

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
OBJECTION TO UNITED PARCEL SERVICE
INTERROGATORIES UPS/USPS—50, 52-54, 57-58
(August 26, 1999)

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service hereby objects to interrogatories UPS/USPS—50, 52-54, 57-58, filed on August 16, 1999.

Interrogatory UPS/USPS-50. Interrogatory 50 subparts (a) and (b) request that the Postal Service offer an opinion as to whether certain federal criminal and other statutes apply to Post E.C.S. transactions. A similar interrogatory, UPS/USPS-41, was the subject of P.O. Ruling No. C99-1/9. In that ruling, the Presiding Officer indicated that the UPS and the Postal Service be prepared to discuss interrogatory UPS/USPS-41 at the prehearing conference. During the prehearing conference, the Presiding Officer requested that UPS file an amendment to interrogatory UPS/USPS-41, Tr. 1/39; however, as of the date of this pleading, UPS's motion to compel a response to this interrogatory has not been granted.

The Postal Service objects to interrogatory UPS/USPS-50 on grounds of relevance and on grounds that this interrogatory requests a legal opinion. Whether unauthorized actions taken in connection with Post E.C.S. transactions may give rise to criminal violations does not establish that Post E.C.S. meets the legal standard established by

the courts for evaluating whether a service is "postal" in character, *i.e.*, whether the service is related to the posting, handling, and delivery of mail matter.¹

The Postal Service further maintains that interrogatory UPS/USPS-50 is patently objectionable on grounds that it requests a legal opinion from the Postal Service. To require a response to this interrogatory would be clearly contrary to Special Rule of Practice 5, which clearly provides that legal argument is not to be received into evidence, and to well-established Commission precedent. Cf. P.O. Ruling No. R97-1/39. In P.O. Ruling No. R97-1/39, the Presiding Officer denied a motion to compel the Postal Service to provide legal opinions on insured services. The Presiding Officer explained:

[The] [i]nterrogatories . . . ask whether, as to insured and uninsured mailers, the Postal Service has the status of a common carrier or bailee. These are essentially legal questions, rather than questions of fact. While a response might indicate the legal position of the Postal Service, that position would not be controlling on the Office of the Consumer Advocate nor on the Commission. The Postal Service Opposition is correct that OCA can develop this information through normal legal research.

P.O. Ruling No. R97-1/39 at 2. Similarly, here, UPS is asking the Postal Service to offer its opinion about the applicability of federal law to Post E.C.S. This is improper discovery, and UPS is not entitled to a response. If UPS wishes to argue that certain federal laws apply to Post E.C.S. transactions, it is free to do so.

Interrogatories UPS/USPS-52, 54 and 58. Interrogatory UPS/USPS-52 requests

¹ *National Assoc. of Greeting Card Publishers v. US Postal Service*, 569 F.2d 570, 595-598 (D.C. Cir. 1976) (NAGCP), *vacated on other grounds*, *US Postal Service v.*

whether there have been Post E.C.S. transactions in which the sender and recipient had e-mail addresses containing the top level domains (TLDs) of “.com”, “.org”, “.net”, or “.edu”, and for the proportion of Post E.C.S. messages that fall within this category. Interrogatory UPS/USPS-54 asks for the proportions of Post E.C.S. transactions that have involved users and addressees who do not have “foreign top level domains” in their e-mail addresses. Interrogatory UPS/USPS-58 asks for the proportion of Post E.C.S. transactions where the sender had a TLD containing “.com”, “.org”, “.net”, or “.edu” in the domain name of the sender’s e-mail address and the message was left to retrieve on servers inside or outside the United States.

The Postal Service objects to interrogatories 52, 54, and 58 on grounds of relevance and burden. In addition, the Postal Service objects to interrogatory 54 on the additional ground of vagueness,² and to interrogatory 58 on the additional ground of commercial sensitivity and jurisdiction to the extent it requests information about Post E.C.S. transactions initiated by users other than those licensed by the United States

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Associated Third Class Mail Users, 434 U.S. 884 (1977).

² In interrogatory UPS/USPS-47, UPS endeavored to define “foreign top level domain” for purposes of that interrogatory. Interrogatory 54, however, does not provide any such definition. The Postal Service therefore raises a vagueness objection to this interrogatory. While UPS may believe that “foreign top level domain” is a widely known term in the Internet community, it has *never* cited a single source of authority that even uses the term “foreign top level domain.” Indeed, the glossary of registration-related terms maintained by Network Solutions does not include the concept at all. Indeed, it describes “.com”, “.net”, and “.org” as “worldwide top level domains,” clearly contrary to the positions that UPS has maintained with respect to its motions to compel interrogatories UPS/USPS-44, 45, and 47. See

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Postal Service.³

Relevance. Once again, UPS asks for disaggregated proportions of Post E.C.S. transactions based on its unsubstantiated and thoroughly discredited theory on the “foreign” or “domestic” nature of TLDs. As the Postal Service has consistently argued in its pleadings, UPS’s attempt to segregate Post E.C.S. transactions on the basis of TLDs will not reveal the proportion of “foreign” or “domestic” Post E.C.S. transactions, no matter how those terms are defined. As the Postal Service’s arguments in this regard have been well documented and thoroughly explained, it does not believe it is necessary to repeat them here, but rather it is sufficient to incorporate by reference its pleadings related to interrogatories UPS/USPS-44, 45, and 47(f).

Burden. All three interrogatories request information that require the Postal Service to determine the proportion of a subset of all Post E.C.S. messages on the basis of the senders’, recipients’, or both the senders’ and recipients’ TLDs in e-mail addresses. Such quantifications cannot be performed without undue burden. In particular, there is no mechanism that would facilitate automated searches of sender or recipient e-mail addresses for Post E.C.S. transactions. As such, preparing responses to these interrogatories would require that computer programmers obtain raw data files

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<<http://www.networksolutions.com/help/registration/glossary.html>>.

³ The interrogatory is not worded to apply to Post E.C.S. messages initiated by Postal Service licensed users, so the Postal Service raises a commercial sensitivity and jurisdiction objection to the extent it has any information about transactions initiated by users licensed by other postal administrations. By raising this objection, however, the

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from the pertinent computer system(s) and/or network backup. Each sender and/or recipient e-mail address would appear in the raw data files proximate to other extraneous characters without any obvious visual separations from those characters. Consequently, the data would have to be converted manually, upon visual inspection, by a knowledgeable data base administrator, to a format that would lend itself to searching for the transactions with the sender, recipient, or sender and recipient TLDs requested by UPS. Multitudinous e-mail addresses would then have to be independently examined to determine how it should be categorized for purposes of determining the proportion requested by UPS. The Postal Service estimates that this task would require at least two weeks, full time, of a qualified engineer to write scripts sufficient to extract the relevant data, and an additional two weeks of dedicated resources to verify the requested data and prepare responses. Moreover, while the tasks of obtaining the data files and visually separating e-mail addresses could be combined for all three interrogatories, more time would be needed to the extent each interrogatory seeks information requiring separate evaluation, on a transaction-specific basis, of both the sender and recipient's e-mail addresses. Although it is difficult to estimate with precision the total time involved, we estimate that a minimum of six weeks would be required, given the other discovery requests that are outstanding. This would be unduly burdensome, particularly given the complete lack of relevance of this

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Postal Service does not intend to represent that it possesses such information.

information to the matters at issue in this proceeding.

Interrogatory UPS/USPS-53. Interrogatory UPS/USPS-53 requests that the Postal Service provide copies of customer feedback and informal interviews to which the Postal Service referred in its response to interrogatory. The Postal Service objects on grounds that this interrogatory is cumulative and on grounds of commercial sensitivity. UPS has already requested copies of market research in interrogatory UPS/USPS-5(f); hence, this request is cumulative. Further, as the Postal Service maintained in its objection to interrogatory UPS/USPS-5(b), the requested information is commercially sensitive. The Postal Service reiterates that release of customer feedback would be detrimental to its business interests, and would be of significant benefit to competitors.

Interrogatory UPS/USPS-57. This interrogatory requests whether the Postal Service sought “the consent of the President” in connection with any agreements between the Postal Service and the International Post Corporation and the foreign posts, or to any rates or prices charged for Post E.C.S. The Postal Service objects on grounds of relevance and on grounds that this interrogatory seeks legal conclusions. First, the Postal Service notes that P.O. Ruling No. C99-1/9 held that information about the participation of specified individuals or organizational units of the Postal Service in Post E.C.S. need not be disclosed. Similarly, the participation of the President in any agreements or prices for Post E.C.S. is not determinative as to Post E.C.S.’s legal status, for the Executive Office of the President could very well evaluate policies related

to any kind of service. See, e.g., Op. & Rec. Dec., PRC Docket MC78-3 at 159 (discussing Administration Policy Statement (July 23, 1979) on E-COM service).

Furthermore, the interrogatory requests a legal conclusion. The interrogatory uses the same language in 39 U.S.C. § 407(b), which provides that the Postal Service may "with the consent of the President" negotiate and conclude treaties and conventions and establish international rates of postage. As the controversy in *UPS Worldwide Forwarding v. United States Postal Serv.*, 66 F.3d 621 (3d Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996), makes clear, the concept of "Presidential consent" for purposes of section 407 is not a simple, straightforward factual inquiry. Rather, there are procedural mechanisms that underlie the concept of "Presidential consent," and the Postal Service does not believe that this is the appropriate forum to relitigate when such consent is manifested for purposes of section 407, as this is in essence a question of law.

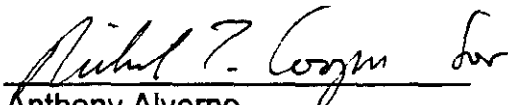
The undersigned counsel has sent a copy of this document to counsel for UPS
via facsimile transmission.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Anthony Alverno

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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