

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

REQUEST TO ADD
PRIVATE ADDRESS FORWARDING
TO THE MARKET DOMINANT PRODUCT LIST

Docket No. MC2013-60

**REPLY OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF PETITIONER SEEKING ORDER AUTHORIZING DISCOVERY**
(October 28, 2013)

The United States Postal Service hereby submits its reply to Petitioner's Motion for Disclosure of Related USPS Documents (October 21, 2013).¹ For the reasons explained below, the motion should be denied.

On October 23, 2013, under the terms of Order No. 1858, the Commission modified the procedural schedule in this docket by extending the original October 16, 2013 deadline for filing initial comments to November 18, 2013; and by extending the original November 13, 2013 deadline for filing reply comments to December 20, 2013.

Sometime after December 20th, the Commission will assess whether the proposed modification to the Mail Classification Schedule is consistent with the position of the Postal Service, and then determine which procedural option in 39 C.F.R. § 3020.55(b) to exercise, including rejection of the Petitioner's Request. In considering its options under Rule 55(b), the Commission must assess, *inter alia*, the limits of its role under section 3642 to add new products to the Mail Classification Schedule (MCS) in light of the grant of primary authority in section 403(a) to postal management in the planning and development of postal services to offer to the public. In doing so, the

¹ Hereinafter, Petitioner's Motion for Discovery. The motion is dated October 18, 2013, but bears an October 21, 2013 filing date stamp.

Commission should take care not to impose upon the Postal Service any obligation to plan or develop any product or service currently not in existence, especially if it has not concluded that the absence of that product from the MCS contravenes a requirement or policy of Title 39 United States Code.²

Petitioner's Motion for Discovery asks the Commission to immediately institute proceedings to consider the merits of his Private Address Forwarding classification proposal under Rule 55(c) by ordering discovery under Rule 55(d). In support of his motion, Petitioner makes several assertions that compel a rejoinder.

For instance, Petitioner alludes to the Comments of the United States Postal Service in Response to Notice and Order Concerning Request to Add Private Address Forwarding to the Market Dominant Product List (October 16, 2013) and argues that:

The substance of the USPS' Reply was founded in very large part of [sic] the feasibility of my proposal. The USPS' significant history of having already deliberated the feasibility, priority, demand, etc., . . . [of the Private Address Forwarding concept] has clear and immediate relevance to this proceeding.

Petitioner's Motion for Discovery at 2. Petitioner appears to have misread the USPS Reply to Order No. 1858. At pages 2-4 of that Reply, the Postal Service reveals that product concepts similar to Private Address Forwarding (PAF) have been conceived internally, and that all product concepts compete for internal financial, analytical and developmental resources and consideration by postal management. From there, it appears that Petitioner has jumped to the conclusion that the Postal Service has analyzed, deliberated and/or determined the operational feasibility, cost and market demand for a PAF-like product.

² The Postal Service distinguishes such circumstances from one in which a basis exists for the Commission to conclude that the Mail Classification Schedule should be modified to correct for undue or unreasonable discrimination or preference, within the meaning of 403(c).

So that the Commission is clear, the Postal Service takes this opportunity to reiterate that forms of the Private Address Forwarding product concept, like many others over the years, have been conceived by and subjected to varying degrees of brainstorming among headquarters personnel. However, to-date, no determination has been made to commit capital and/or personnel resources to a cross-functional feasibility analysis that might lead to a decision to further explore developing any PAF-like concept into a product.

At page 2-7 of its October 16th Reply to Order No. 1858, the Postal Service summarily identifies some of the issues that would likely be examined as part of a serious product feasibility review.³ In doing so, the Reply acknowledges at pages 2-3 what is already a matter of public record, that the Postal Service has taken action to protect its intellectual property rights in similar, internally generated product concepts. The patent referenced at pages 2-3 of the Reply proves that a similar product concept is more than a decade old. The *Digital License Plate* concept discussed in fn. 5 of the Reply is evidence that a form of the concept is presently under consideration.

It appears from Petitioner's Motion for Discovery that these revelations have given rise to *hope* that the Digital License Plate concept may have achieved elevated status in the competition for scarce financial, analytical and developmental resources at postal headquarters. However, when read objectively, the October 16th Reply offers no basis for concluding that the concept has gained any such traction internally.

Conceptual brainstorming should not be mistaken for cross-functional review that seeks to resolve operational feasibility, customer demand, information security or privacy

³ To avoid any further misinterpretation, it should be understood that this summary of issues was not generated in connection with any actual feasibility review, but solely for purposes of the October 16th Reply to Order No. 1858.

concerns. Petitioner's assertions at page 2 of his discovery motion that the Postal Service has "already deliberated" the matters he lists or that it "has already evaluated similar proposals" as the result of internal cross-functional feasibility review appear to be the product of an overly enthusiastic reading of the Postal Service's October 16th Reply.

At pages 2-3 of his Motion for Discovery, Petitioner provides a list of five enumerated discovery requests. In the Post Script on page 3 of his Motion, Petitioner acknowledges that they also have been submitted to the Postal Service in the form of a request for records under the Freedom of Information Act, 5 U.S.C. § 552. In light of the very preliminary posture of this docket, considerations of judicial economy should compel the Commission to decline to permit discovery until such time as a threshold determination is made under Rule 55, and the Commission has decided whether there will be further proceedings in which formal discovery might serve some purpose in its resolution of Petitioner's Request. Accordingly, Petitioner's motion seeking to initiate discovery should be denied.

In the meantime, Petitioner is free to pursue his request for access to records under the terms of the Freedom of Information Act.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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