

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

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO CARLSON MOTION TO COMPEL RESPONSES TO
DFC/USPS-38, 42, AND 45, AND DFC/USPS-T39-36(b)-(d)
(April 3, 2000)

On February 28th, the Postal Service filed timely objections to the above interrogatories. On March 27th, a motion to compel regarding the above responses appeared on the Commission's webpage. Although the motion to compel indicated that it had been mailed on March 10th, the Postal Service has no records of ever having received a copy of the motion. The Postal Service hereby opposes the motion to compel.

The Motion Should Be Denied As Untimely

The motion itself acknowledges that the due date for filing of the motion was March 13th. According to the time stamp on the document, it was not received by the Commission until March 27th. As noted above, there is no record of the document ever having been received by the Postal Service. Even assuming, as the certificate of service states, that the motion was mailed on March 10th, no information has been brought to light suggesting what steps, if any, may have been taken when the motion did not appear on the Commission's webpage on March 13th or the days immediately following. It would seem that parties who do not personally file their pleadings with the Commission have an obligation to exercise due diligence to verify that the pleadings have been received. The Commission's website greatly facilitates fulfillment of that obligation. It would likewise appear reasonable to expect that a party who discovers that a document he expected to appear on the daily listing had not appeared would check with the opposing party to see if they had received the document. Once again,

there is no indication that such a contact was attempted. Instead, all we have is a document that shows up the webpage two weeks after the due date. On that basis alone, the motion to compel should be denied. In the alternative, at the very least, this lack of diligence should be taken into account in assessing the purported importance of the information sought.

DFC/USPS-38, 42, and 45

As stated in the Postal Service's objection of February 28th, these questions are rooted in Mr. Carlson's first set of interrogatories on the topic of Sunday processing of First-Class Mail, DFC/USPS-1 - 12. In that set, Mr. Carlson never broached the topic of inter-subclass comparisons of Sunday processing. Instead, Mr. Carlson's first questions made quite clear his concern was intra-subclass discrimination -- his perception that some First-Class mailers had access to regular Sunday dispatch, and others did not.¹ As summarized in the February 28th objection:

Although concerned about a lack of relevance, the Postal Service attempted to be cooperative, and responded to those questions. The substance of the Postal Service's responses were to confirm that the national policy is to not regularly process outgoing First-Class collection mail on Sundays, and to state that although there are occasionally some instances in which facilities do Sunday processing, the Postal Service does not consider that any facilities regularly process collection mail on

^{1/} The actual motivation for Mr. Carlson's initiation of this entire series of interrogatories is probably best revealed by his interrogatory number 12, keeping in mind that his residence is in the San Francisco area:

DFC/USPS-12. Suppose two customers, one living in San Francisco and one living in an area served by a processing plant that regularly processes outgoing First-Class Mail on Sundays, place equal value on the ability to have outgoing First-Class Mail processed on Sundays if they deposit the mail at their local post office. Please confirm that the customer who lives in San Francisco receives a lower value from his First-Class Mail service than the customer who lives in the area served by a processing plant that regularly processes outgoing First-Class Mail on Sundays. If you do not confirm, please explain.

Sundays. Moreover, in response to the accusations of discrimination, the Postal Service pointed out that not only is it unaware of any inconsistency, but even if some isolated exceptions to the policy could be identified, they would have no bearing on a ratemaking process in which uniform First-Class letter rates are established which intentionally involve significant rate averaging, and which must be applied in the context of a nationwide postal network over which a wide variety of operational conditions exist.

Objection at 1-2. The Objection pointed out clearly that Mr. Carlson was asserting an entirely new basis for relevance in his second set of questions (38-45) by suddenly shifting to claims of a need to do inter-subclass comparisons. (The Postal Service responded to his question seeking information relevant to inter-subclass comparisons in its answer to his question 41, which was provided without objection.) What is most disconcerting about the shift in the alleged basis for the claim of relevance is the appearance that Mr. Carlson is engaging in pure and simple gamesmanship.²

Nothing in the motion to compel dispels that impression. The motion to compel does not address that portion of the objection noting the attempt to shift from intra to inter-subclass comparisons, discusses only inter-subclass comparisons, and never

^{2/} In attempting to generate support for the newly-formulated claim of relevance on the basis of inter-subclass comparisons, the motion states that "[i]f 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 the availability of Sunday collection and dispatch." Motion to Compel at 2. The Postal Service has already conceded exactly that point in response to interrogatory 41 from Mr. Carlson, and Mr. Carlson is free to make that argument on the basis of the information that has already been provided. It is, therefore, distinctly unclear as to the basis upon which he perceives that this line of reasoning supports his claim for a need for further information regarding Sunday processing of First-Class Mail. Hypothetically speaking, identification of facilities that regularly process First-Class collection mail would not support an argument for a higher Express Mail cost coverage, and could only be used (logically, even though not practically) to support an argument for a higher *First-Class* cost coverage. Mr. Carlson appears to be seeking information that can only contradict the sole argument he has expressed an interest in presenting, and this is therefore further indication of the suspect nature of his relevance claim.

even attempts to explain why, if that is the purported relevance of the information, it was not sought in that context originally. Even more troubling in this regard is that aspect of the motion which suggests that Mr. Carlson believes that he has information which identifies facilities whose practices are not consistent with national policy, but which further indicates that he has deliberately chosen not to disclose that information in favor of an approach which simply demands that the Postal Service admit that its earlier answers may not be accurate, and provide true and accurate responses. See Motion to Compel at 3-4, especially footnote 8. This approach brings to mind the description in a widely-circulated trial advocacy video training course of the cross-examination technique employed by the Soviet prosecutors during the Nuremberg trials, which reportedly consisted entirely of mind-numbing repetition of the question "Do you *now* confess that you are a Fascist beast?" Mr. Carlson apparently believes that it is appropriate for him to continue to demand an acknowledgment of error until such point as the Postal Service can miraculously intuit which facilities, in his mind, do not conform to national policy, and address those facilities specifically. Whether such a Kafkaesque procedure makes sense in other contexts, there is no place for it within the time-constrained perimeters of postal ratemaking. Questions 38 and 45 are purely argumentative, and nothing short of offensive.

The most basic flaw in the motion to compel, however, is the fundamental irrelevance of the information sought. As noted in the objection:

The Postal Service has stated its nationwide policy on Sunday processing of First-Class collection mail. The Postal Service has stated that it is unable to identify any facilities that do not comply with the nationwide policy on a regular basis. For purposes of contrasting the value of service of First-Class Mail under this policy with the subclass which can receive

regular Sunday processing (i.e., Express Mail), this information is more than sufficient to make any relevant comparisons. To attempt instead to proceed facility-by-facility and quibble over what is or is not "regular" Sunday processing in some limited number of instances, which apparently is what Mr. Carlson has in mind, is not going to add anything material to the Commission's evaluation of the relative cost coverages of First-Class Mail and Express Mail.

Objection at 2-3. It bears repeating here that the point of contention is not whether there is ever processing and dispatch of First-Class Mail received on Sundays. The Postal Service has acknowledged that, under certain circumstances, and for valid operational reasons, Sunday processing does occur, with one obvious example being during the peak holiday greeting card season. The only point of contention is whether there are facilities at which such processing is necessarily described as "regular." The Postal Service has stated that it has been unable to identify any facilities where that is the case. All Mr. Carlson appears to want to do, to repeat the language of the objection, is quibble over the assessment of "regular" on a facility-by-facility basis. Any possible outcome of that exercise is of no conceivable consequence to the ratemaking determinations that must be made in this proceeding, and the questions are therefore irrelevant.

The motion also argues that the Postal Service's objection concedes that the Postal Service must confirm the potential inaccuracy of its initial responses. Motion to Compel at 3. This argument fails to comprehend the nature of arguments concerning the concept of relevance. Imagine a car crash case, in which the contested issue is whether the light had already turned red when a car entered the intersection, and a witness states in response to a question that the car appeared to him to be gray. If his attorney objects to a follow-up question about whether he is sure that the car was not

actually silver, on the grounds that it is irrelevant whether the car was gray or silver, the attorney has not conceded that the car was not gray. He has simply, and correctly, asserted that questions about the shade of color of the car are not relevant. The exact same reasoning is applicable here. Disputes about shades of “regularity” of Sunday processing at specific individual facilities within a national network of tens of thousands of facilities provides no useful information for pricing purposes. That is even more emphatically the case in circumstances such as this, in which there are no indications that the national policy is implemented any differently now than it has been in the last three rate cases in which rates were established. Even if it were it timely, which it is not, the motion to compel should be denied in its entirety with respect questions 38, 42, and 45.

DFC/USPS-T39-36(b)-(d)

Mr. Carlson also moves to compel responses to interrogatories DFC/USPS-T39-36(b)-(d), which ask witness Mayo to obtain information about why post office box customers at three particular facilities identified by Mr. Carlson may not receive mail and access their post office boxes on Saturdays. The questions also ask for other facts about the Byron Rumford Station in Oakland, California. Mr. Carlson’s motion has not justified requiring the Postal Service to respond.

In his motion to compel, Mr. Carlson argues that “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”, the Postal Service should inquire about

why three particular facilities do not provide service on Saturdays. Motion at 6. Mr. Carlson does not explain how these examples would add anything to the record beyond the practices at these three facilities.

Moreover, Mr. Carlson has not fully explored the Postal Service's knowledge about post office box service on Saturdays. The Postal Service has not specifically been asked for reasons why facilities may decide not to offer delivery of or access to post office boxes on Saturdays. The Postal Service is willing to discuss these reasons in response to other interrogatories, such as interrogatory DBP/USPS-84(b, f), concerning when access to box sections is made available, and DBP/USPS-115, concerning access and delivery to post office boxes 6 days a week. These responses are due in 3 days.

However, the Postal Service objects to obtaining anecdotal evidence for an intervenor.³ Witness Mayo should not be expected to undertake the burden of discussing localized practices with field employees. More importantly, the Postal Service should not be required to distract field employees from their primary duties in order to respond to rate case discovery.

Mr. Carlson also has not established that information about these three facilities would be material to the Commission's consideration of post office box classifications in

^{3/} This matter is different from the circumstances in Docket No. R97-1, when witness Plunkett did check with individual facilities in response to interrogatories about return receipt service. See Rebuttal Testimony of Michael K. Plunkett on Behalf of United States Postal Service (USPS-RT-20), at 6, n.5. As witness Carlson admits, those interrogatories were focused on impeaching witness Plunkett's prior knowledge of field practices. See Motion at 6-7. In this case, witness Mayo is not claiming that all facilities provide delivery and/or access to post office boxes on Saturdays, so field inquiry is not needed to correct the record.

this proceeding. Mr. Carlson claims that "[t]he availability of mail on Saturdays is an important factor contributing to the value of box service." Motion at 6. But that is likely not the case at some facilities, such as those in business districts or office parks that are active on weekdays, but dead on weekends. In many cases, customers may be obtaining boxes to get their weekday mail, and would not be interested in Saturday delivery.

In interrogatory DFC/USPS-T39-36(c), Mr. Carlson asks the approximate year in which the building housing the Byron Rumford station was constructed. Mr. Carlson answers that question himself in page 6 of his motion to compel. Interrogatory DFC/USPS-T39-36(d) asks witness Mayo to confirm that access to the box section on Saturdays at the Byron Rumford Station could not have been accommodated architecturally. Despite Mr. Carlson's protests, this inquiry does seem to indicate a substantial degree of knowledge about why that facility might not offer Saturday post office box access.

The Postal Service does appreciate Mr. Carlson's use of formal discovery, rather than direct contacts to field employees, to gain rate-case-related information in this proceeding. Nonetheless, discovery should not be allowed to require the Postal

Service to gather anecdotal information from the field, at least where more generalized information may be available.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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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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April 3, 2000