

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

RESPONSE OF UNITED PARCEL SERVICE TO
UNITED STATES POSTAL SERVICE REQUEST
FOR PARTIAL RECONSIDERATION OF
P.O. RULING NO. C99-1/20 AND REQUEST
FOR EXTENSION OF TIME TO FILE RESPONSE
(March 30, 2001)

United Parcel Service ("UPS") hereby responds to the United States Postal Service Request for Partial Reconsideration of P.O. Ruling No. C99-1/20 and Request for Extension of Time to File Response dated March 23, 2001 ("Reconsideration Motion").

I. RECONSIDERATION REQUEST

1. The Postal Service indicates that it "has only identified records for PosteCS transactions taking place over the past thirty days." Reconsideration Motion at

1. While the Postal Service states that it will continue to search its files for records going back more than thirty days (*id.*), it requests approval to limit its response to "data for the most recent 30-day period." Reconsideration Motion at 2.

The Postal Service's statements are unclear. Is it indicating that the requested information is kept only for thirty days, *i.e.*, that after thirty days a record of a PosteCS transaction is erased or otherwise destroyed? That would be surprising, given the fact

that one of the essential features of the service is to validate, and provide assurance of, receipt, for example. In fact, the Postal Service indicates that it may be able to locate records going back more than thirty days. Reconsideration Motion at 1.

Of course, the Postal Service cannot provide what it does not have and cannot get. Moreover, UPS does not insist that the Postal Service search for and provide all records going back to the inception of PosteCS. The question is what is a reasonable timeframe. UPS is concerned that thirty days may not be sufficiently long because, for example, PosteCS transactions may have seasonal variation, much like certain types of hard copy mail. Thus, UPS requests that the Postal Service be required to search for and supply records covering the most recent twelve month period for which information is available.¹

2. The Postal Service also requests that it be required to supply only the proportion, and not the total number, of the specified PosteCS transactions. Reconsideration Motion at 2. It claims that the number of transactions combined with the proportions would reveal commercially sensitive volume information. *Id.*

Depending on the magnitude of the proportion of transactions that do not involve a foreign top level domain, the number of such transactions could be significant for purposes of the Commission's determination concerning its jurisdiction. For example, if the Postal Service responds that only one percent of PosteCS transactions are not

1. Since the interrogatories at issue requested information on all PosteCS transactions and were not confined to a specific timeframe, we assume that the Postal Service's estimates of the time it would take to respond to the interrogatories were made on the basis of the unlimited timeframe covered by the request.

associated in any way with a foreign top level domain address, the Commission may be inclined to believe that the volume is *de minimis* and therefore not assert jurisdiction. However, that one percent of transactions could represent a substantial volume of messages.²

UPS continues to contend that there is nothing commercially sensitive about Postal Service volume figures. The Postal Service does not give any indication of how it could be competitively harmed were UPS to know the Postal Service's PosteCS volume and thereby (supposedly) be able to "evaluate the success of the Postal Service's PosteCS product, and . . . the Postal Service's strengths in, and share of, the secure electronic message market." Reconsideration Motion at 2. Indeed, the Postal Service itself has already made public probably the most telling information concerning the success of PosteCS -- the fact that PosteCS has always operated, and continues to operate, at a loss. See Postal Rate and Fee Changes, 2000, Docket No. R2000-1, Tr. 46C/20910-11 (response of the Postal Service to interrogatory OCA/USPS-142).³ That PosteCS is being provided at a loss illustrates the crucial importance of Commission

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2. It is UPS's position that the Commission's jurisdiction does not depend on the volume of a postal service. Unlike certain other agencies, the Commission does not have discretion to decide not to exercise its jurisdiction. Even if there are only relatively few PosteCS transactions, those few transactions are nevertheless subject to the Commission's jurisdiction and should be subjected to the scrutiny required by the statute.
 3. Earlier in this case, the Postal Service objected to revealing aggregate revenues for PosteCS on the ground of commercial sensitivity. Objection of the United States Postal Service to United Parcel Service Interrogatories UPS/USPS-1-24, dated May 25, 1999, at 5. Yet, it voluntarily provided those revenues in its response to the cited OCA interrogatory.

jurisdiction in ensuring that the Postal Service does not compete unfairly through below-cost rates.

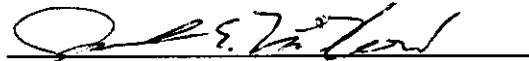
However, were the Commission to agree that the volume information in question is somehow commercially sensitive, then at the very least the information should be supplied under protective conditions, as the Postal Service itself suggests.

Reconsideration Motion at 2.

II. EXTENSION REQUEST

Finally, the Postal Service requests that the time for it to supply the data in question be extended until April 20, 2001. UPS has no objection to that request.

Respectfully submitted,



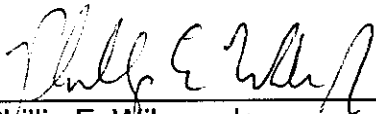
John E. McKeever
Phillip E. Wilson, Jr.
Attorneys for United Parcel Service

PIPER MARBURY RUDNICK & WOLFE, LLP
3400 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103
(215) 656-3300
and
1200 19th Street, N.W.
Washington, DC 20036
(202) 861-3900

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.



Phillip E. Wilson, Jr.

Dated: March 30, 2001
Philadelphia, PA