PRESIDING OFFICER'S
RULING NO. C99-1/19

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

Complaint on Post E.C.S. Docket No C99-1

PRESIDING OFFICER'S RULING GRANTING UPS MOTION TO COMPEL RESPONSES TO INTERROGATORIES BEARING ON LEGAL ASPECTS OF POST E.C.S. SERVICE

(Issued November 29, 2000)

Complainant United Parcel Service has directed two interrogatories to the Postal Service that concern legal aspects of the subject of the Complaint, Post E.C.S. service. Interrogatory UPS/USPS-50 asks whether it is the Postal Service's position that criminal statutes governing the mails, such as 18 U.S.C. §§ 1701 and 1735, apply to Post E.C.S. transactions, and similarly whether in the Service's view unauthorized interception of a Post E.C.S. message or document violates any federal statute relating to the mails. Interrogatory UPS/USPS-57 asks whether the Service sought the consent of the President to any of its Post E.C.S. arrangements or agreements with the International Post Corporation, Canada Post, or LaPoste, and whether it sought the President's consent to any of the rates or prices charged for Post E.C.S. service. The Postal Service objects to both interrogatories as irrelevant and calling for legal opinions or conclusions.

In its Motion to Compel,[1] UPS argues that UPS/USPS-50 is relevant because the Service's position on the applicability of criminal statutes governing the mails to Post

[1] Motion of United Parcel Service to Compel Answers to Interrogatories UPS/USPS-50, 52-54, and 57-58, September 9, 1999.

E.C.S.—whether correct or not—would be relevant to determining whether Post E.C.S. is itself mail. UPS also argues that § 26(c) of the rules of practice specifically contemplates that such interrogatories are not objectionable merely "because an answer would involve an opinion or contention that relates to fact or the application of law to fact...." UPS Motion at 1-2. With regard to UPS/USPS-57, UPS asserts that the interrogatory asks for facts, not legal conclusions, and that the relevance of those facts is established by 39 U.S.C. § 407. If the Postal Service has sought Presidential consent pursuant to § 407, UPS states that it may argue that this act constitutes an admission relevant to establishing the "postal" nature of Post E.C.S.; on the other hand, if the Service has not done so, and the Commission finds the Service to be "postal," UPS says it may argue that the failure to do so constitutes an admission relevant to establishing the domestic nature of the service. Id. at 4-5.

In its Answer,[2] the Service reiterates its claims that the requested information is wholly irrelevant and would consist entirely of legal conclusions. According to the Service, a response to UPS/USPS-50 would only be a statement of the Service's current legal reasoning concerning Post E.C.S. service, not an admission regarding its postal or non-postal nature. The Service asserts that the non-factual nature of such a response precludes the likelihood of discovery of admissible evidence, in contravention of § 25(a) of the Commission's rules. Moreover, the Service claims that compelling production of attorney work product would both violate Special Rule of Practice 5, and place the Service in the untenable position of divulging privileged legal analysis to a competitor. Postal Service Answer at 1-3.

With regard to UPS/USPS-57, the Service argues that the interrogatory is couched in the statutory language of § 407, and therefore that a response would unavoidably involve interpretation of that language. As drafted, the Service asserts, the

[2] United States Postal Service Answer in Opposition to Motion of United Parcel Service to Compel United States Postal Service to Answer Interrogatories UPS/USPS-50, 52-54, and 57-58, September 16, 1999.

question constitutes an illegitimate attempt to force the Postal Service into defining the concept of "Presidential consent," a phrase which the Service claims has been the subject of litigation between UPS and the Postal Service. Id. at 6-7.

I shall grant Complainant's motion to compel with respect to these two interrogatories. While they call for responses that concern the application of law to facts, I find they are relevant inquiries within the terms of §§ 25 and 26 of the rules of practice, and should be answered.

First, I disagree with the Service's assertion that the interrogatories at issue seek nothing but statements of essentially irrelevant legal opinion. The terms and conditions under which the Postal Service provides Post E.C.S. or any other service—including applicable legal entitlements and restrictions—are facts of potential relevance to determining the character of that service for the purpose of Commission proceedings. For example, the fact that a service is provided in connection with Postal Service philatelic activities authorized by 39 U.S.C. § 404(a)(5) may render the fee charged for that service not an appropriate subject for a complaint to the Commission under 39 U.S.C. § 3662.[3]

Second, I find that the two interrogatories seek relevant and potentially admissible information from the Postal Service. UPS/USPS-50 asks the Service to identify the extent to which Post E.C.S. enjoys the legal protections enforced for the benefit of hardcopy mail. As UPS argues, a response will shed additional light on the resemblance, or lack thereof, of Post E.C.S. to conventional "postal" services. UPS/USPS-57 asks, in essence, whether the Postal Service took a particular action. This information may shed light on arguments concerning whether the Service may claim the same pedigree for Post E.C.S. and its fees as it does for the international postal services and rates it implements pursuant to 39 U.S.C. § 407. To the extent the Service does, or does not, claim such a pedigree, a response would be relevant to the

[3] *See* Docket No. C95-1, Order No. 1075, Order Dismissing Complaint, September 11, 1995.

focal issue to be resolved in this phase of the proceeding, "whether Post E.C.S. is a postal service for purposes for Chapter 36 of Title 39,"[4] *i. e.*, a domestic postal service.

Responding to these relevant interrogatories should not require the Postal Service to undertake the preparation of any new or budensome legal analyses. The Service has recently provided detailed statements of its views regarding its legal authority to offer e-commerce products and services generally, and the applicability of numerous federal laws to such services—including Post E.C.S.— to the United States General Accounting Office, pursuant to a request of Senator Cochran. I anticipate that the Service will be able to draw on the legal analyses underlying the views it expressed to GAO for responses to the UPS interrogatories. The Service's legal opinions are published in GAO's report, U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce.[5] Inasmuch as these statements are now in the public domain, I also find it unlikely that providing the requested responses would cause any appreciable harm to the Postal Service, notwithstanding Complainant's status as a competitor.

[4] Presiding Officer's Ruling No. C99-1/3, July 7, 1999, at 7, Ruling 2.

[5] GAO/GGD-00-188, September 7, 2000, at 34-49.

RULING

1. The Motion of United Parcel Service to Compel United States Postal Service to Respond to Interrogatories UPS/USPS-50, 52-54, and 57-58, filed September 9, 1999, is granted with respect to UPS/USPS-50 and -57.[6]

2. The Postal Service shall provide responses to UPS/USPS-50 and -57 no later than December 13, 2000.

Dana B. Covington, Sr.
Presiding Officer

[6] The Motion to Compel with respect to UPS/USPS-52 through –54 and UPS/USPS-58 will be addressed in a subsequent ruling.