

BEFORE THE  
POSTAL RATE COMMISSION

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COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

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ANSWER OF UNITED PARCEL SERVICE TO  
UNITED STATES POSTAL SERVICE MOTION FOR  
ISSUANCE OF TENTATIVE RULING ON DISCLOSURE  
(FEBRUARY 29, 2000)

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United Parcel Service hereby responds to the United States Postal Service Motion for Issuance of Tentative Ruling on Disclosure ("Motion"), filed on February 22, 2000. In its Motion, the Postal Service seeks to supplement its earlier Provision of Descriptive List of Responsive Documents and Associated Privileges Pursuant to Presiding Officer's Ruling No. C99-1/9 ("Descriptive List") and proposes another, new procedure by which "key stakeholders" and the Postal Service would comment yet again on the production of the documents being reviewed by the Presiding Officer.

**The Postal Service's Supplemental Category Listings and Objections**

On August 30, 1999, the Postal Service filed its Descriptive List. That filing contained an extensive number of categories of responsive documents and asserted objections to their production. Descriptive List, at 3-15. In its Motion, the Postal Service claims to have undertaken further review of these documents and now seeks to supplement the Descriptive List with "a number of additional privileges and grounds for objection" that it claims are applicable to the documents. Postal Service Motion, at 2.

It is far too late to make additional objections. In P.O. Ruling No. C99-1/14 (February 7, 2000), the Presiding Officer directed the Postal Service to 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." P.O. Ruling No. C99-1/14 (February 7, 2000), at 3. (emphasis added). The August 30, 1999, list was the product of extensive motions practice between the parties and was in fact not forthcoming until after five motions to compel were filed between June 8, 1999, and September 9, 1999. The Postal Service had more than enough time to complete its review prior to the issuance of P.O. Ruling No. C99-1/14 on February 7, 2000. It would be unfair to reopen this issue now, when it appears that resolution of this extended discovery dispute is finally near.

Furthermore, the descriptions of the "updated information" and "supplemental objections" are too vague to allow for adequate evaluation. The new descriptions include such items as "e-mail messages and other forms of communication," "other information about foreign post activity," and "communications from vendors for work to be performed." Motion, at 3. The generic objections include, without any explanation, "deliberative process privilege" and "commercially sensitive information." Id., at 3 and 4. These vague and conclusory assertions are not sufficient to permit the formulation of a response by UPS. Indeed, the Postal Service apparently does not contemplate any further involvement by UPS in the discovery debate.

The time for the Postal Service -- and others who may claim an interest -- to object to UPS's discovery requests is long gone. The Presiding Officer should reaffirm P.O. Ruling No. C99-1/14, limit the Postal Service to the objections raised in its August 30, 1999, Descriptive List, and, after review of the documents, determine which of these

relevant documents should be produced pursuant to protective conditions and which do not merit any such protection.

### **The Postal Service's Motion for Establishment of Procedures**

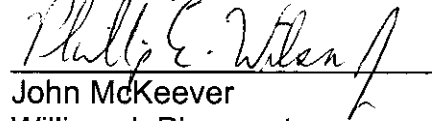
The Postal Service also proposes that, after the Presiding Officer's in camera inspection, the Presiding Officer issue a preliminary ruling identifying the documents that are to be disclosed either publicly or under protective conditions. Motion, at 4. The Postal Service argues that still another round of motions practice is necessary to afford those who have an interest in the documents at issue yet another opportunity to comment on the proposed manner of disclosure and asserted risk of harm resulting from disclosure. Id., at 4-5.

UPS submits that the Postal Service's proposal will do nothing more than cause further delay in what is already an overly protracted proceeding, without providing any additional benefits or safeguards. The net result of the Postal Service's proposal will be more delay. Other stakeholders have already had ample opportunity, had they chosen to avail themselves of it, to comment on these very same issues. Indeed, the Postal Service has consistently presented arguments on the stakeholders' behalf in opposition to UPS's discovery requests. See e.g., Objection of the United States Postal Service to United Parcel Service Interrogatories UPS/USPS-1-24 (May 25, 1999), at 9, 18-19; United States Postal Service Objection to United Parcel Service Interrogatories UPS/USPS-34-43 (July 6, 1999), at 2; United States Postal Service Objection to United Parcel Service Interrogatories UPS/USPS-44-45 (July 12, 1999), at 2; Objection of the United States Postal Service to Office of the Consumer Advocate Interrogatories OCA/USPS-8, 9 (in part), 10-14, 16 (in part), 17, 18 (in part) (July 16, 1999), at 2-6; United States Postal Service Objection to Office of the Consumer Advocate

Interrogatories OCA/USPS-19, 20 (a-b), 21, 23-26, 27 (b-d), 28-33 (September 7, 1999), at 8. Those who have failed to avail themselves of those earlier opportunities to express their views have clearly done so knowingly. They should not now be permitted to delay yet again the resolution of this case, especially when the Postal Service has demonstrated its ability and willingness to champion their cause. Since no benefits will result from following the Postal Service's approach, there is no reason to adopt it in lieu of proceeding as soon as possible to the completion of discovery and the merits of the case. Therefore, the procedure offered by the Postal Service is unnecessary and should be rejected.

WHEREFORE, United Parcel Service respectfully requests that the United States Postal Service's Motion for Issuance of Tentative Ruling on Disclosure be denied.

Respectfully submitted,



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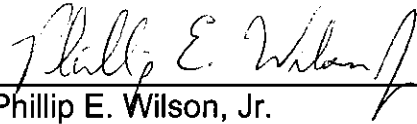
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document by first class mail, postage prepaid, in accordance with Section 12 of the Commission's Rules of Practice.

  
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Dated: February 29, 2000  
Philadelphia, Pa.

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