

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

ORIGINAL

005816

SPECIAL SERVICES REFORM, 1996

Docket No. MC88-3

RECEIVED
NOV 4 4 58 PM '96
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

RESPONSE OF UNITED STATES POSTAL SERVICE
TO MOTION OF DOUGLAS F. CARLSON
TO BE EXCUSED FROM ORAL CROSS-EXAMINATION
(November 4, 1996)

By Motion dated October 25, 1996, Douglas F. Carlson asked to be excused from the need to appear for oral cross-examination on his testimony.¹ This Response opposes Mr. Carlson's Motion.

Mr. Carlson cites several reasons why he should be excused from oral cross-examination on his testimony, including: 1) he has been prompt in responding to interrogatories, and at least at the time he mailed his motion, no interrogatory responses were outstanding;² 2) Mr. Carlson has a scheduling conflict on the eighteenth of November, the first day of scheduled hearings;³ 3) the Special Rules

¹ Douglas F. Carlson Motion To Be Excused From Oral Cross-Examination On My Direct Testimony, dated October 25, 1996.

² On October 30, the Postal Service filed an additional (and timely) set of interrogatories; these were emailed to him, and he has indicated he expects to finalize his responses—and provide them via email, in the next day or so. Mr. Carlson indicated to postal counsel his hope that a review of the answers to the interrogatory set would leave the Postal Service in a position to assert that no oral cross-examination is planned. The Postal Service is unable to make that representation, if only because those answers have yet to be received.

³ In a more recent motion, Mr. Carlson has requested both that his oral cross-examination, if any, instead be conducted on November 25, contemporaneously with his proposed oral cross-examination of the Postal Service implementation witness. Douglas F. Carlson Motion to Require United States Postal Service to Make Available A Witness For Oral Cross-Examination Concerning Status Report On Implementation

POSTAL RATE COMMISSION
DOCKETED
NOV 4 1996
OFFICE OF THE SECRETARY

(continued...)

favor written over oral cross-examination; and 4) the distance and expense related to a travel across the country, especially if it is mid-week.

The Postal Service does currently have planned limited oral cross-examination of Mr. Carlson, and expects that additional areas of inquiry may arise upon review of responses to the outstanding interrogatory set. While the scope of cross-examination may ultimately prove to be quite limited, the Postal Service is unwilling at this time to forbear its opportunity to conduct oral cross-examination.

The greater Postal Service difficulty with Mr. Carlson's Motion is the potential precedent it sets. Rate and classification proceedings docketed at the Commission typically involve issues that have great financial significance for some parties. Those interested in limiting their exposure to litigation expenses have the option of choosing to intervene on a limited basis, or of commenting. In this instance, Mr. Carlson has chosen to participate fully including the submission of his own direct testimony. While he apparently has endeavored to respond as quickly and completely as possible to interrogatories, such responsiveness should not form the basis for excusing any witness from appearing on the stand and responding to the parties' —and the Commissioners'—questions. In essence, the Postal Service is concerned about the

³ (...continued)

Of Proposed New Post-Office-Box Fee Schedule, dated October 29, 1996. Postal counsel has since indicated to Mr. Carlson that the Postal Service would oppose at least the second to last paragraph of the October 29 Motion, which requests oral cross-examination on matters beyond the scope of the Status Report, on the grounds that the implementation witness is not competent to address those additional matters. Mr. Carlson thereafter informed postal counsel that his primary purpose in requesting the oral cross-examination of the implementation was embodied in that second to last paragraph, and if the witness can only answer questions regarding matters in the status report, then: 1) Mr. Carlson would prefer to cross-examine the implementation witness only via written cross-examination, and 2) he would prefer not to travel to Washington. Mr. Carlson further requested that postal counsel include these new developments in this Response; postal counsel has endeavored to do so accurately.

due process implications of permitting a witness to appear in some, but not all, of the usual litigation stages.⁴ The Postal Service is prepared to consider, moreover, the need for filing a motion to strike Mr. Carlson's testimony should he not appear for oral cross-examination.

Mr. Carlson proposes in the alternative that his cross-examination be conducted over the telephone. While the Postal Service does not specifically oppose this request in the limited circumstances of this case, this lack of opposition stems primarily from Mr. Carlson's responsible handling of his previous appearance at the hearings on the Postal Service case-in-chief, his straightforward answers to interrogatories, the expected short duration of postal cross-examination, and the routine use of electronic links in some forums as a means of limiting the expenses of testifying. The Postal Service does note that any telecommunications link that also includes a video component would comport better than would a mere telephone link with the procedural protections afforded in those other forums.⁵

⁴ Had Mr. Carlson's Motion been accompanied by a motion to withdraw his testimony, the procedural problems would be obviated.

⁵ Questions about the identity of the witness, his or her competency to testify, and the fact that such testimony is sworn could perhaps be alleviated by using a court reports at both ends of the telephone link.

- 4 -


For the foregoing reasons, the Postal Service respectfully opposes Mr. Carlson's motion to be excused from appearing for oral cross-examination in this case.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking




Kenneth N. Hollies

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-3083; Fax -5402
November 4, 1996

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.



Kenneth N. Hollies

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
November 4, 1996