

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

**UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO OFFICE OF THE  
CONSUMER ADVOCATE MOTION TO COMPEL RESPONSES TO  
INTERROGATORIES OCA/USPS-12 AND -14  
(August 6, 1999)**

On July 6, 1999, the Office of the Consumer Advocate (OCA) filed interrogatories OCA/USPS-8-18. On July 16, the Postal Service filed objections to OCA/USPS-8, 9 (in part), 10-14, 16 (in part), 17, 18 (in part).<sup>1</sup> On July 20, 1999, the Postal Service filed responses to interrogatories OCA/USPS-9 (in part), 15, 16 (in part), and 18 (in part). On July 30, the OCA filed its Motion to Compel Responses to Interrogatories OCA/USPS-12 and -14 (hereinafter "Motion").<sup>2</sup> The Postal Service hereby responds to OCA's Motion.<sup>3</sup>

Interrogatory 12 requests that the Postal Service identify the location of its servers and state whether these are separate computers. Interrogatory 14 requests that the Postal Service identify the entity that owns and controls certain servers and the

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<sup>1</sup> Objection of United States Postal Service to Interrogatories OCA/USPS-8, 9 (in part), 10-14, 16 (in part), 17, 18 (in part) (filed July 16, 1999) (hereinafter "Objection").

<sup>2</sup> On August 2, 1999, the OCA filed a notice withdrawing interrogatories OCA/USPS-8, 9 (unanswered portion), 10, 11, 13, 16 (unanswered portion), 17 and 18 (unanswered portion).

<sup>3</sup> Under Special Rule of Practice 2B, answers in opposition to a participant's motion to compel discovery requests "will be considered supplements to the arguments presented in the initial objection." P.O. Ruling No. C99-1/3, Attachment A. Consistent with Special Rule 2B, the Postal Service will not endeavor to repeat the arguments presented in its

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domain "global." The Postal Service objected to these interrogatories on grounds of relevance and commercial sensitivity (in part).

In its Motion, the OCA states that the location, ownership, and control of servers used in Post E.C.S. is "significant in determining how much like traditional postal service [Post E.C.S.] is." OCA Motion at 3. The OCA further states that such information will assist in understanding the "mail-like" character of Post E.C.S. The OCA postulates that if the Postal Service owns, controls or operates the servers on which Post E.C.S. messages are stored pending retrieval, then this will would "resemble[] holding physical mail following attempted delivery . . . ." OCA incorrectly assumes that private or Postal Service ownership of the equipment used to provide Post E.C.S. is somehow determinative to the "postal/nonpostal" question. That the Postal Service owns and controls, or contracts out, an element of its network, even in the context of hardcopy postal services, is completely irrelevant to the "postal" character of a service. The Postal Service out-sources a substantial portion of its hardcopy delivery network to retail operators, privately operated transportation carriers, and rural highway contract carriers for the acceptance, transportation, and delivery of mail matter, yet this does nothing to change the fundamental character of the "postal" services handled by such contractors. Likewise, it is of absolutely no consequence whether the Postal Service owns or controls servers and web domains. Furthermore, OCA's attempt to analogize Post

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initial Objection, but rather will supplement those arguments in order to respond to

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E.C.S. to the hardcopy mail paradigm makes no sense. It should be of no moment to a sender or recipient of an electronic message that the message is to be sent to, or retrieved from, a server located in either Tuscaloosa or Tombouctou; the message can be sent to or retrieved from either location electronically, usually within a matter of seconds, without regard to where the user or recipient is located. This clearly would not be the case in the context of a hardcopy letter. It would make no sense to route a domestic cross-town letter through a foreign post. To do so would require that the sender pay more for international mail service and would force recipient to undertake extraordinary measures to retrieve the communication. The analogy to hardcopy mail, therefore, simply does not work, and it is therefore irrelevant where servers are located<sup>4</sup> and who owns or controls them.

OCA further maintains that, if the Presiding Officer directs that inquiries on the international nature of Post E.C.S. are appropriate in the first phase, the interrogatories

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arguments raised in OCA's Motion to Compel.

<sup>4</sup> The Postal Service objected on grounds of sensitivity to the extent OCA sought disclosure of the physical location of servers used in connection with Post E.C.S. To the extent OCA requests no more than the identity of the country in which servers are located, the Postal Service will not pursue this ground. The Postal Service does not agree, however, that system security does not face greater risk of attempted penetration if more specific information on the physical location of servers is liberally disclosed. Such information would give persons intent on penetrating the system a much better understanding of the equipment and facilities to which they should direct their attention. Even if such information were relevant, it should only be provided under suitable protective conditions.

would also elicit information relevant to this topic as well.<sup>5</sup> In particular, OCA claims that if a Post E.C.S. message is initiated in, routed through, and received by computer equipment and servers in the United States, "it cannot be disputed that such a transaction is domestic." OCA Motion to Compel at 4. This has no logical appeal. That a message is routed through a server located in the United States does not establish that any particular transaction is foreign or domestic. Rather, the truly revolutionary aspect of Internet-based communications is that they can be sent by, and received from, anywhere in the world, regardless of the physical location of equipment used to route and store such messages. Rather than addressing a message to a person in a fixed location, as is the case with traditional hardcopy communications, the sender of an electronic message need not concern herself with the recipient's physical location, for the message will be accessible wherever immigration authorities allow the recipient entry and wire communications are available to facilitate e-mail and Internet access. Thus, contrary to OCA's contention, it cannot be disputed that the physical location of a

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<sup>5</sup> In its Motion, the OCA states that it agrees with UPS that the first phase of the proceeding should extend into inquiries on the international nature of Post E.C.S. The Postal Service's views on this topic are well stated in its Answer in Opposition to 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 (filed July 26, 1999). Furthermore, the Postal Service contests the OCA's suggestion that leaving the international inquiry out of the first phase of the proceeding would "unfairly postpone UPS's opportunity to obtain a review of Post E.C.S.'s costs, rates, and revenues . . . ." To the contrary, such inquiries would not be "postponed" by virtue of excluding the international question from the first phase, for, as the Postal Service argued in its Answer in Opposition, the inquiry on the international nature of a service is entirely outside the bounds of section 3662; hence, it should never take place

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server does nothing to prove the cross-border or domestic nature of any particular transaction. Hence, physical locations of servers used in Post E.C.S. are of absolutely no relevance here.

### CONCLUSION

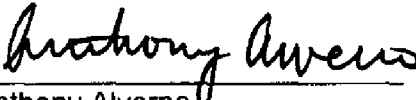
WHEREFORE, the Postal Service requests that OCA's Motion to Compel responses to interrogatories OCA/USPS-12 and -14 be denied. The undersigned counsel has sent a copy of this document to counsel for UPS via facsimile transmission.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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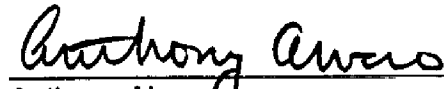
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in any "phase" of this proceeding.

**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 Alverno

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