

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268 0001

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COMPLAINT ON POST E.C.S.

Docket No. C99-1

PARTIAL RESPONSE OF UNITED STATES POSTAL SERVICE
TO COMMISSION ORDER NO. 1229
(March 3, 1999)

In accordance with Order No. 1230, the United States Postal Service hereby provides responses to questions 1-3 and 4(b) posed in Order No. 1229. In Order No. 1230, issued March 2, 1999, the Commission deferred ruling on the Postal Service's Motion for Reconsideration or for Alternative Relief, filed March 1, 1999, with respect to question 4(a), in order to give the Complainant an opportunity to respond.

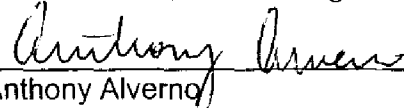
The questions are stated verbatim and are followed by the responses.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:
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March 3, 1999

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- (1) According to a newspaper account contained in Exhibit B to the Complaint, the Postal Service commenced offering Post E.C.S. in a six-month test it began on July 17, 1998.
 - (a) Has the operations test of Post E.C.S. concluded, and provision of the service discontinued?
 - (b) If the service is still being provided, please describe its status and specify the authority under which it is being provided.
 - (c) Whether or not the service is still being provided, does Postal Service management currently plan to request approval of an extension of Post E.C.S. by the Board of Governors? If so, please specify the contemplated timing of any such request.

RESPONSE:

- 1) As a point of clarification, the pilot began in May 1998.
 - a) No. Post E.C.S. is scheduled to continue at least through mid-June 1999.
 - b) Post E.C.S. is in operations test status, and is provided pursuant to arrangements between and among LaPoste, Canada Post Corporation, the International Postal Corporation, and a software supplier. Section 404(a)(6) of Title 39, U.S.C., serves as legal authority for provision of nonpostal services such as Post E.C.S.
 - c) There are no current plans to request approval from the Board of Governors for an extension, nor any understanding that such a request would be necessary or appropriate at this juncture.

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- (2) In paragraph 20 of the Answer filed on November 5, 1998, the Postal Service "denies that 'substantial numbers' of companies are using Post E.C.S., or that usage of Post E.C.S. can be characterized as 'nationwide'."
- (a) Is the number of U.S. companies the Service has licensed to use Post E.C.S.:
(i) fewer than 25; (ii) between 25 and 100; or (iii) more than 100?
 - (b) If this information is available, please specify the percentage of Post E.C.S. document transmissions originated by U.S. licensees to date: (i) directed to recipients within the U.S., and (ii) directed to recipients in other countries.
 - (c) Please provide a quantitative description of the geographic dispersion of U.S. companies licensed to use Post E.C.S. — for example, the number of metropolitan areas, performance clusters, States, or other geographic divisions in which such companies are located.
 - (d) Is it possible and permissible for a U.S. company licensed to use Post E.C.S. to originate document transmissions from: (i) more than one location? (ii) anywhere in the United States?

RESPONSE:

- a) The answer falls within (ii).
- b) Based on customer feedback and informal interviews with end users, it is known that transactions are originated and directed to recipients within the U.S. However, feedback from one large customer of the service indicates that Post E.C.S. transactions are directed to recipients worldwide. The Postal Service has no reliable means of determining with certainty where (geographically) Post E.C.S. transactions originate or destinate; once a company is authorized to use Post E.C.S., specific transactions can originate from or be sent to any location that has internet access.

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c) The geographic dispersion of companies participating in the test is as follows:

<i>State</i>	<i># Companies</i>
California	7
Massachusetts	10
New York	7
Rhode Island	1
Virginia	1
Michigan	1
Texas	1
New Jersey	4
North Carolina	1
Pennsylvania	2
Hawaii	1
Utah	1
Iowa	1
Georgia	1
Florida	<u>1</u>
TOTAL	40

d) Yes to (i) and (ii). See response to subpart (b).

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- (3) Exhibit A to the Complaint, which appears to be a piece of Postal Service promotional material, states: "Post E.C.S. allows you to send and receive your business documents quickly at substantial cost savings compared to overnight and courier services."
- (a) Is Post E.C.S. being offered as a substitute for Express Mail or any other service currently provided by the Postal Service?
- (b) To what extent have U.S. companies licensed to use Post E.C.S. substituted use of that service for Express Mail or any other postal service they previously used?

RESPONSE:

- a) Post E.C.S. lacks certain characteristics to make it a direct substitute of Express Mail or any other hardcopy postal service. For example, Post E.C.S.:
- lacks capability for sending merchandise, unlike Express Mail, Standard Mail, or First-Class Mail;
 - lacks capability to provide the recipient with documents that bear the author's impressions on paper;
 - provides no document reconstruction insurance, unlike First-Class Mail combined with registry or Express Mail;
 - cannot be combined with other special service options in DMCS 900 *et seq.*, such as return receipt and certified mail. To fulfill legal requirements, some mailers must use either certified or registered mail; Post E.C.S. would not provide a substitute in these instances.
- b) The Postal Service has no quantified data regarding substitution. However, based upon informal customer feedback, it has been our experience that

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customers view Post E.C.S. as a secure means by which to communicate
over the internet.

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- (4) In paragraph 31 part a of the Answer filed on November 5, 1998, the Postal Service states that it is "conducting a limited test of ... Post E.C.S., under the auspices of the International Post Corporation, in conjunction with the Canada Post Corporation and France's LaPoste."
- (a) Please provide a copy of each convention, memorandum of understanding, contract, or other instrument governing the joint provision of Post E.C.S. service under the international arrangement referenced in this paragraph.
 - (b) Which of the terms and conditions under which the Postal Service has provided Post E.C.S. to U.S. companies, if any, are governed by the referenced international arrangement?

RESPONSE:

- a) A motion for reconsideration has been filed concerning this subpart.
- b) Most of the provisions in the attached Test Participant License and Services Agreement for United States Postal Service *Post E.C.S.* are governed by the international arrangement referenced above.

TEST PARTICIPANT LICENSE AND SERVICES AGREEMENT FOR UNITED STATES POSTAL SERVICE POST E.C.S.
THIS DOCUMENT STATES THE TERMS AND CONDITIONS UPON WHICH THE UNITED STATES POSTAL SERVICE ("USPS") OFFERS
TO LICENSE ITS USPS POST E.C.S. CLIENT SOFTWARE (THE "SOFTWARE") AND, IF DESIRED, PROVIDE USPS POST E.C.S.
SERVICES ON AN EVALUATION BASIS (THE "SERVICES").

1. As a test participant, you have obtained an account with USPS to evaluate the Post ECS Services. The account will be limited in time to the pilot test period, and in the number and size of files you may distribute. Once the time period has expired your right to send files from your account will terminate immediately and, within 10 days thereafter, all of your files remaining on USPS's servers will be purged and unavailable to you or your intended recipients.

For so long as you have a valid account with USPS or an authorized USPS Post E.C.S. service provider and are not in breach of this Agreement, USPS hereby grants to you a nonexclusive license to use the Software in connection with the Services. You may not download or otherwise export or re-export the Software except in full compliance with all applicable laws and regulations. You may not: (a) transfer, assign or sublicense the Software or allow any person other than yourself to use the Software; (b) reproduce (except to make one archival copy), modify, adapt, translate, rent, lease, loan or distribute the Software or create any derivative works of the Software; (c) decompile, reverse engineer or disassemble the Software except to the extent that this restriction is expressly prohibited by applicable law; or (d) use the Software for any purposes other than in connection with USPS Post E.C.S. transactions. Title to and ownership of the Software shall remain with USPS or its suppliers. You agree not to attempt to disable or bypass any functionality- or time-limitation mechanisms of the Services or Software.

2. If you elect to be a test participant of Post E.C.S. from USPS, the following additional terms apply to you:

- (a) You are solely responsible for the contents of your files, and USPS acts as a passive conduit for your online distribution and publication of such content. However, USPS reserves the right to remove from its servers any files which USPS believes may create liability for it.
- (b) You represent and warrant that the files distributed through your account (or the distribution thereof): (a) do not infringe on any copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) do not violate any law, statute, ordinance or regulation, including without limitation those pertaining to export control, unfair competition, antidiscrimination and false advertising; (c) are not defamatory or trade libelous; (d) are not obscene or, if pornographic or indecent, are being distributed only to people legally permitted to receive such files; or (e) do not contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines.
- (c) You are solely responsible for providing all hardware, telecommunications equipment and software (other than the Software) that you require to use the Services.
- (d) Privacy issues are very important to USPS. Given the current regulatory and technological environment, however, you should not have an expectation of privacy regarding your account or any files distributed through it.
- (e) USPS cannot ensure or verify if or when file recipients receive notice of a file's availability.
- (f) You may not transfer or share your account with anyone. You may not disclose your account password to any third parties.
- (g) Notwithstanding anything to the contrary herein, USPS may amend the terms applicable to the Services by providing notice to you when you access your evaluation account. Such terms shall be automatically incorporated herein if you elect to use the Services after notice.
- (h) If USPS decides to discontinue offering services, USPS may discontinue offering the Services and cancel your account at any time without notice.

3. USPS AND ITS SUPPLIERS PROVIDE THE POST E.C.S. SERVICES AND THE SOFTWARE "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED. In particular, USPS does not guarantee uninterrupted, secure or error free operation of the Software or USPS's servers.

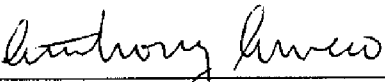
4. IN NO EVENT SHALL USPS OR ITS SUPPLIERS BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR BREACH OF CONTRACT OR WARRANTY OR FOR NEGLIGENCE OR STRICT LIABILITY) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR THE SOFTWARE. In no event shall USPS's liability arising out of or in connection with this Agreement exceed the cost of any transaction and the cost of retransmission.

5. You shall pay all sales, use, excise and other taxes arising from your possession or use of the Software or the Services, except for taxes based upon USPS's net income.

6. For U.S. Government end users, the Software is a "commercial item." To the extent not covered by the federal law of the United States of America, this Agreement shall be governed by the laws of the State of California as such laws are applied to agreements entered into and to be performed entirely within California between California residents. Both parties submit to jurisdiction in California and further agree that any cause of action arising under this Agreement shall be brought in the Federal District Court in the Northern District of California. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed. If any provision of this Agreement shall be invalid, the validity of remaining provisions of this Agreement shall not be affected. This Agreement, as written in English, is the entire agreement between USPS and you with respect to the Software and Services and supersedes all prior agreements (whether written or oral) and other communications between USPS and you with respect to such matters. It may be changed only in a writing executed by an authorized USPS representative.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



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