

**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
RESPONSE TO POSTAL SERVICE OPPOSITION
TO CARLSON MOTION TO COMPEL RESPONSES
TO DFC/USPS-38, 42, & 45 and DFC/USPS-T39-36(b)-(d)**

April 8, 2000

On April 3, 2000, the Postal Service filed "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)." The due date for filing my motion was March 13, 2000. As my certificate of service states, I mailed the motion to the Commission on March 10, 2000, three days before the due date. The Commission did not receive my motion until March 27, 2000. If a document is mailed via First-Class Mail in time to be received by the deadline if the Postal Service meets its delivery standard — three days for mail between California and Washington — "the failure of the Postal Service to meet its service standards will be considered adequate grounds to support grant of a motion for late acceptance, and the timely mailing of such documents will be viewed as incorporating a motion for late acceptance should the Postal Service fail to meet its service standards." POR MC97-2/2. My motion cited this Commission precedent.

The Postal Service states that "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." Opposition at 1.

I firmly disagree with the Postal Service's contention that parties whose pleadings are delayed in the mail by the Postal Service have an obligation "to exercise due diligence to verify that the pleadings have been received." *Id.* Nonetheless, I will explain the steps that I did take during the 17-day delivery interval.

In this proceeding, every document that I have mailed to the Commission's 20268 ZIP Code in a flat-sized envelope via First-Class Mail has taken 6 to 17 days to be delivered, well more than the three-day delivery standard. The delay undoubtedly is attributable to problems in the Government Mails Section of the Washington post office. In 1999, the Office of the Inspector General confirmed "allegations" that federal agencies' mail handled by the Government Mails Section was "misdirected and delayed."¹ I took no immediate action when my motion did not arrive within 10 days or so because this delay is typical. Moreover, I did "diligently" check the Commission's Web site daily, hoping that my First-Class Mail would arrive soon. In addition, during a telephone conversation on, approximately, March 23, 2000, with Ms. Joyce Taylor in the Docket Office, I discussed the missing motion and explained that I would mail a duplicate in a #10 envelope on March 24, 2000. I did mail a duplicate on March 24, 2000, but the original arrived on March 27, 2000, and was filed at that time.

Postal counsel never bothered to check with the Commission's Docket Office concerning steps that I took, including sending a duplicate motion, before launching accusations about my alleged lack of diligence. Opposition at 1. According to staff in the Docket Office, postal counsel also did not call to inquire about the postmark date on the envelope in which I mailed my motion. Instead, postal counsel proceeded to file a pleading insinuating that my certificate of service was false. Discovery of the facts clearly was not a priority for postal counsel. Moreover, the Postal Service's focus on the accuracy of the certificate of service is disingenuous, given that the Postal Service routinely is serving documents to parties one to three days after the date indicated on each document's certificate of service.²

¹ Office of the Inspector General, *Semiannual Report to Congress*, April 1, 1999–September 30, 1999, at 43 (Audit Report No. OIG AC-MA-99-002).

² In both this case and many previous proceedings, documents served by the Postal Service typically have arrived more than three days after the date indicated on the certificate of service, even though the delivery standard for First-Class Mail from the Washington, DC, area to California is three days. The Postal Service uses a permit imprint, so mailing envelopes do not have a postmark date.

The root of this problem was exposed in mid-March, however, when the Postal Service began using a postage meter. According to the meter postmarks, documents were mailed one to two business days after the date indicated on the certificate of service. Documents filed on Friday and certified as served on Friday were mailed the following week, introducing a major delay in delivery of documents to participants. The Postal Service soon resumed use of the permit imprint, but the delays continue. The reason for the persistent delays is now clear: the Postal Service does not serve the documents on the date indicated on the certificate of service. The Postal Service has not responded to two letters discussing this problem.

Regarding my alleged obligation to contact postal counsel to verify that he received my motion, Opposition at 1, I typically seed my larger mailings with test letters. When I mailed the motion on March 10, 2000, and served the appropriate parties, including the Postal Service, I included test mail. My test mail arrived, properly processed, on March 11, 2000. Therefore, I had no reason to expect that the Postal Service would fail to deliver my properly mailed First-Class Mail to postal counsel. The Postal Service's assertion that I had an obligation to contact opposing counsel to determine whether he received the document solely because my document was delayed in transit to the Commission has no merit. But even if such an obligation existed, the fact that my test mail was collected and processed properly seemingly would have allayed fears that my mailing had gone astray.

Even setting aside the Postal Service's attempt to shift the fault for delays in delivery of First-Class Mail from the Postal Service to postal customers such as I, the Postal Service's pleading is troubling. In discussing the underlying dispute, the Postal Service likens my attempt to obtain true and accurate responses concerning outgoing mail processing on Sundays to Soviet prosecutors, the Nuremberg war-crimes trials, and Fascism, events and elements of 20th-century history whose somber significance should not be compared to the issues in the current dispute or, in particular, to me.

Indeed, the principal issue here is a continuing pattern by the Postal Service of filing incorrect information in response to discovery requests, then resisting participants' attempts to obtain correct information.³ In the instant case, the Postal Service has decided to compare my attempts to reveal the deception to Soviet prosecution techniques. In doing so, postal counsel has crossed the line from proper advocacy to conduct that borders on defamation. This concern is particularly acute given that the

³ In Docket No. R97-1, Postal Service witness Plunkett denied that the Postal Service turns over return-receipt mail to large-volume recipients and allows them to complete the return receipts without Postal Service supervision. *See, e.g.*, Tr. 3/866-68. Only after I presented independently obtained information did the Postal Service admit that some problems exist. *See, e.g.*, Tr. 32/17122. Not only have my claims been vindicated in the current case, the Inspection Service audit report provided in response to DFC/USPS-T39-3 reveals that the magnitude of the mishandling of accountable mail is greater than even I had suspected three years ago.

Another example exists in the current case. As subsequent information filed in this case will reveal, the Postal Service's response to DFC/USPS-23(a) is simply untrue because the Postal Service guarantees delivery of Express Mail to some destinations even when the Postal Service cannot possibly meet the delivery commitment.

Postal Service's comments have been published on the World Wide Web, and readers will not necessarily see the related documents that reveal the actual extent of the Postal Service's distortions.

The Postal Service's tactics are reminiscent of a motion filed by the same Postal Service counsel in Docket No. R97-1. In 1997, the Postal Service appealed to the presiding officer to be excused from responding to the duly filed interrogatories of another participant, David Popkin. Fortunately, this attempt to deny due process to a participant self-destructed: Three days after the Postal Service filed the motion, and before any participant had responded to the motion, the presiding officer denied the motion, noting that Commission procedures should "not be used to abuse or intimidate other participants."

I urge the presiding officer to consider the information that I have provided in this response when reviewing the Postal Service's opposition to my motion to compel responses to DFC/USPS-38, 42, and 45 and DFC/USPS-T39-36(b)-(d).

Respectfully submitted,

Dated: April 8, 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

April 8, 2000
Emeryville, California