

RECEIVED

JUL 21 4 27 PM '99

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0007  
POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

Docket No. C99-1

**UNITED STATES POSTAL SERVICE  
RESPONSE TO MOTION OF UNITED PARCEL SERVICE FOR EXTENSION OF  
TIME TO FILE CASE-IN-CHIEF AND FOR EXPEDITED RESPONSE HERETO  
(July 21, 1999)**

On July 15, 1999, United Parcel Service filed a Motion for Extension of Time to File Case-in-Chief and for Expedited Response Hereto (hereinafter "Motion"). The Motion requests that the Presiding Officer extend the deadline for the filing of UPS's case-in-chief in this proceeding "pending the resolution of the currently outstanding discovery disputes between UPS and the Postal Service." The Motion also requests that a prehearing conference be held in advance of the filing of UPS's case-in-chief.<sup>1</sup> P.O. Ruling No. C99-1/6 directs that responses to UPS's Motion be filed by July 21. In accordance with that ruling, the Postal Service hereby responds to UPS's Motion.

---

<sup>1</sup> In the Motion, UPS claims that the Postal Service "has not even furnished information in response to requests to which it has not objected on relevance or other recognized grounds." Similarly, CAUUC claims that the Postal Service has "refused to provide any answers to discovery requests even those to which it has not objected." CAUUC Statement in Support of Motion of United Parcel Service for Extension of Time to File Case-in-Chief and for Expedited Response Thereto (July 20, 1999). These claims distort the Postal Service's position. The discovery requests to which UPS and CAUUC allude include only a handful of questions for which the only ground for objection was presented in the Postal Service's "general objection." The Postal Service explained throughout its pleadings that the basis for its "general objection" was consistent with prior precedent and other law. As indicated in the Report of the Meeting Between the United States Postal Service and United Parcel Service in Response to Presiding Officer's Ruling No. C99-1/3 (filed July 14, 1999), the Postal Service is no longer pursuing its "general objection" to discovery, and since July 12, it has been filing responses to numerous OCA and UPS interrogatories to which no specific objection

(continued...)

***Extend Filing of UPS Case-in-Chief.*** The Postal Service is not opposed in principle to UPS's request for an extension of time regarding the filing of its case-in-chief; however, the Postal Service is concerned that extending the deadline indefinitely may create disincentives for the participants to adopt litigation strategies that will facilitate the prompt resolution of the controversy at hand. The Postal Service accordingly requests that, should UPS's request for extension be granted, the Presiding Officer specify a date for the filing of UPS's case-in-chief, based on a prediction of the time it will take to resolve "currently outstanding discovery disputes."<sup>2</sup> In addition, to ensure that the filing of UPS's case-in-chief is not further delayed by subsequent discovery disputes, the Postal Service believes that any ruling granting an extension

---

(...continued)  
has been raised.

<sup>2</sup> As of the date and time of the preparation of this pleading, the only "pending discovery disputes" of which the Postal Service is aware is UPS's Motion to Compel Responses to UPS/USPS-1-7 and 9-20, UPS's Motion to Compel Responses to UPS/USPS-25-33, and UPS's Motion to Compel Responses to UPS/USPS-34 and 36-43. The Postal Service has also filed objections to other UPS and OCA discovery requests. UPS's Motion does not make clear whether it or the OCA will move to compel responses to these discovery requests or when motions to compel in relation to these discovery requests may be filed. Nevertheless, assuming, for purposes of time estimation only, that the Postal Service would file a partial or complete objection to the most recently filed discovery request (UPS/USPS-45-49), a responsive pleading by the Postal Service to a hypothetical motion to compel responses to this discovery request would be due no later than August 16, based on assumptions that Postal Service would timely file any objection it may have by July 26, UPS would timely move to compel by August 9, and the Postal Service would timely file a responsive pleading by August 16. This date could accordingly be used as a benchmark for determining when UPS's case-in-chief must be filed. This could be accomplished, for example, by adding an estimate of the time needed for the Presiding Officer to resolve any such motion and time for the Postal Service to file a response. The Postal Service accordingly submits that a date between August 23 and August 30 would be a reasonable date for submission of UPS's case-in-

(continued...)

also address deadlines for discovery against the Postal Service. In particular, the Postal Service submits that it would be appropriate for the ruling to specify a date by which discovery on the Postal Service for the purpose of preparation of participants' cases-in-chief<sup>3</sup> is to end. The Postal Service proposes that discovery requests for this purpose be filed within seven days of a ruling granting UPS's request for extension. The participants have had ample time to formulate their discovery requests, and the Postal Service has answered a number of questions in this proceeding. Placing reasonable limits on discovery against the Postal Service would be eminently reasonable, as it imposes discipline on the proceeding and facilitates prompt resolution of the complaint.

***Prehearing Conference.*** UPS requests that a prehearing conference be held under section 24 of the Commission's Rules of Practice and Procedure. The Postal Service opposes this request. First, the reason offered by UPS for the prehearing conference is unfounded. UPS states that the prehearing conference is appropriate here because it claims that the Postal Service "has been especially recalcitrant in responding to discovery."<sup>4</sup> To the extent that UPS's claim is based on the Postal Service's general objection to discovery, the Report of the Meeting between the United States Postal Service and United Parcel Service in Response to Presiding Officer's Ruling No. C99-1/3, filed on July 14, makes clear that the Postal Service is no longer

---

(...continued)  
chief.

<sup>3</sup> This measure would not affect follow-up discovery under Special Rule of Practice 2D.

pursuing that objection. This essentially moots the basis for UPS's request, since the Postal Service is responding to discovery to which no specific objection has been raised. Second, the Postal Service submits that a prehearing conference would serve no useful purpose, since many of the topics fit for discussion at such an event have already been resolved. In particular, the scope of this phase of the proceeding has already been narrowed in P.O. Ruling No. C99-1/3. The participants have commented upon the Special Rules of Practice, and they have now been placed into effect. See *id.* An outline of the procedural schedule has also been issued. *Id.* The Presiding Officer has further ruled on the application of protective conditions. P.O. Ruling No. C99-1/4. The complainant and UPS have held discussions on resolution of discovery disputes in conformity with the Presiding Officer's ruling. Issues raised in pending motions, including UPS's motions to compel discovery, the Postal Service's Request for Certification of P.O. Ruling No. C99-1/3, and UPS's Motion 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, do not appear to be candidates that lend themselves to oral discussion at a prehearing conference, particularly given the importance and complexity of the legal issues raised in them. In sum, the Postal Service submits that there is nothing for the participants to discuss or resolve at a prehearing conference at this juncture. If a *prehearing* conference is to be held, it should be scheduled after the filing of UPS's case-in-chief. At that time, the

---

(...continued)

<sup>4</sup> As explained in footnote 1 above, UPS mischaracterizes the Postal Service's position.

participants will have a clearer idea of the issues raised by UPS's case-in-chief, and can offer estimates of the time that will be needed to conduct discovery on UPS witnesses and predictions as to whether they intend to exercise or forgo the opportunity for hearings on UPS witnesses.

### CONCLUSION

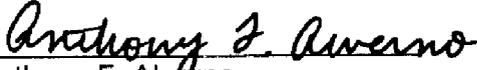
WHEREFORE, the Postal Service respectfully requests that any ruling granting UPS's request for extension of the filing of its case-in-chief also (i) specify the date by which UPS's case-in-chief is to be filed, and (ii) provide that discovery against the Postal Service for the purpose of preparation of participants' cases-in-chief is to expire within seven days of the issuance of any such ruling. The Postal Service also requests that UPS's request for a prehearing conference be denied at this juncture.

The undersigned counsel has sent a copy of this pleading via facsimile transmission to counsel for UPS and counsel for CAUUC.

UNITED STATES POSTAL SERVICE

By its attorneys:

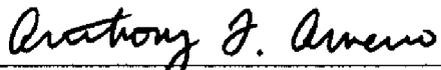
Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

  
Anthony F. Alverno  
Attorney

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2997; Fax -6187  
July 21, 1999

**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. Averno

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2997; Fax -6187  
July 21, 1999