

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

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POSTAL RATE COMMISSION
OFFICE OF THE CLERK

COMPLAINT ON POST E.C.S.

Docket No. C99-1

**UNITED STATES POSTAL SERVICE
RESPONSE TO P.O. RULING NO. C99-1/14
AND MOTION FOR ISSUANCE OF TENTATIVE RULING ON DISCLOSURE**

I. NOTICE OF FILING

On February 7, 2000, the Presiding Officer issued P.O. Ruling No. C99-1/14. That Ruling requires the Postal Service to provide, for *in camera* inspection, all documents listed or categorized in its Descriptive List of documents, filed August 30, 1999, with the exception of those documents or categories for which Complainant explicitly withdrew its request for production in its Response to the United States Postal Service's Privilege Log, filed on September 9, 1999. In compliance with Ruling No. C99-1/14, the Postal Service is today filing the documents listed in its Descriptive List of documents filed on August 30, 1999.^{1,2} Due to volume of documents falling under the introductory subpart

¹ The list is current through August 30, 1999. To the extent further searches for documents are hereafter requested, the Postal Service objects on grounds of burden; further document production would, in any event be cumulative. Closure must, at some point, be reached; otherwise, this proceeding will continue in a perpetual state of burdensome discovery and motions practice.

² The Postal Service has marked the documents according to the numbering convention listed in the attachment to this Notice. Discovery requests that UPS has withdrawn without prejudice are identified as "withdrawn" on the attached list. For the general category, *i.e.*, the documents requested under the introductory subpart to interrogatory UPS/USPS-5, the Postal Service has adopted a special numbering convention corresponding to the category item number in the Postal Service's Descriptive List of Documents as shown in the attachment. For example, the tenth document in the 12th category listing (*i.e.*, client notes, research, communications regarding product

(continued...)

to question 5, a separate listing with corresponding objections for each document potentially responsive to the introductory subpart has not been prepared.³

The Postal Service reemphasizes that the burden involved in identifying, categorizing, photocopying, and marking the documents has been substantial. The effort has consumed considerable resources from attorneys, product managers, support staff, and counsels from other entities that have interests in the documents. With the exception of the handful of documents for which no objection was cited in the Postal Service's Descriptive List of Documents, the Postal Service reiterates that the documents produced are commercially sensitive and subject to numerous privileges.

II. SUPPLEMENTAL CATEGORY LISTINGS AND OBJECTIONS

Due to the number of potentially responsive documents, the Postal Service discovered in the course of preparing this filing that a number of additional privileges and grounds for objection apply to the documents. In addition, the Postal Service noticed that some of the documents did not fall neatly into the categories in the introductory subpart to question 5. The Postal Service therefore requests the opportunity to supplement its Descriptive List of documents as follows:

(...continued)

development) would be numbered as either "5Gen12-10" or "5G12-10". For all other subparts, documents are numbered according to the subpart of the interrogatory. For example, the 7th document listed under interrogatory UPS/USPS-5C would be numbered "5C-7".

³ If the Presiding Officer requests such a listing, the Postal Service will undertake to prepare it.

UPDATED CATEGORY LISTINGS

CATEGORY OR DOCUMENT	UPDATED INFORMATION
5G1	Includes consultant strategy meeting objectives and agenda
5G5	Includes e-mail messages and other forms of communication
5G6	Includes e-mail messages and other forms of communication. Includes summaries of meetings with prospective customers
5G7	Includes account information from foreign posts
5G11	Contains proprietary consultant reports on technology assessments
5G19	Includes Y2K Freeze Exception Request
5G22, 5G23	Includes communications from vendors for work to be performed in connection with Post E.C.S.
5G24	Delete category; no responsive documents identified
5G28	Includes other information about foreign post activity
5C-20	Add new item: "Tumbleweed Post ECS for Trainers"
5DW-1	Includes e-mail messages and other forms of communication
14-2	Service Provider Agreement (USPS copy lacks all signatures)

SUPPLEMENTAL OBJECTIONS⁴

CATEGORY OR DOCUMENT	SUPPLEMENTAL OBJECTIONS
5G7	Contains commercially sensitive customer information of foreign posts.
5G8	Deliberative process privilege for predecisional slide presentations; some documents contain the commercially sensitive information of foreign posts
5G10	Draft documents containing predecisional strategic plans not approved by management; all documents are commercially sensitive and subject to deliberative process privilege
5G12	Deliberative process privilege; contains commercially sensitive and trade secrets of USPS, foreign posts, and private vendors
5G18	Trade secrets and proprietary information of the USPS, International Post Corporation, and foreign posts; deliberative process privilege
5G19	Deliberative process privilege

⁴ These objections supplement those objections listed in the Postal Service's Descriptive List of Documents filed on August 30, 1999. The Postal Service does not repeat the objections raised in that document here.

5G20	Deliberative process privilege. Contains trade secrets and proprietary information of private vendors, USPS, and International Post Corporation.
5G21	Contains proprietary advertising plans. Contains draft and unapproved materials subject to the deliberative process privilege. Contains predecisional documents of foreign posts and software vendors.
5G25	Contains commercially sensitive business plans and other sensitive predecisional communications subject to deliberative process privilege; contains trade secrets and proprietary information of USPS, foreign posts, and International Post Corporation
5B2	Contains commercially sensitive information of foreign posts
5C-2, 5C-18, 5C-20	Contains commercially sensitive and proprietary training materials of private vendor
5D-1	Contains individual name and address information
5F-7	Contains confidential information of private vendor
13-1, 13-2	Contains predecisional deliberations subject to deliberative process privilege
14-1, 14-2	Contains the proprietary and confidential information of foreign posts, software vendor, and International Post Corporation. The Postal Service also withdraws its attorney work product and attorney client privilege objections related to these documents.

III. MOTION FOR ESTABLISHMENT OF PROCEDURES

The Postal Service also moves for the establishment of procedures relating to disclosure. In particular, the Postal Service requests that once the Presiding Officer has completed the *in camera* inspection, a preliminary or tentative ruling be issued identifying the documents that are to be disclosed either publicly or under protective conditions, and, if different protective conditions are to be used for different classes of documents, the protective conditions proposed for each class. Because of the sheer volume of documents involved, and the fact that there are multiple outside entities that have an interest in many documents that are sensitive commercially, it is critical that

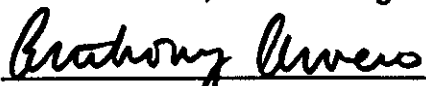
key stakeholders who have proprietary or commercial interests in the information contained in the documents, including, *inter alia*, Canada Post Corporation, Tumbleweed Communications Corporation, La Poste, and the International Post Corporation, be granted the opportunity to express their views, directly or indirectly, regarding proposed forms of disclosure *before* the documents are made available to the public or representatives of the participants, whether under protective conditions or otherwise. This measure will provide the key stakeholders and the Postal Service the opportunity to inform the Presiding Officer of the risk of harm that could be caused by release of the documents. It would also enable the stakeholders to comment on the need for the use of protective conditions or redactions for commercially sensitive information. Further, this measure will ensure that the Presiding Officer makes informed determinations on the status of each document before the risk of competitive harm to a stakeholder becomes imminent. In addition, the Postal Service requests that once the *in camera* inspection is completed, the documents be returned to the Postal Service.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Anthony Alverio
Attorney

ATTACHMENT

CATEGORY NUMBERING SYSTEM FOR DOCUMENTS

I. Interrogatory UPS/USPS-5 (introductory subpart):

5 Provide all documents (other than Technical Materials) referring or relating to Post E.C.S.:

Document Category	Document Numbers
Documents related to Project Progress and Strategy Meetings and Teleconferences, including agendas, schedules, minutes	Withdrawn (5G1)
Draft Agreements among USPS, foreign posts, IPC, and/or Tumbleweed and related communications	Withdrawn (5G2)
Client communications, plans and reports concerning data security issues	Withdrawn (5G3)
Various email messages and other communications regarding account creation, implementation and management process and procedures	Withdrawn (5G4)
Various email messages and other communications regarding billing process and procedures	Withdrawn (5G5)
Various email messages and other communications concerning customer relations and sales issues	5G6-1 to 5G6-32
Status reports concerning USPS's and foreign posts' customer activity, service usage, and telemarketing results	5G7-1 to 5G7-35
Internal PowerPoint presentations regarding project status and service features	5G8-1 to 5G8-9
PowerPoint presentations to postal conference attendees	5G9-1 to 5G9-2
Communications and draft creative for proposed internal and external public relations activity	5G10-1 to 5G10-8
Draft specifications and other communications and consultant reports related to integration of Postal Service and vendor services	Withdrawn (5G11)
Client notes, research, communications regarding product development	5G12-1 to 5G12-48
Counsel's draft pleadings	Withdrawn (5G13)
Records of counsel's communications with clients regarding PostECS litigation, other litigation-related communications	Withdrawn (5G14)
Counsel's notes of conversations with representatives of foreign posts, IPC and/or Tumbleweed	Withdrawn (5G15)
Legal memoranda	Withdrawn (5G16)
Memoranda of attorney/client briefings	Withdrawn (5G17)

Obsolete or superseded sales and marketing plans (See 5e)	5G18-1 to 5G18-4
Communications and reports concerning project budgeting, planning and measurement and Y2K Freeze Exception Request	Withdrawn (5G19)
Documents concerning other Postal Service initiatives which tangentially refer to PostECS	5G20-1 to 5G20-34
Public Relations Marketing Communications	5G21-1 to 5G21-17
Communications and reports from vendors regarding product development issues	Withdrawn (5G22)
Task orders with, and communications from, vendors for support services related to PostECS	Withdrawn (5G23)
Cost estimates for hardware to be supplied in support of PostECS (no responsive documents identified)	Withdrawn (5G24)
Management briefing papers concerning PostECS activities and status	5G25-1 to 5G25-12
Documents concerning research of similar services and technologies in marketplace	5G26-1 to 5G26-27
Draft price lists and sales support information	5G27-1 to 5G27-2
Reports concerning demand for, and other information about, foreign posts' implementation of PostECS	5G28-1 to 5G28-2

II. Interrogatory UPS/USPS-5(a):

- a) Promotional materials, coupons, advertisements, solicitations, and other similar items (the names of customers or potential customers need not be provided);⁵

Document	Document Numbers
Solicitation letter directed to top officials 9/16/98	5A-1, 5A-2

III. Interrogatory UPS/USPS-5(b):

- b) Instructions to Postal Service or contractor personnel involved in selling, promoting, providing, or answering inquiries concerning Post E.C.S.;

⁵ Note that some responsive material, which consists of widely distributed or publicly available information, was provided in the Postal Service's partial response to interrogatory UPS/USPS-5(a), filed on July 20, 1999. This information is not duplicated here.

Document	Document Numbers
Tumbleweed Software Customer Visit Program 9/26/98	5B-1
"Request for Customers" memorandum to Business Customer Relations managers 9/17/98	5B-2
Post E.C.S. Customer Enrollment Plan draft document 9/98	5B-3
<i>Post E.C.S. Usage Generation Plan, February 1999.</i>	5B-4
<i>Post E.C.S. Know the Account Template, September 26, 1998</i>	5B-5
<i>Sales Strategies for Post E.C.S., September 1998</i>	5B-6
<i>Post E.C.S. Enrollment Strategy, October, 1998</i>	5B-7
Draft Account Management Plan 10/21/98	5B-8
PostECS Response Support Package 7/2/99	5B-9
PostECS telemarketing script (2 versions)	5B-10
PostECS Product Data Sheet (several versions)	5B-11
Hotline and Database Procedures 6/11/99	5B-12
PostECS Accounts Creation 5/21/99	5B-13
Establishing Group Accounts	5B-14
Lead Conversion and Customer Retention Plan	5B-15
PostECS Sales Call Report form	5B-16

IV. Interrogatory UPS/USPS-5(c):

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

Document	Document Numbers
Product Demo Script	5C-1
USPS PostECS Sales & Technical Workshop manual used in training on August 25-26, 1998	5C-2
Sample Applications PostECS 8/17/99	5C-3
PostECS Competitors 8/17/99	5C-4
PostECS Quick Reference Guide	5C-5
Customer Case Study presentation 8/17/99	5C-6
Driving Post E.C.S. Transactions, IPC meeting, November 1998	Withdrawn (5C-7)
Post E.C.S. for Trainers	Withdrawn (5C-8)
PostECS Hands-on Training Agenda 8/13/99	5C-9
Anatomy of a Sales Call 8/17/99	5C-10
PostECS Training Guide 5/21-22/98	5C-11
Sales Workshop 8/17/99	5C-12

Accelerated PostECS Training Course 5/6/98	Withdrawn (5C-11)
PostECS Sales Training Guide 5/6/98	5C-14
PostECS User's Guide (4 versions)	Withdrawn (5C-13)
PostECS Step-By-Step Guide to Receiving a PostECS Package Using a Netscape Browser (2 versions)	Withdrawn (5C-14) ⁶
PostECS Step-By-Step Guide to Sending a PostECS Package	5C-17
Sales Strategies for PostECS	5C-18
PostECS Demonstration Scheduling	5C-19
Tumbleweed Post ECS for Trainers	5C-20

V. Interrogatory UPS/USPS-5(d):

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);

Document Category	Document Numbers
Account welcome letters containing newly established account login and password information.	Withdrawn
Various e-mail correspondence and other forms of communications to establish meeting dates and times, meeting agendas, next steps, etc.	Withdrawn (5DW-1)
Various communications to customers or potential customers responding to questions, interest expressed, comments, acknowledgments, etc. regarding Post E.C.S. service	5D-1
Holiday greeting sent via flash technology during December, 1998 that reminded existing participants of Post E.C.S. and its benefits.	5D-2 (diskette)
Reminder message sent via flash technology to all participants alerting them of migration from Post E.C.S. version 1.5 to Post E.C.S. version 2.0. June, 1998.	5D-3
Various emails from the Post E.C.S. help desk responding to customer inquiries	Withdrawn
Various customized presentations to potential and actual customers	5D-4
Various statements of use/invoices directed to test participants.	5D-5
PostECS Test Participant Application Template	5D-6

⁶ This is a single item; it was numbered by UPS in Exhibit B to its Response to the USPS Privilege Log as items 16 and 17.

VI. Interrogatory UPS/USPS-5(e):

e) Plans for future marketing of Post E.C.S.

Document	Document Numbers
Creative Workplan For Print and Banner Ads 7/22/98	5E-1
Post E.C.S. pilot plan prepared by the Postal Service, Canada Post, and LaPoste;	5E-2
Media plans prepared by and for the Postal Service;	5E-3
Summary of IPC's marketing activities	5E-4

VII. Interrogatory UPS/USPS-5(f):

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

Document	Document Numbers
January 1999 Post Electronic Courier Service Post E.C.S. What Have We Learned	5F-1
February 9, 1999 Post E.C.S. Customer Feedback	5F-2
Survey Results - collected and tabulated by consultant for surveys administered at trade shows during September, 1998, October, 1997, and February, 1996.	5F-3
January 22, 1999 Post E.C.S. Market Feedback Confidential Memo to International Post Corporation (IPC) summarizing customer and potential customer feedback and the sales process to date.	5F-4
January 29, 1999 Canada Post Corporation (CPC) Electronic Services Marketing Post E.C.S. Demonstration & User Feedback Recordings – This document summarizes CPC customer feedback, comments and findings from a number of different sources such as sales calls, tradeshow, help desk and sales representative input.	5F-5
February 1, 1999 Post E.C.S. Initial Feedback, La Poste - This document summarizes feedback from La Poste customers as of the date drafted.	5F-6
PostECS Summary of Prospect and Customer Feedback 12/98	5F-7
PostECS Post Demo Questionnaire, and completed questionnaires.	5F-8

USPS Post ECS Customer Feedback Questionnaire	5F-9
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VIII. Interrogatory UPS/USPS-6:

All training manuals or materials (other than Technical Materials) used or prepared by or for the Postal Service regarding Post ECS.

Document

See list for 5(c).	
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IX. Interrogatory UPS/USPS-10:

All proposals, bids, solicitations, and advertising for PostECS provided to customers or potential customers or PostECS (the names of customers or potential customers need not be provided).

Document

Document Numbers

PostECS Overview 8/19/99	10-1
PostECS Overview 11/25/98	10-2
PostECS Security and Privacy 11/25/98	10-3
PostECS Information/Fact Sheet (6 versions)	10-4
PostECS 21 st Century Document Delivery System "Web Story" 3/29/99	10-5
"Here's Something About . . . PostECS"	10-6
Customer Service and Support	Withdrawn (10-7)
"Post ECS 30-day Free Trial" (2 versions)	10-8
Postal Service Product Web Page (www.usps.com)	10-9
PostECS print advertisement	10-10
See also responses to 5(a), 5(d).	

X. Interrogatory UPS/USPS-12:

Marketing materials, including all descriptions to employees and all instructions to employees, referring or relating to PostECS.

See responses to 5(a), 5(b), 5(c), and 10.

XI. Interrogatory UPS/USPS-13:

Memoranda, studies, reports, analyses, and recommendations on whether the Postal Service should provide Post E.C.S. (In footnote 8 of its Motion to Compel, UPS withdraws any request for "recommendations", but it seeks to compel analyses and factual material which underlie any recommendations.)


Document	Document Numbers
PostECS Business Proposition and accompanying memorandum 5/1/98	13-1
Powerpoint Presentation to Board of Governors 5/98	13-2
Portion of memorandum from counsel to clients.	Withdrawn
Portion of memorandum from counsel to Strategic Planning Committee.	Withdrawn
Portion of memorandum from counsel to clients.	Withdrawn
Portion of internal Law Department memo.	Withdrawn

XII. Interrogatory UPS/USPS-14. This interrogatory requests that the Postal Service provide "all contracts or agreements concerning PostECS, including all agreements between or among the Postal Service, La Poste, Canada Post Corporation, and International Post Corporation."

Document	Document Numbers
Software development and license agreement executed by International Post Corporation (IPC), Tumbleweed Software, Canada Post, the Postal Service, and LaPoste and exhibits and addenda to that instrument related to Post E.C.S.	14-1
Service Provider Agreement June 22, 1999 Tumbleweed, IPC, USPS, Canada Post and LaPoste (unsigned version in USPS records)	14-2

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Anthony Alverio

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February 22, 2000