

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint on Post E.C.S.

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Docket No. C99-1

OFFICE OF THE CONSUMER ADVOCATE  
RESPONSE IN SUPPORT OF UNITED PARCEL SERVICE  
MOTION TO COMPEL RESPONSES TO INTERROGATORIES  
(June 18, 1999)

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The Office of the Consumer Advocate (OCA) hereby files a response in support of the Motion of United Parcel Service (UPS) to Compel Answers to Interrogatories.<sup>1</sup> Rather than cooperating with the Commission's decision to initiate "formal proceedings" and to "adduce additional facts through discovery,"<sup>2</sup> the Postal Service has filed a "general objection to all of the interrogatories . . . followed by specific objections."<sup>3</sup> The Postal Service's disappointment with the Commission's decision does not justify its refusal to respond to discovery. The Commission should grant UPS' motion and direct the Postal Service to respond promptly.

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<sup>1</sup> "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 USPS-20," filed June 8, 1999.

<sup>2</sup> Order No. 1239, "Order Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings," issued May 3, 1999, at 22.

<sup>3</sup> "Objection of the United States Postal Service to United Parcel Service Interrogatories UPS/USPS-1-24" (Objection), filed May 25, 1999, at 1.

The Postal Service's general objection is that "UPS' discovery request is premature," in that "the scope of discovery is far from clear."<sup>4</sup> This is not a valid objection to discovery. An examination of the Postal Service's specific objections reveals that several of UPS' interrogatories are not otherwise objectionable, even under the excessively narrow view of discovery suggested by the Postal Service. For example, interrogatories 3 and 4 are said to be objectionable only "to the extent that they request information about the foreign posts' volumes."<sup>5</sup> This implies that domestic volume information *is* relevant to issues that the Commission must resolve. Similarly, on page 12 of the Objection, the Postal Service concedes that "product descriptions" are relevant and unprivileged, yet the Service has improperly withheld this information from UPS, the Commission, and other litigants.

Various claims of confidentiality (commercial sensitivity, proprietary character of information sought) and privilege (attorney-client or work product), and burden have been specifically asserted throughout the Objection. UPS, for its part, has offered to access any materials judged by the Presiding Officer to be sensitive or confidential only under protective conditions.<sup>6</sup>

As noted by OCA in its earlier pleading,<sup>7</sup> the Commission should presume that unfettered access to requested information is appropriate, and the Commission should

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<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> *Id.* at 5.

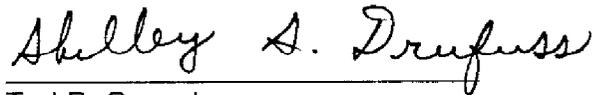
<sup>6</sup> "Motion of United Parcel Service for a Protective Order," filed May 14, 1999.

<sup>7</sup> "Office of the Consumer Advocate Comments in Response to P.O. Ruling No. C99-1/2," filed June 8, 1999.

impose restrictions on access only when the harm contended by the Postal Service is clearly demonstrated and substantiated. In acting on UPS' Motion, OCA urges the Presiding Officer to provide the Postal Service with an opportunity to demonstrate the harm that would result from release of the information sought by UPS.<sup>8</sup> OCA further urges the Presiding Officer to grant UPS' motion to compel provision of interrogatory responses, and restrict access to information provided only when the necessity of doing so has been clearly proven by the Postal Service.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE



Ted P. Gerarden  
Director

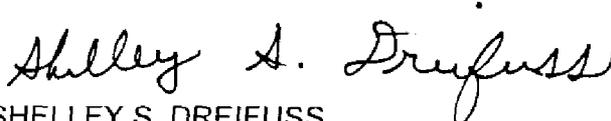
Shelley S. Dreifuss  
Attorney

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<sup>8</sup> In turn, litigants who have an interest in obtaining the information should be given an opportunity to respond to the Postal Service's demonstration of harm.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

  
SHELLEY S. DREIFUSS  
Attorney

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June 18, 1999