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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

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

Complaint on Post E.C.S.

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Docket No. C99-1

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL RESPONSES TO INTERROGATORIES
OCA/USPS-12 AND -14
(July 30, 1999)

Pursuant to Special Rule 2B,¹ the Office of the Consumer Advocate (OCA) hereby files a motion to compel responses to interrogatories OCA/USPS-12 and -14. The Postal Service filed an objection to these interrogatories on July 16, 1999,² on two grounds: relevance and commercial sensitivity (in part).³

In interrogatory 12, OCA requested the following information:

OCA/USPS-12. Please provide the location(s) of the <http://global.postecs.com> and <https://global.postecs.com> server(s). Are the <http://> and <https://> servers completely separate computers? Please explain.

Interrogatory 14 was phrased as follows:

OCA/USPS-14. Who owns and controls the <http://global.postecs.com> and <https://global.postecs.com> server(s)? To whom does the "global" domain belong?

¹ Adopted in P.O. Ruling C99-1/3, July 7, 1999.

² "Objection of the United States Postal Service to Office of the Consumer Advocate Interrogatories OCA/USPS-8, 9 (in part), 10-14, 16 (in part), 17, 18 (in part)."

³ *Id.* at 4.

It is the Postal Service's position that questions concerning the location of Post E.C.S. servers are "completely irrelevant to the postal/nonpostal question,"⁴ and therefore, need not be answered. OCA, however, shares the view of United Parcel Service (UPS) that "the first phase of the proceeding embraces both of the jurisdictional issues raised by the United States Postal Service," i.e., the postal/nonpostal character of Post E.C.S. *and* its domestic/international character. UPS's argument that it would not be efficient or sensible to schedule a second phase of the complaint proceeding to examine the domestic/international nature of Post E.C.S. is compelling. Doing so would needlessly and unfairly postpone UPS's opportunity to obtain a review of Post E.C.S.'s costs, rates, and revenues, in the event that the Commission were to determine that it does have jurisdiction over the service.

In Order No. 1239, the Commission pointed out that this case presents unique issues because the Postal Service is providing non-traditional service. The Commission noted that the standard for deciding whether a service is mail "is not restrictive as to the technological means used to perform any of those functions," and that there is a colorable claim that Post E.C.S. "is the delivery of mail because it accomplishes by electronic means all the functions that would otherwise be performed by conveying a physical message or document."⁵ Clearly the Commission has contemplated that there must be a careful review of all aspects of Post E.C.S. service

⁴ *Id.*

⁵ "Order Denying Motion of United States Postal Service To Dismiss Complaint and Notice of Formal Proceedings," Order No. 1239, at 19.

to determine whether or not the service has attributes that would lead the Commission to conclude that it is postal in character.

OCA's inquiry about the location, ownership, and control of the server(s) used for Post E.C.S. service is intended to gain important information about the way in which Post E.C.S. service works. According to the Postal Service, a sender uploads a message and/or electronic files to a Post E.C.S. server. The server then notifies the intended recipient that a package is available for pickup and supplies the recipient with a unique URL address at the server. The recipient accesses the server using the URL provided, and downloads the package. Location, ownership, and control of the Post E.C.S. server(s) is significant in determining how much like traditional postal service this is. If, for example, the Postal Service owns and controls or operates the servers upon which Post E.C.S. mail is stored pending retrieval, then the service resembles holding physical mail following attempted delivery until the recipient comes to the Post Office to retrieve the physical mail. The details of location, ownership, and control will play an important role in judging the mail-like character of Post E.C.S.

The Postal Service has objected to almost all of the OCA's modest discovery requests in this proceeding. It goes too far, however, in objecting to providing OCA with the facts about how Post E.C.S. actually operates, including key facts about the roles the Postal Service and third parties may play in providing the service. This information is critical to assist the Commission in determining how evolving forms of electronic communication fit into the statutory scheme governing the actions of the Postal Service.

Nor has the Postal Service contended that the OCA queries contained in interrogatories 12 and 14 are irrelevant to the issue whether Post E.C.S. is, at least in

part, domestic in nature, nor can it be so contended. If a Post ECS transaction is: (1) initiated in the United States (by a computer situated in the United States), (2) routed through Postal Service servers situated in the United States, and (3) received by a computer situated in the United States, it cannot be disputed that such a transaction is domestic. Therefore, if the Presiding Officer rules that inquiries concerning the domestic/international nature of Post E.C.S. are appropriate for the first phase of the proceeding, then OCA moves that the Postal Service be directed to provide answers to interrogatories 12 and 14.

The second ground alleged by the Postal Service to avoid answering the subject interrogatories is:

[I]nformation about the physical location of servers is sensitive Disclosure of such information could enable persons intent on gaining unauthorized access to the system or compromising system security to concentrate their efforts on points of access proximate to the place where such servers are located.

This scenario is both highly conjectural and improbable. The Service has not alleged that it has encountered efforts to breach the security of Post E.C.S. servers. Nor has the Postal Service established or attempted to establish that identification of the location and ownership of servers enhances the ability of "hackers" to breach security. Furthermore, Postal Service representations in promotional material for Post E.C.S. tout the near-impregnability of its Post E.C.S. security measures:⁶

Post E.C.S. provides several levels of security, from password protection at origin and destination to secured SSL or PCT internet connections and optional RSA (RC4) file-encryption on the Post E.C.S. server.

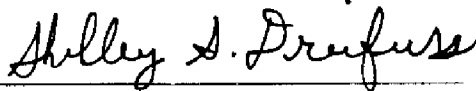
⁶ Attachment to Postal Service response to UPS/USPS-5A.

The Postal Service's claims for the need for secrecy concerning the server locations must, therefore, be rejected.

Wherefore, for the reasons presented above, OCA respectfully requests that the Postal Service be directed to provide complete responses to interrogatories OCA/USPS-12 and 14.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE



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Director

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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.



Stephanie S. Wallace

Washington, D.C. 20268-0001
July 30, 1999