

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING
GRANTING MOTION TO COMPEL RESPONSES TO
INTERROGATORIES DFC/USPS-80(C) AND 81

(Issued December 1, 2006)

On November 22, 2006, Douglas F. Carlson filed a motion to compel responses to interrogatories DFC/USPS-80(c) and 81.¹ The interrogatories concern the Postal Service's "Forever Stamp" proposal. The Postal Service previously filed answers to the interrogatories on November 21, 2006.² Therefore, Mr. Carlson's motion will be treated as a request to provide more responsive answers to the interrogatories. The Postal Service did not file an answer to the Motion.

In summary, Mr. Carlson's contention is that the Postal Service's Forever Stamp proposal, including the proposed DMCS language, is vague, and the intentions of the Postal Service should be made clear. He notes that the proposal was filed late leaving little time for discovery and follow-up before intervenor testimony was due. He further notes proposed changes in permissible use of the Forever Stamp since the proposal was introduced, but that the DMCS language remains in its original form.

¹ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-80(c) and 81, November 22, 2006 (Motion).

² Responses of the United States Postal Service to Interrogatories of Douglas Carlson (DFC/USPS-80 and 81), November 21, 2006.

DFC/USPS-80(c). Mr. Carlson asserts that interrogatory DFC/USPS-80(c) “attempts to discover the customer use that the DMCS language would or would not permit.” The interrogatory and response to all of interrogatory DFC/USPS-80 follows:

DFC/USPS-80.

Please refer to the response to DFC/USPS-78(c), the sentence “Once purchased, the Stamp may be used for first-ounce letter postage at any time in the future, regardless of the prevailing rate at the time of use” that witness Taufique proposed for DMCS section 241, and proposed DMM section 604.1.10, which appears in the notice published at 71 Fed. Reg. 56,587 on September 27, 2006.

- a. Please confirm that the Postal Service interprets the sentence quoted in the opening paragraph of this interrogatory as providing that the postage value of each “Forever Stamp” is the current First-Class Mail single-piece one-ounce letter rate. If you do not confirm, please explain.
- b. Please confirm that proposed DMCS section 241 could reasonably and properly be interpreted to permit customers to use a “Forever Stamp” on First-Class letters only, to the exclusion of other classes or shapes of mail. If you do not confirm, please explain.
- c. Please discuss the extent to which the Postal Service believes that proposed DMCS section 241 does or does not permit the Postal Service to restrict the use of the “Forever Stamp” to First-Class letters.

RESPONSE

- a. Confirmed.
- b. Not confirmed. Such an interpretation could be reasonable without being proper.
- c. An interrogatory seeking discussion of the extent to which proposed DMCS language “restricts” or “prohibits” or “permits” postal action calls for the statement of a legal conclusion, as opposed to a statement of fact. Accordingly, the Postal Service does not consider that it is obliged to respond to such a question in discovery. No doubt, this issue will be the subject of legal briefs in this docket.

Discussion: Mr. Carlson is requesting that the Postal Service provide a specific interpretation of language that the Postal Service proposes to be included in the DMCS. This appears to be a legitimate issue for discovery when considering the questions surrounding the permissible uses for the Forever Stamp. It is certainly appropriate for intervenors and the Commission to understand whether or not the proposed DMCS

language reflects the intended use of the Forever Stamp prior to briefs and prior to the Commission making a recommendation. The Postal Service's objection that a response "calls for the statement of a legal conclusion" misses the mark. Postal Service participation in reviewing proposed DMCS language greatly facilitates the ability of intervenors to understand and the Commission to recommend appropriate DMCS language. The motion to compel with respect to DFC/USPS-80(c) is granted.

DFC/USPS-81. Mr. Carlson argues that as a useful way to understand the intentions of the Postal Service's Forever Stamp proposal, interrogatory DFC/USPS-81 probes how the Postal Service's proposed implementation differs from his proposed DMCS language. The interrogatory and response to interrogatory DFC/USPS-81 follows:

DFC/USPS-81.

Please refer to the response to DFC/USPS-79(b).

- a. Please confirm that the DMCS language proposed in DFC-T-1 is fully consistent with the *actual use* of the "Forever Stamp" that the Postal Service proposes to allow or "tolerate." For purposes of this interrogatory, the term "actual use" is distinct from "intended use" and does not encompass issues related to intended use.
- b. Please confirm that the only difference, for purposes of resolving the issues in this proceeding, between the responses to DBP/USPS-340 and 341 and the DMCS language proposed in DFC-T-1 is that DFC-T-1 proposes that the intended purpose of the Forever Stamp be for use on all mail classes, while in contrast the Postal Service's interrogatory responses emphasize that the intended use of the "Forever Stamp" is on one-ounce single-piece First-Class Mail letter-shaped pieces and that other uses will be tolerated but not encouraged. If you do not confirm, please explain the other differences between the responses to DBP/USPS-340 and 341 and the DMCS language proposed in DFC-T-1.

RESPONSE

- a. The Postal Service lacks sufficient insight into the thought processes that resulted in the development of the DMCS language proposed in DFC-T-1 to be able to declare what the intent of that language might be. Such declarations are best left to the author of DFC-T-1.
- b. The Postal Service can confirm that the intended use of the Forever Stamp that it has proposed is on one-ounce single-piece First-Class

Mail letter-shaped pieces, and that other uses will be tolerated but not encouraged. The Postal Service lacks sufficient insight into the thought processes that resulted in the development of the DMCS language proposed in DFC-T-1 to be able to declare what the intent of that language might be or whether it results in one or more deviations from what is stated in response to DBP/USPS-340 and 341.

Discussion: Mr. Carlson's interrogatory is the equivalent of the Commission's frequent practice of asking the Postal Service whether or not it objects to DMCS language proposed by the Commission that differs from language proposed by the Postal Service, prior to making a recommendation. This form of discovery helps avoid recommending language that does not serve its intended purpose. Nothing in the interrogatory requires the Postal Service to delve into the thought process of the party proposing the language. To the contrary, what is sought is the Postal Service's interpretation of specific language. It basically requests the Postal Service to comment on whether or not the alternative language is consistent with the intended rules for use of the Postal Service's proposed Forever Stamp, and if not, then to provide further explanation. The motion to compel with respect to DFC/USPS-81 is granted.

RULING

1. The Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-80(c) and 81, filed November 22, 2006, is granted.
2. Responses are due December 6, 2006.

George Omas
Presiding Officer