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BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY
COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

RESPONSE OF UNITED PARCEL SERVICE TO
UNITED STATES POSTAL SERVICE MOTION FOR
CLARIFICATION AND PARTIAL RECONSIDERATION
OF PRESIDING OFFICER'S RULING NO. C99-1/16
(August 1, 2000)

Pursuant to Section 21(b) of the Commission's Rules of Practice, 39 C.F.R.

§ 3001.21(b), United Parcel Service hereby responds to the United States Postal Service Motion for Clarification and Partial Reconsideration of Presiding Officer's Ruling No. C99-1/16 (July 25, 2000) ("Postal Service Motion").

DISCUSSION

1. The Postal Service first requests clarification of the status of the documents returned to the Postal Service for redaction pursuant to Presiding Officer's Ruling No. C99-1/16 ("the Ruling"). Postal Service Motion at 1-3. In particular, the Postal Service requests that, even after redaction, those documents be produced only under protective conditions. *Id.*

Redaction on the one hand and production of documents under protective conditions on the other are two alternative ways of dealing with privileged materials. If the privileged material in a document is not relevant to the issues at hand while other material in the document is relevant, then redaction and subsequent production without

protective conditions is the preferred method of providing for the discovery of relevant material. On the other hand, if the relevant material itself is privileged, then the entire, unredacted document should be produced, albeit under protective conditions. The Postal Service is apparently seeking to have both methods applied at once. Its suggested approach should be rejected.

The Ruling itself apparently contemplates that the documents returned to the Postal Service for redaction would then, after redaction, be produced without protective conditions. For example, the Ruling notes that “it is appropriate to adopt measures designed to protect” documents containing privileged material, and then indicates that those measures “include the document’s release in redacted form, *or* limitation to access under protective conditions.” Ruling at 6 (emphasis added). See *also id.* at 8 (“Because of its highly sensitive nature, Document 5G8-6 shall be returned to the Service for redaction . . . and thereafter shall be produced. The *other* documents in the category shall be made available under the protective conditions attached to this ruling.”) (emphasis added). That is entirely appropriate. Thus, the Ruling should be clarified, but to make clear that the documents returned to the Postal Service for redaction should be made publicly available once the redaction process has been completed.

2. The Postal Service also seeks, once again, reconsideration of a discovery ruling in this proceeding. One must ask whether the Postal Service will ever accept a Presiding Officer’s ruling in this case. Given the extended history of the Postal Service’s repeated efforts to resist discovery, one can only conclude that the Postal Service’s primary goal is to delay this proceeding as long as possible.

In any event, the Postal Service belatedly asks permission to redact yet additional information from the documents which the Presiding Officer has already examined and ordered it to produce. UPS has repeatedly stated that it has no objection to the redaction of customer names. See Postal Service Motion at 3, ¶ (iii). Nor has UPS objected to the redaction of vendor names and products, or (at least at this stage of the proceeding) of “estimates of expenses, and actual expenses.” *Id.*, ¶¶ (vii) and (viii). Given UPS’s prior indications in this regard as well as prior discovery rulings, a request for reconsideration was hardly necessary, except to serve as a vehicle for still further delay.

Some of the other categories identified by the Postal Service -- “Predecisional or commercial information of the foreign posts and the International Post Corporation” (category i) and “Statements about the foreign posts and IPC as they relate to the foreign posts’ or IPC’s products or markets” (category ii), Postal Service Motion at 3 -- are described so vaguely that it is impossible to determine from the description alone whether the specific information addressed is truly privileged or not. The descriptions provided certainly are broad enough to encompass relevant material, which, of course, should not be redacted.

The Presiding Officer has already reviewed these documents and has ruled on what is and what is not privileged. The Postal Service certainly should not be given unilateral authority to redact anything it may consider to fit within these broadly and vaguely defined categories. Instead, the documents should be produced exactly how the Presiding Officer has already ordered them to be produced, *i.e.*, redacted as

instructed in the Ruling, or under protective conditions, or without redaction and not subject to protective conditions.

In short, except as to customer names, vendor names and products, and estimates of expenses and actual expenses (as to which reconsideration is not really necessary), the Postal Service's request to redact material other than that identified in the Ruling should be denied.

3. Similarly, the Postal Service's request that certain Canada Post documents not be produced at all should be rejected. The Postal Service asserts, yet again, that those documents are not relevant. It claims that they "do not constitute the admissions of the Postal Service." Postal Service Motion at 3-4.

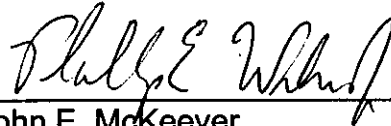
Whether the statements in these documents are or are not Postal Service admissions is not the question. The question is whether the documents contain relevant information. Certainly, a Postal Service admission on a relevant point should be produced in discovery. However, Postal Service admissions are not the only statements that are relevant to the issues in this case. Rather, how a product such as PostECS is viewed either by any of its providers (such as Canada Post) or by its users is highly relevant to whether or not it is, for example, a substitute for a service that is admittedly postal in nature.

Again, the Presiding Officer has already reviewed these documents and ruled on their disposition. The Postal Service's attempt to litigate over and over the discoverability of documents which the Presiding Officer has found to be relevant should be soundly rejected.

CONCLUSION

WHEREFORE, United Parcel Service respectfully requests that (1) the documents previously returned to the United States Postal Service for redaction as instructed in Presiding Officer's Ruling No. C99-1/16 should thereafter be made publicly available, (2) the Postal Service Motion should be granted with respect to its request to redact customer names, vendor names and products, and estimates of expenses and actual expenses, and (3) the Motion should be denied in all other respects.

Respectfully submitted,



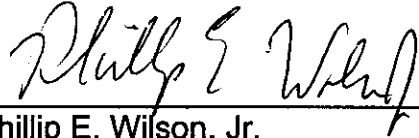
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Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

A handwritten signature in cursive script, reading "Phillip E. Wilson, Jr.", written over a horizontal line.

Phillip E. Wilson, Jr.

Dated: August 1, 2000
Philadelphia, PA