

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 OFFICE OF THE CONSUMER ADVOCATE
INTERROGATORIES OCA/USPS-19, 20(A-B), 21, 23-26, 27(B-D), 28-33
(September 7, 1999)

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service hereby objects to interrogatories OCA/USPS—19, 20(a-b), 21, 23-26, 27(b-d), and 28-33, filed on August 25, 1999.

Interrogatories OCA/USPS-19(a-e) and OCA/USPS-25. Subparts (a) through (e) of interrogatory OCA/USPS-19 request information about the use, location, and Internet protocol numbers for the Postal Service's "gk-east.usps.gov" and "gk-west.usps.gov" servers. Interrogatory OCA/USPS-25 requests information about the secure portion of the Post E.C.S. server and asks for a description of any measures taken to ensure security in a portion of a server. The Postal Service objects to both interrogatories on grounds of relevance and commercial sensitivity. These questions do not shed light on the functional characteristics of Post E.C.S. for purposes of evaluating its "nonpostal" status, but rather are invasive and intended to uncover information about the degree of security afforded to computer hardware and systems. The location of the Post E.C.S. server has already been disclosed in the Postal Service's response to OCA/USPS-12 filed on August 20, 1999. Additional inquiries into

the Postal Service computer networks would yield nothing of consequence to Post E.C.S. for purposes of evaluating whether it is a "postal" service subject to Commission jurisdiction. Further, disclosure of more detailed information about the Postal Service's servers 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. Indeed, P.O. Ruling No. C99-1/11 acknowledged the Postal Service's concerns with respect to system security and only required disclosure of server locations in "general terms." The type of information that OCA requests would only further compromise system security and yield nothing of probative value to the question presently before the Commission.

Interrogatory OCA/USPS-19(f-i). Subparts (f) through (i) of interrogatory OCA/USPS-19 request information about the relationship between Martineau & Associates and the Postal Service. The Postal Service objects on grounds of relevance. The relationship between the Postal Service and consultants performing ministerial tasks on behalf of Post E.C.S. is not relevant to the question of whether Post E.C.S. is a "postal" service. In P.O. Ruling No. C99-1/9, the Presiding officer refused to compel information about the Postal Service's organizational units and personnel involved with Post E.C.S. on grounds that such information "would not illuminate the service itself." P.O. Ruling No. C99-1/9 at 2. The same reasoning applies here with equal force. That various facets of Post E.C.S. are made possible by the activities of contractors does not in any way make Post E.C.S. any more or less "postal" than it

already is for purposes of the Commission's jurisdiction.

Interrogatory OCA/USPS-20(a)-(b). Subparts (a) and (b) of interrogatory 20 request that (i) the Postal Service quantify the market research that it has conducted according to the foreign and domestic origin and destination pairs, (ii) disclose any updates to the market research it has conducted, and (iii) quantify all market research according to origin and destination pairs. The Postal Service objects on grounds of commercial sensitivity and privilege. Disclosure of the Postal Service's market research, as well as any conclusions the Postal Service may have drawn from it, are sensitive commercially. Disclosure of any such information would be highly detrimental to the Postal Service by disclosing to competitors valuable information about the market characteristics of the Post E.C.S. usage. Further, conclusions drawn by the Postal Service about its market research are privileged and proprietary, and have been completely shielded from disclosure. See P.O. Ruling No. R97-1/60 (redaction of researchers' analysis and interpretation of underlying facts, as well as conclusions and recommendations was proper as such information was protected by deliberative process privilege). Hence, there is no basis to require the Postal Service to respond to this interrogatory.

Interrogatory OCA/USPS-21. This interrogatory tests a representation regarding the ability of Adobe Acrobat portable document format technology to enable recipients to read documents. The Postal Service objects on grounds of relevance. This proceeding is intended to evaluate the "nonpostal" status of Post E.C.S., and not to test

the accuracy of representations made about the capabilities of Adobe Acrobat software.

Interrogatory OCA/USPS-23-24. These interrogatories ask whether it would be theoretically possible to redesign Post E.C.S. so as to require the user to respond to questions regarding sender and recipient physical locations. The Postal Service objects on grounds of relevance. The product under review in this proceeding is not some hypothetical product design devised by theoreticians, but rather the one that is currently in operation. The status of Post E.C.S. should be evaluated based on its functional characteristics, and not on a nonexistent, hypothetical design. Furthermore, these questions smack of precisely the type of inquiries that the courts have determined to transcend the scope of ratemaking proceedings. The District of Columbia Court of Appeals reaffirmed that the Commission ratemaking should not transcend into the realm of managing postal operations:

[The Commission] may not, however, under the statute's ratemaking structure, forge ahead with a recommendation that surpasses its ratemaking function and unduly intrudes on management.

Mail Order Ass'n v. United States Postal Serv., 2 F.3d 408, 424 (D.C. Cir. 1993), amended, reh'g denied, 1993 U.S. App. LEXIS 24994 (D.C. Cir. Sept. 22, 1993).

Interrogatory OCA/USPS-26. Interrogatory 26 tests representations made in connection with the Postal Service's Electronic Postmark™ and also requests production of all memoranda, documentation, legal research, and all other materials that address the quoted claims. The Postal Service objects on grounds of relevance

and privilege. First, the scope of the inquiry in this proceeding is the Postal Service's Post E.C.S. product, and *not* Electronic Postmark™, which is a separate product. The information, moreover, is not designed to evaluate the functional characteristics of Post E.C.S., but rather appears to be a transparent attempt to test the accuracy of the representations. Secondly, the interrogatory requests production of privileged attorney-client and attorney-work product communications, as the nature of any research and memoranda that underlies representations made in connection with these claims would be attorney work product generated in response to requests by organizational clients.

Interrogatory OCA/USPS-27(b-c), 28, 29, and 30. Subparts (b) and (c) of interrogatory OCA/USPS-27 request an opinion from the Postal Service on the degree to which transactions are initiated in the United States. Interrogatory OCA/USPS-28 requests that the Postal Service guess whether the proportion of "domestic" Post E.C.S. transactions has been less than any of a number of given fractions. Interrogatory 29 requests that the Postal Service offer guesses of the proportions for future Post E.C.S. transactions in fiscal year 2000. Interrogatory 30 requests that the Postal Service state the basis for the belief that "some" Post E.C.S. transactions will be "international."

The Postal Service objects to these interrogatories on various grounds. First, it objects to interrogatory 30 on grounds that it is cumulative. The Postal Service has already stated the basis for its conclusion that all Post E.C.S. transactions are "international" in its response to UPS/USPS-46(a), filed on August 20, 1999.

Second, the Postal Service objects to interrogatories 28, 29, and 30 on grounds of vagueness. These interrogatories ask for opinions on proportions of "domestic" transactions, but the term is not defined for purposes of these interrogatories. As the term is undefined, the Postal Service does not know how to even perform the requested analysis. The point may be moot, however, since, as explained in the Postal Service's response to interrogatory UPS/USPS-46(a) filed on August 20, all Post E.C.S. transactions are "international".

Finally, the Postal Service objects to interrogatories 27(b)-(c), 28, 29, and 30 on grounds that these interrogatories request unsubstantiated conjecture and pure speculation. The Postal Service explained in its response to interrogatory UPS/USPS-3(a) filed on July 20 that it "has no mechanism to quantify the number of transactions involving a sender and recipient located anywhere in the United States (or anywhere in the world)." Commission precedent makes clear that discovery that calls for such unsubstantiated speculation is not permissible. See P.O. Ruling No. R97-1/106 at 3 n.1 (citing P.O. Ruling No. MC95-1/19 at 4-6 (denying motion to compel on grounds that subject line of inquiry called for speculation); see also *See Tyger Const. Co. Inc. v. Pensacola Const Co.*, 29 F.3d 137, 142 (4th Cir. 1994) ("An expert's opinion should be excluded when it is based on assumptions which are speculative and are not supported by the record."), *cert. denied*, 115 S. Ct. 729 (1995).

Interrogatory OCA/USPS-27(d), 31, and 32. Subpart (d) of interrogatory OCA/USPS-27 requests that the Postal Service state whether the Postal Service has

any Post E.C.S. licensed users with addresses outside the United States.

Interrogatories 31 and 32 request information on whether the Postal Service registers individuals in Canada and France, respectively. Interrogatory 33 requests information on the Postal Service's policy regarding the location of licensed users.

The Postal Service objects to these interrogatories on various grounds. First, the Postal Service objects to all interrogatories on grounds of relevance. These questions pertain to the same type of information requested by UPS in interrogatories UPS/USPS-26 and -29, which requested information on whether the Postal Service has licensed Post E.C.S. users in foreign countries. The Presiding Officer determined to not compel responses to these questions on grounds that the participation of nondomestic users has no bearing on the matters at issue in this proceeding. The Presiding Officer explained:

the relevance of the requested information about Post E.C.S. licensees is too attenuated to warrant compelling its production. As Order No. 1258 indicates, the Commission's inquiry into the "domestic" versus "international" issue is focused on establishing whether there is "an appreciable segment of Post E.C.S. *transactions* that are wholly domestic," in order to determine the potential applicability of Chapter 36 to those transactions. Order No. 1258 at 5. (Emphasis added.) The extent to which there are non-domestic *users* of Post E.C.S. has no bearing on this question. Consequently, I shall not compel the Postal Service to respond to these interrogatories.

P.O. Ruling No. C99-1/9 at 6. Simply put, consistent with P.O. Ruling No. C99-1/9, OCA's inquiry regarding a test participant's mailing address or location is irrelevant.

The Postal Service further objects to interrogatory 27(d) on grounds that it requests commercially sensitive information about the Postal Service's customer base.

Disclosure of such information would reveal information useful to competitors as to whether domestic or international markets should be targeted.

The Postal Service also objects to these interrogatories on grounds of commercial sensitivity, privilege, and jurisdiction, as these interrogatories delve into the relationship between the Postal Service and the foreign posts. Post E.C.S. is a new service in test status, and the posts that have helped to create and launch the service are engaged in a process of determining how to define their interrelationships, as well as relationships between themselves and other entities that may elect to offer the product in the future. Such relationships are the subject of ongoing discussion and negotiation, and are considered predecisional and confidential information of the parties. Disclosure at this stage would compromise negotiating positions and undermine program effectiveness.

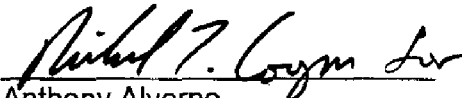
The undersigned counsel has sent a copy of this document to counsel for UPS
via facsimile transmission.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

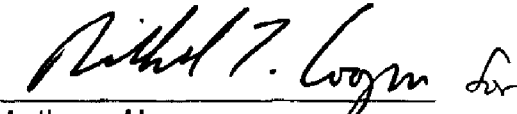
By its attorneys:

Daniel J. Foucheaux, Jr.
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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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September 7, 1999