

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

**POSTAL RATE AND FEE CHANGES, 2000**

**Docket No. R2000-1**

**DOUGLAS F. CARLSON  
MOTION TO COMPEL UNITED STATES POSTAL SERVICE  
TO RESPOND TO INTERROGATORIES  
DFC/USPS-18, 19(c) & 20(b)–(e)**

**February 28, 2000**

Pursuant to Rule 26(d), I move to compel the Postal Service to respond to interrogatories DFC/USPS-18, 19(c), and 20(b)–(e).

Interrogatories DFC/USPS-18, 19(c), and 20(b)–(e) represent a series of questions about the Breast Cancer Research stamp, a “semipostal” stamp that the Postal Service issued in July 1998. These questions are relevant because they cast doubt on the Postal Service’s claim that a discounted rate for pre-bar-coded reply mail, a proposal known in prior dockets as Courtesy Envelope Mail (CEM), would complicate the rate schedule, cause customer confusion, and create enforcement problems.

These straightforward interrogatories, when confirmed, will establish that the Breast Cancer Research stamp shows the words “First-Class” rather than a dollar or cent denomination. Breast Cancer Research stamps sell for 40 cents. Prior to January 10, 1999, the single-piece First-Class rate was 32 cents. A Breast Cancer Research stamp purchased prior to January 10, 1999, was worth 32 cents in postage. The eight-cent difference funded administrative expenses and breast-cancer research. A Breast Cancer Research stamp purchased after January 10, 1999, is worth 33 cents in postage. The seven-cent difference funds administrative expenses and research. A customer who purchased Breast Cancer Research stamps prior to January 10, 1999,

and who seeks to use these stamps in February 2000 should apply an additional one cent in postage, since the stamp was worth 32 cents in postage at the time of purchase. The problem is, the Breast Cancer Research stamps bear no denomination. Thus, stamps purchased before January 10, 1999, and worth 32 cents in postage appear identical to stamps purchased after January 10, 1999, which are worth 33 cents in postage. Neither customers nor postal employees can, today or in the future, look at a Breast Cancer Research stamp and determine whether the stamp is worth 32 or 33 cents in postage. Enforcement of proper postage payment is impossible, and honest customers seeking to pay proper postage would be confused by this system.

The Postal Service objects to these interrogatories on the grounds of relevance, commercial sensitivity, and privilege.<sup>1</sup> In reality, these interrogatories are highly relevant. After the Commission recommended CEM as a “shell” classification in Docket No. R97-1,<sup>2</sup> the Governors rejected the Commission's recommendation.<sup>3</sup> The Governors explained their concerns about “public confusion” from the two-stamp system and “nettlesome administrative and enforcement concerns.”<sup>4</sup> In its response to OCA/USPS-29 in the current proceeding, the Postal Service indicated that a CEM proposal offered in this proceeding likely would generate a “reaction” from the Postal Service similar to the reasoning expressed in the Governors' decision in Docket No. R97-1.<sup>5</sup>

Participants in the current proceeding have a right to introduce a CEM proposal anew or file briefs on this subject. Since the Postal Service has expressed its intention to oppose a CEM proposal on grounds similar to those expressed in the Governors' decision, participants should be permitted to test and probe the Postal Service's claims about public confusion, complexity, and enforcement difficulties. One method of examination is to compare behavior in similar situations. In particular, participants should have the opportunity to argue that if these concerns were as serious as the

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<sup>1</sup> United States Postal Service Objection to Interrogatories DFC/USPS-18, 19(C), and 20(B-E) at 1 (filed February 25, 2000).

<sup>2</sup> PRC Op. R97-1 at ¶ 5168.

<sup>3</sup> Decision of the Governors of the United States Postal Service on the Recommended Decisions of the Postal Rate Commission on Prepaid Reply Mail and Courtesy Envelope Mail, Docket No. R97-1 (dated June 29, 1998).

<sup>4</sup> *Id.* at 6.

<sup>5</sup> Response to OCA/USPS-29 (filed February 10, 2000).

Postal Service claims they are, the Postal Service would not have elected to omit a denomination from the Breast Cancer Research stamp, effectively rendering enforcement and detection of underpaid postage impossible. In contrast, enforcement of postage payment under CEM would be possible; at *worst*, it would be merely labor-intensive. The enforcement concern that seemed paramount in the context of CEM apparently was inconsequential for the Breast Cancer Research stamp.

The Postal Service no doubt will argue that CEM and Breast Cancer Research stamps are different. The Postal Service is free to draw this distinction on brief, but this distinction does not undermine the clear relevance of these interrogatories to the persuasiveness of the Postal Service's objections to CEM and the right of participants to advance the arguments outlined above. With its response to OCA/USPS-29, the Postal Service has opened the door to questions examining its reasons for opposing CEM.

In objecting to DFC/USPS-18(t), the Postal Service cites the deliberative-process privilege. This interrogatory inquires into the reasons why the Postal Service did not print postage denominations on the Breast Cancer Research stamps. The relevance of this interrogatory outweighs any privilege. If the Postal Service could have printed a denomination on these stamps, thus reducing customer confusion and eliminating the permanent enforcement problem,<sup>6</sup> the persuasiveness of the Postal Service's claim about enforcement problems and confusion relating to CEM would be greatly undermined. Again, participants advancing an argument in favor of CEM have a right to use discovery to rebut the Postal Service's reasons for opposing CEM.

Offering no specifics, the Postal Service claims commercial sensitivity in objecting to DFC/USPS-20(b), which inquires into customer confusion about the Breast Cancer Research stamp.<sup>7</sup> The commercial sensitivity of this information is difficult to imagine given that the Postal Service has a monopoly on First-Class Mail and is the only agency in the country that issues postage stamps, semipostal or otherwise.

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<sup>6</sup> This enforcement problem will exist for as many years or decades as customers continue to use Breast Cancer Research stamps. Each stamp will continue to represent 32 cents, 33 cents, or maybe even 34 cents postage, yet the postage value will be unknown to a person viewing the stamp.

<sup>7</sup> Objection at 2.

If the Postal Service can identify some commercial sensitivity, the relevance of DFC/USPS-20(b) will outweigh the perceived sensitivity. Suppose the Postal Service has no evidence indicating that the non-denominated Breast Cancer Research stamp has caused customer confusion. Participants supporting a CEM proposal should be permitted to use this information to argue that CEM, which would use *denominated* stamps, might not be as confusing for the public as the Postal Service asserts.

The Postal Service claims that interrogatories DFC/USPS-20(c)–(e) “delve into matters reserved exclusively for postal management[.]”<sup>8</sup> Subparts (c) and (d) ask about postal management’s support for issuing future semipostal stamps. These interrogatories are relevant because support for issuing semipostal stamps in the future would indicate that the existence of a stamp that sells for a price higher than its underlying postage rate may not create confusion. The Postal Service claims that CEM would be confusing because it would create a “two-stamp” system.<sup>9</sup> If the public can handle a semipostal stamp, which sells for a price higher than the underlying postage value, participants should be permitted to argue that the public could handle CEM, too. Postal management may have made public comments on this issue, and it would be reasonable to request the Postal Service to provide only those comments or sentiments that have been expressed publicly or to journalists.<sup>10</sup>

Interrogatory DFC/USPS-20(e) is quite relevant, since the Breast Cancer Research stamp arguably complicated the nation’s mail system, yet the Postal Service has publicly hailed the *success* of this stamp, even ordering a second printing.<sup>11</sup> Again, I might argue, if CEM would complicate the rate structure, why are the complications of semipostal stamps acceptable?

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<sup>8</sup> *Id.*

<sup>9</sup> Decision at 6.

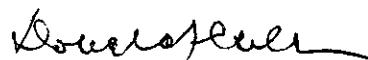
<sup>10</sup> Although I recall having read that postal management supports the concept of issuing another semipostal stamp, I was not able to locate a citation. However, in *Linn’s Stamp News*, an editor wrote the following sentence about the Breast Cancer Research stamp: “There’s even been talk about a follow-up stamp.” “Editor picks top stamp stories for 1998,” *Linn’s Stamp News*, December 28, 1998; available at [www.linns.com](http://www.linns.com). Requiring the Postal Service to provide its public comments on the question of issuing another semipostal stamp is reasonable and will allow participants to probe the Postal Service’s claim about confusion resulting from a “two-stamp” system under CEM.

<sup>11</sup> USPS Stamp News Release No. 99-019 (January 21, 1999); available at <http://www.usps.gov/news/stamps/99/99019stp.htm>.

Lastly, the Postal Service claims that an unspecified "subset" of my questions posed in interrogatory 18 "border[s] on abuse of process"<sup>12</sup> because the information "can be independently established by reference" to other publications. Only subpart (a) could easily be established by citing a publication; all other subparts call for some interpretation or inference that a party knowledgeable about postal administration should provide. The Postal Service is the logical party to ask. The Postal Service is objecting vociferously because these interrogatories undermine the concerns it has launched against CEM. The Postal Service could have conserved its "precious resources"<sup>13</sup> by answering these simple questions, rather than filing an objection and the likely forthcoming opposition to this motion. In directing the Postal Service to answer these interrogatories, the presiding officer should advise the Postal Service that frivolous claims of "abuse of process," possibly designed to intimidate citizens from participating in the ratemaking process, have no place in this proceeding.

Respectfully submitted,

Dated: February 28, 2000



DOUGLAS F. CARLSON

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### 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*.



DOUGLAS F. CARLSON

February 28, 2000  
Emeryville, California

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<sup>12</sup> Objection at 3.

<sup>13</sup> *Id.*