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PRESIDING OFFICER'S  
RULING NO. C99-1/22

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

Complaint on Post E.C.S.

Docket No C99-1

PRESIDING OFFICER'S SUPPLEMENTAL RULING ON  
UNITED PARCEL SERVICE MOTIONS TO COMPEL RESPONSES  
BY UNITED STATES POSTAL SERVICE TO INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

(Issued June 11, 2001)

In Ruling No. C99-1/9, I addressed four outstanding motions filed by Complainant United Parcel Service to compel responses by the Postal Service to a variety of discovery requests.<sup>1</sup> One category of requests considered in the ruling consisted of interrogatories seeking different types of information regarding the volume of Post E.C.S. transactions and their respective origins and intended destinations. I rejected the Postal Service's categorical claim that all such information necessarily is irrelevant to issues before the Commission, finding that "as a general matter, information regarding the respective origins and points of receipt of Post E.C.S. transactions is, potentially, highly relevant" to establishing the domestic or international character of the service.<sup>2</sup> However, at that time I deferred a final ruling on the motions with respect to those interrogatories pending further clarification of potential admissibility and adoption of appropriate protective conditions.

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<sup>1</sup> Presiding Officer's Combined Ruling on Outstanding Motions of United Parcel Service to Compel Responses by United States Postal Service to Interrogatories and Requests for Production of Documents, August 9, 1999.

<sup>2</sup> Id. at 8.

The Commission adopted a set of protective conditions for use in dealing with sensitive information produced in this case in Order No. 1283,<sup>3</sup> and made corrections and provided further clarification of those conditions in Order No. 1287.<sup>4</sup> Recently, I dealt with two motions of Complainant to compel responses to requests for information that also concerned the number of Post E.C.S. transactions and their association with arguably domestic and foreign origins and destinations.<sup>5</sup> With this background, it is now appropriate to revisit the issues posed by the interrogatories on which action was deferred in my earlier ruling.

UPS/USPS-2. This interrogatory requests the total number of Post E.C.S. transactions that have taken place to date. The Postal Service objected to this request on the grounds that volume information is both irrelevant and commercially sensitive.

The Service objected to UPS/USPS-47(f) on the same grounds, arguing that a response would enable a reviewing party to calculate the aggregate transaction total also sought in UPS/USPS-2. In Ruling No. 20, I considered the parties' competing arguments on UPS/USPS-47(f), and directed the Service to provide a response.<sup>6</sup> Subsequently, in response to the Service's request for reconsideration, I granted the alternative relief requested by the Service by allowing its to file a response under the protective conditions prescribed in Orders 1283 and 1287.<sup>7</sup>

Inasmuch as the information requested in UPS/USPS-2 can be derived from the public portion of the response to UPS/USPS-47(f) together with the information filed under protective conditions, Complainant can gain access without further action on the

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<sup>3</sup> Order on Protective Conditions Appropriate for Application to Sensitive Information Produced in This Proceeding, January 28, 2000.

<sup>4</sup> Order Disposing of Motions for Clarification and Correction of Protective Conditions Adopted in Order No. 1283, March 1, 2000.

<sup>5</sup> See Presiding Officer's Ruling No. C99-1/20, Ruling on Complainant's Outstanding Motions to Compel Responses to Discovery Requests to United States Postal Service, March 16, 2001; Presiding Officer's Ruling No. C99-1/21, Ruling on United States Postal Service Request for Partial Reconsideration of P. O. Ruling C99-1/20 and Request for Extension of Time to File Response, April 24, 2001.

<sup>6</sup> Presiding Officer's Ruling No. C99-1/20, *supra*, at 1-4.

<sup>7</sup> Presiding Officer's Ruling No. C99-1/21, *supra*, at 4-5.

pending motion. Consequently, the motion of UPS shall be dismissed as moot with respect to this interrogatory.

UPS/USPS-44. This interrogatory asks the Service to state the percentage of total Post E.C.S. transactions that were addressed by its licensed users to a foreign top level domain. The Postal Service objected on the grounds of vagueness, irrelevance, and undue burden. UPS argues that the interrogatory is intended to probe the Service's claims that Post E.C.S. does not have a domestic component that falls within the Commission's jurisdiction; that its terms should be sufficiently familiar to the Service to enable it to prepare an answer; and that preparing a response is unlikely to prove unduly burdensome to the Service.

This interrogatory is similar in focus to four of the discovery requests treated in Ruling No. 20, which requested information on the proportions of Post E.C.S. transactions between variously described senders and recipients.<sup>8</sup> As with those interrogatories, the apparent intent of UPS/USPS-44 is to elicit information that may bear on the extent to which Post E.C.S. service is domestic or international in character. Specifically, the interrogatory seeks information that may assist in identifying the segment of transactions sent by domestic Post E.C.S. users that arguably consists of international traffic.

I shall grant the motion to compel a response to UPS/USPS-44. I find the inquiry directly relevant to the domestic-versus-international facet of the jurisdictional issue currently before the Commission.<sup>9</sup> Further, I do not find any vagueness in the interrogatory that would impede the production of a response; the Postal Service has already used addressing to a foreign top level domain as a criterion for disaggregating Post E.C.S. transactions in responding to UPS/USPS-47(f) and 54. Also, in light of this earlier effort, I do not find any burden that might be associated with responding to UPS/USPS-44 to be undue. Presumably, the Postal Service will be able to produce a

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<sup>8</sup> Presiding Officer's Ruling No. C99-1/20, *supra*, at 1-4, 5-8.

<sup>9</sup> See Order No. 1258, August 6, 1999, at 4-6.

response from the data files used to prepare its responses to the four interrogatories referenced above.

UPS/USPS-3(b)-(c) and -4. The two subsections of UPS/USPS-3 ask the Service to provide the proportions of total Post E.C.S. transactions that involved: (1) a sender located in the U.S. and a recipient not located in the U. S.; and (2) a sender not located in the U. S. and a recipient located in the U. S. UPS/USPS-4 asks the Service to provide the number of Post E.C.S. transactions for which the sender was located in the U. S. and the message was left for the recipient to retrieve on a server located in the U. S. The Postal Service objected to both interrogatories on the grounds of irrelevance, commercial sensitivity, and lack of Commission jurisdiction.

In its Motion to Compel, UPS argues that the interrogatories request raw data needed to determine the domestic and international proportions of Post E.C.S. transactions, and thus seeks information directly relevant to the service's claim that Post E.C.S. is not a domestic service. UPS also denies that it is seeking information about foreign posts' volumes, and maintains that a statistical profile of aggregate Post E.C.S. transactions which identifies and compares wholly domestic transactions and claimed international transactions—with no identification of users or foreign posts—is not commercially sensitive.

In its Answer, the Postal Service reiterates its objections that the requested information is both irrelevant and commercially sensitive. While the Service advances detailed arguments in support of these claims "on principle," it overrides them by further representing that it could not produce responsive information even if UPS's motion to compel were granted.<sup>10</sup>

Notwithstanding the Postal Service's objections in principle, I find that it should submit substantive responses to these interrogatories, and shall so rule.

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<sup>10</sup> United States Postal Service Answer in Opposition to Motion of United Parcel Service to Compel Responses to Interrogatories UPS/USPS-1-7 (except 5(g)) and 9-20, June 18, 1999, at 4-7.

Unlike such interrogatories as UPS/USPS-44, these questions do not request information categorized according to specified criteria—such as addressing to a foreign top level domain—but UPS/USPS-3(b) and (c) are reasonably stated requests for identification of the proportion of outgoing and incoming international Post E.C.S. transactions,<sup>11</sup> and UPS/USPS-4 is similarly devised to identify the proportion of purely domestic transactions. The requested information is clearly related to a jurisdictional issue to be decided by the Commission, and thus is relevant.

Nor would the alleged commercial sensitivity of responsive information necessarily serve as a basis for denying access under any terms. The information requested in UPS/USPS-47(f) regarding proportions of actual Post E.C.S. transactions was found appropriate for public response, and the same basic conclusion would apply here. To the extent total Post E.C.S. volumes or information that involved transactions originating with other postal administrations were encompassed in the requests, protective conditions could be adopted to allay such concerns, as provided in Ruling No. 21.<sup>12</sup>

However, it appears to be the Postal Service's position that it is incapable of providing substantive information in response to these interrogatories. If that is the case, the Postal Service shall prepare answers so indicating, and provide explanations as to why it believes this to be the case.

UPS/USPS-20(a). This subsection of the interrogatory asks the Service to specify the number of United States users who are licensed to use Post E.C.S. The Postal Service objected to responding on the grounds of relevance and commercial sensitivity.

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<sup>11</sup> However, as I ruled with respect to UPS/USPS-58(b), it would be inappropriate to require the Postal Service to investigate and vouch for a tally of those transnational transactions that are in the custody of other countries' postal administrations, rather than those that reside on servers controlled by the Service. Presiding Officer's Ruling No. C99-1/20, March 16, 2001, at 7.

<sup>12</sup> Presiding Officer's Ruling No. C99-1/21, *supra*, at 4-5.

UPS argues that the requested information is relevant because it is needed to determine the proportion of Post E.C.S. users and volume that represent domestic transactions, and the corresponding proportions that represent international transactions. UPS also denies that the competitive posture of Post E.C.S. service renders such information commercially sensitive. The Postal Service replies that the number of licensed users does not inform the question of the legal status of Post E.C.S., but rather would give competitors clear information about the extent of the Service's success with its test of Post E.C.S. to date.

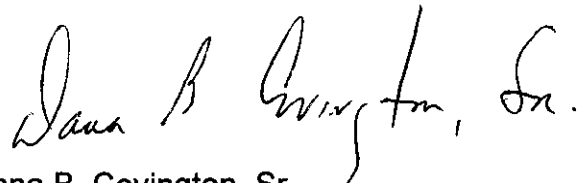
I agree with the Postal Service that the requested user count is insufficiently relevant to issues currently before the Commission to warrant production of such potentially sensitive information. The number or proportion of domestic *users*, as distinguished from the number or proportion of domestic *transactions*, would appear to be of peripheral relevance to the question of whether Post E.C.S. is a domestic postal service; the instances of actual use for domestic communications, rather than the count of authorized users, would be of much greater relevance and probative value.<sup>13</sup> On the counterbalancing issue of commercial sensitivity, a count of domestic users of a new service in direct competition with products offered by Complainant and other vendors clearly constitutes sensitive business information. Therefore, the motion of UPS shall be denied with respect to this discovery request.

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<sup>13</sup> As with the earlier denial of Complainant's motions with respect to UPS/USPS-26, -29 and -45, my finding is guided by the Commission's conclusions in Order No. 1258. P. O. Ruling No. 9, *supra*, at 5-6. Additionally, without a count of users licensed by the French and Canadian postal administrations—information that the Postal Service cannot reasonably be expected to produce—a proportion of domestic users could not be calculated.

RULING

1. The Motion of United Parcel Service to Compel United States Postal Service to Respond to Interrogatories UPS/USPS-1 through UPS/USPS-7 and UPS/USPS-9 through UPS/USPS-20, filed June 8, 1999, is dismissed as moot with respect to UPS/USPS-2; granted with respect to UPS/USPS-3(b)-(c) and UPS/USPS-4; and denied with respect to UPS/USPS-20(a).
2. The Fourth Motion of United Parcel Service to Compel United States Postal Service to Answer Interrogatories UPS/USPS-44 and UPS/USPS-45, filed July 22, 1999, is granted with respect to UPS/USPS-44.

A handwritten signature in black ink, reading "Dana B. Covington, Sr." in a cursive script.

Dana B. Covington, Sr.  
Presiding Officer