

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

Docket No. C99-1

**UNITED STATES POSTAL SERVICE
MOTION FOR CLARIFICATION AND PARTIAL RECONSIDERATION OF
PRESIDING OFFICER'S RULING NO. C99-1/16**

On July 12, 2000, the Presiding Officer issued P.O. Ruling No. C99-1/16, which addresses the objections of the Postal Service to the disclosure of a number of documents filed by the Postal Service for in camera inspection pursuant to P.O. Ruling No. C99-1/14. The ruling categorizes the documents into one of four groups: (1) irrelevant and returned to the Postal Service, (2) publicly available from the Docket Section in Commission Library Reference LR-PO-1, (3) available to participants under the terms of the protective conditions of Order No. 1287, and (4) returned to the Postal Service for redaction and subsequent refile with the Commission. With respect to the latter category, the Ruling directs that the Postal Service file the redacted documents on July 31, two weeks from July 17, the date on which the Commission returned the documents to the Postal Service for the redaction exercise. The Postal Service respectfully seeks clarification and partial reconsideration of the Ruling.

After now having had the opportunity to review the contents of the documents returned for redaction, the Postal Service seeks clarification on the status of these documents. In particular, the Ruling does not make clear what form of disclosure will apply to those documents whose contents are partially

redacted in accordance with the Ruling. Presumably, the documents would only be made available to the other participants under the protective conditions of Order No. 1287. This would be consistent with prior rulings, such as P.O. Ruling Nos. R97-1/46, 1/52, 1/60, and R2000-1/21, where the Presiding Officer limited, under protective conditions, access to studies commissioned by the Postal Service on the alternative delivery industry, notwithstanding the redaction of deliberative material from these documents. The same remedy is necessary here. Redaction alone will do nothing to protect the Postal Service's and its stakeholders' commercial interests, since the Ruling generally limits redaction to deliberative information. Thus, for example, the Ruling permits the Postal Service to redact from document no. 5G8-6 "analyses relating to potential, rather than actual, Postal Service electronic service offerings" Even if such information were redacted, however, the document would still contain proprietary and commercially sensitive information, such as the number of registered customers, the names of these customers, and the number of transactions. Similarly, document no. 5G12-5 contains nondeliberative assessments of vendor's software and software products. Document no. 5G18-3, which consists of a tri-post "pre-launch" plan, contains commercially sensitive and proprietary market analyses which would apparently not be eligible for redaction as "internal marketing and sales plans," which is the only category of information the Ruling permits be redacted from this document. The contents of this document, if disclosed, would enable competitors to appropriate for their own use the posts' market analyses, and assess the posts' competitive capabilities by revealing the

extent and depth of their understandings about the marketplace. These examples illustrate that even in redacted form, the documents will still contain commercially sensitive information, the disclosure of which could seriously impair the posts' commercial interests. The Postal Service accordingly requests that the Presiding Officer clarify that the documents returned to the Postal Service for redaction will be available, in their redacted form, only under the protective conditions of Order No. 1287.

The Postal Service also seeks partial reconsideration of the Ruling on three points. First, the Postal Service requests that the Presiding Officer permit the Postal Service to redact several additional categories of information, including:

- (i) Predecisional or commercial information of the foreign posts and the International Post Corporation (IPC);
- (ii) Statements about the foreign posts and IPC as they relate to the foreign posts' or IPC's products or markets;
- (iii) customer names;
- (iv) past or projected volume statistics for Post ECS or Electronic Postmark;
- (v) past or projected financial statistics and projections;
- (vi) past or proposed prices of Post ECS;
- (vii) vendor names and products; and
- (viii) estimates of expenses, and actual expenses, by the U.S. Postal Service and other stakeholders.

These categories of information do nothing to elucidate the issue of the nonpostal nature of Post E.C.S., and moreover, consist of sensitive business information of the Postal Service and the foreign posts.

Second, the Postal Service seeks reconsideration of the ruling that certain Canada Post documents be provided. Document no. 5G18-1, which is marked as "confidential" and "draft," is Canada Post Corporation's work product, and the statements made therein should not be attributed to the Postal Service. It is

therefore irrelevant, as its contents do not constitute the admissions of the Postal Service. The same reasoning also applies to document no. 5G18-3, the Pre-Launch Plan "[r]evised specifically for [Canada Post Corporation] by ES Marketing," and a document marked originally as PX2009E, the Pilot Overview, which is contained in document 5C-11. Document PX2009E and document 5G18-3 were prepared or edited by or for Canada Post, and are marked as "confidential." Both documents are based on a collaborative "tri-post" work product, prepared jointly by the Postal Service, Canada Post, and La Poste in 5G18-4. Document PX2009E and document no. 5G18-3 are cumulative, with the exception of any information that is specially tailored for Canada Post, which is irrelevant here. The Postal Service also requests that the Presiding Officer reconsider the relevance of document nos. 5G21-12 and -13, which were provided publicly in LR-PO-1. These documents consist of draft versions of a Canada Post Corporation press release, and are therefore irrelevant, as this proceeding relates to the Postal Service's Post E.C.S. product.

Finally, the Postal Service requests reconsideration of the time period within which it must file its response. The Postal Service has already begun the process of preparing redactions, but this process is time-consuming, as it requires coordination with responsible organizational units, and, in some cases, it may require consultation with external stakeholders. The Postal Service intends to proceed with redactions expeditiously, and expects to be able to file some documents very shortly after a ruling on the instant motion is considered. Other documents, which are more lengthy, or whose discoverable contents depend

more heavily on the outcome of this motion, will require more time. The Postal Service accordingly requests that it be given up to 20 days after the date of a ruling on the instant motion to file redacted versions of the documents, with the understanding that the Postal Service will attempt to file as many documents as possible prior to the end of the 20-day period.

CONCLUSION

WHEREFORE, the Postal Service requests that the Presiding Officer clarify the status of documents returned to the Postal Service for redaction and that the Presiding Officer reconsider P.O. Ruling No. R2000-1/16 as discussed above.

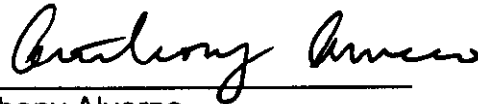
The undersigned counsel has sent a copy of this document to counsel for complainant via facsimile transmission.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

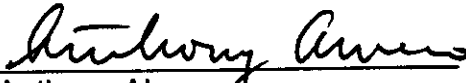
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CERTIFICATE OF SERVICE

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 Alverno

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July 25, 2000