

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

MOTION OF UNITED PARCEL SERVICE TO COMPEL
UNITED STATES POSTAL SERVICE TO RESPOND TO
INTERROGATORIES UPS/USPS-1 THROUGH UPS/USPS-7
AND UPS/USPS-9 THROUGH UPS/USPS-20
(June 8, 1999)

United Parcel Service hereby moves that the United States Postal Service be ordered to answer interrogatories UPS/USPS-1 through UPS/USPS-7 (except 5(g)) and interrogatories UPS/USPS-9 through UPS/USPS-20, as modified herein, within seven days of the Presiding Officer's Ruling, on the grounds set forth below.¹

INTRODUCTION

On May 3, 1999, the Commission issued Order No. 1239 denying the Postal Service's motion to dismiss UPS's Complaint and initiating formal proceedings to consider the Complaint. On May 14, 1999, UPS served interrogatories and document requests UPS/USPS-1 through UPS/USPS-24 on the Postal Service. These discovery

1. Copies of these interrogatories are attached hereto as Exhibit "A."

requests seek to elicit information relevant to the following defenses asserted by the Postal Service in response to UPS's Complaint:

1. That PostE.C.S. is not a "class of mail" or a "postal" service;
2. That PostE.C.S. is not a domestic service; and
3. That PostE.C.S. is not being provided on a basis that violates the

costing and ratemaking requirements of the Postal Reorganization Act.²

On May 25, 1999, the Postal Service objected to every single one of UPS's interrogatories. As we now show, the Postal Service should be ordered to respond to interrogatories UPS/USPS-1 through UPS/USPS-7 (except 5(g)) and UPS/USPS-9 through UPS/USPS-20.

ARGUMENT

A. THE POSTAL SERVICE'S GENERAL OBJECTION SHOULD BE OVERRULED.

The Postal Service objects to all of UPS's interrogatories on the ground that they are "premature." Objection at 2. The Postal Service does not explain why discovery is premature, except to say that (1) the Commission has not yet ruled on UPS's Motion for Leave to Conduct Discovery, filed before a formal proceeding was initiated, and (2) a procedural schedule and special rules have not yet been issued. Objection at 4.

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2. The Postal Service's Answer to the Complaint does not explicitly allege that Post E.C.S. is not a domestic service. Rather, the Postal Service made that assertion in its Motion to Dismiss (at 16).

This “objection” is frivolous. The Commission’s rules explicitly permit any participant in a “proceeding” to serve interrogatories and document requests on “any other participant to the proceeding,” without limit as to when such requests may be served. 39 C.F.R. §§ 3001.25(a), 3001.26(a). Thus, as soon as a “proceeding” is initiated, discovery may ensue. When it issued Order No. 1239, the Commission explicitly “initiate[d] formal proceedings” and expressly stated that those proceedings should be held “in conformity with 39 U.S.C. § 3624” (Order No. 1239 at 1, 23), which specifically authorizes discovery. 39 U.S.C. § 3624(b)(3). See also Order No. 1239 at 22 (“This process will enable the Complainant . . . to adduce additional facts through discovery”).

The Postal Service suggests that “it is far from clear what the permissible scope of discovery should be” Objection at 3-4. That is just not so. Absent any ruling limiting discovery -- and there is no such ruling -- the issues and therefore the scope of discovery are defined by the pleadings, i.e., UPS’s Complaint and the Postal Service’s Answer.³

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3. There is nothing in the Commission’s Order noticing this proceeding which separates this case into phases or limits discovery to only certain of the issues raised by UPS’s Complaint. Thus, UPS submits that interrogatories UPS/USPS-8 and UPS/USPS-21 through 24 are proper, in that they seek information relevant to issues raised by UPS’s Complaint, i.e., whether PostE.C.S. is being provided in violation of 39 U.S.C. §§ 3622(b)(3) and (4). However, UPS will not press for answers to these interrogatories at this point, in recognition of the fact that those issues could become moot, depending on the resolution of the other issues in the case. We reserve the right to press for answers to interrogatories UPS/USPS-8 and UPS/USPS-21 through 24 at a later point in this proceeding.

The Postal Service notes that Order No. 1239 does not “explicitly” rule on UPS’s Motion for Leave to Conduct Discovery. Objection at 4. But there was no need for the Commission to do so. That motion was filed before a formal proceeding was initiated -- a time when, at least arguably, a complainant may need permission to conduct discovery. Since the Commission has initiated formal proceedings, the Motion for Leave is now moot.

The Postal Service’s general objection can only be construed as an attempt to delay this proceeding. It should be overruled. Since the Postal Service has not filed any other objections to interrogatories UPS/USPS –1(a), 3(a), 9, 18, 19, and 20(b), it should be ordered to answer those discovery requests as soon as possible, and no later than seven days from the date of the Presiding Officer’s Ruling.

- B. THE POSTAL SERVICE’S SPECIFIC OBJECTIONS ARE ALSO WITHOUT MERIT.

- A. The Information Requested in Interrogatories UPS/USPS-2, 3(b)-(c), 4, and 20(a) Is Relevant to the Postal Service’s Contention That PostE.C.S. Is Not a Domestic Service, and Is Not Privileged.

Interrogatories 2, 3(b)-(c), 4, and 20(a) ask for the raw data needed to determine the proportion of PostE.C.S. users and volume representing domestic transactions, and the proportion of users and volume that are international in character. The Postal Service objects on the grounds of relevance and commercial sensitivity.

This information is directly relevant to the Postal Service’s claim that PostE.C.S. “is . . . not a domestic service.” Motion to Dismiss at 16. Thus, this case is different from that in Presiding Officer’s Ruling No. C96-1/5, relied on by the Postal Service

(Objection at 5-6), since no such claim was made in that proceeding (the Pack 'N Send case) and the only issue was whether Pack 'N Send is a postal service. See Commission Order No. 1135 at 5, 7 ("Docket C96-1 involves a single, limited issue"). Before deciding whether to proceed with UPS's Complaint here, the Commission itself asked for information similar to that requested in these interrogatories. Order No. 1229 at 2. Under these circumstances, the Postal Service can hardly complain about the relevancy of these discovery requests, which seek the raw data needed to test one of its defenses.

The Postal Service's claim that data on PostE.C.S. volume and the number of PostE.C.S. users is commercially sensitive seems to be based solely on the assertion that "the field of secure electronic services is competitive." Objection at 5. That is not enough to make this data privileged. On the contrary, the Postal Service routinely publishes volume figures for its competitive services such as parcel post, Express Mail, and Priority Mail. It even supplies billing determinant data in the course of Commission proceedings.⁴ That PostE.C.S. may be "a test of a potential new service" does not excuse the Postal Service from its statutory obligation to seek a recommended decision from the Commission and supply the Commission with information relevant to the Commission's responsibilities, see, e.g., United Parcel Service, Inc. v. United States Postal Service, 604 F.2d 1370 (3d Cir. 1979), cert. denied, 446 U.S. 957 (1980), nor

4. UPS has not requested billing determinant data here.

does it turn non-privileged information into privileged information. In fact, the Commission's rules for test services envision that the Postal Service ordinarily will provide test data as a test progresses. See 39 C.F.R. § 3001.162.

In interrogatories 3(b)-(c) and 4, UPS is not seeking "information about the foreign posts' volumes." Objection at 6. We seek only that information needed to determine the extent of U.S. domestic as opposed to international usage of PostE.C.S. The extent to which PostE.C.S. involves a sender or a recipient that is not located in the United States is relevant to the Postal Service's defense. A mere statistical profile of all PostE.C.S. transactions and users in the aggregate, with no users or foreign posts identified and comparing the number of wholly domestic transactions with the number of claimed international transactions, is certainly not competitively sensitive.

To avoid any misunderstanding, UPS is willing to combine subparts (b) and (c) of Interrogatory 3 and to combine subparts (c) and (d) of Interrogatory 4, so that only one response is required for 3(b)-(c) and one for 4(c)-(d) with respect to transactions in which one of the parties is located outside the United States.

Accordingly, the Postal Service should be ordered to provide the information requested in interrogatories 2, 3(b)-(c), 4, and 20(a).

B. The Postal Service's Other Objections Should Also Be Overruled.

We now discuss each of the Postal Service's other objections, in the order raised by the Postal Service.⁵

Interrogatories UPS/USPS-1(b)–(c) and 7. These requests seek information on the departments, divisions, or other organizational units that, and on the job duties of the employees who, are or have been involved in PostE.C.S. The identity of individual employees is not requested. The Postal Service objects on grounds of relevance and the deliberative process privilege. Neither ground is valid.

First, information concerning the organizational units and employees, and therefore on the nature of the resources, that have been and are involved in the development, implementation, provision, and sale of PostE.C.S. is highly relevant. See Presiding Officer's Ruling No. C96-1/5 at 4. Information on the nature of the resources used in PostE.C.S. and whether the Postal Service used and uses some of the same resources in developing and providing PostE.C.S. as it uses in developing and providing services that are admittedly postal in nature certainly is relevant to whether PostE.C.S. is mail, or a postal service. The sharing of resources is directly relevant not only to the character of PostE.C.S. as a postal service, but also to the question whether resources employed for admittedly postal services are being invested in PostE.C.S.

5. As noted above (at page 3 n.3), UPS is not yet pressing for answers to Interrogatories 8 and 21-24.

Both the character of PostE.C.S. and the potential subsidization of PostE.C.S. by other mail services are proper issues in this proceeding, and the information sought relating to what resources the Postal Service is using in developing and providing PostE.C.S. is directly relevant to the issues raised by the Complaint.

As for the deliberative process privilege, UPS has requested only general information on the resources being used by the Postal Service. We have not requested the identification of any individual employees.⁶ Nor have we requested in these interrogatories anything that any individual participants in predecisional processes have said or done. Accordingly, the Postal Service's invocation of the deliberative process privilege is unwarranted.

Moreover, the privilege does not protect factual material. It rests on the policy of protecting deliberations, i.e., opinions, recommendations, and advice. And the privilege is to be narrowly construed. Environmental Protection Agency v. Mink, 410 U.S. 73, 87-89 (1973).

The information requested in these interrogatories is purely factual. There can be no legitimate concern that the participation of individuals in the Postal Service's deliberative processes concerning PostE.C.S. or any other operation would be chilled

6. Such information, though not requested here, must be disclosed under the Freedom of Information Act, see National Western Life Ins. Co. v. United States, 512 F. Supp. 454, 459-62 (N.D. Tex. 1980), where the requestor need not supply a reason for the request. Clearly, then, it is a proper subject of disclosure in discovery as long as relevance is established.

by responding to these interrogatories. In short, the deliberative process privilege is simply inapplicable here.

Interrogatory UPS/USPS-5 (introductory subpart). Interrogatory 5 asks for all documents (other than Technical Materials as defined in the interrogatories) referring or relating to PostE.C.S. The Postal Service objects on grounds of undue burden, overbreadth, commercial sensitivity, privilege, and relevance.

On burden, overbreadth, and commercial sensitivity, the Postal Service fails to mention that the scope of the request is narrowed by the exclusion of Technical Materials (Interrogatories at pages 1, 3), defined in accordance with the exact terms used by the Postal Service when it asked the Commission to reconsider its information request 4(a) in Order No. 1229. See Motion of the United States Postal Service for Reconsideration, or for Alternative Relief (March 1, 1999) at 3-4. This broad exclusion should satisfy these objections of the Postal Service. To the extent that responsive materials other than Technical Materials may be commercially sensitive, the safeguards of a proper protective order would satisfy such concerns.

As for the privileges asserted by the Postal Service, there are undoubtedly many documents which are not privileged. They should be produced. The Postal Service should also produce a privilege log of all documents for which any privilege is asserted, as is commonly done in civil litigation. See Presiding Officer's Ruling No. R97-1/40 at 4-5. This standard discovery requirement supplies the information needed for a party

conducting discovery to determine whether to press for the documents, and for the Presiding Officer to decide the propriety of the invocation of a privilege.⁷ As discussed in connection with Interrogatories UPS/USPS-1(b)-(c) and 7, the deliberative process privilege is not applicable to factual material. In any event, the applicability of these privileges should be further substantiated for each document by a proper privilege log that identifies the date, subject matter, author, recipients, and general contents of the assertedly privileged documents.

Interrogatory UPS/USPS 13.⁸ This interrogatory seeks highly relevant studies or reports on the development of PostE.C.S. (other than Technical Materials). The Postal Service objects on grounds of deliberative process privilege, attorney-client and work product privilege, commercial sensitivity, and relevance.

As for relevance, these documents could very well contain admissions relevant to the postal nature of PostE.C.S. Moreover, the very nature of the requested material establishes that it likely contains admissible evidence on whether PostE.C.S. is a postal service, and on whether there is consumer demand for PostE.C.S. as a substitute for

7. As for attorney work product, is the Postal Service seriously suggesting that some of its PostE.C.S. documents were prepared by or under the direction of attorneys in anticipation of litigation? This claim stretches credulity. The general fact that litigation is an ever-present possibility is not a sufficient basis to assert this privilege. See, e.g., National Union Fire Ins. Co. of Pittsburgh, PA v. Murray Sheet Metal Co., Inc., 967 F. 2d 980, 984 (4th Cir. 1992).
8. UPS has withdrawn Interrogatory 5(g). We also withdraw that aspect of Interrogatory 13 which asks for recommendations (but not that aspect which seeks analyses and factual material which underlie any recommendations).

other postal services. UPS takes strong issue with the Postal Service's claim, stated with respect to Interrogatories 15-17, that "evidence of substitutability does not inform the question of whether PostE.C.S. is a 'postal' service in a jurisdictional sense" (or in any other sense). Objection at 17. UPS intends to show in its direct case that such evidence is highly relevant to that very question.⁹

As for the claims of attorney-client privilege and work product, it seems highly unlikely that these documents could meet the tests for those privileges. In any event, the Postal Service should substantiate its privilege claims with a proper privilege log. Concerning the deliberative process privilege, the Postal Service should still produce those portions of these documents that are factual in nature, as well as a privilege log supporting its claim that the remaining portions may be withheld or redacted. Moreover, this case is unlike Presiding Officer's Ruling No. C96-1/5 in the Pack 'N Send case (relied on by the Postal Service, Objection at 11), because in that case there was no question whether Pack 'N Send would be a substitute for another service that is admittedly postal in nature. Finally, as to commercial sensitivity, UPS has already indicated its willingness to accept these documents under the terms of a suitable protective order.

9. Curiously, the Postal Service admits that substitutability is "germane to a rate proposal's consistency with §3622(b)(5)," Objection at 17, the factor which addresses the "available alternative means of sending and receiving letters and other mail matter." 39 U.S.C. § 3622(b)(5) (emphasis added). Yet, it asserts the substitutability of *e-mail* for other types of mail does not show that both are mail.

Interrogatory UPS/USPS-5(e). The Postal Service acknowledges that it has identified marketing plans for PostE.C.S. that are responsive to this request, but it objects that they are not relevant. It claims that marketing plans do not meaningfully describe the characteristics and qualities of PostE.C.S. That is highly unlikely. In any event, it is for the parties and the Commission, not the Postal Service alone, to determine whether the information in such plans is probative of the postal character of PostE.C.S. These plans likely relate to several relevant subjects: (1) the nature of demand for the service, (2) the nature of services for which customers would be likely to substitute PostE.C.S., and (3) the ways in which and the extent to which PostE.C.S. is interchangeable with other postal services.

Not only are these matters relevant to the postal character of PostE.C.S., but they also are relevant to whether PostE.C.S. would effect " a change in the nature of postal services which will generally affect service on a . . . substantially nationwide basis" under 39 U.S.C. § 3661(b), a matter also raised by UPS's Complaint (¶¶ 19-25). Recognizing that these documents may be commercially sensitive, UPS has already agreed that they may be produced subject to a protective order.

Interrogatories UPS/USPS-5(b), (c), 6, and 12 (descriptions and instructions). Instructions and training materials (other than the not-requested Technical Materials) for employees involved with PostE.C.S. are relevant to several issues that lie at the heart of this proceeding. What employees are told about PostE.C.S. and what they are instructed to say about PostE.C.S. to customers and potential customers is highly likely to contain relevant admissions. It could also provide

information about (1) the nature of PostE.C.S. and how the service generally operates and is provided, (2) how it is perceived by the Postal Service or by customers in comparison with admittedly postal services, (3) the characteristics of the demand for PostE.C.S., (4) the substitutability of PostE.C.S. for other postal services, and (5) ultimately, the postal character of PostE.C.S. Later in its Objection (at 13), the Postal Service acknowledges the relevance of descriptions of the “workings” of PostE.C.S.

The Commission’s rules specifically permit the discovery of “information which appears reasonably calculated to lead to the discovery of admissible evidence.” 39 C.F.R. §3001.25(a). The materials requested here clearly fall in that category. The Postal Service itself acknowledges that product descriptions of PostE.C.S. contained within this material are relevant (Objection at 12), and it is very likely that more than the mere product descriptions are relevant to the core issues here.

Standard postal procedures and training manuals are not commercially sensitive material. Unlike the situation in Presiding Officer’s Ruling No. MC97-5/6, cited by the Postal Service (Objection at 12-13), this is not a case where information is being sought from private sector competitors which are “competing franchise organizations.” Presiding Officer’s Ruling No. MC97-5/6 at 1. These Postal Service documents have no competitive significance.¹⁰ Even if they did, they should be produced subject to a protective order, as was done in Ruling No. MC97-5/6.

10. Again, UPS points out that Interrogatory 6 explicitly excludes Technical Materials.

Interrogatories UPS/USPS-5(a)(in part), 5(d), 10 (solicitations, advertising)(in part), and 12. Promotional materials, advertisements, and solicitations of PostE.C.S. business are certainly relevant to the Postal Service's view of the nature of PostE.C.S., as well as to the characteristics of the consumer demand for PostE.C.S. and any substitutable postal services. In fact, the Commission relied in part on Postal Service promotional material as supporting the claim that PostE.C.S. "is the delivery of mail" when it denied the Postal Service's Motion to Dismiss. Order No. 1239 at 19-20. This information also goes to the impact of PostE.C.S. on other postal services.

The Postal Service attempts to avoid production of some of these documents by suggesting that "targeted advertising" is commercially sensitive. Objection at 13. The Postal Service asserts that some of this material was sent to specific customers instead of being distributed more generally.

We have expressly excluded from these requests the names of any customers or recipients. Once that information is redacted, there can be no colorable claim of commercial sensitivity.

Interrogatories UPS/USPS-10 (proposals and bids) and 11. The Postal Service objects to producing proposals, bids, or contracts with customers (even with the customer names deleted) on the grounds that the price information contained in those documents is both commercially sensitive and irrelevant. UPS is willing at this time to

accept these documents with the pricing terms redacted.¹¹ The other terms on which PostE.C.S. services are sold are highly relevant to core issues such as the nature of PostE.C.S. and the substitutability of PostE.C.S. for other postal services. As the Presiding Officer stated in Ruling No. C96-1/5 at 4, “the *terms and conditions* under which those prices are quoted to customers, may be of great potential relevance.”

Moreover, contracts (including commercially sensitive unit prices) are not exempt from public disclosure on the ground of commercial sensitivity even if the contracting party’s identity is not redacted. See, e.g., McDonnell Douglas Corp. v. NASA, 981 F. Supp. 12 (D.D.C. 1997) (requiring the release under FOIA of a requested contract, including unit prices); Martin Marietta Corp. v. Dalton, 974 F. Supp. 37 (D.D.C. 1997) (denying plaintiff’s reverse FOIA case seeking to prevent the release of contract unit prices); McDonnell Douglas Corp. v. NASA, 895 F. Supp. 316, 318 (D.D.C. 1995) (requiring the release of contracts and unit prices); Racal-Milgo Government Systems v. Small Business Administration, 559 F. Supp. 4, 6 (D.D.C. 1981) (release of contract and unit prices under FOIA is a cost of doing business with the Government); Chemical Waste Management, Inc. v. O’Leary, No. CIV.A.94-2230, 1995 WL 115894 (D.D.C.

11. Although UPS is willing to have price terms removed, it does not agree that prices for postal (or other) services provided by the Postal Service are confidential. In particular, UPS disagrees with the Postal Service’s attempt to equate the prices it charges with the “prices of private retailers.” Objection at 15. The Postal Service stands on a different footing from private retailers because (1) it is a government agency charged with serving the public interest, and (2) it is subject to the requirements of the Postal Reorganization Act. See National Western Life Ins. Co. v. United States, supra, 512 F. Supp. at 462.

Feb. 28, 1995) (allowing the release under FOIA of subcontract and subcontract prices); AT&T Info. Sys. Inc. v. GSA, 627 F. Supp. 1396 (D.D.C. 1986) (allowing the release under FOIA of proposals, including pricing information). If UPS may obtain these documents under FOIA, it certainly is entitled to them here in discovery.

In short, the Postal Service should produce all of these documents.

Interrogatory UPS/USPS-5(f). The Postal Service acknowledges that it has responsive documents consisting of (a) summaries of surveys of customers related to their experiences with PostE.C.S., and (b) reports, studies, and analyses of the market in which PostE.C.S. competes. The Postal Service's assertion (Objection at 16) that direct comments from customers regarding PostE.C.S. and, for example, customers' reasons for using PostE.C.S. and their satisfaction with it "have nothing to do with" determining the nature of PostE.C.S. simply lacks credibility.

These documents are undoubtedly highly informative with respect to the postal character of PostE.C.S. and the demand-side substitutability of PostE.C.S. for other services. In fact, documents responsive to this interrogatory may well be the best evidence of how users perceive the nature of PostE.C.S. and of the substitutability between PostE.C.S. and other services, both of which are key factors in determining whether PostE.C.S. constitutes a postal service.

Again, UPS has already agreed that it will accept this material subject to a protective order. Thus, there should be no concerns of compromising any confidentiality this material may have.

Interrogatories UPS/USPS-15, 16, and 17. These interrogatories request actual information on the extent to which users view PostE.C.S. as a substitute for other

postal services. It is highly relevant to the extent to which PostE.C.S. services have already been substituted for postal services. Such evidence will indicate whether and to what extent PostE.C.S. and postal services are functionally and economically interchangeable. The Postal Service has identified responsive evidence, suggesting that its customers have already spoken on this very question.

The identification of customers is not requested, so concerns about the competitive sensitivity of this information are misplaced. Thus, there is no reasonable ground for objection to these interrogatories.

Interrogatory UPS/USPS-14. This interrogatory requests all contracts between the Postal Service and foreign posts concerning PostE.C.S. The Postal Service has asserted that PostE.C.S. falls outside the Commission's jurisdiction because "It is a global service." Motion to Dismiss at 16. In order to test this assertion, UPS seeks -- as the Commission has previously sought -- production of the governing documents between the Postal Service and foreign entities which the Postal Service mentions in making this assertion. The terms of those agreements are highly relevant to the Postal Service's claim, and to the extent to which PostE.C.S. is a domestic service.

The Postal Service objects based almost entirely on the sensitivity of certain licensing arrangements in the documents. It fails to acknowledge that UPS has explicitly excluded such Technical Materials from similar interrogatories. UPS is also willing to do so here.

As previously shown, contracts with government agencies are public documents. Nevertheless, UPS has agreed to accept these documents pursuant to a protective order.

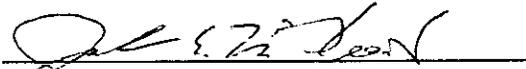
CONCLUSION

The Postal Service's blanket refusal to produce any of the requested information -- including information which it agrees is relevant and to which it has interposed no specific objection -- speaks volumes about the real reasons for its objections. In order to avoid further delay, UPS has bent over backwards to attempt to allay any arguably legitimate concerns about these discovery requests, even to the point of volunteering when the requests were served to accept certain non-sensitive documents pursuant to a protective order. The Presiding Officer should not countenance the Postal Service's blatant stone-walling.

WHEREFORE, United Parcel Service respectfully requests that the Presiding Officer grant the Motion to Compel and order the United States Postal Service to provide the information and documents requested in interrogatories UPS/USPS-1

through UPS/USPS-7 (except 5(g)) and UPS/USPS-9 through UPS/USPS-20 within seven days of the date of the Presiding Officer's Ruling.

Respectfully submitted,



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Dated: June 8, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

Nicole P. Kangas
Nicole P. Kangas

Dated: June 8, 1999
Philadelphia, PA

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BEFORE THE
POSTAL RATE COMMISSION

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MAY 14 12 57 PM '99
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OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS
OF UNITED PARCEL SERVICE TO
UNITED STATES POSTAL SERVICE
(UPS/USPS-1 THROUGH UPS/USPS-24)
(May 14, 1999)

Pursuant to Sections 25 and 26 of the Commission's Rules of Practice, United Parcel Service ("UPS") hereby submits the following interrogatories and requests for production of documents to the United States Postal Service ("Postal Service").

Without conceding the confidentiality of the information involved, UPS is willing to accept information or documents responsive to the paragraphs marked by an asterisk under the terms of a protective order in the form attached to UPS's separate motion for a protective order filed simultaneously with these discovery requests.

For the purpose of these discovery requests, the term "Technical Materials" means software license provisions, development of customs software, license fees and payment, software provider support and maintenance, warranty, indemnity, proprietary computer code, descriptions of proprietary computer codes, functional requirements of software, software test plans, and proprietary software integration plans, and similar technical information.

UPS/USPS-1. (a) What was the date that PostECS was first offered to any customer or potential customer?

(b) Which Postal Service departments, divisions, or other units were or are involved in developing, implementing, providing, and offering PostECS service?

(c) Describe all of the functions and responsibilities of each of the Postal Service departments, divisions, or units which play, or have played, any role in either the development, implementation, provision, or sale of PostECS.

UPS/USPS-2. What is the total number of PostECS transactions that have taken place to date?

UPS/USPS-3. Of the total number of PostECS transactions that have taken place to date, what proportion involved:

(a) both a sender located in the United States and a recipient located in the United States;

(b) a sender located in the United States and a recipient not located in the United States;

(c) a sender not located in the United States and a recipient located in the United States?

UPS/USPS-4. (a) Provide the number of PostECS transactions where the sender was located in the United States and the message was left for the recipient to retrieve on a server located in the United States.

(b) Provide the number of PostECS transactions where the sender was located in the United States and the message was left for the recipient to retrieve on a server located outside the United States.

(c) Provide the number of PostECS transactions where the sender was located outside the United States and the message was left for the recipient to retrieve on a server located in the United States.

(d) Provide the number of PostECS transactions where the sender was located outside the United States and the message was left for the recipient to retrieve on a server located outside the United States.

UPS/USPS-5. Provide all documents (other than Technical Materials) referring or relating to PostECS, including but not limited to:

(a) Promotional materials, coupons, advertisements, solicitations, and other similar items (the names of customers or potential customers need not be provided);

(b) Instructions to Postal Service or contractor personnel involved in selling, promoting, providing, or answering inquiries concerning, PostECS;

(c) Motivational tools, training materials, and any other similar materials for Postal Service or contractor personnel;

(d) Communications sent to any customers or potential customers, by mail or by any other form of delivery, including by wholly electronic means (the names of customers or potential customers need not be provided);

*(e) Plans for the future marketing of PostECS;

*(f) Any surveys of customers or potential customers or market studies concerning PostECS; and

(g) Plans for the future provision of PostECS.

UPS/USPS-6. Provide all training manuals or materials (other than Technical Materials) used or prepared by or for the Postal Service regarding PostECS.

UPS/USPS-7. Provide the full job titles, job descriptions, and all other duties, whether related to PostECS or not, performed by Postal Service employees who either (a) solicit customers or potential customers of PostECS, (b) are involved in answering inquiries concerning PostECS, (c) provide or participate in providing PostECS (including performing any functions related to any hardware, software, equipment, or other devices used in providing PostECS), (d) handle complaints about PostECS, or (e) handle billing for PostECS.

UPS/USPS-8. If PostECS were provided as a stand-alone service, at the present time would its:

- (a) revenues equal its costs, or
- (b) revenues exceed its costs, or
- (c) costs exceed its revenues?

UPS/USPS-9. Is PostECS ever offered in conjunction with the provision of, or in conjunction with offers to provide, any postal services? If so, provide all documents relating to such offers or transactions (the names of customers or potential customers need not be provided).

UPS/USPS-10. Provide all proposals, bids, solicitations, and advertising for PostECS provided to customers or potential customers of PostECS (the names of customers or potential customers need not be provided).

UPS/USPS-11. Provide all contracts or agreements for PostECS concluded with customers (the names of customers need not be provided).

UPS/USPS-12. Provide all marketing materials, including all descriptions to employees and all instructions to employees, referring or relating to PostECS.

*UPS/USPS-13. Provide all memoranda, studies, reports, analyses, and recommendations (other than Technical Materials), whether prepared by the Postal Service or by a consultant to or a contractor of the Postal Service, on whether the Postal Service should provide PostECS.

*UPS/USPS-14. Provide all contracts or agreements between the Postal Service and any other entity concerning PostECS, including all agreements between or among the Postal Service, La Poste, Canada Post Corporation, and International Post Corporation.

UPS/USPS-15. Have any Postal Service customers substituted the use of PostECS for the use of any hardcopy mail services? If so, provide all data or other information (other than the names of customers) concerning such situations.

UPS/USPS-16. Has the volume of Express Mail, Priority Mail, or any other postal service used by a particular Postal Service customer declined after that customer began to use PostECS? If so, provide all data or other information (other than the names of customers) concerning such situations.

UPS/USPS-17. For every PostECS customer, provide separately the volume of Express Mail, of Priority Mail, of any other type of mail, and of PostECS transactions (a) for the one year period before the customer began using PostECS service, and (b) separately, for the period since the customer started using PostECS. (There is no need to identify customers).

UPS/USPS-18. Does the Postal Service ever provide, or has it ever provided, hardcopy proof of delivery of a PostECS message or document? If so, provide the form of all such proofs of delivery.

UPS/USPS-19. Is the provision of PostECS an effort by the Postal Service to counteract the Postal Service's concerns about declining use of hardcopy mail due to the use of faxes, e-mail, or any other services that do not involve hardcopy delivery?

UPS/USPS-20. (a) Provide the number of United States users licensed to use PostECS.

(b) Is it possible for a United States user licensed to use PostECS to originate transactions from (i) more than one location, (ii) anywhere in the United States, (iii) in the United States and also from another country?

UPS/USPS-21. Provide the total costs of PostECS from the time it was first proposed to date. Provide all underlying source materials, data, and workpapers used to generate this figure.

UPS/USPS-22. (a) Break down the total cost figure provided in response to UPS/USPS-21 into labor, materials, advertising, administrative, and all other costs. Provide all underlying source materials, data, and workpapers used to prepare the response to this interrogatory.

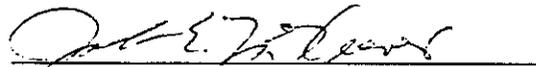
(b) For "all other costs," specify by category any significant costs omitted from the breakdown sought in paragraph (a), above. Provide all underlying source materials, data, and workpapers used to prepare the response to this interrogatory.

(c) Break down the total cost figure provided in response to UPS/USPS-21 into the finest disaggregation possible.

UPS/USPS-23. Provide the total costs of developing, implementing, and providing PostECS.

UPS/USPS-24. Provide the total revenues derived by the Postal Service from PostECS service.

Respectfully submitted,



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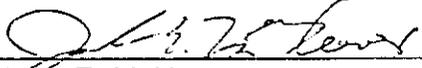
and

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Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.



John E. McKeever

Dated: May 14, 1999
Philadelphia, PA