

ORDER NO. 1352

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

Before Commissioners:

George Omas, Chairman;
Dana B. Covington, Vice Chairman;
Ruth Y. Goldway;
and Tony Hammond

Complaint on Post E.C.S.

Docket No. C99-1

ORDER ACCEPTING CERTIFICATION
AND DISMISSING COMPLAINT AS MOOT

(November 6, 2002)

On October 1, the Presiding Officer in this proceeding issued Ruling No. C99-1/28, in which he exercised his discretion under § 23(a)(8) of the rules of practice [39C.F.R. § 3001.23(a)(8)] to certify a question for consideration and disposition by the full Commission. That question is the appropriateness of dismissing the pending Complaint of United Parcel Service on the ground of mootness.

In his previous Ruling No. C99-1/27, the Presiding Officer cited publicly released information indicating that the Postal Service intended to discontinue Post E.C.S. service, the sole subject of the Complaint in this docket. In light of this apparent change in circumstance, he directed the Postal Service to submit a pleading declaring the status of Post E.C.S. service, and provided for responses by other participants, with a view to possible dismissal of the Complaint as being entirely moot.¹

On September 19, the Service responded to Ruling No. 27 and moved to dismiss the Complaint. Citing an attached declaration of Leo J. Campbell, former program manager for Post E.C.S. service who supervised the discontinuation of the service, the

¹ Presiding Officer's Ruling No. C99-1/27, September 5, 2002.

Postal Service states that the service has been terminated. On this factual basis, the Service argues that no live controversy remains to be resolved, and therefore that the Complaint should be dismissed as moot.²

Complainant United Parcel Service responded to the Postal Service's motion in a pleading filed on September 26.³ Complainant states that, on the basis of Mr. Campbell's declaration, it appears that the reason for the Complaint no longer exists. Accordingly, UPS does not oppose the motion to dismiss. Similarly, the response⁴ filed by the Office of the Consumer Advocate takes the position that, in view of the declaration stating that Post E.C.S. service has been terminated, there appears to be no point in going forward with this proceeding.

Inasmuch as the matter to be resolved involves a motion to dismiss, which could result in a final determination of the proceeding, the Commission accepts the Presiding Officer's certification of the question of mootness. The Commission also grants the Postal Service's motion to dismiss the Complaint, in light of the facts presented in the declaration of Mr. Campbell.

Mr. Campbell attests to the following facts: that the Postal Service discontinued selling Post E.C.S. service on February 1, 2002; that no new customers could register for the service as of March 1, 2002; that no new Post E.C.S. transactions could be initiated as of April 30, 2002; and that recipients could no longer access messages after May 31, 2002.⁵ Further, Mr. Campbell represents on the Postal Service's behalf that it has no plans to reintroduce the service, and counsel for the Postal Service reiterates that position.⁶

Given this state of facts, the Commission agrees with the parties' consensus that no live controversy remains to be resolved in this docket, and therefore that the proceedings initiated by the Complaint of United Parcel Service are moot. Further,

² United States Postal Service Response to Presiding Officer's Ruling No. C99-1/27 and Motion to Dismiss Complaint, September 19, 2002.

³ Response of United Parcel Service to United States Postal Service's Motion to Dismiss Complaint, September 26, 2002.

⁴ Office of the Consumer Advocate Response to P.O. Ruling No. 99-1/27, September 26, 2002.

⁵ United States Postal Service Response, *supra*, Declaration of Leo J. Campbell, para. 3.

⁶ *Id.* at 2 and Declaration, para. 4.

absent any prospect that Post E.C.S. could be revived to spark controversy in the future, no evident purpose would be served by keeping this docket open. Accordingly, the Commission will dismiss the Complaint, and declare these proceedings to be at an end.

Finally, the Commission notes that it has custody of certain materials submitted by the Postal Service under protective conditions, as provided for in three Presiding Officer's Rulings on motions to compel responses to discovery requests.⁷ In an earlier ruling, at the Postal Service's request, the Presiding Officer confirmed that the documents provided under such conditions would be returned to the Service as soon as their availability was no longer required for the purposes of this proceeding.⁸ As the Presiding Officer noted at the time, this treatment is consistent with the established Commission practice of offering to return such sensitive materials to their owners after the conclusion of the proceeding in which they were provided. Accordingly, since this proceeding is being terminated, the Commission will direct its docket section to return these *in camera* materials to the Postal Service upon issuance of this Order.

It is ordered:

1. The Commission accepts certification of the question referred by the Presiding Officer in Ruling No. C99-1/28.
2. The Motion of the United States Postal Service to Dismiss Complaint, filed September 19, 2002, is granted.
3. Materials submitted by the United States Postal Service under protective conditions in response to Presiding Officer's Rulings C99-1/16, C99-1/21 and C99-1/23 shall be returned to the Postal Service forthwith.

⁷ Presiding Officer's Ruling No. C99-1/19, November 29, 2000; Presiding Officer's Ruling No. C99-1/21, April 24, 2001; Presiding Officer's Ruling No. C99-1/23, August 7, 2001.

⁸ Presiding Officer's Ruling No. C99-1/15, March 20, 2000, at 3.

4. Proceedings in Docket No. C99-1 are terminated, and the docket is hereby closed.

By the Commission.

(S E A L)

Steven W. Williams
Secretary