

ORDER NO. 1230

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

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OFFICE OF THE CLERK

Before Commissioners:

Edward J. Gleiman, Chairman;
W.H. "Trey" LeBlanc III, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway;
and George A. Omas

Complaint on Post E.C.S.

Docket No. C99-1

ORDER DENYING MOTION OF
UNITED STATES POSTAL SERVICE
FOR RECONSIDERATION OF ORDER NO. 1229
AND DIRECTING IMMEDIATE PROVISION OF
RESPONSES TO QUESTIONS 1, 2, 3, AND 4(B)

(March 2, 1999)

On February 17, 1999, the Commission issued Order No. 1229 in this docket, which directed the Postal Service to provide certain described categories of information concerning its provision of Post Electronic Courier Service (or "Post E.C.S."), the subject of the Complaint lodged by United Parcel Service on October 5, 1998. As the Commission observed at that time, the questions posed in the Order were intended to elicit information that would clarify the issues presented by this controversy, particularly those raised by the Postal Service's Motion to Dismiss the Complaint, which it filed on November 5, 1998.

In lieu of filing responsive information, on the March 1 deadline prescribed in Order No. 1229 the Postal Service filed a motion for reconsideration of Order No. 1229, or alternatively for special treatment of information responsive to Question 4(a) in the Order.¹

¹ Motion of the United States Postal Service for Reconsideration, or for Alternative Relief, March 1, 1999.

In support of its motion for reconsideration, the Service states a belief "that it is unnecessary for the Commission to engage in factfinding, simply because the relief requested by UPS is not within the scope of the Commission's complaint adjudication authority under 39 U.S.C. § 3662." Motion at 2-3. Based on this challenge of the Commission's authority to grant relief — which reiterates the Service's argument in its pending motion to dismiss the Complaint — the Service claims that "responses to questions posed in Order No. 1229 would not enhance the Commission's understanding of the jurisdictional issue." *Id.* at 3.

Without reaching the merits of the Postal Service's position regarding the Commission's jurisdiction to consider the Complaint, which will be addressed if necessary in the Commission's ruling on the pending motion to dismiss, the Commission categorically rejects the Service's argument against the factfinding process initiated by Order No. 1229. Depending upon the state of facts as yet unknown, information responsive to the questions posed in the Order may bear significantly on the outcome of the pending motion to dismiss the Complaint. Illustratively, if the Post E.C.S. service is no longer being offered, the evident mootness of the Complaint may make it unnecessary to rule on arguments concerning the Commission's jurisdiction to consider it.

Furthermore, recent experience demonstrates that factfinding can be productively employed in resolving Complaints pending before the Commission, even where issues have been raised concerning the applicability of § 3662 to the particular Complaint. In Docket No. C98-1, the Postal Service moved for dismissal of the Complaint of Life Time Fitness, based in part on an argument that the Complaint did not raise a policy matter appropriate for consideration under § 3662.² Prior to ruling on the motion to dismiss, the Commission issued an Order requesting specific information concerning the Postal Service's operational objective, service standard, and service

² Docket No. C98-1, Motion of the United States Postal Service to Dismiss Complaint, November 10, 1998, at 3-8.

commitment for Standard (A) Mail.³ The Service filed detailed responses to the questions posed in the Order on January 8, 1999.⁴ After considering those responses, uncontested facts, and the parties' legal arguments, the Commission issued Order No. 1227 dismissing the Complaint on January 27, 1999.

The Postal Service states that, without intending to waive its right to contest the Commission's authority to entertain the UPS Complaint, it "is prepared to promptly provide responses to questions 1, 2, 3, and 4(b)" posed in Order No. 1229. Motion at 3. However, with respect to 4(a), the Service asks the Commission to reconsider whether the requested information is necessary, and either to withdraw the question or narrow its scope. *Id.* at 3-4. Should the Commission conclude that it is appropriate to review documents responsive to question 4(a), the Service requests an Order permitting it to redact financial information and file the documents under protective conditions, in light of commercially sensitive information contained in them and the consequent harm that their public release could produce. *Id.* at 3-5.

Because question 4(a) involves the additional considerations cited by the Postal Service, the Commission will take no action with respect to documents and other information responsive to that question now, but will consider the matter following Complainant's opportunity to file a response. At this time, the Commission will only direct that the Postal Service produce information responsive to the other questions in Order No. 1229, which it apparently is prepared to file promptly.

It is ordered:

1. The Motion of the United States Postal Service for Reconsideration of Order No. 1229, filed March 1, 1999, is denied with respect to Questions 1, 2, 3, and 4(b).


³ Order No. 1224, Order Requesting Supplemental Information, December 17, 1998.

⁴ Response of the United States Postal Service to PRC Order No. 1224 Requesting Supplemental Information, January 8, 1999.

2. The Postal Service is directed to produce information responsive to Questions 1, 2, 3, and 4(b) in Order No. 1229 by March 5, 1999.

By the Commission.

(S E A L)


Margaret P. Crenshaw
Secretary

* Commissioner Goldway not participating.