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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

DOUGLAS F. CARLSON ANSWER IN SUPPORT OF MOTION
OF OFFICE OF THE CONSUMER ADVOCATE TO REQUIRE
THE POSTAL SERVICE TO PROVIDE DRAFT IMPLEMENTATION RULES
FOR THE PROPOSED NONRESIDENT BOX FEE
AND A WITNESS TO STAND CROSS-EXAMINATION ON SUCH DRAFT RULES

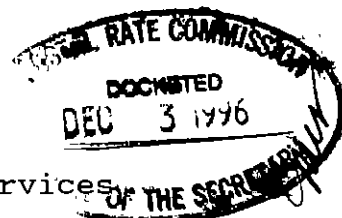
December 3, 1996

I support the motion of the Office of the Consumer Advocate to require the Postal Service immediately to provide a set of draft implementation rules for the proposed nonresident post-office-box fee and a witness knowledgeable about the draft rules who will stand oral cross-examination on them. I also request that the Commission establish a very brief period during which participants may submit written interrogatories to the Postal Service witness concerning the draft implementation rules.

Not only do I concur fully with the arguments the OCA set forth in its motion, I believe that the additional due-process and procedural considerations that I discuss below compel the Commission to require the Postal Service to submit draft implementation rules immediately.

Discussion

When the Postal Service filed its "Special Services Reform, 1996" request on June 7, 1996, it defined nonresident boxholders as "those individual or business



boxholders whose residence or place of business is not located within the 5-digit ZIP Code area of the office where box service is obtained." USPS-T-7 at page 23, line 21 and page 24, lines 1-2. The OCA, David Popkin, and I constructed and filed all our written interrogatories using this definition.

The first indication that the definition might change came in Response to DFC/USPS-T7-3(d). The interrogatory presented a simple hypothetical scenario in which two boxholders, A and B, lived one block from each other in City X but had different five-digit ZIP Codes. The interrogatory further stated that both A and B desired box service at the post office [postal facility] serving B's five-digit ZIP Code. When asked to confirm that customer A would be subject to a nonresident fee, witness Needham refused to confirm, stating that "The details of how the non-resident fee would apply will be determined during the implementation process." Participants therefore were required to conduct their oral cross-examination in September in a sort of haze, as witness Needham preempted questions concerning the fairness and equity of situations such as the one described in DFC/USPS-T7-3 by stating that the implementation process might alter application of the nonresident fee to the scenarios we posed. See, e.g., Tr. 3/736, lines 16-20 and lines 23-25, and Tr. 3/790-792.

On October 23, 1996, the Postal Service filed Status Report of United States Postal Service on Implementation of Special Services Reform Proposals. The status report

revealed that the definition of nonresident had changed. Specifically, for customers served by a post office that has multiple ZIP Codes, customers now would be permitted to obtain a box at any facility under the jurisdiction of that post office. Thus, a resident served by the Los Angeles post office could obtain a box 15 miles across town from where he lives and not pay a nonresident fee, while a resident of a small suburb on the border of Los Angeles, such as Marina Del Rey, which has just one postal facility that offers box service, would pay a nonresident fee if he obtained box service just one mile away in Los Angeles.

The revised definition changed the substance of the proposal and altered the focus of the issues concerning fairness and equity for city residents. Indeed, the status report was partially responsible for requiring me to spend over \$425 to travel to Washington to conduct oral cross-examination on this new set of issues.

During this oral cross-examination, witness Raymond indicated that the implementation plans could change again, either before or after the Commission issues its recommended decision. [Citation unavailable.] Indeed, near the end of the hearing, witness Raymond indicated that the implementation team was giving some consideration to a "proximity rule" to address certain difficult boundary situations. [Citation unavailable.]

The revised nonresident-fee proposal contained in the October 23, 1996, status report arguably raised some due-process concerns, to the extent that it was submitted after

oral cross-examination on the Postal Service's direct case and therefore was partially responsible for requiring me to make a costly second trip to Washington. In addition, by failing to file these revisions as part of its formal request on June 7, 1996, the Postal Service violated § 54(a)(1) of the Rules of Practice, which dictate that a formal request must include

such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act.

Rules of Practice § 54(a)(1) [emphasis added].

Indisputably, participants and the Commission were not able to assess the scope of the proposed nonresident fee in cities with multiple ZIP Codes until October 23, 1996 (or, on some issues, until oral cross-examination on November 25, 1996), more than four months after the Postal Service filed its formal request.

If the Postal Service were to make further substantive changes to the nonresident-fee proposal after the hearings on the Postal Service's rebuttal evidence, or after participants filed their briefs, or after the Commission issued its recommended decision, the due-process problems would be quite serious. For example, after participants file their briefs, the Postal Service then could announce implementation of a "proximity rule"--and participants would be unable to conduct cross-examination on the rule or modify

the arguments they made in their timely filed briefs. Such a result clearly would violate 39 U.S.C. § 3624(a) and § 3624(b)(3).¹ Furthermore, future changes would be objectionable on the grounds that they were not timely filed, as required by § 54(a)(1).

While certain details of some proposals perhaps may properly be deferred to the implementation stage, in this case the Postal Service has inserted substantive changes into the original request by characterizing the changes as merely details of implementation. Any future changes to the request that are revealed after the deadline for the Postal Service to file rebuttal evidence might prevent the Commission from making an informed decision. Moreover, future changes submitted after the deadline for rebuttal evidence would violate § 54(a)(1) and certainly would infringe on participants' right to due process under 39 U.S.C. § 3624.

For these reasons, I support the OCA's request that the Commission require the Postal Service to submit any future changes to the nonresident-fee proposal on or about December

¹This due-process argument should sound familiar, given that the Postal Service has been making a similar argument in its attempt to strike testimony of witnesses Bentley and Thompson. See, e.g., Motion to Strike Testimony of Witnesses Bentley and Thompson, Or, In The Alternative, For Production of a Commission Witness at 2; Supplemental Comments of United States Postal Service to Motion to Strike Major Mailers Association Witness Bentley's New Analysis; and Comments of the United States Postal Service Concerning Rebuttal Testimony to Major Mailers Association Witness Bentley's New Analysis, where the Postal Service laments the absence of adequate time for written discovery and oral cross-examination. Of course, by failing to provide cost data in accordance with the Commission's costing method, the Postal Service has precipitated the crisis. In contrast, with the nonresident fee it is the Postal Service who has created the problem for which the OCA and I seek relief.

6, 1996, the deadline for filing rebuttal evidence. In addition, since the information contained in these draft implementation rules arguably should have been submitted on June 7, 1996, I request that the Commission provide a brief period for written discovery on the draft implementation rules for the benefit of participants who reside a long distance from Washington, DC.

Respectfully submitted,

Dated: December 3, 1996



DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required participants of record in accordance with section 12 of the Rules of Practice and section 3(B)(3) of the Special Rules of Practice.



DOUGLAS F. CARLSON

December 3, 1996
Emeryville, California