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PRC Issues Report Card for 2016 to 2017

On Apr. 27, the Postal Regulatory Commission (PRC) issued its analysis of the Postal Service fiscal year (FY) 2016 Annual Performance Report and FY 2017 Performance Plan. Each year, the PRC must review the Postal Service's performance goals, make findings as to whether the Postal Service has met those goals, and offer recommendations regarding the protection or promotion of public policy objectives.

The PRC's review finds that the Postal Service's FY 2016 Report and FY 2017 Plan comply with all but one of the legal requirements of 39 U.S.C. §§ 2803 and 2804, respectively. However, the PRC notes that the FY 2017 Plan and FY 2016 Report as submitted lacked sufficient information for the PRC to determine compliance in some respects, and that the issuance of Chairman Information Requests (CHIRs) was necessary to obtain the required information. The PRC directs the Postal Service to include all information necessary to show compliance with 39 U.S.C. §§ 2803 and 2804 in future annual performance plans and performance reports.

The PRC also provides further guidance on how the Postal Service can fully comply with 39 U.S.C. § 2803(a). The PRC recommends that future annual performance reports and plans clearly explain how the Postal Service's strategic initiatives relate to performance goals and performance indicators. The PRC also reiterates its prior recommendation that each strategic initiative have a unique performance measure that only measures performance for that initiative.

The report further provides an in-depth evaluation of the Postal Service's four performance goals: 1) Deliver High-Quality Service, 2) Provide Excellent Customer Experiences, 3) Ensure a Safe Workplace and Engaged Workforce, and 4) Sustain Controllable Income.

PRC's findings include:

• The PRC finds that the Postal Service partially met the Deliver High-Quality Services performance goal.
• The PRC finds that the Postal Service partially met the Provide Excellent Customer Experiences performance goal.
• The PRC finds that the Postal Service partially met the Ensure a Safe Workplace and Engaged Workforce performance goal.
• The PRC finds that the Postal Service partially met the Sustain Controllable Income performance goal.

In conducting this year's review, the PRC designated a Public Representative and invited comments on whether the Postal Service met its performance goals and satisfied applicable statutory and regulatory requirements. It also sought input on public policy recommendations, observations on strategic initiatives, and other relevant matters.

Several CHIRs were issued seeking clarification of the FY 2017 Plan and FY 2016 Report. The Postal Service filed responses to all information requests. The Public Representative submitted comments to which the Postal Service provided reply comments.

High-Quality Services

The PRC finds that the Postal Service did not meet the Deliver High-Quality Services performance goal in FY 2015. Iin FY 2016, the Standard Mail Composite result (92.97%) exceeded the target (91.00%). However, the Postal Service failed to meet FY 2016 targets set for any of the six performance indicators that measure First-Class Mail service performance.

The failure to meet goals set for these mailpieces raises concerns because in FY 2013 and FY 2014, much of the Single-Piece First-Class Mail (Overnight) service standard volumes shifted to either the 2-Day or 3-5-Day service standard as a result of service standard changes associated with the Mail Processing Network Rationalization initiative. The USPS now finds it difficult to meet the more relaxed practice goals set back then.

The Public Representative commented that after two years of deteriorating service, the Postal Service's performance improved for every performance indicator. Improvements were significant, especially for the Single-Piece First-Class Mail and Presorted First-Class Mail 3-5-Day performance indicators. However, the Public Representative observed that despite these improvements, the Postal Service did not meet any FY 2016 targets for the Single-Piece First-Class Mail and Presorted First- Class Mail performance indicators. She noted that the most significant shortfalls were for the 3-5-

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Short Takes

Legislation to permit states to expand their jurisdiction to impose on out-of-state businesses liability for collecting and paying over sales tax just became less likely to pass. *POLITICO's Morning Tax* reports that a powerful member of his party has joined the opposition: "Let's just say Rep. Steve Womack (R-Ark.), who's been a leading GOP advocate in the House for online sales tax legislation, was neither thrilled nor surprised that Judiciary Chairman Bob Goodlatte (R-Va.) is expected to join legislation that would codify the current precedent that bars states from forcing out-of-state retailers to collect sales tax. 'I learned from my mom a long time ago that if I can't say something nice, I won't say it,' Womack told *Morning Tax*, before adding: 'We've been stonewalled for a long time.' Those who want to give states more power to collect those sales taxes have been saying for a while that they expect the Supreme Court to weigh in on the issue before Congress."

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The Berkshire Company has a new whitepaper called *Addressing the Mail: A Guide for Postal Professionals*. Mail list updating remains critical to holding down costs for business mailers and the USPS. "The United States Postal Service (USPS) delivers to over 300 million people at more than 150 million addresses every day. In most years, between 600,000 and 800,000 new addresses are created. About 40 million people will file a change of address request with the USPS each year." For tips to improve accuracy and verification of address data, request a copy of the whitepaper at *berkshire-company.com*.

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ShipStation has a new e-book called *Shipping Nirvana* on creative shipping solutions such as warehouse layout, packaging materials, new shipping software, postage savings, and other shipping efficiencies. The answer to some businesses' shipping questions is not a Shipping Station service. For example, the e-book points to suppliers who may offer new and more creative solutions to problems: "While there are many places you can find boxes, a big contender in this space is Uline, who claims 1,300 box sizes and types."

Another tip addresses inexpensive sources of secure tape: "Discount retailers, and even the Dollar Store, offer quality packaging tape that works well. This is another area where buying in bulk can save you a bundle."

The e-book compares several alternatives for shipping, including hybrid shipping services: "Both UPS and FedEx have partnered up with USPS to provide hybrid services to aid in residential deliveries. Depending on the service, SurePost for UPS or SmartPost for FedEx, you can save up to 50% using the hybrid service over standard rates. The trick with these is that UPS and FedEx will pick up the package initially, but eventually hand it off to USPS for final delivery to the customer. While it ends up taking longer in delivery times, it can save you quite a bit of money. In addition to the cheaper cost, technically you also get free Saturday delivery—since USPS is the one who's delivering it—as well as no residential surcharge from UPS & FedEx."

Get the e-book and all of the tips at *ShipStation.com*.

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The Temporary Emergency Committee of the Board of Governors of the Postal Service ("TEC") will meet May 10 in open session at Postal Service headquarters, 475 L'Enfant Plaza, SW, Washington, DC. The public is welcome to observe the meeting beginning at 8 a.m. ET in the Ben Franklin Room on the 11th floor. The TEC is expected to discuss the following items:

1. Call to order
2. Remarks of TEC Chairman/Postmaster General & CEO
3. Approval of previous minutes
4. Committee Reports
5. Quarterly Report on Financial Performance
6. Quarterly Service Performance Report
7. Tentative agenda for the June 20 meeting
8. Adjourn

Open session meetings of the TEC of the Board of Governors are available on live audio webcasts at *http://about.usps.com/news/electronic-press-kits/bog/welcome.htm*. Three hours after the conclusion of the open session meeting, a recorded audio file will be available for listening. In compliance with Section 508 of the Rehabilitation Act, the audio webcast will be open-captioned.

Following the TEC's open meeting on May 10, Postmaster General and CEO Megan Brennan and Chief Financial Officer Joe Corbett will host a telephone/web conference call to discuss the financial results in more detail. The call will begin at 10 a.m. ET and is open to the news media and all other interested parties.

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Day performance indicators for Single-Piece First-Class Mail and Presorted First-Class Mail.

In its reply comments, the Postal Service acknowledges opportunities to improve service performance for both the Single-Piece First-Class Mail and Presorted First-Class Mail (3-5-Day) performance indicators. It explains that the operating window change from FY 2015 continues to impact its ability to meet service performance targets. It notes that specific factors influencing 3-5-Day service performance include challenges in achieving 24-Hour Clock targets, as well as difficulties in optimizing the balance between air and surface transportation.

The PRC recommends that the Postal Service closely examine and monitor the reasons why the FY 2014 and FY 2015 year-to-year changes in mail characteristics or mail volumes were underestimated or unplanned in its transportation network planning. The PRC also recommends that when districts do not meet their service performance targets due, in whole or in part, to severe weather, the Postal Service show when and to what extent severe weather affected service performance results. By doing so, the Postal Service should distinguish between severe weather causes of poor service performance, and other ongoing causes throughout the fiscal year in its performance reports.

The PRC concluded that all service performance results improved over FY 2015. In fact, this was the first time since the Postal Service introduced its strategic initiatives to "close the gap between revenue and cost" in FY 2012 that all service performance indicator results improved over the previous fiscal year. Although the Postal Service did not meet most FY 2016 targets for the Deliver High-Quality Service performance indicators, results of the Single-Piece First-Class Mail (3-5-Day) and Presorted First-Class Mail (3-5-Day) performance indicators showed a relatively large year-over-year improvement. As a result, the FY 2016 First-Class Mail Composite performance indicator result also showed a large year-over-year improvement from FY 2015.

For those service performance indicators that do not meet FY 2016 targets, the PRC recommends that the Postal Service include the number of districts where the annual service performance indicator target was met in its FY 2016 Report.

Excellent Customer Services

The Postal Service measures customer satisfaction with customer surveys adapted to the specific type of customer. The PRC finds that the Postal Service did not meet the Provide Excellent Customer Experiences performance goal in FY 2015. To ensure that each aspect of customer experience progresses, the PRC recommends that the Business Service Network (BSN), Point of Sale (POS), Delivery, and Customer Care Center (CCC) performance indicators each have individual targets in future performance plans.

In future years, the PRC recommends that the Postal Service include all BSN customers in the survey. Alternatively, the Postal Service should provide the number of BSN accounts that are not eligible to complete the BSN survey.

To help meet the "Five Minutes or Less" standard, the PRC recommends that the Postal Service closely monitor and reduce wait times in line during peak months by, for example, including more staff at retail locations or adding additional window retail hours.

The PRC finds that revisions to the FY 2015 CCC survey may improve its utility as a measurement of customer experience. In future years, if the Postal Service revises a customer experience survey, the PRC recommends that the Postal Service describe these changes in the methodology section of the Preface document of that fiscal year's ACR, Library Reference USPS-FY16-38 (customer experience surveys), and in the report(s) where the survey is discussed.

If the Postal Service makes changes to surveys that affect comparability across fiscal years, the Postal Service should adopt an approach similar to the changes it made to the FY 2015 CCC survey.

To ensure that the FY 2016 Report complies with 39 U.S.C. § 2804(c) for the Provide Excellent Customer Experiences performance goal, the PRC recommends that the Postal Service also compare survey results received online for the CEM survey conducted in FY 2013 and the CI Delivery surveys conducted from FY 2014 through FY 2016 for residential and small/medium business customers.

The PRC recommends that the Postal Service establish a performance indicator based on the Large Business survey and include it as part of the CI Composite Score.

Workplace and Workforce

The PRC finds that the Postal Service did not meet the Ensure a Safe Workplace and Engaged Workforce performance goal in FY 2015.

The PRC recommends that the Postal Service consider adding another workplace safety performance indicator for which results are not revised after the end of the fiscal year. The PRC recommends that the

Postal Service use the Postal Pulse survey to identify the causes of employee turnover and design programs to reduce turnover rates for non-career employees. In the FY 2016 Report, the Postal Service should describe the steps it has taken to use the Postal Pulse survey data to measure the relationships between employee engagement, accident reduction, and employee retention.

Without a comparable FY 2015 target and result, the FY 2015 Report does not comply with 39 U.S.C. § 2804(b)(1) for the Postal Pulse survey score performance indicator. In FY 2016, the Postal Service should administer the Postal Pulse survey for a full cycle. It should then set a FY 2017 target for the Postal Pulse survey score and provide the basis for selecting this target. In FY 2016, the Postal Service should take steps to increase the FY 2015 mean score of 3.16. It should assess its progress at the end of FY 2016 by comparing the FY 2015 and FY 2016 results for the comparable test period.

To allow for some cross-year comparison in FY 2016, the PRC recommends that the Postal Service use the same methodology for calculating the FY 2016 Postal Pulse survey score result to ensure that FY 2015 and FY 2016 results are comparable.

The PRC recommends the Postal Service reconsider whether any results can be compared between the Voice of the Employee (VOE) and Postal Pulse surveys and provide such comparable results for fiscal years 2013, 2014, 2015, and 2016 in the FY 2016 Report.

If the Postal Service makes additional changes to the Postal Pulse survey that affect comparability, the PRC recommends that the revised survey retain at least one item that can be compared to the previous survey.

The PRC recommends that the Postal Service continue setting targets and measuring results using the mean score of Items 1 through 12 on the Postal Pulse survey. The Postal Service should also consider setting targets and measuring results for specific items in the Postal Pulse survey. In the FY 2016 Plan, the PRC recommends that the Postal Service compare FY 2015 and FY 2016 results of these specific items and explain how they relate to the FY 2015 and FY 2016 mean scores.

Controllable Income

The PRC finds that the Postal Service partially met the Sustain Controllable Income performance goal in FY 2015. In FY 2016, the Postal Service used two performance indicators to measure progress toward its Sustain Controllable Income goal: Deliveries per Total Work Hours (DPTWH) (as a percent improvement over the same period last year) (DPTWH % SPLY) and Controllable Income (Loss).

The PRC finds that accounting for Sunday delivery is an improvement to the current DPWH calculation methodology, which does not account for the additional workload of Sunday deliveries, yet includes Sunday workhours as part of total workhours. Because Sunday delivery began in October 2013, the PRC recommends that in addition to recalculating the FY 2015 and FY 2016 results, the Postal Service should also recalculate the FY 2014 result using the revised methodology and include the revised results in the FY 2016 Report.

In the FY 2016 Report, the PRC recommends that the Postal Service explain its methodology for adjusting the workhours in the DPWH formula to account for year-to-year changes in weighted mail volumes.

The PRC recommends that in the FY 2016 Report, the Postal Service explain whether and how the FY 2016 DPWH performance indicator accounts for any increase in the number of delivery points and associated workhours caused by the rebounding housing market. The Postal Service should also describe any modifications it makes in the development of forecasted delivery points used to calculate the FY 2017 DPWH target.

The PRC recommends that the Postal Service update or adjust its First-Class Mail forecasting volume model accordingly. If year-to-year changes in other mail volume characteristics impacted FY 2015 overrun of the workhours plan, the Postal Service should assess whether and how its workhours estimation processes can be improved.

The PRC recommends that the Postal Service include additional performance indicators in its FY 2016 Annual Report that quantify cost savings from strategic initiatives and capital investments and show how they are producing intended cost savings over time.

The PRC recommends that the Postal Service balance the use of regular and overtime workhours to optimize its operational flexibility and efficiency.

Read the full report, including a complete list of PRC findings and recommendations for each goal, on the PRC's website at *https://www.prc.gov/sites/default/files/reports/2016%20Report%202017%20Plan.pdf*.

The PRC is an independent federal agency that provides regulatory oversight over the Postal Service to ensure the transparency and accountability of the Postal Service and foster a vital and efficient universal mail system. The PRC is comprised of five Presidentially-appointed and Senate-confirmed commissioners, each serving terms of six years. The Chairman is designated by the President. In addition to Chairman Robert G. Taub, the other commissioners are Vice Chairman Mark Acton and Commissioners Tony Hammond and Nanci Langley.

UPS Imposes Fees for Inefficiency

United Parcel Service, Inc. (UPS) wants retailers to get their shipping acts together and to pay more when they fall short, according to a *Wall Street Journal* report. The delivery company allocates human resources services and space based on customers' shipping forecasts provided by its retailer customers. When these companies fall short of the projected volume, the underutilized resources cost UPS money.

Dave Abney, CEO of UPS, told the paper that the idea of retailers paying for unused resources is not intended to be punitive but a part of negotiations it has with its customers. The company blames analysts for pushing it to raise prices to compensate for lost profits due to the rising numbers of ecommerce deliveries. "'I'm convinced we have the right balance,' he told the *Journal* in an interview for a separate article. 'We're going to focus on growing the business and increasing the yield.'"

It costs more to make a single delivery to a private residence than to make multiple deliveries to a business address. While UPS has benefited from increased shipments due to ecommerce activity, the company has adopted route-optimization software and works to manage costs.

UPS already adds additional charges for shipments on retailers who exceeded their shipping forecasts. Now the new pricing plan will address the bottom line of accounts. These adjustments will be particularly important once the holiday season starts.

UPS recently announced the addition of package delivery and pick-up on Saturdays. *(See BMR o5/08/2017, p. 7.)* Last month, the carrier expanded a three-city pilot to fifteen cities or major metropolitan areas. In light of recent steady increases in UPS (and FedEx) shipping costs, this new initiative to have customers share in the cost of its inefficiencies may face some retailer pushback. However, analysts counter that the culprit is the retailers' inefficient forecasting of demand. The question for retailers is whether they can afford improved volume prediction when their customers keep pushing for free shipping, which lowers retailers' margins.

Amazon's Crush on Retail

The 2017 edition of the *Internet Retailer Top 500* rankings provides new insights on the No. 1 retailer, Amazon.com, Inc. Amazon already dominates ecommerce, but retail is feeling the squeeze as well. *Internet Retailer* reports that: "Online retail sales to consumers in the U.S. reached nearly $400 billion in 2016, up 15.6% year-over-year, according to U.S. Commerce Department figures. The merchants ranked in the 2017 edition of the *Internet Retailer Top 500* grew web sales 15.5% in 2016. But factoring out Amazon, the remaining top 500 retailers grew 11.7% last year—nearly four percentage points slower than the U.S. e-commerce market as a whole."

Online Advantage

Top retailers collectively saw the *slowest* year-over-year online sales growth rate since the Great Recession in 2009. The growth rate for North American retail chains engaged in ecommerce in the longer-than-a-decade history of *Internet Retailer* was the second slowest.

According to the magazine, "Web-only retailers grew more than twice as fast as the chains, at 22.3%. Factoring out Amazon, web-only retailers grew online 16.6% last year."

Second to None

The Amazon marketplace helps other etailers while it helps its own bottom line. According to the new rankings, "The world's largest online retailer grew its product sales last year—or revenue it earned from sales of products it owned, plus fees it secured for third-party sales on its marketplace—by 24.9% to $123.77 billion globally. That revenue represents 31.5% of the Top 500 online sales total."

Amazon is crushing its competitors: "*Internet Retailer* estimates that in the U.S. total sales transacted on Amazon-owned sites reached $147.0 billion last year, a 31.3% jump from $112.0 billion in 2015. That means that Amazon alone accounted for $4 of every $10 spent online by U.S. consumers. It also was responsible for two-thirds of the $52.9 billion in e-commerce growth in the U.S. last year, not to mention more than 27% of the $127.6 billion in growth for all retailers, when factoring out the sale of automobiles, fuel and sales in restaurants." *https://www.digitalcommerce360.com/2017/05/02/amazons-dominance-in-u-s-online-retail/.*

U.S. Shutdown Averted . . . for Now

Congress averted a government shutdown at the end of April by agreeing first to a stop-gap funding bill that moved the reconciliation budget decision to last week and then, it seems, agreeing to defer action until September. *http://www.rollcall.com/news/politics/decision-day-avoiding-government-shutdown.* The bipartisan cooperation required to make the deal came at a price that may be harder to come by in September now that President Trump has tweeted that he thinks a shutdown might represent an opportunity to strip congressional Democrats of their power to halt action when sixty-one votes are needed to pass a bill in the Senate.

President Trump's tweet came in the early hours of the month of May. *POLITICO's Power Playbook* reported: "THIS IS A FIRST- @realDonaldTrump at 9:01 a.m.: 'The reason for the plan negotiated between the Republicans and Democrats is that we need 60 votes in the Senate which are not there! We....' ... at 9:07 a.m.: 'either elect more Republican Senators in 2018 or change the rules now to 51%. Our country needs a good 'shutdown' in September to fix mess!'" Who knew there was a "good shutdown"?

The tweets came days after *Reuters* ran an exclusive story and reported: "Trump said a shutdown would be a 'very negative thing' but that his administration was prepared if it was necessary." *http://www.reuters.com/article/us-usa-trump-budget-exclusive-idUSKBN17U0A0.*

POLITICO described the prospect in terms even the president might follow: "LET'S UNPACK THIS A BIT. October will be 15 months before the midterm election where voters will render their judgement [sic] on the all-Republican Washington. Unlike past shutdowns— where two-party control kept blame slightly ambiguous—Republicans will own this one. Republican leadership wants absolutely nothing to do with a shutdown, and if the president is looking for one, he'll be on his own. Period. Not to mention, the debt ceiling needs to be lifted around the same time, which makes this whole situation even more politically perilous."

Stay tuned. Reality TV makes for suspenseful economic planning.

Brains Behind the Wheel

The demand for autonomous vehicles is building even as the software to operate such cars is coming together.

Building Demand

The market for driverless cars is lining up. A recent survey of U.S. members conducted by *Business Insider Intelligence*, reported in the publication's May 3 newsletter that 44% of respondents would pay more for a driverless car. While 56% would not, those willing to pay more were willing to pay dearly.

Of those willing to pay more to have an autonomous vehicle, some were willing to pay more than $20,000 extra for the ride.

Up to $4000—38%
$4000 to $8000—37%
$8000 to $12,000—19%
$12,000 to $20,000—4%
More than $20,000—3%

The willingness to pay more for a vehicle not yet functional is the equivalent of saying: "If you build it, they will come," in the movie *Field of Dreams*.

Samsung Inside

Business Insider reports that some innovators are working on the software that will make cars autonomous (instead of building the cars themselves). Samsung has won from the South Korean Ministry of Land, Infrastructure, and Transport permission to test self-driving cars in the country, *Reuters* reports.

Working with, rather than in competition with, car manufacturer Hyundai, Samsung hopes to develop autonomous vehicle software for installation in specially manufactured cars. Samsung may not be the leader in the field. Already, *Business Insider* counts twenty other companies approved to conduct self-driving tests in the country.

The autonomous driving software needed includes sensors, computer systems, AI, and other software for self-driving cars. Samsung's deal with Hyundai appears not to be exclusive, because reports of the testing are careful to say the Samsung equipment in development "will then be placed into specially manufactured cars made by partners like Hyundai."

There appears to be a recognition that teaming up speeds up both sides of the new cars' development. Alphabet's Waymo works with Chrysler to try to achieve some of the same synergies and economies.

Samsung can use this new project to build on its achievements working with smartphones and TVs. At some point, the driverless car is expected to be driverless. That means drivers may one day safely use smartphones, TVs, and other devices during travel.

As *Business Insider* explains it: "The self-driving car is no longer a futuristic fantasy. Consumers can already buy vehicles that, within a few years[‘] time, will get software updates enabling them to hit the road without the need for a driver.” *http://www.businessinsider.com/self-driving-car-market-presents-a-strong-opportunity-for-samsung-2017-5?*.

Mixed Messages

At the same time as United Parcel Service, Inc. (UPS) is telling ecommerce businesses that they will bear more of the risks associated with having the shipper handle package deliveries because it no longer wishes to bear the costs of its customers’ poor forecasting, UPS is rolling out Saturday delivery and issuing a challenge to its competitors. *(See BMR 05/08/2017, p. 5.)* UPS will begin Saturday service in May. Saturday delivery has been a luxury for which customers paid more. Special surcharges discouraged use of the service. Now UPS looks to one-up competitor FedEx Home Delivery (FHD) which offers a Tuesday-Saturday schedule. The Postal Service has long delivered on Saturdays and now delivers on Sundays on behalf of Amazon.

The price point is certain to please. There is no charge for this service for delivery; it will be standard for UPS Ground. The company will attempt residential ground deliveries on Saturday and deliver Monday if the recipient is not at home on Saturday.

Six days’ delivery also will compare favorably with its competitor, FedEx's shorter schedule.

Parcel magazine of May 3 breaks down what will cost extra once Saturday service begins:

• “Saturday Stop Charge – if already scheduled, the fee will increase from $3.00 to $9.00 per stop.

• Saturday Stop Charge – UPS Smart Pickup request will increase from $3.00 to $6.00 per stop.

• Saturday Stop Charge with UPS On-Call Pickup request will now be charged $3.20 per stop (in addition to any applicable UPS On-Call Pickup charge).

Saturday pickup will be available for UPS 3 Day Select, UPS Ground, and UPS Ground in select areas. In such areas, a Saturday Stop Charge or the applicable UPS On-Call Pickup charge will apply any time a Saturday pickup is requested (in addition to any applicable Saturday Air Processing Fee/s for UPS Air Services; more on that below). In such areas, if a Saturday pickup is scheduled but nothing is shipped, the Saturday Stop Charge or applicable UPS On-Call Pickup charge will be assessed . . . .”

Read more at *http://parcelindustry.com/article-4879-decoding-the-ups-saturday-announcement.html*.

Battle over Future's Cars Starts Now

Lawyers for Alphabet Inc.’s self-driving car unit, known as Waymo, have their work cut out for them in their lawsuit against Uber for allegedly stealing trade secrets when Uber hired a former Waymo engineer.

The case is being fought in federal district court in San Francisco and already has generated countless documents and hours of legal services. Now the parties are fighting over a temporary injunction that would give Waymo’s counsel time to react to Uber’s refusal to turn over emails between Uber executives and engineer Anthony Lewandowski.

Uber has not disputed that Lewandowski took files—as many as 14,000 files—with him when he left for Uber. But parties have held back about 3500 emails exchanged with the engineer while Lewandowski argues that the release would amount to self-incrimination.

If Waymo’s lawyers prevail, Uber will have to desist from further development of its driverless car. Uber claims it was unaware of the alleged theft of files. Moreover, it has voluntarily removed Lewandowski from its driverless car project for which he was hired.

The judge has suggested that Waymo has a good case that theft occurred but—for the moment—a weak case that Uber participated. The best evidence for the injured party is “a document showing 5,309,445 shares of restricted Uber stock, awarded to Lewandowski with a vesting date of January 28, 2017—the day after Lewandowski quit his job at Google to form his own self-driving car company, Otto,” *Forbes* reported. *http://www.forbes.com/sites/alanohnsman/2017/05/03/waymo-urges-judge-in-google-tech-case-to-halt-ubers-self-driving-car-efforts/#320e068b69c6*.

The judge must determine whether this circumstantial evidence shows that Lewandowski had assets on his first day in business that Uber would pay as much as $250 million to acquire—something other than what Lewandowski downloaded six weeks earlier from the Waymo files. If not, then Uber arguably aided its new engineer in his efforts to use the formation of Otto to cover the sharing of Waymo’s trade secrets with Uber. *https://www.nytimes.com/2017/05/03/technology/uber-waymo-court-case-self-driving-cars-technology.html?_r=0*.

Briefs

In our last issue, we covered news suggesting malls and department stores were in the process of right-sizing after overbuilding created unprofitable overcapacity in some markets. *(See BMR 04/24/2017, p. 1.)* Journalists and analysts have continued to cover the trends—in some cases denying the trends exist.

The Denver Post asks whether or not the glut is real if Amazon.com Inc. can profitably expand its brick-and-mortar footprint. As the article explains: "Amazon has been dabbling in physical retail since 2015, during which time it's opened a half-dozen bookstores that double as gadget emporia, a score of campus bookstores that don't sell books and a convenience store without cashiers.

"For now, its efforts seem largely experimental, though that may not be true for long." Sucharita Mulpuru, a retail analyst, notes the irony of an ecommerce giant expanding its retail footprint: "'It seems counterintuitive they are investing in any physical stores when they are blamed for the demise of so many of them, but no cow is sacred,'" she says. Of course, the king of ecommerce does retail in its own way.

The article provides the following example of innovative display of store inventory: "At Amazon's six physical bookstores—six more are on the way—books are arranged on shelves that face out, even though that takes more space. Amazon isn't trying to cram its entire inventory into these stores; Amazon figures you can just order everything else from your phone."

Read more at *http://www.denverpost.com/2017/04/30/amazon-experimenting-physical-stores/.*

The toughest prospects for retail success may involve sales of apparel, and Amazon has an idea for claiming new turf in that field, but with an online offer retailers will find hard to beat. *The New York Times* wrote: "If future anthropologists want to study the rubble of early-21st-century retail, a good place to start will be what Amazon.com did to apparel shopping in the few years before and after 2017." After reviewing some of the data discussed previously, the article paints a picture of even more dire events: "The outlook for physical retailers is grim, the sector roiled by store closings, layoffs and bankruptcies. This year, Amazon will surpass Macy's, which last year announced it would shut 100 stores, to become the largest seller of apparel in America, by several analysts' estimates. . . . Amazon is exploring the possibility of selling custom-fit clothing, tailored to the more precise measurements of customers, and it has considered acquiring clothing manufacturers to further expand its presence in the category.

"If there are tipping points in retail—moments when shopping behavior swings decisively in one direction—there's a strong case to be made that apparel is reaching one now, with broad implications for jobs, malls and shopping districts." *https://www.nytimes. com/2017/04/30/technology/tipping-point-for-amazon-in-apparel.html.*

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