

# DOCKET SECTION

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

RECEIVED  
FEB 18 4 28 PM '98

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

POSTAL RATE AND FEE CHANGES, 1997 :

DOCKET NO. R97-1

## PARCEL SHIPPERS ASSOCIATION (PSA) MOTION TO COMPEL RESPONSE OF UNITED PARCEL SERVICE TO REQUEST FOR PRODUCTION OF INFORMATION AND DOCUMENTS

United Parcel Service (UPS) has filed objections to PSA/UPS-4, 5, and 6(b)-(e) (dated February 9, 1998 and received by mail while Counsel for PSA was out of town). Those interrogatories request information about UPS that the Postal Rate Commission (PRC) routinely requires be produced by United States Postal Service. Those interrogatories request the following information about UPS:

1. The number of parcels delivered by UPS which weighed more than 70 pounds and were greater in length and girth combined than 108 inches;
2. UPS volumes, revenues, costs of, and net income earned by United Parcel Service from its delivery of domestic, nonexpedited parcels; and
3. The percentage of its parcels on which UPS granted a discount from the published tariff, the percentage of its parcels for which UPS imposed a surcharge, and the amounts of the average discount and the average surcharge.

UPS has been an intervenor in every major PRC proceeding since the first proceeding some 27 years ago and has successfully resisted in all of that time the divulgence of any meaningful information about its own operations, while at the same

time demanding in the most exquisite detail every facet of information about the United States Postal Service, its only competitor for the delivery of domestic ground parcel shipments to residences. All that one can tell from the data that UPS is willing to share with the Commission and intervenors from case to case is that UPS, over those 27 years, has grown into a behemoth of a carrier of parcels, while the Postal Service has in that same period of time become an insignificant factor.

In each proceeding, UPS maintains that the requested data is not relevant to the setting of postal rates; would be burdensome to compile and produce; and is regarded as confidential by the Company. It ill behooves an intervenor who has participated in every PRC proceeding, probably more aggressively over the last several decades than any single party except the Postal Service itself, and has thereupon created untold burdens for numerous intervenors, not to mention the Postal Service, responding to its ravenous appetite for data, to plead burden.

UPS' claim of confidentiality should be seen in the proper context. That context is one where the Postal Rate Commission has repeatedly over the years ordered the Postal Service to divulge to its only competitor for ground transportation of parcels the most fulsome details of every aspect of its operations. Is there anything confidential about the fact that, for example, while United States Parcel Post carries X number of parcels, United Parcel Service carries almost all the rest? Why is it confidential to know what that number is? If it would be so commercially damaging to UPS, why is it not conversely commercially damaging to USPS to disclose that information in a much greater wealth of detail?

One can understand why UPS regards as highly sensitive the amount of discounts it is granting to favorite customers; the penalties it is imposing on others; and the extent to which these practices go on. As to that data we agree that UPS should not be compelled to produce that unless it can be demonstrated that it is clearly relevant to the issues in this proceeding, and necessary to produce a record upon which postal rates can be properly made.

It has long been PSA's contention that the PRC cannot properly establish parcel post rates without an understanding of the small parcel delivery market. Since United Parcel Service is the acknowledged dominator of this market, we do not understand how the PRC can employ the noncost factors of the Act in fixing parcel post rates if it knows nothing of the size of the market and the relative strength of the only competitor in that market. It seems to us fundamental that the Commission must know the relative market share of UPS, that is, its volumes; its costs to service that market; the various prices it charges to different parts of that market; and the effect that may have upon the prices the Commission recommends for parcel post. The PRC needs to know the profitability of UPS' share of the market so that the Commission can determine the impact of its actions upon the only private competitor. The PRC needs to know the size of UPS' market for parcels that exceed 70 pounds and also that exceed the 108 inches in length and girth combined, a market for which UPS is in fact a monopolist because the Postal Service cannot carry such parcels and there is no one other than UPS to provide that service.

The PRC evidently believes this kind of information is relevant. Section 3001.92 of its Rules of Practice and Procedure requests (but does not require) that submissions by intervenors include information about competitor operations. Subparagraph (h) provides that, if the intervenor is a competitor of the Postal Service, the intervenor should define the areas of competition, and provide ". . . a demonstration of the intervenor's ability or inability to meet postal competition." Among other data the Commission's rules request is a five-year record" . . . showing growth in each major segment of the Company's business and a statement of the current rates and all conditions of service applicable to the portion of the intervenor's operations which is affected by comparable service of the Postal Service."

The Commission would like to know the actual rates charged by UPS. The UPS tariff is a meaningless document, to the great satisfaction of favored customers with discounts, and to the consternation of UPS customers when they are told that their rates will be so much more than the published tariff. The Commission wants to know the costs of the competitive services and the rationale by which the intervenor has made the attribution of those costs.

We submit that the Commission's own cited rules establish that the information objected to by UPS is manifestly relevant. While pretending to observe the Commission's request for an intervenor statement, the United Parcel Service response to subparagraph (h) is a mockery of the Commission's rules. (See attached)

UPS does not directly claim the USPS proposals will competitively injure UPS; rather, they cite to their independent consultants, noting those consultants have

concluded that the proposals would violate the Act and, because of that violation of the Act, UPS will lose volume and revenues, although UPS hastens to say they have no estimates of what that loss might be. (See UPS response to PSA/UPS-3) And, when asked what they base their conclusions of competitive harm on, UPS' hired consultant simply responds that, while he has not investigated the impact of parcel post rates on UPS, it is his testimony that ". . . unfair parcel post rates could injure competitors such as UPS." And this same witness disclaims any knowledge about the parcel post market, stating that he has computed no market shares and therefore is unable to say whether UPS' parcel volumes have increased while USPS' parcel post volumes have declined. (See response to PSA/UPS-T3-5) We do not believe UPS can have it both ways; they cannot hint at competitive injury and hire experts who studiously avoid any knowledge of the market but yet posit competitive harm from "illegal rates," and at the same time shield from the Commission and intervenors any data which might be used to document or rebut such competitive harm. UPS studiously avoids sponsoring any witness who knows anything substantive about UPS.

We would argue that, if UPS persists in hiding behind the claim that this basic data is somehow highly confidential, and therefore privileged, then it foregoes all claims, direct or implied, that the rates to be recommended for parcel post services by the PRC should take into account a competitive impact on UPS.

Wherefore, PSA requests that the Commission order United Parcel Service to fully comply with PSA's request for data contained in PSA/UPS-4, 5, and 6 (b)-(e), or, if it declines to do so on the basis of the confidentiality of the information requested, that

PRC rule that all adverse inferences of the nonresponded to questions be held to have been established contrary to UPS' interests.

Respectfully submitted,

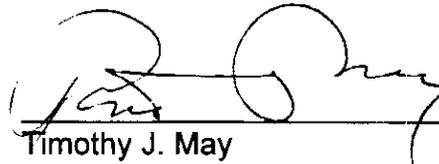


Timothy J. May, Esquire  
PATTON BOGGS, L.L.P.  
2550 M Street, N.W.  
Washington, D.C. 20037-1350  
Tel. (202) 457-6050  
Fax. (202) 457-6315  
Counsel for Parcel Shippers Association

Dated: February 18, 1998

#### CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.



Timothy J. May

Dated: February 18, 1998

(h) Competitor Operations

Both UPS and the Postal Service accept packages from the public, transport them to their destinations, and deliver them to consignees. While UPS's ground parcel delivery services are often compared with Parcel Post, UPS also delivers many packages of the type handled in other classes and subclasses of mail.

UPS has uniform maximum weight and size limits on packages of 150 pounds and 130 inches in length and girth combined. The Postal Service currently has package limitations for Parcel Post of 70 pounds and 108 inches in length and girth combined. Bound Printed Matter has a weight limit of 15 pounds.

(i) Impact of Rate Changes on Users' Suppliers

UPS has no information on this subject.

(j) Statement of Revenues, Volumes,  
Costs, and Profits

Attachment A is an audited schedule of UPS's revenues, costs (including federal income tax), and net income for the period ended December 31, 1996, and for each of the preceding four years, prepared by the Company's auditors, Deloitte & Touche. Attachment B is a statement of UPS's annual volumes for each of the five years from 1992 to 1996, inclusive.