

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-38, 42, and 45 and DFC/USPS-T39-36(b)-(d)

March 10, 2000

Pursuant to Rule 26(d), I move to compel the Postal Service to respond to interrogatories DFC/USPS-38, 42, and 45 and DFC/USPS-T39-36(b)-(d). The Postal Service filed objections on February 28, 2000.¹ Rule 26(d) requires this motion to be filed by March 13, 2000. I am mailing this motion via First-Class Mail on March 10, 2000, in time for the motion to be received by the deadline if the Postal Service achieves its three-day delivery standard for First-Class Mail. Therefore, according to Commission precedent stated in POR MC97-2/2, this motion is timely.

DFC/USPS-38, 42, and 45

Interrogatory DFC/USPS-42(a) requests a copy of a page from a recent issue of *Postal Life* magazine that lists the locations of postal facilities that offer window service 24 hours a day, 7 days a week. Part (b) of this interrogatory asks the Postal Service to explain whether First-Class Mail, Priority Mail, and Express Mail tendered to those facilities on a Sunday will be processed and dispatched on Sunday. Interrogatories DFC/USPS-38 and 45 concern my previous interrogatories DFC/USPS-3, 5, and 8, which inquire into the extent to which processing and distribution centers (P&DC's) process outgoing mail on Sundays.

¹ Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-38-39, 42-45 at 4 (filed February 28, 2000) ("Objection #1") and Objection of United States Postal Service to Interrogatory DFC/USPS-T39-36(B-D) of Douglas F. Carlson (filed February 28, 2000) ("Objection #2").

The extent to which customers can deposit mail for collection and dispatch on Sundays is relevant under two of the eight statutorily enumerated criteria for postal ratemaking. Under 39 U.S.C. § 3622(b)(2), "collection" and "priority of delivery" of each class of mail are relevant to the "value of the mail service" provided to "both the sender and recipient[.]" A second factor, appearing in § 3622(b)(5), is the "available alternative means of sending and receiving letters and other mail matter at reasonable costs." If Express Mail is the only class of mail to be collected and dispatched on Sundays, one might argue that Express Mail should have a higher value of service than other classes based on availability of Sunday collection and dispatch.

The extent to which Express Mail, Priority Mail, and First-Class Mail can regularly be tendered for Sunday collection and dispatch is relevant to determining the appropriate cost coverage for each class. Moreover, participants advocating changes in cost coverage based on the availability of Sunday collection and dispatch must have *reliable* information with which to work. The Commission also needs accurate and reliable information on which to base its opinion and recommended decision. Unfortunately, the Postal Service has not provided reliable information on this subject and now objects to this line of inquiry on relevance grounds.²

In responding to DFC/USPS-3, the Postal Service stated that its national policy "is not to conduct Sunday collections or outgoing processing of First-Class Mail except during the holiday season or as a contingency for unusual circumstances." In DFC/USPS-5 and 8, the Postal Service flatly denied that any processing plants regularly process outgoing First-Class Mail on Sundays. I know that these interrogatory responses are incorrect because I have reliable information, including my own test mail, confirming that some P&DC's regularly process outgoing First-Class Mail on Sundays.

After the Postal Service filed its responses to DFC/USPS-3, 5, and 8, I contacted postal counsel to ask for a revised response. Postal counsel informed me that my questions were not relevant to this proceeding, and he promised to object on relevance grounds if I filed follow-up interrogatories.

² See Objection #1 and Response of the United States Postal Service to Interrogatories of Douglas F. Carlson (DFC/USPS-39, 41, 43, 46-49) at 1 (filed March 2, 2000).

The Postal Service's inaccurate responses to my discovery requests left me in a procedural quandary. After receiving the inaccurate responses, pursuant to Rule 26(d), I could have filed a motion to compel the Postal Service to provide true and accurate answers. Unfortunately, in my motion I would have been unable to respond to the Postal Service's objections to providing the information because the Postal Service had not even stated any objections yet. In its opposition to my motion to compel, the Postal Service then would have been able to state its grounds for objecting for the first time, and I would have had no opportunity to respond. I rejected this option.

Instead, I filed follow-up interrogatories. DFC/USPS-45 asks the Postal Service to provide "true and accurate responses to DFC/USPS-3, 5, and 8." This question gave the Postal Service another chance to respond to the original question; however, if the Postal Service declined to provide correct information to the original interrogatories, the Postal Service would be required to state in an objection the reason for not filing true and accurate information in response to the original question. I then could respond to the objection. While acknowledging that this interrogatory follows up on my previous interrogatories, the Postal Service claims that this interrogatory is argumentative.³ In reality, the question is a necessary consequence of the Postal Service's inaccurate responses to my original interrogatories and the procedural predicament into which those inaccurate responses placed me. In this context, to ask for accurate answers to the previous interrogatories is reasonable and proper discovery.

DFC/USPS-38 asked the Postal Service to confirm that its responses to DFC/USPS-3, 5, and 8 "may not be true or accurate." The Postal Service objects on the grounds that this interrogatory is argumentative.⁴ In reality, as the presiding officer ruled in Docket No. R97-1, the "reliability or accuracy of relevant data is nearly always relevant."⁵ The Postal Service's objection itself indicates some uncertainty about the accuracy of the responses, as it allows for the possibility of "isolated exceptions."⁶ Therefore, the objection essentially concedes that the Postal Service must confirm DFC/USPS-38. In fact, DFC/USPS-5 and 8 inquire not only into national policies but

³ Objection #1 at 1 and 4.

⁴ *Id.* at 4.

⁵ POR R97-1/89 (filed January 27, 1998).

⁶ Objection #1 at 1.

also require discussion of any exceptions. If exceptions exist, isolated or not, the responses to DFC/USPS-5 and 8 are incorrect.

The accuracy of relevant data is relevant because my case would be prejudiced if the presiding officer allowed incorrect information to remain in the record without, at minimum, an acknowledgement from the Postal Service that the information may not be correct. The opportunity for the Postal Service to raise relevance objections to questions on this subject expired when the Postal Service answered my original interrogatories. The responses to these interrogatories must be accurate, and to the extent that the Postal Service is unsure about their accuracy, the Postal Service must admit the uncertainty.

The Postal Service suggests that I am “simply wrong on the substance” and that the Postal Service is “unable to identify any facilities that do not comply with the nationwide policy on a regular basis.”⁷ This statement is troubling because it indicates that the Postal Service may have invested an insufficient amount of effort into obtaining a correct answer to my interrogatories. Once again, I have very reliable, easily obtained information indicating that some P&DC’s regularly process outgoing mail on Sundays.⁸

Interrogatory DFC/USPS-42 requests information on the extent to which various classes of mail deposited at post offices offering 24-hour window service is dispatched on Sundays. Since these post offices are located in various major cities across the country, examination of the processing of mail tendered at these facilities on Sundays provides information of a sufficiently national scope appropriate for consideration in postal ratemaking. (Ideally, I also would inquire into the processing and dispatch of mail deposited at the many non-24-hour postal retail stores that nevertheless are open on Sundays, such as those located in shopping malls or airports.) The Postal Service claims that responding to this interrogatory would be “irrelevant, duplicative, and potentially burdensome” since the Postal Service allegedly has addressed this subject in responding to DFC/USPS-41. In response to DFC/USPS-41(f) and (h), the Postal Service stated that customers should have no expectation that Priority Mail will be

⁷ *Id.* at 2-3.

⁸ I am not providing my information because I am using the discovery process to learn information that I do not already know. Moreover, the Postal Service is responsible for providing information about postal operations, not intervenors.

processed and dispatched on Sundays. This information appears to be inaccurate, as window clerks at facilities that are open on Sundays have assured me that Priority Mail will be processed and dispatched on Sunday. The Postal Service should be required to answer DFC/USPS-42(b) for each of the facilities listed in *Postal Life* because the information gathered in the process of responding to DFC/USPS-42(b) may better inform the Postal Service of its own procedures. In fact, this information might prompt a revision to the response to DFC/USPS-41(f) and (h).

In sum, the extent to which Express Mail, Priority Mail, and First-Class Mail are processed and dispatched on Sundays is relevant to two statutory pricing criteria. As a participant, I am entitled to submit testimony or arguments on brief on this issue, to obtain information from the Postal Service relevant to Sunday mail processing, and to receive accurate responses to my interrogatories. Therefore, the Postal Service should be directed to respond to interrogatories DFC/USPS-38, 42, and 45.

DFC/USPS-T39-36(b)–(d)

Interrogatories DFC/USPS-T39-36(b)–(d) ask the Postal Service to explain why customers who have post-office boxes at two stations, located in Oakland, California, and New York City, and the only post office in the town of Babb, Montana, do not receive mail or have access to their post-office boxes on Saturdays. The Postal Service objected to these interrogatories on the grounds that they are not relevant.⁹

The Postal Service has no information on the extent to which box customers cannot receive mail or access their boxes on Saturdays.¹⁰ In response to DFC/USPS-T39-10, witness Needham indicated that she “would not be surprised if post office box delivery did not occur or access to post office boxes was not available on Saturdays as a result of unique local circumstances.” Witness Needham indicated that she was not aware of any national policy or other guidelines explaining the “unique local circumstances” under which no delivery or access to post-office boxes on Saturdays would be permissible.¹¹ Witness Needham also asserted that delivery of mail or access

⁹ Objection #2.

¹⁰ Response to DFC/USPS-T39-11.

¹¹ Response to DFC/USPS-T39-36(a).

to boxes on Saturdays is “not enough of a factor” to warrant an alternative fee structure for post-office boxes that would consider Saturday box service in pricing boxes.¹²

Box customers who cannot receive or access mail on Saturdays arguably should pay lower fees than customers who receive or access mail Monday through Saturday. The availability of mail on Saturdays is an important factor contributing to the value of box service. Witness Needham’s assertion to the contrary is merely an opinion based on neither data nor knowledge of the reasons why some box customers cannot receive or access mail on Saturdays. I intend to argue in this case that a fee structure that bases box fees on facility rental costs would be unfair and inequitable to the extent that it emphasizes one factor — rental costs — while overlooking an important service factor, delivery of mail and access to box mail on Saturdays. Participants and the Commission need an indication of how many facilities do not offer box service on Saturdays and why, and they arguably should have this information before considering the current proposal to tie box fees to facility rental costs.

Since the Postal Service apparently has no information on the extent to which customers do not receive box service on Saturdays or the range of reasons that might justify a decision by field managers not to provide service on Saturdays, I am attempting to add to the record by identifying three specific offices that do not deliver box mail on Saturdays and asking why customers do not receive box service on Saturdays. Contrary to the Postal Service’s suggestion in its objection,¹³ I do not know why the Byron Rumford Station, which was constructed in the mid-1990’s in a new federal-building complex in Oakland, and the post office serving the town of Babb, Montana, do not offer Saturday box service. Discovery requests to obtain this information are entirely appropriate, and the Postal Service likely can obtain an answer to this question with an inquiry to each postmaster.

The Postal Service suggests that I submit this information via testimony.¹⁴ This suggestion is somewhat disingenuous considering that the Postal Service objected in Docket No. R97-1 after I contacted postal officials directly concerning delivery of mail sent via certified mail and return receipt to high-volume recipients and presented this

¹² Response to DFC/USPS-T39-13.


¹³ Objection #2 at 2.

¹⁴ *Id.*

information to impeach the prior testimony of witness Plunkett.¹⁵ At that time, the Postal Service indicated a preference for formal discovery,¹⁶ which I am attempting to use now. I would be unable to learn why these facilities do not offer Saturday box service without contacting local postal officials, as no obvious reason exists. Thus, the Postal Service now is implicitly suggesting the method of obtaining information to which the Postal Service objected in Docket No. R97-1.

The Commission needs more information on how many facilities do not provide Saturday box service and why. Rental-cost information is available, but information on service levels is deficient. Service is an important component in determining value of service and appropriate fee levels. The information I have requested will inform the Commission in reviewing the Postal Service's proposed revision to the fee structure for post-office boxes, as this revision may need to be deferred to a future rate proceeding until the Postal Service provides more information on relevant aspects of box service. Since responses to these interrogatories can be provided with minimal burden, the Postal Service should be directed to provide responses on this relevant issue.

Respectfully submitted,



Dated: March 10, 2000

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*.



DOUGLAS F. CARLSON

March 10, 2000
Emeryville, California

¹⁵ Docket No. R97-1, Opposition of United States Postal Service to Douglas F. Carlson Motion to Admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 into Evidence (filed October 30, 1997) at 5-6.

¹⁶ *Id.* at 5.

TEXT OF ORIGINAL INTERROGATORIES

DFC/USPS-38. Please confirm that the Postal Service's responses to DFC/USPS-3, 5, and 8 may not be true or accurate.

DFC/USPS-42.

- a. Please provide a copy of the page from a recent edition (past two to four months) of *Postal Life* that lists the locations of postal facilities that offer window service 24 hours a day, 7 days a week.
- b. For each of the facilities listed, please explain whether (i) First-Class Mail, (ii) Priority Mail, and (iii) Express Mail will be processed and dispatched if a customer tenders it to that facility on a Sunday.

DFC/USPS-45. Please provide true and accurate responses to DFC/USPS-3, 5, and 8.

DFC/USPS-T39-36. Please refer to your response to DFC/USPS-T39-10.

- b. To enhance the record on this subject via examples, please explain why customers may not receive mail and access their post-office boxes on Saturdays at the Byron Rumford Station in Oakland, California, the post office in Babb, Montana, and the station located in the Port Authority Bus Terminal in New York, New York.
- c. Please provide the approximate year in which the building housing the Byron Rumford Station was constructed.
- d. Please confirm that access to the box section on Saturdays at the Byron Rumford Station could not have been accommodated architecturally. If you do not confirm, please explain.