

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
PROVISION OF DESCRIPTIVE LIST OF RESPONSIVE DOCUMENTS
AND ASSOCIATED PRIVILEGES
PURSUANT TO PRESIDING OFFICER'S RULING NO. C99-1/9
(August 30, 1999)**

On May 14, 1999, UPS filed interrogatories and requests for production of documents UPS/USPS-1-24. On May 25, the Postal Service filed general and specific objections to UPS's discovery request. On June 8, UPS filed its Motion to Compel Responses to Interrogatories UPS/USPS-1-7 (except 5(g)) and 9-20 (hereinafter "UPS Motion to Compel"). Presiding Officer's Ruling No. C99-1/9, *inter alia*, deferred ruling on the motion to compel with respect to Interrogatories UPS/USPS-5, 6, and 10 through 14, pending production by the Postal Service of a "list specifying the particular privilege claimed for each category of document requested" in these interrogatories. Ruling No. C99-1/9 (August 9, 1999) at 4. At the prehearing conference held August 10, 1999, the Postal Service was directed to include in its list a description of specific documents potentially responsive to subparts (a) through (f) of Interrogatory UPS/USPS-5, and Interrogatories 6, 10, 11, 12, 13 and 14. Tr. 1/14-15. Presiding Officer's Ruling No. C99-1/12, however, modified the requirements relating to subpart 5(d), requiring only a categorization of potentially responsive documents. Ruling No. C99-1/12 (August 26, 1999) at 2.

The Postal Service hereby provides the attached descriptive list of potentially responsive documents pursuant to Ruling No. 9 and the discussion of participants at

the prehearing conference.¹ Due to the enormous number of files and documents required to be searched, reviewed, analyzed and categorized in order to comply with the request for a *Vaughn* index, and the limited Postal Service resources available to conduct these tasks, the Postal Service cannot guarantee that it has located and described absolutely every potentially-responsive document at this time. However, the Postal Service does contend that it has conducted a good-faith effort to complete the requested index,² and it is the product's program manager's belief that the vast majority of potentially-responsive documents has been identified and listed. Given the need to respond to ongoing discovery requests which continue to be filed unabated, the limited resources available to devote to this task,³ and the needs of the client to actively manage the product in the midst of this litigation, the Postal Service believes that the additional extraordinary effort that would be required to possibly locate a few remaining undiscovered items is not warranted at this juncture. The Postal Service therefore respectfully requests that it be relieved from continuing to search for potentially-responsive documents.

¹ Note that since a response to interrogatory 11 was provided, over objection, on August 20, 1999, materials potentially responsive to this interrogatory have been excluded from the listings provided.

² Following the filing of the Postal Service's motion for an extension of time in which to provide the list on August 20, 1999, the Postal Service dedicated the full-time efforts of three contractors who would otherwise be performing other tasks to assist in the identification, location, review and categorization of potentially-responsive documents, from a variety of hard-copy and electronic files. These efforts, which together with the ongoing efforts of Postal Service client and legal personnel, consumed hundreds of person hours.

³ The contractors who were assigned to assist in this effort, unfortunately, are scheduled to end their contractual relationships with the Postal Service in the very near future, and will not be able to devote their remaining time to the continued search for documents.

The lists presented below are organized by interrogatory, and, where relevant, by interrogatory subpart. Note that where a particular document or category is potentially responsive to more than one interrogatory or subpart, it is listed only once, under what the Postal Service has determined to be the most pertinent interrogatory.

I. Interrogatory UPS/USPS-5 (introductory subpart):

5 Provide all documents (other than Technical Materials) referring or relating to Post E.C.S.:

Document Category	Privilege/Objection
Documents related to Project Progress and Strategy Meetings and Teleconferences, including agendas, schedules, minutes	Deliberative Process, Attorney-Client, Relevance, commercial sensitivity
Draft Agreements among USPS, foreign posts, IPC, and/or Tumbleweed and related communications	Relevance, attorney work product, attorney-client, commercial sensitivity
Client communications, plans and reports concerning data security issues	Relevance, attorney-client, commercial sensitivity
Various email messages and other communications regarding account creation, implementation and management process and procedures	Relevance, commercial sensitivity
Various email messages regarding billing process and procedures	Relevance, commercial sensitivity, trade secret, proprietary information
Various email messages concerning customer relations and sales issues	Relevance, commercial sensitivity
Status reports concerning customer activity, service usage, and telemarketing results	Relevance, commercial sensitivity
Internal PowerPoint presentations regarding project status and service features	Relevance, commercial sensitivity
PowerPoint presentations to postal conference attendees	Relevance, commercial sensitivity
Communications and draft creative for proposed internal and external public relations activity	Relevance, commercial sensitivity
Draft specifications and other communications related to integration of Postal Service and vendor services	Relevance, Commercial Sensitivity, Trade Secret Proprietary information.

Client notes, research, communications regarding product development	Relevance, Commercial Sensitivity, Trade Secret Proprietary information.
Counsel's draft pleadings	Attorney Work Product, Relevance
Records of counsel's communications with clients regarding PostECS litigation, other litigation-related communications	Attorney work product, attorney/client privilege. Relevance, Commercial Sensitivity, Trade Secret Proprietary information.
Counsel's notes of conversations with representatives of foreign posts, IPC and/or Tumbleweed	Attorney work product, relevance, commercial sensitivity
Legal memoranda	Attorney work product, relevance
Memoranda of attorney/client briefings	Attorney work product, attorney/client privilege.
Obsolete or superseded sales and marketing plans (See 5e)	Relevance, commercial sensitivity
Communications and reports concerning project budgeting, planning and measurement	Relevance, commercial sensitivity
Documents concerning other Postal Service initiatives which tangentially refer to PostECS	Relevance, commercial sensitivity
Public Relations Marketing Communications	Relevance, commercial sensitivity
Communications and reports from vendors regarding product development issues	Relevance, commercial sensitivity
Task orders with vendors for support services related to PostECS	Relevance, commercial sensitivity
Cost estimates for hardware to be supplied in support of PostECS	Relevance, commercial sensitivity
Management briefing papers concerning PostECS activities and status	Relevance, commercial sensitivity
Documents concerning research of similar services and technologies in marketplace	Relevance, commercial sensitivity
Draft price lists and sales support information	Relevance, commercial sensitivity
Reports concerning demand for foreign posts' implementation of PostECS	Relevance, commercial sensitivity Proprietary information of foreign posts

II. Interrogatory UPS/USPS-5(a):

- a) Promotional materials, coupons, advertisements, solicitations, and other similar items (the names of customers or potential customers need not be provided);⁴

Document	Privilege/Objection
Solicitation letter directed to top officials 9/16/98	Relevance, commercial sensitivity Commercially sensitive information, as this is not widely distributed and reveals sales strategies.

III. Interrogatory UPS/USPS-5(b):

- b) Instructions to Postal Service or contractor personnel involved in selling, promoting, providing, or answering inquiries concerning Post E.C.S.;

Document	Privilege/Objection
Tumbleweed Software Customer Visit Program 9/26/98	Relevance. Commercial sensitivity. Prepared for the Postal Service by Tumbleweed. Provides analysis of customer needs.
"Request for Customers" memorandum to Business Customer Relations managers 9/17/98	Commercial sensitivity. Identifies target markets, customers, pricing strategy, marketing strategy.
Post E.C.S. Customer Enrollment Plan draft document 9/98	Commercial sensitivity. Identifies sales objectives, target markets and resources to be used by sales personnel.
<i>Post E.C.S. Usage Generation Plan, February 1999.</i>	Commercial sensitivity. Contains quantitative information about prospective transaction volumes, targets. Reveals strategies for enlisting new customers.

⁴ Note that some responsive material, which consists of widely distributed or publicly available information, was provided in the Postal Service's partial response to interrogatory UPS/USPS-5(a), filed on July 20, 1999. This information is not duplicated here.

	Contains customer-specific data, analysis of customers. Contains analysis and recommendations with respect to pricing.
<i>Post E.C.S. Know the Account Template, September 26, 1998</i>	Relevance, commercial sensitivity, proprietary information of USPS and private company. Reveals marketing and sales strategy, how to analyze customer needs.
<i>Sales Strategies for Post E.C.S., September 1998</i>	Commercial sensitivity. Reveals market analyses and strategy. Prepared by consultant for Postal Service. Largely irrelevant.
<i>Post E.C.S. Enrollment Strategy, October, 1998</i>	Largely irrelevant. Commercial sensitivity. Profiles potential customers.
Draft Account Management Plan 10/21/98	Relevance: Concerns account management, has nothing to do with alleged postal character of product. Commercial sensitivity: describes steps to interact with test participants during test, reveals sales/customer retention strategy.
PostECS Response Support Package 7/2/99	Commercially sensitive. Internal instructions regarding how to set up a PostECS account. Contains pricing information, instructions for product use, customer follow-up. Not widely distributed. Large portions are irrelevant.
PostECS telemarketing script (2 versions)	Commercial sensitivity: would reveal marketing strategy.
PostECS Product Data Sheet (several versions)	Commercial sensitivity: Demonstrates the way the Postal Service highlights and describes the features of the service to our customers; reveals positioning strategy
Hotline and Database Procedures 6/11/99	Relevance: concerns procedures for answering inquiries on the Postal Service's toll-free hotline, procedures for updating customer lead database. Commercial sensitivity: contains trade secret information regarding structure, contents of lead database. Contains no product descriptions.

PostECS Accounts Creation 5/21/99	Relevance, Commercial Sensitivity. Provides technical details on internal USPS process for setting up customer accounts, recording customer data.
Establishing Group Accounts	Relevance, Commercial Sensitivity, Trade Secrets. Reflects passwords and logon information to USPS secure server.
Lead Conversion and Customer Retention Plan	Relevance. Commercial sensitivity, would reveal marketing tactics and strategy
PostECS Sales Call Report form	Relevance. Form never used. Does not pertain to nature of product. Commercial sensitivity, contains survey form revealing customer information in which the Postal Service is interested.

IV. Interrogatory UPS/USPS-5(c):

c) Motivational tools, training materials, and any other similar material for Postal Service or contractor personnel;

Document	Privilege/Objection
Product Demo Script	Relevance. Contains technical guidance on how to use the PostECS demonstration at https://global.postecs.com .
USPS PostECS Sales & Technical Workshop manual used in training on August 25-26, 1998	Commercial Sensitivity. Contains detailed information regarding sales strategy, customer base, customer-specific information. Significant portions irrelevant, as contains technical information regarding software usage, installation.
Sample Applications PostECS 8/17/99	Commercial sensitivity. Would reveal target markets and sales strategies.

PostECS Competitors 8/17/99	Commercial sensitivity. Assessment of competitive service offerings.
PostECS Quick Reference Guide	Commercial sensitivity. Would reveal marketing strategy.
Customer Case Study presentation 8/17/99	Commercial sensitivity. Reveals customer specific information, marketing strategy.
Driving Post E.C.S. Transactions, IPC meeting, November 1998	Relevance. Commercial sensitivity. This is marked as and consists of the confidential information of a third party. As such, contractual nondisclosure provisions may apply governing this document. Contains case studies.
Post E.C.S. for Trainers	Relevance, pertains to use of graphical user interface, administrative server functions, software requirements and installation procedures. Commercial sensitivity: Contains proprietary information of third-party vendor.
PostECS Hands-on Training Agenda 8/13/99	Relevance. Commercial sensitivity.
Anatomy of a Sales Call 8/17/99	Relevance. Commercial sensitivity. Reveals marketing, sales strategy.
PostECS Training Guide 5/21-22/98	Relevance. Commercial sensitivity. Reveals marketing, sales strategy. Contains confidential proprietary information of foreign post.
Sales Workshop 8/17/99	Relevance, commercial sensitivity. Would reveal customer identities, marketing strategies, target markets, sales strategies.
Accelerated PostECS Training Course 5/6/98	Relevance, commercial sensitivity. Describes work done by vendor for IPC. This is marked as and consists of the confidential information of a third party. As such, contractual nondisclosure provisions may apply governing this document
PostECS Sales Training Guide 5/6/98	Relevance. Commercial Sensitivity. Contains detailed information regarding sales strategy.
PostECS User's Guide (4 versions)	Relevance, commercial sensitivity
PostECS Step-By-Step Guide to Receiving a PostECS Package Using a Netscape	Relevance, pertains to use of graphical user interface and Electronic Postmark™.

Browser (2 versions)	Commercial sensitivity, distributed only to test participants, would reveal strategic, design and other valuable elements of PostECS service.
PostECS Step-By-Step Guide to Sending a PostECS Package	Relevance, pertains to use of graphical user interface and Electronic Postmark™. Commercial sensitivity, distributed only to test participants, would reveal strategic, design and other valuable elements of PostECS service.
Sales Strategies for PostECS	Relevance, commercial sensitivity.
PostECS Demonstration Scheduling	Relevance. Form for recording PostECS demonstrations requested by prospective customers.

V. Interrogatory UPS/USPS-5(d):

d) Communications sent to any customers or potential customers, by mail or by any other form of delivery, including by wholly electronic means (the names of customers or potential customers need not be provided);

Document Category	Privilege/Objection
Account welcome letters containing newly established account login and password information.	Relevance, Commercial sensitivity.
Various e-mail correspondence to establish meeting dates and times, meeting agendas, next steps, etc.	Relevance, Commercial sensitivity
Various communications to customers or potential customers responding to questions, interest expressed, comments, acknowledgments, etc. regarding Post E.C.S. service	Relevance, Commercial sensitivity, privacy of customers.
Holiday greeting sent via flash technology during December, 1998 that reminded existing participants of Post E.C.S. and its benefits.	Relevance, Commercial sensitivity
Reminder message sent via flash technology to all participants alerting them of migration from Post E.C.S. version 1.5 to Post E.C.S. version 2.0. June, 1998.	Relevance, Commercial sensitivity

Various emails from the Post E.C.S. help desk responding to customer inquiries	Relevance, Commercial sensitivity, user privacy.
Various customized presentations to potential and actual customers	Relevance, Commercial sensitivity. Reveals positioning and sales strategy. Reveals future product enhancements, pricing.
Various statements of use/invoices directed to test participants.	Relevance, Commercial sensitivity
PostECS Test Participant Application Template	Relevance, Commercial sensitivity

VI. Interrogatory UPS/USPS-5(e):

e) Plans for future marketing of Post E..C.S.

Document	Privilege/Objection
Creative Workplan For Print and Banner Ads 7/22/98	Commercial sensitivity. Reveals marketing strategy regarding advertisement content.
Post E.C.S. pilot plan prepared by the Postal Service, Canada Post, and LaPoste; ⁵	To the extent information about the foreign posts, foreign markets, or IPC falls within this discovery request, the Postal Service reiterates its objection on grounds of commercial sensitivity, relevance, and jurisdiction. In addition, to the extent the plans contain recommendations and predecisional deliberation, they are privileged.
Media plans prepared by and for the Postal Service;	Commercial sensitivity. Reveals marketing strategy regarding advertisement content.

⁵ A review of the table of contents of this document reveals its highly sensitive nature. This includes analysis and summaries of trends in communication; implications; market trends; benefits; service overview; objectives and measurement criteria; volume assumptions; analysis of strengths, weaknesses, opportunities, and threats; positioning; competitive overview; customer profile; pricing; customer invoicing; customer support; reporting; methodology; market research; and data analysis. All of this information is commercially sensitive and proprietary. Moreover, to the extent the plans embody recommendations, they are protected by the deliberative process privilege.

Summary of IPC's marketing activities	To the extent information about the foreign posts, foreign markets, or IPC falls within this discovery request, the Postal Service reiterates its objection on grounds of commercial sensitivity, relevance, and jurisdiction. Commercial sensitivity. Reveals marketing strategy regarding advertisement content.
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VII. Interrogatory UPS/USPS-5(f):

(f) Any surveys of customers or potential customers or market studies concerning PostECS⁶

Document	Privilege/Objection
January 1999 Post Electronic Courier Service Post E.C.S. What Have We Learned	Relevance. Commercial sensitivity. Contains in-depth analysis of customer perception of product, steps to be taken to improve customer acceptance. Contains customer-specific information. Contains proprietary, trade secret research and analysis.
February 9, 1999 Post E.C.S. Customer Feedback	Report prepared by consultant summarizing results of surveys sent to existing customer base. Customer Feedback Questionnaire is attached. Contains customer-specific information regarding customer acceptance and strategies to improve customer acceptance. Contains proprietary, trade secret research and analysis.
Survey Results - collected and tabulated by consultant for surveys administered at trade shows during September, 1998, October, 1997, and February, 1996.	Relevance. Some of these tradeshow surveys addressed not only Post E.C.S. but also other Postal Service initiatives not at issue in this proceeding. Commercial sensitivity. Contains

⁶ As stated in its initial Objection, the Postal Service does not consider market research of other post's customers to be responsive to this request. UPS's Motion does not address this matter. Any ruling addressing this question should make absolutely clear that any information about the customers, markets, operations, or policies of the foreign posts or IPC are not within the scope of any compelled response.

	customer-specific information regarding customer perceptions of products, evaluation of importance of various features.
January 22, 1999 Post E.C.S. Market Feedback Confidential Memo to International Post Corporation (IPC) summarizing customer and potential customer feedback and the sales process to date.	Relevance. Commercial sensitivity. Contains analysis of product strengths and weaknesses, customer feedback, suggested improvements.
January 29, 1999 Canada Post Corporation (CPC) Electronic Services Marketing Post E.C.S. Demonstration & User Feedback Recordings – This document summarizes CPC customer feedback, comments and findings from a number of different sources such as sales calls, tradeshow, help desk and sales representative input.	Relevance. . Commercial sensitivity. Contains analysis of product strengths and weaknesses, customer feedback, suggested improvements. . Contains customer-specific information. Contains confidential, proprietary information of foreign post.
February 1, 1999 Post E.C.S. Initial Feedback, La Poste - This document summarizes feedback from La Poste customers as of the date drafted.	Relevance. . Commercial sensitivity. Contains analysis of product strengths and weaknesses, customer feedback, suggested improvements.
PostECS Summary of Prospect and Customer Feedback 12/98	Relevance. . Commercial sensitivity. Contains analysis of product strengths and weaknesses, customer feedback, suggested improvements.
PostECS Post Demo Questionnaire, and completed questionnaires.	Relevance, Commercial sensitivity. Reveals marketing strategy, areas of interest. Contains customer specific customer information. Trade secret, proprietary market research. Questionnaires assure respondents of privacy.
USPS Post ECS Customer Feedback Questionnaire	Relevance. Does not concern nature of PostECS. Commercially sensitive. Disclosure would reveal marketing strategy, measurement criteria, other trade secret information.

VIII. Interrogatory UPS/USPS-6:

All training manuals or materials (other than Technical Materials) used or prepared by or for the Postal Service regarding Post ECS.

Document	Privilege/Objection
See list for 5(c).	

IX. Interrogatory UPS/USPS-10:

All proposals, bids, solicitations, and advertising for PostECS provided to customers or potential customers or PostECS (the names of customers or potential customers need not be provided).

Document	Privilege/Objection
PostECS Overview 8/19/99	No objection.
PostECS Overview 11/25/98	No objection.
PostECS Security and Privacy 11/25/98	No objection.
PostECS Information/Fact Sheet (6 versions)	No objection
PostECS 21 st Century Document Delivery System "Web Story" 3/29/99	No objection
"Here's Something About . . . PostECS"	Commercial sensitivity. Very limited distribution to test participants. Would reveal marketing strategy.
Customer Service and Support	Relevance. Commercial sensitivity. Would reveal details of product support system.
"Post ECS 30-day Free Trial" (2 versions)	No objection. Current versions provided previously.
Postal Service Product Web Page (www.usps.com)	No objection.
PostECS print advertisement	No objection.
See also responses to 5(a), 5(d).	

X. Interrogatory UPS/USPS-12:

Marketing materials, including all descriptions to employees and all instructions to employees, referring or relating to PostECS.

See responses to 5(a), 5(b), 5(c), and 10.

XI. Interrogatory UPS/USPS-13:

Memoranda, studies, reports, analyses, and recommendations on whether the Postal Service should provide Post E.C.S. (In footnote 8 of its Motion to Compel, UPS withdraws any request for "recommendations", but it seeks to compel analyses and factual material which underlie any recommendations.)

Document	Privilege/Objection
PostECS Business Proposition and accompanying memorandum 5/1/98	Relevance. Commercial sensitivity. Would reveal target markets, pricing strategy, other business strategy.
Powerpoint Presentation to Board of Governors 5/98	Commercial sensitivity. Deliberative process. Would reveal predecisional strategic marketing information regarding a large number of potential service offerings. Relevance. Vast majority of document does not concern PostECS.
Portion of memorandum from counsel to clients.	Relevance. Deliberative process, attorney/client privilege, attorney work product.
Portion of memorandum from counsel to Strategic Planning Committee.	Relevance. Deliberative process, attorney/client privilege, attorney work product.
Portion of memorandum from counsel to clients.	Relevance. Deliberative process, attorney/client privilege, attorney work product
Portion of internal Law Department memo.	Relevance. Deliberative process, attorney/client privilege, attorney work product

XII. Interrogatory UPS/USPS-14. This interrogatory requests that the Postal Service provide “all contracts or agreements concerning PostECS, including all agreements between or among the Postal Service, La Poste, Canada Post Corporation, and International Post Corporation.”⁷

Document	Privilege/Objection
Software development and license agreement executed by International Post Corporation (IPC), Tumbleweed Software, Canada Post, the Postal Service, and LaPoste and exhibits and addenda to that instrument related to Post E.C.S. ⁸	Attorney work product, attorney/client privilege. Commercial sensitivity, relevance.
Service Provider Agreement June 22, 1999 Tumbleweed, IPC, USPS, Canada Post and LaPoste	Attorney work product, attorney/client privilege. Commercial sensitivity, relevance.

⁷ UPS’s Motion to Compel addresses only “contracts between the Postal Service and foreign posts.” UPS apparently has not moved to compel production of other miscellaneous agreements identified in the Postal Service’s initial Objection, including agreements to which foreign posts are not parties, including those for technical sales support, administrative support, help desk services, and consulting services. These have nothing to do with the issues before the Commission. Any ruling granting UPS’s Motion to Compel with respect to interrogatory 14 should make clear that such agreements need not be provided, as they have not been compelled.

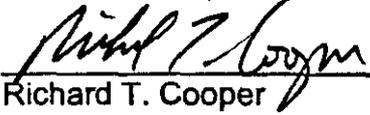
⁸ UPS’s Motion to Compel requests all contracts between the Postal Service and foreign posts “concerning Post E.C.S.” UPS’s Motion to Compel does not explicitly address the licensing agreements identified in the Postal Service’s objection between the Postal Service and foreign posts regarding their use of the Postal Service’s proprietary Electronic Postmark™ system software. These agreements confer the right on foreign posts for the use the Postal Service’s proprietary Electronic Postmark™ system software in their provision of secure electronic services. The Postal Service emphasizes that licensing agreements for Electronic Postmark system software are not relevant to this controversy, as they relate to the *foreign posts’* products and provision of secure electronic services. Such licensing agreements do not pertain to the Postal Service’s Post E.C.S. product. The services of other providers, such as the Canada Post and LaPoste, are not at issue here. Thus, Electronic Postmark™ software licensing agreements extended to foreign posts are well beyond the scope of this proceeding. Furthermore, the Postal Service regards any such agreements as highly confidential, as disclosure would compromise negotiating positions. Disclosure of the existence of any such agreements and of their contents cannot, moreover, be made, consistent with the terms of the agreements, until a notice provision expires.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Richard T. Cooper
Attorney

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.



Richard T. Cooper

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