

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE  
TO MAJOR MAILERS ASSOCIATION MOTION TO STRIKE  
ERRATA TO LIBRARY REFERENCES AND REBUTTAL  
TESTIMONY OF POSTAL SERVICE WITNESS LOETSCHER  
(December 15, 2006)

The United States Postal Service hereby provides its response in opposition to the Major Mailers Association's (MMA) Motion to Strike Errata To Library References And Rebuttal Testimony Of USPS Witness L. Paul Loetscher And For Order Directing The Public (sic) Service To Supplement The Record, filed December 14, 2006. For the reasons discussed below, the Postal Service opposes MMA's Motion to Strike, and submits that MMA's request for an Order to supplement the record is now moot.

In short, MMA's Motion to Strike takes issue with the errata to USPS-LR-L-34, USPS-LR-L-193, and USPS-RT-9, which were filed on December 13, 2006. As explained in the Postal Service's Notices of Errata, also filed on December 13, the errata to USPS-LR-L-193 and USPS-RT-9 arise from the errata to USPS-LR-L-34. USPS Library Reference L-34 was filed as a Category 2 library reference along with witness Loetscher's direct testimony in this docket, on May

3, 2006. MMA's main rationale for opposing the above-referenced errata seems to be their objection to the Postal Service's filing of errata to USPS-LR-L-34 over six months after it was originally filed. Their Motion states, "The Postal Service cannot be permitted to revise its study results so long after the fact. Having relied on flawed study results until the day before the record is set to close, the Service must take the study results." MMA Motion at 2.

As MMA's Motion correctly states, the genesis for these changes to USPS-LR-L-34 was the cross examination of witness Loetscher on December 6, 2006. At the December 6 hearing on witness Loetscher's rebuttal testimony, counsel for MMA cross-examined witness Loetscher on certain duplicate records that counsel for MMA discovered in a file from USPS-LR-L-34 that had been converted to an Excel file format. Prior to this hearing, no party, including MMA, pointed out to witness Loetscher (or the Postal Service) the possible existence of duplicate records in any of the data files of USPS-LR-L-34, either through written interrogatories, oral cross examination,<sup>1</sup> or an informal communication to Postal Service counsel. MMA submitted no interrogatories to witness Loetscher on USPS-LR-L-34 throughout the entire discovery period on the Postal Service's direct case, and did not raise this particular issue during their oral cross examination of witness Loetscher's direct testimony, or in the direct testimony of MMA witness Bentley. Essentially, from May 3 until December 6, 2006, this entire issue lay dormant.

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<sup>1</sup> Witness Loetscher appeared before the Commission for oral cross examination on his direct testimony, USPS-T-28, and associated library reference, USPS-LR-L-34, on August 10, 2006. This appearance occurred more than three months after USPS-LR-L-34 was originally filed.

Thus, for MMA to argue that the Postal Service's filing is improper simply because the errata were filed over six months after the original filing of USPS-LR-L-34 ignores the fact that the potential for duplicate entries was *itself* not raised until over six months after USPS-LR-L-34 was filed. In reality, despite MMA's claim that the Postal Service is revising its study "long after the fact," the Postal Service submitted its revisions less than one week after the issue was first raised. The Postal Service should not be forbidden from filing errata solely because potential anomalies were not made known during the regular discovery period.

In addition, MMA's Motion states that counsel for MMA did not ask the Postal Service to make "wholesale revisions" to any library reference during the December 6 hearing. The Postal Service fails to see how removing six duplicated observations from nearly 1,800 observations could be considered a "wholesale" revision to USPS-LR-L-34. Moreover, there is no requirement that the scope of any errata to Postal Service material must be determined by opposing counsel. The December 6, 2006, cross examination by MMA introduced potential instances of double counting in USPS-LR-L-34. However, those records were contained in an Excel file informally provided to counsel for MMA, who requested the file for the first time less than a week before witness Loetscher's appearance. The Postal Service had no way of knowing at the time of the December 6 hearing whether or not the errors identified by MMA were contained in the original USPS-LR-L-34 files, the Excel file provided to MMA, or

the Excel file shown to witness Loetscher on the stand.<sup>2</sup> To suggest that the Postal Service should have refrained from looking into the issue, or from correcting the record to remove errors once identified, seems overly restrictive and unfair. Therefore, the Postal Service opposes MMA's Motion to Strike.

Motions to strike constitute extraordinary relief under the Commission's Rules of Procedure, which has been emphasized by the Presiding Officer in this very docket. See 39 C.F.R. § 3001.21(c); P.O. Ruling No. R2006-1/74 (October 10, 2006). Thus, the Postal Service submits that the errata to USPS-LR-L-34, USPS-LR-L-193, and USPS-RT-9 should remain on the record. However, even though the Postal Service opposes the MMA Motion to Strike, the Postal Service would not object if the Presiding Officer allowed the original versions of the above-referenced files to remain on the record along with the revised versions that were filed on December 13, if he believes it would ease the burden on MMA's analytical or briefing efforts.

Finally, in an aim to clarify the record at this late stage and respond to MMA's request for an Order to supplement the record, the Postal Service has today filed a Category 4 Library Reference, designated USPS-LR-L-197, which contains the original Excel version of alldata2, with the six instances of duplicate records included. Thus, the Postal Service submits that the portion of MMA's Motion for an Order to supplement the record is now moot. However, the Postal Service opposes the MMA Motion to Strike the errata to USPS-LR-L-34, USPS-LR-L-193, and USPS-RT-9.

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<sup>2</sup> For example, the anomalies could have been a result of converting the original USPS-LR-L-34 file to the Excel format.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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