

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

REQUEST TO ADD
PRIVATE ADDRESS FORWARDING
TO THE MARKET DOMINANT PRODUCT LIST

Docket No. MC2013-60

**COMMENTS OF THE UNITED STATES POSTAL SERVICE
IN RESPONSE TO PETITIONER'S JANUARY 13TH REPLY**
(January 21, 2014)

The United States Postal Service hereby submits these comments in response to Petitioner's January 13th Reply.¹

It is the Postal Service's view that if the proponent of a product concept concedes that he has no basis for asserting that the concept is operationally feasible, and the Postal Service represents that it does not possess the technical resources or systems that would make the concept operational, a serious question arises as to the extent to which proceedings under section 3642 are warranted. It is the view of the Postal Service that, under such circumstances, in the absence of any basis for concluding that the continued absence of the product concept from the Mail Classification Schedule explicitly contravenes some policy in Title 39, the Commission should exercise its discretion under 39 C.F.R. 3020.55 and 3020.56 and either reject the proposal or decline to go forward with formal proceedings.

There is a clear divide between Petitioner and the Postal Service, that will not be resolved by yet another round of pleadings, regarding the weight that the Commission should give to the views of the Postal Service regarding such issues as the compatibility

¹ Docket No. MC2013-60, Petitioner's Reply to USPS' Response To Closing Motion (January 13, 2014).

of specific product concepts with postal management's capital expense plans, or the postal network's technical and operational capabilities. While decisions under section 3642 and its implementing regulations are clearly to be made by the Commission, the Postal Service has unique standing among its "equals" in any section 3642 proceeding. While the Postal Service's efforts to avoid overstating that role do not satisfy Petitioner, the fact that the Postal Service's views and concerns can weigh heavily in the Commission's deliberations is consistent with the statutory scheme.

No material purpose would be served by the Postal Service responding to unfounded assertions that it has claimed to have *exclusive* authority to propose new postal products, either under former section 3623 or current section 3642.² The Postal Service does not see conflict between the provisions of sections 403(a) and 3642. Accordingly, it sees no reason to respond to Petitioner's thesis at page 2 of his January 14th Reply that "the new section prevails" in resolving a conflict that, to the Postal Service, is not apparent.

The Postal Service is not able to resolve the conflict between Petitioner's denial at page 3 of having asserted that the Commission has authority to review Postal Service FOIA determinations³ with his argument at page 4 that the Commission "does have authority over the USPS[FOIA] regulations."⁴ At page 10, Petitioner argues that "the Postal Service does not *deny* having documents that would be relevant to the PRC's

² Petitioner's January 13th Reply at 2.

³ *Id.* at 3.

⁴ Contrary to the assertion at page 4 of Petitioner's January 13 Reply, the Commission has no such authority. Accordingly, this docket is not the proper forum for the resolution of Petitioner's belief that the Postal Service has acted unlawfully in response to his Freedom of Information Act (FOIA) request. *Id.* at 3. Nor should the Commission's resolution of whether and how to obtain such additional information as may be necessary to it in the disposition of its responsibilities be influenced by the Postal Service's steadfast assurance that it is acting in accord with the FOIA and its implementing regulations.

own determinations under section 3642.” The judgment of what is relevant ultimately rests with the Commission. In the absence of any expression by the Commission regarding what might be relevant to a particular Commission determination, the Postal Service can only respond by emphasizing that it would be irresponsible and misleading for it to either *admit* or *deny* the existence of relevant records.

At page 6 of his January 13th Reply, Petitioner’s characterization of Postal Service counsel’s summary of the Postal Service’s pleading filed on October 16, 2013 is at odds with counsel’s summary and the pleading itself. The Postal Service has reiterated the view that technical and operational feasibility, in combination with postal product development preferences should carry considerable weight in Commission determinations regarding how to respond to product petitions filed under 39 C.F.R. § 3020, Subpart C. At page 6, Petitioner then asserts that Postal Service counsel expressed the view in their teleconference that “members of the public should not be permitted to make proposals under § 3642 for new products” and only should be limited to tinkering around the edges of existing classifications, “and that only the *USPS* should propose new products.” The assertion is so patently off base that, viewed most charitably, it proves that Petitioner failed to comprehend what was spoken.

In a similar but less troubling vein, Petitioner and Postal Service counsel will have to agree to disagree regarding a different aspect of the October teleconference referenced at page 7 of Petitioner’s January 13th Reply. Counsel recalls offering to provide the name of Vice President Miskanic to whom Petitioner could, without any limitation of purpose, direct correspondence. Petitioner asked if Mr. Miskanic would be willing to provide certain information that Petitioner sought. Counsel responded by

informing Petitioner that he could not speak for Mr. Miskanic and, that counsel's role, if any, in regard to such matters would be an advisory one. Counsel offered to provide a mailing address to facilitate written communication, as opposed to providing a phone number for a cold call. As is his right, Petitioner opted to file an FOIA request rather than seek to initiate any dialogue.

Petitioner's views regarding the relationship between sections 403(a) and 3642 have evolved considerably from those initially expressed to undersigned counsel. His disassociation from those initial views is understandable and appreciated, even in the absence of a concession that they were once expressed.

Unless there is a request from the Commission to address specific matters, the Postal Service considers that the procedural issues before the Commission have been adequately briefed by the parties. Little purpose would be served at this point by the Postal Service restating its views, by responding to Petitioner's restatement of his views, or refuting assertions by Petitioner that have been previously addressed. The Postal Service will defer to the Commission's judgment regarding whether any specific material issues warrant further discussion.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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