

BEFORE THE  
POSTAL RATE COMMISSION

RECEIVED  
SEP 9 9 57 AM '99

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

---

MOTION OF UNITED PARCEL SERVICE TO  
COMPEL ANSWERS TO INTERROGATORIES  
UPS/USPS-50, 52-54, AND 57-58  
(September 9, 1999)

---

Pursuant to Section 25(d) of the Commission's Rules of Practice, United Parcel Service hereby moves that the United States Postal Service be ordered to provide, within seven days of the Presiding Officer's ruling, full and complete answers to interrogatories UPS/USPS-50, 52-54, and 57-58, on the grounds set forth herein.<sup>1</sup>

**ARGUMENT**

**Interrogatory 50.** This interrogatory restates, pursuant to the Presiding Officer's request (Tr. 1/38-39), an earlier interrogatory and asks whether it is the position of the Postal Service that criminal statutes governing the mails apply to PostECS. The Postal Service objects on the grounds of relevance and that the interrogatory requests a legal opinion.

As stated in the Motion of United Parcel Service to Compel Answers to Interrogatories UPS/USPS-34 and 36 through 43 (July 20, 1999) ("Prior Motion") at 6,

---

1. Copies of these interrogatories are attached hereto as Exhibit "A."

the relevance of this interrogatory is clear. If the Postal Service believes that criminal statutes governing the mails apply to PostECS, that is an admission relevant to the question whether PostECS is mail. As also stated in the Prior Motion (at page 6), the Commission's Rules specifically contemplate that an interrogatory is not objectionable merely "because an answer would involve an opinion or contention that relates to fact or the application of law to fact . . . .", quoting 39 C.F.R. § 3001.25(c). Moreover, what is important here is not the correctness or incorrectness of the Postal Service's "legal opinion," but rather the position (right or wrong) of the Postal Service on whether criminal statutes governing the mail apply to PostECS.

UPS incorporates herein by reference the arguments made with respect to interrogatory UPS/USPS-41 in the Prior Motion at pages 5-6 (including footnote 6 at 6-7).

**Interrogatories 52, 54, and 58.** These interrogatories ask whether there have been PostECS transactions in which both the sender and the recipient has a United States email address (*i.e.*, one containing a top level domain name of .com, .org, .net, or .edu), the proportion of all PostECS transactions which such transactions represent, and the proportion of PostECS transactions involving a United States sender where the message was left for the recipient to retrieve on a server located in or outside of the United States. They are designed to elicit information relevant to the Postal Service's defense that PostECS does not have a domestic component.

The Postal Service's vagueness objection to interrogatory 54 can be readily dismissed; that objection goes to the use of the term "foreign top level domain" in the interrogatory, which, as the Postal Service itself points out in its Objection (at page 3, footnote 2), UPS has previously defined.

The Postal Service also objects to all three of these interrogatories on grounds of relevance and "burden." Objection at 3. The Postal Service's relevance objection assumes that the Commission will adopt the Postal Service's theory that the use of a United States email address by a sender and a recipient has nothing to do with whether a PostECS transaction between those senders and recipients are domestic or international. The Presiding Officer has already largely rejected this argument in Presiding Officer's Ruling No. C99-1/9 (August 9, 1999), at 8, stating, "[A]s a general matter, information regarding the respective origins and points of receipt of Post E.C.S. transactions is, potentially, highly relevant in this case." That is clearly correct, especially since information requested in discovery need not necessarily be admissible in evidence, but need only be "reasonably calculated to lead to the discovery of admissible evidence." 39 C.F.R. § 3001.25(a).

On the subject of burden, the Postal Service continues to insist that it is not possible to devise a program which "would facilitate automated searches of sender or recipient e-mail addresses." Objection at 4. Assuming that the Postal Service could not create a method for conducting an automated search, its burden argument is nevertheless unconvincing. It is couched in terms of the length of time it would take to respond to the interrogatory "given the other discovery requests that are outstanding," and "given the complete lack of relevance of this information." Objection at 5-6. Moreover, even taken at face value, the Postal Service's estimate of the time needed to answer these and similar interrogatories is not undue, given the importance of the jurisdictional issue before the Commission in this case and the fact that it is the Postal Service which is seeking to block that jurisdiction.

Finally, the Postal Service objects to interrogatory 58 “on the additional ground of commercial sensitivity and jurisdiction to the extent it requests information about PostECS transactions initiated by users other than those licensed by” the Postal Service. Objection at 3. As UPS has repeatedly stated, we are not interested in information about the foreign posts’ transactions. Our request is limited to information about transactions involving Postal Service licensed users. As a result, the Postal Service’s commercial sensitivity and jurisdictional objections do not come into play.

**Interrogatory 57.** This interrogatory asks whether the Postal Service has sought the consent of the President either to its arrangements with International Post Corporation, Canada Post, or LaPoste, or to any of the rates or prices it is charging for PostECS service. The Postal Service objects on the ground that the requested information is not relevant, and on the ground that the interrogatory seeks legal conclusions.

There is nothing about these questions which requires the Postal Service to state any legal conclusion. Both parts of the interrogatory ask for *facts* -- whether the Postal Service has sought the consent of the President to certain action. The Postal Service correctly points out that this interrogatory uses language found in 39 U.S.C. § 407. Objection at 7. But that does not change the fact that the interrogatory seeks only facts and does not ask the Postal Service to draw any legal conclusions from those facts. Rather, depending on what the facts are, UPS will present any necessary legal argument at the appropriate time.

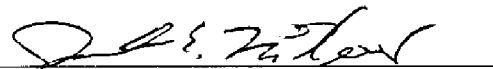
However, 39 U.S.C. § 407 does establish the relevance of the requested facts. For example, if the Postal Service has sought Presidential consent, then UPS may argue that this act of seeking Presidential consent constitutes an admission relevant to

the question whether the service is postal in nature; on the other hand, if the Postal Service did not seek Presidential consent, and if the Commission concludes that PostECS is postal in nature, then the failure by the Postal Service to seek Presidential consent constitutes an admission relevant to the question of the domestic nature of the service.

The requested facts may not be "determinative as to Post E.C.S.'s legal status," Objection at 6, but that is not the test for legitimate discovery. Rather, as we have stated, the test is whether the requested information may lead to the discovery of admissible evidence. UPS submits that this interrogatory meets that test.

WHEREFORE, United Parcel Service respectfully requests that the Presiding Officer order the United States Postal Service to answer fully and completely interrogatories UPS/USPS-50, 52-54, and 57-58 within seven days of the Presiding Officer's ruling.

Respectfully submitted,



John E. McKeever  
Kenneth G. Starling  
Heather E. Gange  
Attorneys for United Parcel Service

PIPER & MARBURY L.L.P.  
3400 Two Logan Square  
18th and Arch Streets  
Philadelphia, PA 19103  
(215) 656-3300

and

1200 19th Street, N.W.  
Washington, DC 20036  
(202) 861-3900

Of Counsel.



BEFORE THE  
POSTAL RATE COMMISSION

RECEIVED  
Aug 16 10 43 AM '99  
POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

---

SEVENTH SET OF INTERROGATORIES OF UNITED  
PARCEL SERVICE TO UNITED STATES POSTAL SERVICE  
(UPS/USPS-50 THROUGH UPS/USPS-58)  
(August 16, 1999)

---

Pursuant to Section 25 of the Commission's Rules of Practice, United Parcel Service hereby serves the following interrogatories on the United States Postal Service:

UPS/USPS-50. (a) Is it the position of the Postal Service that criminal statutes governing the mails such as 18 U.S.C. §§ 1701 ("Obstruction of mails generally"), 1708 ("Theft or receipt of stolen mail matter generally"), and 1735 ("Sexually oriented advertisements") apply to PostECS transactions? If so, please explain.

(b) Is it the position of the Postal Service that the interception of a PostECS message or document by one other than the sender or the addressee violates any federal statute relating to the mails? If so, explain, and identify the relevant statute.

UPS/USPS-51. Please refer to the answer to interrogatory UPS/USPS-46(b-c).

(a) UPS asked in interrogatory UPS/USPS-46(b) whether PostECS may be used to send a message or a document from a sender located in the United States to a recipient located in the United States. Is the answer to that question "yes"?

(b) UPS asked in interrogatory UPS/USPS-46(c) whether there have been any PostECS transactions in which a message or a document was sent from a sender located in the United States to a recipient located in the United States. Is the answer to that question "yes"?

UPS/USPS-52. (a) Have there been any PostECS transactions in which a message or a document was sent from (i) a sender with an email address containing a top level domain name of .com, .org, .net, or .edu (ii) to an addressee with an email address containing a top level domain name of .com, .org, .net, or .edu?

(b) If the answer to (a), above, is yes, what proportion of all PostECS transactions do such transactions represent?

UPS/USPS-53. Provide copies of all "customer feedback and informal interviews with end users" referred to in the Postal Service's response to question 2(b) posed in Commission Order No. 1229.

UPS/USPS-54. State the proportion of PostECS transactions to date that have involved both (a) users who do not have a foreign top level domain in the domain name of their email addresses and (b) addressees who do not have a foreign top level domain in the domain name of their email addresses.

UPS/USPS-55. Please refer to page 17 of the attachments to the Postal Service's response to interrogatory UPS/USPS-5(A), a copy of which is attached hereto as Attachment A, which suggests under the heading "Validation" that PostECS may provide validation of the "time of delivery."

(a) Does PostECS provide validation of "time of delivery"?



(b) If the answer to (a) is yes, what time is validated as the time of delivery -- the time when the sender's message or document is first lodged on the Postal Service's server, the time the addressee picks up the message or document from the Postal Service's server, or some other time? If the answer is some other time, please state what time that is.

UPS/USPS-56. Is PostECS an effort by the Postal Service to counteract concerns about diversion of hardcopy mail (of whatever type) to electronic forms of communication?

UPS/USPS-57. (a) Did the Postal Service seek the consent of the President to any of its PostECS arrangements or agreements with the International Post Corporation, Canada Post, or LaPoste?

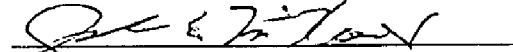
(b) Did the Postal Service seek the consent of the President to any of the rates or prices it is charging for PostECS service?

UPS/USPS-58. (a) Provide the proportion of PostECS transactions to date where the sender had an email address containing a top level domain of .com, .org, .net, or .edu in the domain name of the sender's email address and the message was left for the recipient to retrieve on a server located in the United States.

(b) Provide the proportion of PostECS transactions to date where the sender had an email address containing a top level domain of .com, .org, .net, or .edu in

the domain name of the sender's email address and the message was left for the recipient to retrieve on a server located outside the United States.

Respectfully submitted,



John E. McKeever  
Kenneth G. Starling  
Nicole P. Kangas  
Attorneys for United Parcel Service

PIPER & MARBURY L.L.P.  
3400 Two Logan Square  
18th and Arch Streets  
Philadelphia, PA 19103  
(215) 656-3300

and

1200 19th Street, N.W.  
Washington, DC 20036  
(202) 861-3900

Of Counsel.

encrypted document cannot be compromised even if the system were to be compromised. A digital signature provides additional security services such as:

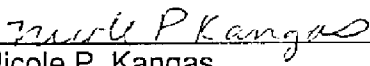
Authentication - Both sender and receiver may have interest in verifying the identity of the other party. In the digital world, this can be achieved by using public key digital certificates to create digital signatures. Certificates bind individuals to their private key, which can be authenticated using a corresponding public key. PosteCS has plans for integration of public/private key technology in the future.

Content Integrity - Both senders and receivers of important documents may require assurances that the document was not altered during transmission. This can be accomplished in two different ways. First, through the Electronic Postmark™ system, the recipient of a documents sent can verify whether or not the document was tampered with enroute adding a means to verify the integrity of files sent via PosteCS. And in the future, with public and private key technology the risk of file alteration can be minimized through encrypting the document with the sender's private key or using a digital signature to compute a hash or message digest encrypted with the sender's private key. The receiver either decrypts the document or verifies the signature using the sender's public key.

Validation - For legal purposes, individuals may require the system to provide validation of transaction. The validation may be the integrity of content, time of delivery, and in the future, the authenticity of the parties involved. The PosteCS™ service incorporates the United States Postal Service's Electronic Postmark™ service, combining tamper detection with an official time-and-date stamp, promising the reliability you've come to trust with the United

CERTIFICATE OF SERVICE


I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

  
\_\_\_\_\_  
Nicole P. Kangas

Dated: August 16, 1999  
Philadelphia, PA

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

  
\_\_\_\_\_  
John E. McKeever

Dated: September 9, 1999  
Philadelphia, PA