

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Request to Add Private Address Forwarding
to the Market Dominant Product List

Docket No. MC2013-60

ORDER DENYING MOTION FOR DISCLOSURE

(Issued November 5, 2013)

I. INTRODUCTION

On September 18, 2013, Petitioner Sai (Petitioner) filed a request with the Commission, asking that it add a proposed product, Private Address Forwarding (PAF), to the Mail Classification Schedule (MCS) as a market dominant special service.¹

On October 16, 2013, the Postal Service submitted its comments on the proposal.² In its Comments, the Postal Service contends that the Commission should reject the proposal to amend the MCS. Comments at 1. It states that the underlying concept behind the proposal has been independently under consideration by the Postal

¹ Request to the Postal Regulatory Commission under 39 U.S.C. 3642 and 39 C.F.R. 3020.50 to add Private Address Forwarding to the Mail Classification Schedule, September 18, 2013 (Request).

² 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 (Comments)

Service. *Id.* at 2. The Postal Service points to three intellectual properties that it owns: (1) a patent that it filed in 2001 (U.S. Patent No.; 7,295,997), (2) a patent application for “Mail My Way,” and (3) a trademark application for “Digital License Plate.” *Id.* at 2-3. It asserts that there is common ground between Petitioner’s proposal and the concepts contained within the Postal Service’s intellectual property. *Id.* at 3.

II. MOTION FOR ORDER FOR DISCLOSURE

On October 21, 2013, Petitioner filed a motion asking the Commission to order the Postal Service to produce all documents relating to proposals similar to his PAF proposal.³ Specifically, Petitioner asks that the Postal Service be ordered to produce:

1. investigations of the ‘availability of technology, operational feasibility, associated costs, potential demand marketability, [and/or] policy implications’ of such proposals;
2. the ‘direction and/or prioritization of pre-decisional product development investigations’ of such proposals;
3. feasibility or technical standards for record storage systems for such proposals and/or for Post Office Box holder identities;
4. ‘procedures in place that protect the identities and street addresses of individuals’ and associated ‘records systems’;
- and 5. the ‘relative rankings of DLP’ and other such proposals with respect to unrelated proposals contemplated by the USPS.

Motion at 2-3.⁴ Petitioner contends that Postal Service’s deliberations on proposals similar to his PAF proposal are relevant to the present proceedings and will be informative for both the Commission and third parties. *Id.* at 2.

³ Petitioner’s Motion for PRC Order for Disclosure of Related USPS Documents, October 21, 2013, at 2 (Motion).

⁴ Petitioner also states that he has filed a request with the Postal Service, pursuant to the Freedom of Information Act, for the same records he seeks in these proceedings. *Id.* at 3.

The Postal Service filed an answer opposing the Motion on October 28, 2013.⁵ Reply at 4. It contends that considerations of judicial economy should compel the Commission to decline to permit discovery until it has made the determination that there will be further proceedings on this docket. *Id.* (citing 39 C.F.R. § 3020.55).

On October 28, 2013, Petitioner filed a response to the Postal Service's Reply.⁶ Petitioner states that he is seeking existing records that pertain to proposals related to PAF and which may be relevant to a determination as to whether his proposal complies with the statutory criteria, as expressed in 39 U.S.C. §§ 3642(b), 3622(b,c), 3691(b,c), and 3641(b). Response at 3-4. Petitioner contends that such documents should be publicly disclosed "well before the deadline for reply comments" so that the public and the Commission can independently assess those statutory criteria and concerns that the Postal Service raises in its Comments. *Id.* at 4. He states that the Commission has the implied power to order document production when it determines whether to accept a proposal pursuant to section 3642(a). *Id.*

III. COMMISSION ANALYSIS

Section 3642(a) provides a means whereby the Commission may, upon the request of a user of the mails, add new products to product lists in the MCS. The Commission's rules require that it review such requests, the Postal Service's reply, and any public comment to determine whether the proposal complies with applicable statutory requirements and the Commission's rules, and whether the proposal is consistent with the position of the Postal Service. 39 C.F.R. § 3020.55. The Commission may approve the request, reject it, institute further proceedings, or direct other action. *Id.* In the event that the Commission institutes further proceedings, it is required to schedule a merits conference, and on conclusion of the conference, issue a ruling that provides for a period of discovery, schedules a hearing on the record,

⁵ Reply of the United States Postal Service to Motion of Petitioner Seeking Order Authorizing Discovery, October 28, 2013 (Reply).

⁶ Petitioner's Response to USPS' Opposition to Discovery, October 28, 2013 (Response).

explains the reasons for not going forward with formal proceedings, or directs other action. 39 C.F.R. § 3020.56.

The Commission's rules do not provide for discovery prior to determining whether the proposal complies with statutory and regulatory requirements and is consistent with the position of the Postal Service. However, the rules do allow for a period of discovery following that determination. By creating a two-step process, the rules permit the Commission to first make an initial determination on the proposal before taking further action if deemed appropriate. Under these procedures, the Commission acts as a gatekeeper, making an initial determination on the proposal based on the parties' filings before finding, if appropriate, a need for further action, *e.g.*, permitting discovery.

Accordingly, the Motion is denied as premature.

It is ordered:

Petitioner's Motion for PRC Order for Disclosure of Related USPS Documents, filed October 21, 2013, is denied.

By the Commission.

Shoshana M. Grove
Secretary