

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

MOTION OF UNITED PARCEL SERVICE FOR
CLARIFICATION OR, IN THE ALTERNATIVE, FOR
RECONSIDERATION AND MODIFICATION OF P.O.
RULING NO. C99-1/3 CONCERNING THE SCOPE
OF THE FIRST PHASE OF THIS PROCEEDING
(July 15, 1999)

United Parcel Service ("UPS") hereby moves that the Presiding Officer clarify or, in the alternative, reconsider and modify that aspect of Presiding Officer's Ruling No. C99-1/3 (July 7, 1999) which limits the first phase of this proceeding to "the issue of whether Post E.C.S. is a postal service for purposes of Chapter 36 of Title 39," and rule that the first phase of the proceeding embraces both of the jurisdictional issues raised by the United States Postal Service.

ARGUMENT

On June 8, 1999, the Postal Service filed a Motion for Partial Reconsideration of P.O. Ruling No. C99-1/2 ("Reconsideration Motion"). The Postal Service there asked the Presiding Officer to restrict this proceeding to "the issue of whether PostECS is a 'postal' service." Reconsideration Motion at 5. In its response, UPS stated that it "has no objection to a ruling which limits the initial phase of the proceeding . . . to the question whether PostECS is mail or a postal service *subject to the Commission's*

jurisdiction." Response of United Parcel Service to United States Postal Service Motion for Partial Reconsideration of P.O. Ruling No. C99-1/2 (June 18, 1999) at 2 (emphasis added). Accordingly, Presiding Officer's Ruling No. C99-1/3 states (at page 7, ¶ 2) that the first phase of this proceeding should be "limited to the issue of whether Post E.C.S. is a postal service *for purposes of Chapter 36 of Title 39*" (emphasis added).

During the discussions between UPS and the Postal Service held in an effort to resolve outstanding discovery disputes as required by Presiding Officer's Ruling No. C99-1/3 (at pages 7-8, ¶ 5), the Postal Service has taken the position that discovery on the Postal Service's jurisdictional claim that PostECS is not a *domestic* mail service is improper at this stage of the case because, according to the Postal Service, this phase is limited to the other jurisdictional issue it has raised, *i.e.*, whether PostECS is "mail," or a "postal" service.¹ UPS believes that the Postal Service's position is contrary to the intent of the Presiding Officer's ruling.

The purpose of the Presiding Officer's ruling is to avoid the need to conduct discovery that would be mooted if the Commission were to find that it does not have jurisdiction over PostECS. Under the Postal Service's reading, the first phase of this case would dispose of only one of the two jurisdictional issues, leaving the other jurisdictional issue to be decided (if necessary) in a second of three phases, or in the same phase as the issues relating to the substantive merits of PostECS under the classification and ratemaking criteria of the statute. That makes no sense.

1. The Presiding Officer could very well rule that the domestic nature of PostECS has not been put at issue in this proceeding, since that issue was not raised in the Postal Service's Answer to the Complaint but rather was only referred to in the argument section of its Motion to Dismiss the Complaint.

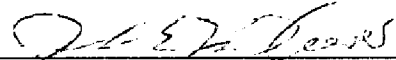
As indicated, UPS believes that the intent of the Presiding Officer's ruling was to consider both jurisdictional issues in the first phase of the case. This is supported by the fact that the Presiding Officer's ruling does not merely state that the first phase is limited to the question whether PostECS is a postal service, but rather goes on to state (at page 2, ¶ 2) that the first phase is limited to whether PostECS is a postal service "for purposes of Chapter 36 of Title 39." This additional language embraces the jurisdictional issue whether PostECS is a *domestic* mail service and is therefore subject to Chapter 36. That reading is certainly consistent with what UPS intended when it responded to the Postal Service's Reconsideration Motion. In light of the Postal Service's refusal to provide discovery on the international/domestic jurisdictional issue, however, UPS seeks clarification concerning the intent of the ruling.

If the Presiding Officer did in fact intend to treat the two jurisdictional issues differently and to deal only with the "postal/nonpostal" issue in this first phase of the case, then UPS requests reconsideration of that ruling. That approach, we submit, would unduly prolong the proceeding by needlessly postponing consideration of the second jurisdictional issue. It would either unnecessarily delay the proceeding by dividing it into three phases (two of which would relate to preliminary jurisdictional issues), or would unduly complicate the second, substantive phase of the proceeding and result in the Postal Service having to respond to discovery on the substantive merits of PostECS without a determination of a preliminary issue that could moot such discovery. Neither result accords with sound administrative economy in decisionmaking.

As mentioned, resolution of this issue is necessary to avoid piecemeal discovery motions practice in this initial phase of the case, since, unless and until the scope of this first phase is made clear, the Postal Service will continue to resist otherwise legitimate discovery requests.

WHEREFORE, United Parcel Service respectfully requests that the Presiding Officer (1) clarify or, in the alternative, reconsider and modify Presiding Officer's Ruling No. C99-1/3 to the extent that ruling delineates the scope of the first phase of this proceeding, and (2) rule that the first phase of this case should deal with both of the jurisdictional issues raised by the United States Postal Service.

Respectfully submitted,



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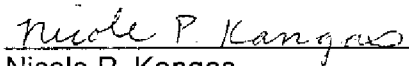
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Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.



Nicole P. Kangas

Dated: July 15, 1999
Philadelphia, PA