

DOCKET SECTION

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.

Docket No. C99-1

**OBJECTION OF THE UNITED STATES POSTAL SERVICE TO
OFFICE OF THE CONSUMER ADVOCATE
INTERROGATORIES OCA/USPS-1, 2, 3(b), 4(e-f), 6
(July 8, 1999)**

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service hereby objects to interrogatories OCA/USPS-1, 2, 3(b), 4(e-f), and 6, filed on June 28, 1999.

Interrogatories OCA/USPS-1 and 3(b). Interrogatory 1 requests information regarding the duration of the Post E.C.S. test. Interrogatory 3(b) requests that the Postal Service state how Post E.C.S. will be offered once the test status stage is complete. The Postal Service objects to these interrogatories on grounds of relevance and commercial sensitivity. Whether Post E.C.S. is in test status or offered in some other basis is irrelevant to the service's functional characteristics and its nonpostal nature. Furthermore, these interrogatories essentially seek information about future plans for a nonpostal service. Disclosure of this information would give competitors insight into product plans, which, in the context of the burgeoning and rapidly evolving electronic services market, constitute sensitive business information. Disclosure of such information would result in competitive harm, as it would enable competitors to reposition their efforts, depending upon whether the Postal Service intends to continue or terminate the test or how the Postal Service would position Post E.C.S. after the test period is completed.

Interrogatory OCA/USPS-2. Interrogatory 2 requests that the Postal Service identify the board or person responsible for authorizing the Post E.C.S. test and produce all documents relating to such approval. This interrogatory is objectionable on grounds of relevance and commercial sensitivity. Commission precedent makes clear that “the decisional processes whereby [the challenged] service was brought into being . . . [have] no direct bearing on the qualities of the service itself.” P.O. Ruling No. C96-1/5. In this regard, information about the approval of the Post E.C.S. test would not shed light on the service’s characteristics and thus its nonpostal nature. Furthermore, documents relating to the decisional process whereby Post E.C.S. came about are subject to protection under the deliberative process privilege. The deliberative process privilege “protects certain opinions and recommendations underlying governmental decisions—*i.e.*, predecisional deliberations—from disclosure, thereby encouraging candor among those advising decisionmakers, with open discussion of legal and policy issues” P.O. Ruling No. R97-1/60. The Postal Service has identified a document that was used in the decisionmaking process that appears to be responsive to interrogatory 2. The document contains internal opinions on Post E.C.S. and recommendations that are predecisional and therefore privileged.

Interrogatories OCA/USPS-4(e-f) and 6(b). Interrogatory 4, subparts (e-f), request that the Postal Service provide a schedule of applicable existing or potential fees charged, collected, or developed for Post E.C.S. service. Interrogatory 6(b) requests whether amounts reported in a newspaper article are “within the range of the Postal Service’s current thoughts on possible charges.” The Postal Service objects on

grounds of relevance, commercial sensitivity, and privilege (in part). In a similar proceeding, Docket No. C96-1, the Presiding Officer concluded that information on Pack & Send price levels "has no direct bearing on the 'postal' quality of the service." P.O. Ruling No. C96-1/5 at 3. Postal Service prices for Post E.C.S. are completely unrelated to customer's usage of existing "postal" service offerings, or the terms and conditions of such "postal" offerings. Thus, in accordance with Commission precedent, price information is clearly of no relevance here.

Furthermore, the Postal Service's practice has been to restrict access to prices so that only customers that are serious prospects for participating in the Post E.C.S. test are given price information. Thus, the Postal Service's existing and potential prices for Post E.C.S. are commercially sensitive and should be shielded from disclosure. Furthermore, to the extent these interrogatories request information about future pricing decisions or "ranges," the Postal Service objects on grounds of privilege. Again, future decisionmaking on pricing is predecisional and subject to protection under the deliberative process privilege.


Interrogatory OCA/USPS-6(a). This interrogatory requests information on the basis upon which the Postal Service "expects to charge" for Post E.C.S. The Postal Service objects to this subpart on grounds of relevance and commercial sensitivity. First, as made clear in P.O. Ruling No. C99-1/3, the only question before the Commission is whether Post E.C.S. is a postal service. Thus, in accordance with P.O. Ruling No. C99-1/3, questions relating to the basis for pricing levels are not relevant

here. Moreover, forcing the Postal Service to release information of this nature would give competitors indications about the cost basis for prices.

UNITED STATES POSTAL SERVICE

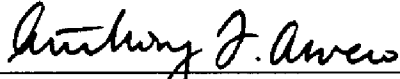
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CERTIFICATE OF SERVICE

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.


Anthony F. Alverno

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