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POSTAL RATE COMMISSION  
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UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

RESIDING OFFICER'S  
RULING NO. C99-1/14

Complaint on Post E.C.S.

Docket No. C99-1

PRESIDING OFFICER'S RULING DIRECTING PRODUCTION  
OF CERTAIN POSTAL SERVICE DOCUMENTS RESPONSIVE  
TO DISCOVERY REQUESTS FOR IN CAMERA INSPECTION

(February 7, 2000)

Complainant United Parcel Service has directed several discovery requests to the Postal Service that seek production of a variety of documents relating to Post E.C.S. service and the circumstances under which it is being provided. The Service has objected to these requests on the grounds of irrelevance, commercial sensitivity, and other claims of privilege.

Complainant submitted a motion to compel responses to these requests, which I considered in Presiding Officer's Ruling No. C99-1/9.<sup>1</sup> After reviewing the categories of documents sought in the interrogatories at issue, I reached the tentative conclusion that "at least some responsive documents are likely to contain material relevant to establishing the status of Post E.C.S. as a 'postal' or 'non-postal' service." *Id.* at 4. However, in order to clarify and focus the evidentiary status of responsive documents, I directed the Postal Service to prepare and submit a detailed list identifying the particular privileges claimed for responsive documents, prior to ruling on the pending motion to compel. *Id.* at 4-5, 11.

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<sup>1</sup> Presiding Officer's Combined Ruling on Outstanding Motions of United Parcel Service to Compel Responses by United States Postal Service to Interrogatories and Requests for Production of Documents, August 9, 1999.

The Postal Service complied by filing a response containing 13 pages of tabular listings containing claims of irrelevance and/or privileges invoked for some 98 responsive documents or document categories.<sup>2</sup> As Ruling No. C99-1/9 also provided, Complainant exercised its opportunity to submit a response to the Service's detailed list.<sup>3</sup> In the case of some categories of responsive documents, UPS states its willingness to withdraw its earlier discovery request, without prejudice. Response at 2, 6-7, 8-9. With respect to the remaining documents, Complainant argues variously that they should be produced outright, in redacted form, or under an appropriate protective order.

In Order No. 1283, issued January 28, the Commission resolved the controversial issue of protective conditions appropriate for application to relevant but sensitive information to be produced in this proceeding. In addition to adopting a uniform set of conditions to be used in appropriate instances, the Commission discussed the variety of tools available to the Presiding Officer for making, and acting upon, an assessment of the balance between relevance and sensitivity without compromising the arguably sensitive aspects of the information in controversy. *Id.* at 3-4. One valuable tool available for implementing this assessment is examination and consideration of such information under an *in camera* order, as provided in § 31a of the rules of practice (39 C.F.R. § 3001.31a).

Section 31a authorizes Presiding Officers to order documents or oral testimony offered in evidence to be placed *in camera*, "but only in those unusual and exceptional circumstances when good cause is found on the record[.]" 39 C.F.R. § 3001.31a. In

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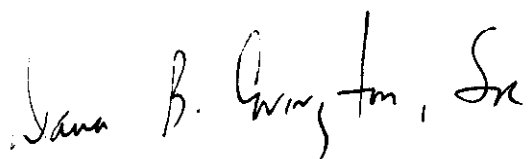
<sup>2</sup> United States Postal Service Provision of Descriptive List of Responsive Documents and Associated Privileges Pursuant to Presiding Officer's Ruling No. C99-1/9, August 30, 1999. This filing lists documents responsive to most of the UPS interrogatories at issue individually, but provides a categorical description of documents responsive to Interrogatory UPS/USPS-5(d), as allowed in Presiding Officer's Ruling No. C99-1/12.

<sup>3</sup> Response of United Parcel Service to the United States Postal Service's Privilege Log, September 9, 1999.

the pending controversy, Complainant—a self-declared competitor in the market in which Post E.C.S. service apparently is being offered—seeks documentary materials which it may wish to proffer in support of its case-in-chief against the Postal Service. In my view, these are unusual and exceptional circumstances involving information of a very high degree of potential sensitivity. Accordingly, I conclude that the appropriate disposition of this pending discovery dispute justifies provision of the documents still in controversy by the Postal Service for *in camera* inspection. Following my examination of these documents, I shall rule on the extent to which, and any special conditions under which, they should be disclosed.

#### RULING

1. The United States Postal Service shall provide all documents listed or categorized in its Descriptive List of Responsive Documents, filed August 30, 1999, except for those documents or categories for which Complainant explicitly withdrew its request in its Response of September 9, 1999, for *in camera* inspection by February 22, 2000.



Dana B. Covington, Sr.  
Presiding Officer