

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION OF
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

DOUGLAS F. CARLSON
RESPONSE TO STAMPS.COM'S OBJECTION TO PROVIDING ACCESS TO
STAMPS.COM'S MATERIAL SUBMITTED UNDER PROTECTIVE CONDITIONS

August 15, 2000

On August 14, 2000, I filed certification statements to obtain access to materials that Stamps.com and E-Stamp filed under protective conditions.¹ On August 15, 2000, Stamps.com filed an objection to my request for access to these materials.² Stamps.com's objection is an extraordinary attempt to deny a participant due process, and the presiding officer should swiftly reject it.

The protective conditions stated in POR R2000-1/97 and 106 and to which I agreed on August 11, 2000, specifically permit access to a participant in Docket No. R2000-1.³ I am a participant in this proceeding.⁴ Therefore, I am entitled to review the material that Stamps.com filed.

When POR R2000-1/97 and 106 were issued, Stamps.com was put on notice that any participant could submit a statement of compliance with the protective conditions and gain access to this material. Furthermore, my notice of intervention specifically stated that I am an individual representing myself.⁵ Therefore, Stamps.com had notice that I, as an individual, might request access to this material. Indeed, my 17

¹ Douglas F. Carlson Notice of Filing of Certifications for Access to Documents Pursuant to POR R2000-1/97 and 106 (filed August 14, 2000).

² Stamps.com's Objection to Providing Access to Stamps.com's Protective Material to Douglas F. Carlson (filed August 15, 2000) ("Objection").

³ POR R2000-1/97, Attachment B, ¶ 1 (filed July 25, 2000) and POR R2000-1/106, Attachment A, ¶ 1 (filed August 1, 2000).

⁴ Douglas F. Carlson Notice of Intervention as a Limited Participator (filed January 24, 2000).

⁵ *Id.* at 1.

interrogatories to Stamps.com witness Heselton (DFC/Stamps.com-T1-1-17) concerning a discount for IBIP mail should have caused Stamps.com to realize that a significant likelihood existed that I might review information filed concerning a discount for IBIP mail. Stamps.com could have availed itself of Rule 32 and appealed this ruling to attempt to restrict access to these materials to only certain types of participants. Stamps.com would have had to file such a request within five days after the ruling was issued, or by August 1, 2000, for POR R2000-1/97 or August 8, 2000, for POR R2000-1/106. Stamps.com did not appeal the ruling. Instead, Stamps.com submitted an eleventh-hour objection designed to stymie my ability to review this information in the waning weeks before initial briefs are due.

In its objection, Stamps.com alleges that the Postal Service and OCA “will adequately represent Mr. Carlson’s interests in the material.”⁶ Stamps.com offers no evidence in support of this proposition. Indeed, Stamps.com does not even know my opinion of the concept of a discount for IBIP mail now and in the future. Nonetheless, Stamps.com’s statement is irrelevant because I am a participant in this proceeding, and I am entitled to examine evidence and submit a brief advocating my position on any issue in the proceeding, regardless of whether another party may share my viewpoint.

Stamps.com alleges that I should not be granted access to this material because I have not identified any reason or justification for being granted access to this material.⁷ Stamps.com further contends that I should not be provided access to this material “[a]bsent a compelling justification[.]”⁸ These statements are nonsense. I am entitled to review this material by virtue of my status as a participant in this case. Neither POR R2000-1/97 nor POR R2000-1/106 requires a participant seeking access to this material to justify his request or state compelling reasons. In fact, such a requirement would be inconsistent with due process because the public has a right to participate, without discrimination based on identity or status, in Commission proceedings.⁹ To the extent

⁶ *Objection at 1.*

⁷ *Id.*

⁸ *Id.*

⁹ *See, e.g.,* Rule 20(a) and Rule 20a.

that my interest in materials relevant to a discount for IBIP mail is not readily apparent, I should not be required to justify my need to review this information. The presiding officer should reject this attempt to restrict access to this material.

In suggesting that allowing me access to this material will be equivalent to providing access to the general public,¹⁰ Stamps.com forgets that the protective conditions provide access only to those members of the general public who also are participants in this proceeding.

Stamps.com states that I am not subject to the ethical and disciplinary rules that would serve to enforce the protective conditions because I am not acting as an attorney in this proceeding.¹¹ The relevance of this statement is unclear because the protective conditions to which I agreed prohibit disclosure of the information, and my signature submitting to those protective conditions presumably would provide Stamps.com a legal remedy if I did disclose this information. In any event, Stamps.com's option to appeal the protective conditions, including any remedy issues, expired long ago.

Stamps.com has the burden of showing why I should not have access to this information. Such a showing presumably would articulate Stamps.com's reasons for believing that I would not honor the protective conditions. I would then have an opportunity to respond. Stamps.com has made no such showing, nor could it.

Stamps.com notes that it did not provide this material in response to a discovery request from me.¹² This observation is irrelevant, as any participant, consistent with due process, may review any information in the record.

Commission rules allow members of the public to participate in proceedings.¹³ Any discount category for First-Class Mail, such as Stamps.com's proposed discount, potentially affects the rates that all First-Class Mail customers pay, since some other customer must compensate for the lost revenue that a discount causes. I am

¹⁰ Objection at 1-2.

¹¹ Objection at 2.

¹² Objection at 1.

¹³ See, e.g., Rule 20(a) and Rule 20a.

concerned about the proposed discount for IBIP mail and intend to continue exploring this issue. Stamps.com *voluntarily* elected to participate in this proceeding and to propose a discount that would affect me as well as other members of the general public. Stamps.com also *voluntarily* chose to submit a proposal for a discount for IBIP mail. Therefore, Stamps.com must submit to scrutiny of its proposal. In the instant dispute, the scrutiny will occur under protective conditions. If Stamps.com does not wish to permit me to exercise my due-process right to review this record evidence, the presiding officer should strike Stamps.com's testimony in support of this proposal from the record, or Stamps.com should withdraw its proposal.

In conclusion, the presiding officer should overrule Stamps.com's objection and decline Stamps.com's invitation to require me to justify my request for access to this information.

Respectfully submitted,

Dated: August 15, 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

August 15, 2000
Emeryville, California