

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 THE UNITED STATES POSTAL SERVICE  
TO RESPOND TO DFC/USPS-70, 77(c), 77(d) & 77(f)

April 8, 2000

I move to compel the Postal Service to respond to interrogatories DFC/USPS-70, 77(c), 77(d), and 77(f). The text of each interrogatory appears on page 8 of this motion.

**DFC/USPS-70**

On March 20, 2000, I filed interrogatory DFC/USPS-70, which states:

Please provide recent national EXFC performance data for every category available (e.g., flats, letters, SPR's; handwritten, typewritten, bar-coded; etc.).

On March 30, 2000, the Postal Service filed an objection, claiming that "disaggregated data by type of First-Class Mail piece are neither relevant nor material."<sup>1</sup> The Postal Service is mistaken.

As the Postal Service admits, "First-Class Mail service performance data are relevant to the determination of 'value of service' for First-Class Mail, as a whole, within the meaning of 39 U.S.C. § 3622(b)(2)." The Postal Service routinely reports aggregate data for First-Class Mail. However, since Priority Mail and Standard Mail (B) are much more likely to transport flats and parcels than letters, the delivery-performance data specifically for First-Class Mail flats and SPR's will provide a benchmark for comparing

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<sup>1</sup> Objection of the United States Postal Service to Carlson Interrogatory DFC/USPS-70 (filed March 30, 2000).

the value of First-Class Mail with the value of Priority Mail and Standard Mail (B). These specific data will be more useful than aggregate data that include letters.

Excellent performance results for First-Class Mail letters also may mask serious performance problems with flats or SPR's. Indeed, stable aggregate EXFC scores, or even increasing EXFC scores, may hide dips in performance for flats or SPR's. In this instance, a participant could reasonably argue that the value of First-Class Mail is not as high as aggregate data suggest because customers who send, e.g., flats, receive substantially poorer delivery service than the aggregate data suggest, and this poor service should be considered in setting rates for First-Class Mail.

For these reasons, this interrogatory clearly is reasonably calculated to lead to the discovery of admissible evidence. See Rule 25(a). In fact, in Docket No. R97-1, the Postal Service provided this information in response to a discovery request.<sup>2</sup>

Data on delivery performance for other categories, such as handwritten, typewritten, or bar-coded, also is relevant because increases in postage rates and fees affect different categories of customers differently. Households typically are affected most directly by the rate for single-piece First-Class Mail letters, while large commercial customers are affected by rate changes in a variety of classes and subclasses. To the extent that households mail primarily handwritten and pre-bar-coded First-Class Mail letters, a participant should be able to argue that the EXFC performance data for handwritten and pre-bar-coded First-Class Mail are more relevant to determining the value of First-Class Mail service to households than aggregate data for the class. Moreover, if a participant submits a proposal for Courtesy Envelope Mail, which would consist of homogeneous pre-bar-coded mail, performance data for pre-bar-coded mail will be relevant to determining the value-of-service markup for CEM. Thus, this interrogatory is reasonably calculated to lead to the discovery of admissible evidence.

The Postal Service should be directed to respond to DFC/USPS-70.

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<sup>2</sup> Unfortunately, I do not have access to all Docket No. R97-1 materials, so I am unable to provide a citation to the specific interrogatory response.

### DFC/USPS-77(c), (d), & (f)

After the Commission recommended Courtesy Envelope Mail (CEM) as a “shell” classification in Docket No. R97-1,<sup>3</sup> the Governors rejected the Commission’s recommendation.<sup>4</sup> The Governors explained their concerns about “public confusion” from the two-stamp system and “nettlesome administrative and enforcement concerns.”<sup>5</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>6</sup> *These interrogatories are relevant because they cast doubt on the Postal Service’s claim that CEM would complicate the rate schedule, cause customer confusion, and create enforcement problems.*

In response to OCA/USPS-62, the Postal Service revealed that an alpha stamp, such as the “H” stamp, will not be used to implement new rates that result from Docket No. R2000-1. Instead, the Postal Service will issue non-denominated stamps that will show “First-Class Mail” or a similar endorsement. *These stamps will bear the artistic design that will be used on the denominated stamps that the Postal Service will issue approximately one month later.*

While alpha stamps are non-denominated, consumers and postal employees can determine the value of alpha stamps by consulting publications that list the value of each alpha stamp that has been issued so far. In contrast, the *artistic design* apparently *will be the primary way for customers and postal employees to determine the value of the non-denominated stamps planned for implementation of the new rates in this case.* Interrogatory DFC/USPS-77(c) asked precisely this question. If the premise of this question is correct, a few years from now this decision may create customer confusion and enforcement problems. One can imagine a telephone conversation between a customer and the Postal Service as the customer tries to describe the design of the

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<sup>3</sup> PRC Op. R97-1 at ¶ 5168.

<sup>4</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>5</sup> *Id.* at 6.

<sup>6</sup> Response to OCA/USPS-29 (filed February 10, 2000).

non-denominated stamp to the postal employee, who may or may not be able to consult a picture of the stamp to view while the customer struggles to describe the artistic design of the stamp. Employees responsible for enforcing underpaid postage, including all letter carriers, would need to be trained on the artistic designs of non-denominated stamps. Over the years, this decision will create a staggering training burden and enforcement obstacle. If confusion and enforcement *truly* are concerns, one might ask why the Postal Service is choosing to issue non-denominated, non-alpha stamps to implement new rates.

DFC/USPS-77(d) asks the Postal Service for any studies or other information indicating that the absence of an alpha designation or rate value on postage stamps may or may not cause customer confusion in future years as customers seek to determine the value of non-denominated stamps that they have in their possession.

DFC/USPS-77(f) asks the Postal Service to discuss the possibility that the Postal Service will have sufficient lead time before implementing new rates in 2001 to print stamps that have the new rate printed on them, eliminating the need for non-denominated stamps. I asked this question because the Postal Service indicated in its response to OCA/USPS-62 that the Postal Service would print an ample supply of one-cent stamps for make-up-rate needs. Presumably the Postal Service would not consider one-cent stamps to be sufficient for make-up purposes if the single-piece First-Class Mail rate rose by two cents. Therefore, the Postal Service's plan to print one-cent stamps for the make-up rate suggests that denominated stamps bearing the new rate also could be printed before implementation of the new rates. Given the potential problems with non-denominated stamps, is the Postal Service planning to print non-denominated stamps even if sufficient lead time would exist to print denominated stamps? If so, customer confusion with non-denominated stamps must not be of sufficient concern to cause the Postal Service to pursue an available alternative — denominated stamps. DFC/USPS-77(f) sought an answer to this question.

As was the case with my interrogatories concerning the non-denominated Breast Cancer Research stamps, these three interrogatories are relevant to evaluating the persuasiveness of the Postal Service's claims that CEM would create customer

confusion and lead to enforcement problems. Non-denominated stamps whose value can be determined based only on the artistic design of the stamp arguably would create considerable confusion and enforcement problems in future years, if not immediately. The enforcement concern seemed paramount in the context of CEM, yet the Postal Service now appears to be set to issue a new stamp that will create significant enforcement problems. Participants should be able to evaluate the weight that the Commission should give to certain Postal Service arguments when, as in this instance, the Postal Service's actions contradict the concerns underlying those arguments.

As occurred after I filed similar interrogatories on the Breast Cancer Research stamp, the Postal Service objected to the current interrogatories.<sup>7</sup> The Postal Service complains that my interrogatories are not relevant and concern implementation matters reserved exclusively for postal management.<sup>8</sup> In addition, the Postal Service cites the deliberative-process privilege in objecting to DFC/USPS-77(d).<sup>9</sup> The presiding officer's recent ruling granting my motion to compel the Postal Service to respond to the interrogatories concerning the Breast Cancer Research stamps<sup>10</sup> quickly disposes of the Postal Service's objections, since my interrogatories on the Breast Cancer Research stamp also involved a Postal Service decision to issue a stamp that bears the words "First-Class," rather than an alphabetical or numeric postage designation.

As described above, the interrogatories clearly are relevant because the answers could cast doubt on the Postal Service's rationale for rejecting the CEM proposal in Docket No. R97-1. In POR R2000-1/28, the presiding officer ruled that my similar interrogatories on the non-denominated Breast Cancer Research stamp "appear to be relevant, as alleged by two different participants, for the purpose of contrasting and comparing the Postal Service's actions concerning the Breast Cancer Research stamp and the CEM proposal."<sup>11</sup> The presiding officer should reject the Postal Service's objection based on relevance.

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<sup>7</sup> United States Postal Service Objection to Douglas F. Carlson Interrogatory DFC/USPS-77(C), (D), and (F) (filed March 31, 2000) ("Objection #2").

<sup>8</sup> *Id.* at 1–2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> POR R2000-1/28 (filed April 3, 2000).

<sup>11</sup> *Id.* at 2–3.

Citing Order No. 1254, the Postal Service claims that implementation matters are “reserved exclusively for postal management and are clearly beyond the scope of permissible discovery.”<sup>12</sup> This order concerned a complaint case, not interrogatories. According to the presiding officer, a matter reserved exclusively for postal management “may still be the topic of an interrogatory.”<sup>13</sup> Once again, the Postal Service’s objection is *without merit*.

Finally, the Postal Service cites the deliberative-process privilege in objecting to DFC/USPS-77(d) “to the extent it requires a discussion of the Postal Service’s predecisional impressions regarding customer behavior.”<sup>14</sup> POR R2000-1/28 explained the deliberative-process privilege.<sup>15</sup> According to the presiding officer, a document loses its pre-decisional protection if the document is expressly incorporated or adopted into a final decision.<sup>16</sup> Therefore, any documents containing pre-decisional impressions regarding customer behavior are *not* subject to the privilege if the documents are expressly incorporated or adopted into a final decision. Even absent an official decision, a document can lose its pre-decisional protection if it is used as the basis for a decision.<sup>17</sup> The Postal Service apparently has made some decisions concerning use of non-denominated stamps to implement the new rates in Docket No. R2000-1, so documents at issue may very well have lost their privilege. Also, purely factual documents, even if used in deliberation, usually are not protected.<sup>18</sup> To the extent that non-written impressions were used as the basis for a decision, those impressions also are not protected.

The burden is on the objecting party to show that documents are both pre-decisional and deliberative.<sup>19</sup> The Postal Service has not come close to meeting this burden. The Postal Service also should have provided a Vaughn index,<sup>20</sup> but once

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<sup>12</sup> Objection #2 at 1–2.

<sup>13</sup> POR R2000-1/28 at 3.

<sup>14</sup> Objection #2 at 2.

<sup>15</sup> POR R2000-1/28 at 3–4.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 3–4.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.*

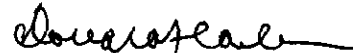
<sup>20</sup> *Id.*

again, the Postal Service has failed to provide sufficient information to allow the presiding officer and me to determine whether the information truly is privileged.

For these reasons, the Postal Service's objections should be overruled, and the Postal Service should be directed to respond to these interrogatories.

Respectfully submitted,

Dated: April 8, 2000



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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*.



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DOUGLAS F. CARLSON

April 8, 2000  
Emeryville, California

## TEXT OF ORIGINAL INTERROGATORIES

**DFC/USPS-70.** Please provide recent national EXFC performance data for every category available (e.g., flats, letters, SPR's; handwritten, typewritten, bar-coded; etc.).

**DFC/USPS-77.** Please refer to the response to OCA/USPS-62.

- c. Please confirm that the artistic design will be the key to determining the postage value associated with new non-denominated basic-rate stamps issued for Docket No. R2000-1. If you do not confirm, please explain.
- d. Please discuss any studies or other information that the Postal Service has to indicate that the absence of an alpha designation or rate value on postage stamps may or may not cause customer confusion in future years as customers seek to determine the value of non-denominated stamps that they have in their possession.
- f. Please discuss the possibility that the Postal Service will have sufficient lead time before implementing new rates in 2001 to print stamps that have the new rate on them, eliminating the need for non-denominated stamps.