

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

RECEIVED
JUN 2 2 40 PM '00

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

**DOUGLAS F. CARLSON
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORIES DFC/USPS-T34-24-26**

May 30, 2000

On April 26, 2000, the Postal Service filed written responses to questions posed to witness Robinson from the bench during oral cross-examination.¹ This filing included a response to a question posed at Tr. 7/2897, which asked for a summary of the information on service standards that Postal Service retail terminals provide. The response indicated that IBM and NCR retail terminals often provide incorrect information to customers and window clerks on service standards for Priority Mail and First-Class Mail, generally indicating that lower-priced services have longer delivery standards than they actually do.²

On May 8, 2000, I served timely follow-up interrogatories, which appear at the end of this motion.³ Interrogatory DFC/USPS-T34-24, parts (a)–(f), asks for confirmation of the types of information that IBM and NCR retail terminals will display for mail sent between San Francisco and Los Angeles, San Francisco and Seattle, and Washington, DC, to Boston. To answer the questions, the Postal Service will need to consult service-standard information and, for the IBM retail terminals, Parcel Post zones, information that is not already in evidence. DFC/USPS-T34-24(g) asks the Postal Service to confirm that the misleading information on service standards might

¹ Response of Postal Service Witness Robinson to Questions Posed at Hearing (filed April 26, 2000). I received these responses on May 1, 2000.

² For example, NCR retail terminals always relegate First-Class Mail to three-day delivery, when in fact First-Class Mail may provide the same service standard as the higher-priced Priority Mail. Similarly, IBM and NCR terminals show a minimum service standard of two days for Priority Mail, so customers may be misled into believing that only higher-priced Express Mail provides an overnight delivery standard.

³ Douglas F. Carlson Follow-up Interrogatories to United States Postal Service Witness Maura Robinson (DFC/USPS-T34-24-27) (filed May 10, 2000).

cause customers to use Priority Mail instead of First-Class Mail in the mistaken belief that Priority Mail would provide a faster service standard than First-Class Mail. This question is important in case window clerks have some other information that they consult in overruling the information that the retail terminals provide.

Witness Robinson's response indicated that the Postal Service plans to provide accurate service-standard information for First-Class Mail on IBM and NCR terminals as a "future modification." Interrogatory DFC/USPS-T34-25 asks the Postal Service to estimate the date on which NCR and IBM retail terminals will be programmed to provide correct service-standard information for First-Class Mail.

Interrogatory DFC/USPS-T34-26 asks witness Robinson to explain why the NCR and IBM retail terminals do not indicate a one-day service commitment for Priority Mail between destinations for which the service standard is one day. This interrogatory probes, among other issues, the technical feasibility of providing accurate information.

The Postal Service objected to these interrogatories on the grounds of timeliness and relevance.⁴ Without explanation, the Postal Service also asserts that my interrogatories are "in many ways inappropriate" discovery. In reality, my interrogatories are relevant and timely follow-up discovery.

The Postal Service cannot seriously claim that the accuracy of the representations that it makes to postal customers is not relevant. If performance data are relevant,⁵ so are representations about delivery standards. The Postal Service is selling Priority Mail by misrepresenting the services provided by the lower-priced alternative, First-Class Mail. As a result, the Postal Service probably misleads some customers seeking to mail one-ounce letters into using Priority Mail, at a rate of \$3.20, for destinations for which the service standard for First-Class Mail is identical to the service standard for Priority Mail. Furthermore, when the service standard for First-Class Mail and Priority Mail is overnight, NCR retail terminals indicate that First-Class Mail has a three-day service standard and Priority Mail has a two-day service standard.

⁴ Objection of United States Postal Service to Carlson Interrogatories DFC/USPS-24-27 (filed May 22, 2000), corrected by Objection of United States Postal Service to Carlson Interrogatories DFC/USPS-T34-24-27 (filed May 23, 2000).

⁵ POR R2000-1/41 at 6 (filed April 14, 2000).

In these cases, customers may unnecessarily purchase Express Mail in order to obtain overnight delivery.

I plan to argue on brief that the Commission should recommend that the Postal Service stop providing incorrect representations of service standards until the retail terminals have been upgraded to provide true and accurate information. Why the Postal Service deployed brand-new retail terminals that display misleading information is incomprehensible. The Commission's concurring opinion in the order disposing of the Complaint of Life Time Fitness resolves any doubt as to whether the Commission may properly comment on issues of deceptive advertising.⁶ The Postal Service's misrepresentations on First-Class Mail and Priority Mail delivery standards meet all the criteria of the Federal Trade Commission's Policy Statement on Deception.⁷ These interrogatories will lead to the production of admissible evidence relevant to deception concerning service standards for First-Class and Priority Mail. Addressing this issue in the omnibus rate case will be more efficient than in a separate complaint proceeding.

On brief, I intend to argue that the Postal Service has not made its case for charging the two-pound rate for Priority Mail flat-rate envelopes rather than the one-pound rate. Responses to these interrogatories will provide additional evidence supporting use of the one-pound rate for flat-rate envelopes. To the extent that customers are placing low-weight letters into Priority Mail flat-rate envelopes based on incorrect service-standard information provided by Postal Service retail terminals, fairness and equity require that these customers pay the lower Priority Mail rate partially to compensate for the harm caused by the misleading information.

On the issue of timeliness of my interrogatories, the Postal Service argues that I could have followed up at the hearing.⁸ Moreover, "[b]y choosing not to participate in hearings, Mr. Carlson has waived his opportunity to pose questions that could have been posed then."⁹ This assertion is nonsense. The Postal Service did not answer this question at the April 18, 2000, hearing. Even if I had attended this hearing, I could not

⁶ See Docket No. C98-1, Order No. 1227 (filed January 27, 1999).

⁷ *Id.* at Concurring Opinion at 1-2.

⁸ Objection at 1.

⁹ *Id.*

have followed up on the answer to this question because the Postal Service did not file a response to the question until April 26, 2000. Due process requires participants to have an opportunity to follow up on responses to discovery requests. The April 18, 2000, hearing did not provide an opportunity to follow up on a written response provided on April 26, 2000. Therefore, my decision not to attend this hearing is immaterial. My interrogatories are proper follow-up to a written discovery response.

The Postal Service also claims that my interrogatories are not proper follow-up because, the Postal Service asserts, I could have posed my questions earlier in the case.¹⁰ In support, the Postal Service cites its response to DFC/USPS-T34-7,¹¹ which revealed service-standard information for NCR, but not IBM, retail terminals. Since the Postal Service's direct case did not discuss IBM retail terminals or service standards, no particular reason exists why I should have seized upon a discussion about NCR retail terminals to follow up on IBM retail terminals. And in the case of DFC/USPS-T34-25, I should not be expected during the discovery period to have asked for the timeline on upgrading the retail terminals because, in reality, I did not learn until the April 26, 2000, response that this upgrade even was planned as a future modification.

In any event, the Postal Service's focus on precisely when a participant could conceivably have posed an interrogatory misses the point. No section of the *Rules of Practice* states that an interrogatory is not proper follow-up if the interrogatory could have been posed before the discovery deadline. Rather, according to Rule 26(a), "Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends." The word "elaborate" means "to expand something in detail."¹² If an interrogatory clarifies or elaborates on the answer to an earlier discovery request, the interrogatory is proper follow-up. The Postal Service's additional restriction would grant the Postal Service immunity from follow-up interrogatories for any statement made after the discovery deadline on any matter that could have been the subject of discovery before the discovery deadline. Even if the follow-up interrogatory sought to clarify or elaborate on the answer to the

¹⁰ *Id.*

¹¹ Response of the United States Postal Service Witness Robinson to Interrogatories of Douglas F. Carlson (DFC/USPS-T34-4-7, 9, 12-15) (filed February 25, 2000).

¹² *Webster's Ninth New Collegiate Dictionary* (1987).

earlier discovery request, the Postal Service would ban the question because the participant could have posed it earlier. The Postal Service would be free to provide information or make statements without fear that a participant could challenge these statements on follow-up. This position, while convenient for the Postal Service, has no merit in the *Rules of Practice* or in principles of due process.

My interrogatories ask the Postal Service to elaborate on the service-standards information. Indeed, DFC/USPS-T34-25 asks for an estimate of the date on which the modification suggested in the initial response will occur. One can hardly imagine a better example of a follow-up interrogatory than this one.

The Postal Service does not need to respond to the information requested in DFC/USPS-T34-24(b), (d), and (f) for NCR retail terminals because the response to DFC/USPS-T34-7(d) already provided this information.

All other information requested in DFC/USPS-T34-24-26 is reasonably calculated to lead to the discovery of admissible evidence. Moreover, the interrogatories constitute timely follow-up. Therefore, I move to compel the Postal Service to respond to DFC/USPS-T34-24-26 (with the exception of information related to NCR retail terminals requested in DFC/USPS-T34-24(b), (d), and (f)).

Respectfully submitted,



DOUGLAS F. CARLSON

Dated: May 30, 2000

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

May 30, 2000
Emeryville, California

TEXT OF ORIGINAL INTERROGATORIES

DFC/USPS-T34-24. Please refer to your response, filed on April 26, 2000, to the question posed during oral cross-examination at Tr. 7/2897.

- a. Please confirm that the service standard for mail sent from San Francisco to Los Angeles is two days for both Priority Mail and First-Class Mail.
- b. Please confirm that any IBM and NCR retail terminals installed in San Francisco will indicate that the service standard for mail from San Francisco to Los Angeles is three days for First-Class Mail and two days for Priority Mail.
- c. Please confirm that the service standard for mail sent from San Francisco to Seattle is two days for both Priority Mail and First-Class Mail.
- d. Please confirm that any IBM and NCR retail terminals installed in San Francisco will indicate that the service standard for mail from San Francisco to Seattle is three days for First-Class Mail and two days for Priority Mail.
- e. Please confirm that the service standard for mail sent from Washington, DC, to Boston is two days for both Priority Mail and First-Class Mail.
- f. Please confirm that any IBM and NCR retail terminals installed in Washington will indicate that the service standard for mail from Washington to Boston is three days for First-Class Mail and two days for Priority Mail.
- g. Please confirm that the information provided in (b), (d), and (f) may cause customers who would use First-Class Mail to send a one-ounce letter if they knew that the service standard was two days to use Priority Mail in the mistaken belief that Priority Mail would provide a faster service standard than First-Class Mail. If you do not confirm, please explain and provide all facts and information that support your answer.

DFC/USPS-T34-25. Please refer to your response, filed on April 26, 2000, to the question posed during oral cross-examination at Tr. 7/2897. Please provide an estimate of the date on which NCR and IBM retail terminals will be programmed to provide correct service-standard information for First-Class Mail.

DFC/USPS-T34-26. Please refer to your response, filed on April 26, 2000, to the question posed during oral cross-examination at Tr. 7/2897. Please explain why the NCR and IBM retail terminals do not indicate a one-day service commitment for Priority Mail between destinations for which the service standard is one day.