

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

**UNITED STATES POSTAL SERVICE
ANSWER IN OPPOSITION TO MOTION OF DOUGLAS F. CARLSON
TO COMPEL UNITED STATES POSTAL SERVICE TO RESPOND
TO INTERROGATORIES DFC/USPS-18, 19(C), AND 20(B-E)**

On February, 15, 2000, Douglas F. Carlson filed interrogatories DFC/USPS—18-23. On February 25, the Postal Service filed objections to interrogatories DFC/USPS-18, 19(c), and 20(b-e) ("Objection"). On March 7, Mr. Carlson's Motion to Compel United States Postal Service to Respond to Interrogatories DFC/USPS-18, 19(c), and 20(b-e) ("Motion") was filed. On March 10, the Office of the Consumer Advocate filed an Answer in Support of Mr. Carlson's Motion to Compel Responses. The Postal Service respectfully opposes Mr. Carlson's Motion.¹

Interrogatories 18(a-s) and 19(c) request information about retail operations in connection with the Breast Cancer Research Stamp, and about customer behavior related to that program. Interrogatory 18(t) requests documents and analyses related to a decision not to include a numerical denomination on the Breast Cancer Research Stamp. Interrogatory 20(b) requests that the Postal Service provide studies conducted on the extent of customer confusion about the Breast Cancer Research Stamp. Interrogatory

¹ The arguments presented in this pleading supplement those presented in the Postal Service's Objection.

20(c-e) asks for postal management's opinions about national policies concerning semipostal stamps. The Postal Service objected to these interrogatories on grounds of relevance, commercial sensitivity (in part), and deliberative process privilege (in part).

Mr. Carlson asserts that discovery related to the Breast Cancer Research Stamp is relevant based on the premise that the Breast Cancer Research Stamp is analogous to an environment in which a hypothetical courtesy envelope mail (CEM) discount is implemented. This is not so. While it is true that Breast Cancer Research Stamps purchased before and after January 10, 1999 have different postage values of 32 and 33 cents, respectively, this does not create a situation analogous to a CEM rate. Presumably, a CEM rate would represent a discount from the First-Class Mail Single-Piece rate, and would only be available for specially designated letter-sized pieces meeting automation compatibility standards. By way of contrast, the price of *all* Breast Cancer Research Stamps is 40 cents, which is well *above* the First-Class Mail Single-Piece rate. Furthermore, the Breast Cancer Research stamp is not limited to letter shapes meeting a prescribed set of automation compatibility standards; rather, it is available for payment of postage for any shape, class, or grouping for which stamps may be used as postage. See DOMESTIC MAIL MANUAL §§ P022.1.6 and P022.2.0. Thus, customer behavior, usage patterns, and eligibility rules would be markedly different for a hypothetical CEM rate proposal. The Breast Cancer Research Stamp accordingly has no bearing on the rate and classification proposals at issue in this proceeding. The risk to postal revenues associated

with having two different postage values for the Breast Cancer Research Stamp are, moreover, *de minimis* in comparison to the revenue consequences associated with a CEM stamp, which would be applied to nearly one-half of household-generated mailstream.

Mr. Carlson has also failed to overcome the Postal Service's objection to subparts (c-e) of interrogatory 20, which ask for postal management's opinions about semipostal stamps. As the Postal Service explained in its objection, these subparts delve into matters reserved exclusively for postal management and are clearly beyond the scope of permissible discovery. *Cf.* PRC Order No. 1254 (holding that complaint on alteration of ZIP Code boundaries is "clearly an operational matter within the exclusive jurisdiction of Postal Service management, in compliance with the policies set forth in Title 39.").

Mr. Carlson also offers no justification to overcome the Postal Service's deliberative process privilege objection to interrogatory 18(b). Subpart (b) requests copies of documents and analyses as to why the Postal Service did not issue a Breast Cancer Research Stamp with a numerical denomination. The Postal Service objected to this interrogatory on grounds that it delved into predecisional matters that were never implemented. Protection of such predecisional deliberations would further the interests served by the privilege, namely, "encouraging candor among those advising decisionmakers, with open discussion of legal and policy issues." P.O. Ruling No. R97-1/60 (citing and quoting *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975); *In re Sealed Case*, 116 F.3d 550, 557-58 (D.C. Cir. 1997); *Mapother v. Department of*

Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993); *Wolfe v. Department of Health and Human Services*, 839 F.2d 768, 773-74 (D.C. Cir. 1988)). Mr. Carlson does not need this information, particularly given that the factors that influenced the design of the Breast Cancer Stamp are unrelated to how the Postal Service would implement a hypothetical CEM proposal.

Mr. Carlson also cannot overcome the Postal Service's commercial sensitivity objection to interrogatory 20(b), which requests market research on customer confusion in connection with the Breast Cancer Research stamp.² In essence, Mr. Carlson dismisses this objection because "the Postal Service has a monopoly on First-Class Mail and is the only agency in the country that issues postage stamps" Mr. Carlson fails to point out, however, that there are numerous entities, both public and private, that are engaged in the design and marketing of stamps for countries throughout the world. Such entities could readily profit from the findings and methodologies contained in the Postal Service's stamp-related market research, which is conducted at the Postal Service's expense. Simply put, the Postal Service's market research is proprietary and valuable, and should be accorded protection as would that of any other entity.

² As the Postal Service explained in its initial Objection, it has not identified information responsive to this subpart. Nevertheless, the Postal Service raised the objection preserve its rights with respect to follow-up or related discovery.

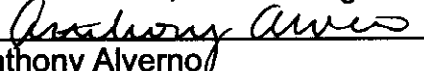
WHEREFORE, the Postal Service requests that Mr. Carlson's Motion be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

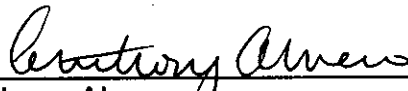
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CERTIFICATE OF SERVICE

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.



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