

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

RESPONSE OF UNITED STATES POSTAL SERVICE
TO OCA MOTION TO PROVIDE
DRAFT IMPLEMENTATION RULES
AND ADDITIONAL WITNESS

(December 6, 1996)

On November 26, 1996, the Office of the Consumer Advocate (OCA) filed a motion asking the Presiding Officer to require that the Postal Service file draft implementation rules and a witness to stand cross examination on those rules by December 6, 1996.¹ On or about December 3, 1996, Douglas F. Carlson filed a pleading supporting the OCA's position.²

The Postal Service opposes the OCA Motion for the variety of reasons enumerated below. Before identifying those, however, the real battle being fought and the predictable futility of the OCA Motion warrant attention.

The Postal Service initiated this case with the filing of its Request on June 7, 1996. In conformity with the Commission's rules and standard practice, the Request specifically identified proposed changes to the Domestic Mail Classification Schedule

¹ Office of the Consumer Advocate Motion 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. This pleading will be referred to as the "OCA Motion" herein.

² 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.

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(DMCS). As with all rate and classification cases filed with the Commission, there exists a gap between the DMCS language and the rules and procedures by means of which any decision is implemented. The Postal Service traditionally views this gap as an area of discretionary postal decision making that is filled in by internal guidance procedures that merge into the regulations that ultimately limit the options of both the Postal Service and its customers.

The Postal Service also recognizes, however, that the substantive requirements that ultimately fill the gap between proposed DMCS language and actual implementation may be of significance to customers; accordingly it seeks to inform interested participants when significant information becomes available.

In this case, the Postal Service has advised participants -- of what are necessarily preliminary decisions regarding how its box fee proposal would be implemented, through the filing of a status report.³ The Postal Service also offered, and the Commission later ordered, that a witness stand oral cross-examination regarding the contents of that report. Both the OCA and Mr. Carlson took advantage of this opportunity.

The real gist of the OCA's position, however, is not that it needs an opportunity to cross-examine a witness regarding implementation (since it has already done so), but that the Postal Service should be required in rate and classification cases to have worked out the final rules prior to filing its Request. This is evident from page 2 of the OCA Motion wherein the OCA points to a transcript section discussing a suggested alternative appellation for "non-resident fee" as evidence that the Postal Service has changed its proposal. If tentative discussion of a possible label for use in explaining a

³ A second status report is in preparation and should be filed by December 13.

new fee to internal and external customers arises to the level of changing the Postal Service proposal, then it is clear that under the OCA's view there can be no gap between DMCS language and actual implementation.

As the OCA knows well, the Postal Service does not agree that it should preclude itself from exercising any discretion in implementing the results of rate and classification cases by putting all of its implementation rules in the DMCS. More critically, as implementation witness Raymond made quite clear, such an approach would be impractical in the extreme because the exact course of Commission litigation, Governors' approval, and other actions necessary to assure a practical implementation cannot be known when a case is filed. See, e.g., Tr. 8/3211-14.

Analysis of the OCA Motion in light of the context in which it was made shows that there is no hope that it could be granted the relief it seeks. Procedurally, the Postal Service is preparing to file rebuttal testimony contemporaneously with this Response. The OCA Motion was made the day after the postal implementation witness appeared on the stand and explained why finalized rules cannot be available at this time, let alone when the case was filed. *Id.* The OCA Motion nonetheless makes a request the OCA knows would be impossible to satisfy.⁴

The OCA's habit of filing spurious motions should not be permitted to derail this proceeding. To the extent it has a legal argument to make, briefs are the appropriate forum.

The lightning rod for the OCA Motion and Mr. Carlson's support for it is the proposed non-resident fee, which has been a matter of significant contention since this

⁴ This is also implicit in the fact that the OCA Motion did not even seek expedited treatment, notwithstanding that the requested relief was to be delivered on the same day a response to its Motion is due.

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case was filed. Its application was described in witness Needham's testimony using a construct readily understood by all: 5-Digit ZIP Code boundaries.⁵ In a single-ZIP Code post office whose delivery and service areas are co-extensive, understanding of the concept of who is and is not a resident becomes straightforward. This explanation of the concept is not comprehensive, of course, as witness Needham forthrightly explained when the first interrogatory on point was received.⁶ Rules must be drafted so that they can have general, national application, Tr. 8/3280-81, but while the general rule may be clear, application in specific contexts must be worked out. This is exactly what the implementation team is doing.

The so-called changes to the rule about which Mr. Carlson complains, e.g., its application to multi-ZIP Code cities, constitute a narrowing of the range of application of the non-resident fee, but are not changes to the non-resident concept itself. Since Mr. Carlson generally opposed the non-resident fee, one might expect that he would welcome the decisions that have been reached during implementation. His Answer in support of the OCA Motion, however, indicates otherwise.

The OCA Motion should be denied for the following reasons:

⁵ At pages one and two of his Answer supporting the OCA Motion, Mr. Carlson applies an unduly narrow interpretation of witness Needham's testimony, which states, "within the 5-digit ZIP Code area of the office where box service is obtained." Witness Needham never defined "office", while the implementation team has simply defined "office" to include all the 5-digit ZIP Codes served by a given post office. Mr. Carlson and the OCA also conveniently overlook the fact that the Postal Service Request includes more general proposed DMCS language that does not address ZIP Codes at all and which has not changed.

⁶ Mr. Carlson's Answer in support of the OCA Motion sets forth appropriate citations to witness Needham's testimony and interrogatory responses, at 1-3.

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- 1) The relief requested is impractical and would be disruptive to provide; a later schedule for filing of implementation rules, if ordered, would likely delay the procedural schedule of the entire case.
- 2) To the extent any relief is available, it has already been provided in the form of the First Status Report and witness Raymond's appearance on the stand to bear cross-examination on it;
- 3) The Postal Service has not, in fact, changed its proposal, which continues to rely upon the same DMCS language included with the Request;
- 4) The implementation team has refined the scope of the proposed non-resident fee both to address concerns raised by Mr. Carlson, the OCA, and others regarding the fairness and equity of the non-resident fee and to make the fee more practical to administer; such refining is a necessary part of any implementation and should be encouraged rather than discouraged; and
- 5) A mechanism for keeping the Commission and participants informed regarding the progress of the implementation team, whose work product must necessarily await action by the Commission and the Governors, has already been established and is working.

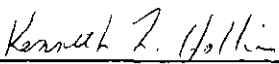
WHEREFORE, the United States Postal Service asks that the OCA Motion be denied.

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Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Kenneth N. Hollies**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

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