision from 1999, the Postal Service undertook additional analysis with the intent of estimating the relationship between volume and capacity, ultimately concluding that capacity responds in a less-than-proportional manner to changes in volume. Proposal Four would incorporate this new estimate of the variability of capacity instead of relying on the proportionality assumption.

Significantly, this change would *reduce* attributable purchased highway transportation costs by about 9.4%, or about \$539 million. \$255 million of the \$539 million total reduction in attributable costs would be due to a reduction in costs attributed to domestic competitive products. See Professor Michael Bradley, *Research on Estimating the Variability of Purchased Highway Transportation Capacity with Respect to Volume* at 36 (“Bradley Report”), Dkt. No. RM2016-12 (Aug. 22, 2016).

The cost impacts for all products, including competitive products, that would be incurred under Proposal Four were filed under seal. As a result, UPS has no way of verifying or challenging the proposal and/or Professor Bradley’s calculations. Without access to the non-public material contained in USPS-RM2016-12/NP1, UPS’s ability to provide informed comments in this docket will be significantly constrained.

In the report underlying Proposal Four, Professor Bradley begins his investigation with “the construction of an analysis data set from the raw TIMES/SV data and matching it with routing information from National Air Surface System (NASS).” Bradley Report at 4. This dataset was subsequently used to examine “the relationship between route-trip-legs and...listed facilities,” to produce case studies of purchased highway transportation,” and to ultimately produce a sample dataset that was used in, and then ultimately deemed to not be sufficiently reliable for, econometric analysis of the question at hand. *Id.* at 4-5. Yet, as highlighted in the recent Public Representative Motion for Issuance of Information Request, these datasets have not been produced in any form. See Public Material Supporting Proposal Four (“UPS-RM-2016-12/1”), Dkt. No. RM2016-12 (Aug. 22, 2016). Yet, this data is essential for UPS’s comments.

Access to the data used and the programs Professor Bradley used to clean the data would allow UPS's outside counsel and consultants to better understand the nature of the shortcomings of these data for the estimation of the volume variability of purchased highway transportation capacity. It could also provide insight into the operational processes and thus allow insight into operational realities that would need to be factored into any analysis of the relationship between mail volume and truck capacity, and permit UPS to determine whether the new model proposed by the Postal Service meets the requirement that the "unit of observation [be] consistent with economic decision making by Postal Service transportation managers and [be] consistent with collected variables in existing Postal Service data systems." Bradley Report at 5.

UPS also supports the Public Representative's request for further information regarding the construction of the "analysis data set" used by Professor Bradley and his team, including but not limited to, time and geographic coverage of the data used, any sampling procedures used in constructing this analysis data set, and other information that would allow UPS's outside counsel and consultants to gauge the representativeness of this data set and the extent to which the reliability problems are likely to recur in alternative data sets constructed from the same sources. This information is essential to enabling UPS to provide fully informed comments in response to Proposal Four. Indeed, the Public Representative has asked the Postal Service to produce parts of it in its motion for a Chairman's information request. See Public Representative Motion For Issuance Of Information Request at 2, Dkt. No. RM2016-12 (Aug. 30, 2016).

Accordingly, UPS respectfully requests that its outside counsel and consultants listed in Exhibit 1 be provided access to the non-public data filed by the Postal Service in UPS-RM-2016-12/NP1.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson  
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Quinn Emanuel Urquhart & Sullivan, LLP  
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***Attorney for UPS***

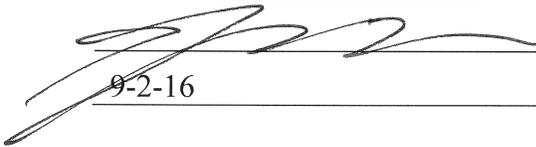
## Exhibit 1

1. Steig Olson
2. Davie LeRay
3. Scott Lerner
4. Michael Gulston
5. Kevin Neels
6. Nicholas Powers
7. Sarah Germain
8. Angela Lam
9. Jacob Light,
10. Dan Luo
11. Martha Rogers
12. Nathan Basch

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Commission Docket No. RM2016-12 by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Commission Docket No. RM2016-12. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name	<u>Steig Olson</u>
Firm	<u>Quinn Emanuel Urquhart &amp; Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	 <u></u>
Date	<u>9-2-16</u>

CERTIFICATION

The undersigned represents that:

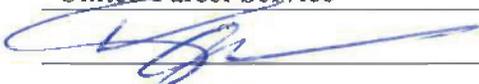
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Name	<u>David LeRay</u>
Firm	<u>Quinn Emanuel Urquhart &amp; Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>9-2-16</u>

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Name	<u>Scott Lerner</u>
Firm	<u>Quinn Emanuel Urquhart &amp; Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	
Date	<u>9-6-16</u>

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Name	<u>Michael Gulston</u>
Firm	<u>Quinn Emanuel Urquhart &amp; Sullivan LLP</u>
Title	<u>Paralegal</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Michael Gulston</u>
Date	<u>9-2-16</u>

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Name	<u>Kevin Neels</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>9-2-16</u>

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Name	<u>Nicholas Powers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>9-2-16</u>

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Name	<u>Sarah Germain</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>Sarah Germain</i></u>
Date	<u>9-2-16</u>

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The undersigned represents that:

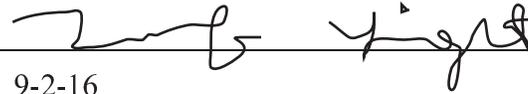
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Name	<u>Angela Lam</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research analyst.</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>9-2-16</u>

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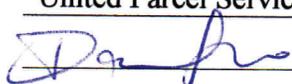
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Name	<u>Jacob Light</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>9-2-16</u>

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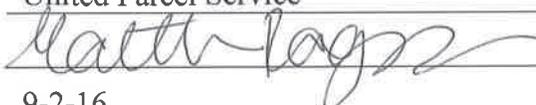
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Name	<u>Dan Luo</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>9-2-16</u>

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Name	<u>Martha Rogers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
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Name	<u>Nathan Basch</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>9-6-16</u>