BEFORE THE

POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Complaint on Sunday and Holiday Collections

Docket No. C2001-1

DOUGLAS F. CARLSON CROSS-MOTION FOR RECONSIDERATION AND ANSWER TO THE POSTAL SERVICE MOTION FOR RECONSIDERATION OF PRESIDING OFFICER'S RULING C2001-1/6

July 30, 2001

I. INTRODUCTION

On July 23, 2001, the presiding officer granted my motion to compel the Postal Service to respond to interrogatory DFC/USPS-19. POR C2001-1/6.[1] This interrogatory requested several data elements from the Postal Service's Collection Box Management System (CBMS) database for each collection box in the United States. In granting my motion, the presiding officer correctly noted that "the quantitative information now on the record is limited." *Id.* at 4. The CBMS data will lead to a better understanding of the magnitude of the service issues in this proceeding. The presiding officer allowed the Postal Service to provide these data under protective conditions. *Id.* at 5.

On July 27, 2001, the Postal Service filed a motion for partial reconsideration of POR C2001-1/6 to limit the amount of information that it provides.[2] I oppose the Postal Service's motion for reconsideration. I also move for reconsideration of the portion of the ruling permitting the Postal Service to provide the response to DFC/USPS-19 under protective conditions.

[1] Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19–21, filed June 26, 2001 ("Motion").

[2] Motion of the United States Postal Service for Partial Reconsideration of Presiding Officer's Ruling No. C2001-1/6, filed July 27, 2001.

II. PROTECTIVE CONDITIONS

As I explained in my motion to compel the Postal Service to respond to interrogatory DFC/USPS-19, every piece of information that the Postal Service will supply in the response to DFC/USPS-19 is publicly available. The information is posted on collection boxes or discernible from visual examination of collection boxes, and all the information is available from 1-800-ASK-USPS. Moreover, as a result of previous Freedom of Information Act (FOIA) requests, I have listings of collection-box information for five to ten entire cities.

The protective conditions, were I to sign them, would place me in an impossible position. Labelled for ease of subsequent reference, the troublesome conditions are:

(a) "No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions." POR C2001-1/6, Appendix A at 1, ¶ 2;

(b) "The duties of any persons obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document." *Id.*, Appendix A at 2, ¶ 5;

(c) "The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission." *Id.*, Appendix A at 2, ¶ 8;

(d) "I agree to use the information only for purposes of analyzing matters at issue in Docket No. C2001-1." *Id.*, Appendix A at 3; *see also Id.*, Appendix A at 4, ¶ 2.

None of these provisions is, on its face, unreasonable. However, as I will explain, the consequences of applying these provisions to publicly available information would be intolerable.

Exhibit 1 contains a newspaper article that describes my ongoing efforts to resolve problems with posted collection times on collection boxes. Often, the posted collection times are earlier than the times that Postal Service policy requires, thus negatively affecting customer service. When I discover these instances, I attempt,

through correspondence with postal officials, to resolve these problems and improve service to customers.

The likelihood is high that, outside this proceeding and after this proceeding is concluded, I will continue to write letters on occasion to postal officials requesting that they correct problems with posted collection times on collection boxes. I will base my letters on information obtained from visual examination of collection boxes, telephone calls to 1-800-ASK-USPS, or information provided to me, in the past or in the future, by postal employees upon request or under FOIA. This information will be identical to the data that the Postal Service will provide in response to DFC/USPS-19.

If I sign these protective conditions, I will open myself up to legal action or other claims by the Postal Service that I have violated the protective conditions in Docket No. C2001-1. This prospect is rather troubling because, in responding to such allegations, I would, in many instances, experience a severe difficulty in proving that I did *not* use the information provided in response to DFC/USPS-19 for a purpose outside the scope of this proceeding. I would be similarly unable to prove conclusively that I did not disclose data received in the response to DFC/USPS-19 because any person can obtain these data at any time by examining collection boxes or calling 1-800-ASK-USPS. I certainly will not allow myself to be placed in a position in which I would need to maintain records of future travels, documenting my presence in particular cities, for the purpose of defending myself against these possible charges.

Under conditions (a) and (b), any time I discussed any information posted on a collection box with any person, or any time I wrote a letter to a postal employee or anyone else discussing individual or multiple collection boxes, I would be subject to attack for having disclosed information and violated the protective conditions. These charges would be untrue, but I could expend a considerable amount of time and money defending myself in court. If my only defense were that I visited the collection boxes in person, while alone, and obtained the information in that manner, the case would turn on my word against the Postal Service's word. I am unwilling to sign these protective conditions and place myself in such an undesirable litigation stance in a federal court.

Condition (c) emphasizes that these protective conditions would remain in force in perpetuity, so I effectively would open myself up to liability for the remainder of my life. These protective conditions would continue even if I obtained CBMS data in the future under FOIA or from a postal employee upon request.

Condition (d), while reasonable on its face, creates the same problems as conditions (a) and (b). If I discussed collection-box information orally or in writing, I would open myself up to legal attack for having used the CBMS data obtained in this proceeding for a purpose other than analyzing the issues in this proceeding — even if such a charge were baseless. Again, defending myself could be difficult and expensive. I conceivably could even be placed in a position of having to prove that CBMS data that I reviewed for the purposes of this proceeding were not the source of inspiration for me to visit a particular city where irregularities with collection times existed or to call 1-800-ASK-USPS for more information. Thus, if I testified in this proceeding about holiday-eve collections in a particular city, I would hesitate subsequently to send a service-complaint letter about other aspects of collection times in that city. Even if I subsequently visited the city to obtain the data that appeared in my service-complaint letter, the Postal Service could make a compelling argument that I probably used the CBMS data obtained in this proceeding for a purpose other than analyzing the issues in this proceeding.

These protective conditions effectively would cast a shadow, forever more, on every written or verbal discussion in which I engaged with anyone on the subject of posted collection times if the discussion included specific data that appear in the CBMS database — even though the data are publicly available. By subjecting me to the threat of legal action, the protective conditions would constitute an unreasonable restriction on my First Amendment right to discuss posted collection times and, certainly, my ability to submit service complaints to the Postal Service.

These problems arise, of course, because the presiding officer is allowing the Postal Service to impose protective conditions on information that already is public. The protective conditions are written to protect confidential information. Protective conditions can reasonably require a person to maintain the confidentiality of information

without exposing the person to liability or legal harassment because the person will not independently encounter the information in the public domain. Thus, if disclosure occurs, the person probably violated the protective conditions. In contrast, the Postal Service is requesting that I promise to keep publicly available information confidential. I believe that I would be unwise to agree to this unprecedented set of conditions.

In weighing the burden on me of protective conditions against the benefit that the Postal Service perceives in imposing protective conditions, the presiding officer should examine the Postal Service's security concerns closely.[3] I believe that this dispute, both here and in my FOIA litigation in federal court, has less to do with security and more to do with preventing me from obtaining CBMS data. The Postal Service wants to impede my ability to locate instances of posted collection times that are earlier than the times that Postal Service policies and regulations require. As I argued in my motion to compel at 20–21, in 1999 I obtained CBMS records under FOIA for Flushing (Queens), New York. I analyzed the data and demonstrated to the district manager of the Triboro District that a substantial percentage of the collection boxes located in Flushing, New York, had collection times far earlier in the day than Chapter 3 of the *Postal Operations Manual* allows. More than 200 boxes had no Saturday collection at all. I requested that the district manager correct these problems. Within a month, the same office that provided the Flushing collections data shifted gears and suddenly discovered a security risk in disclosing the CBMS data. The "security risk" arose after the Flushing data exposed a major, systematic *service deficiency.*

Confirmation of the Postal Service's true motivation lies in the Postal Service's response to my motion to compel. If security were the true concern, one would have expected that the most important protective condition to protect the security of employees and the mail would have been the duty not to disclose the data — that is, to maintain the confidentiality of the data. Instead, far from being concerned about maintaining the confidentiality of the data, the Postal Service admitted that "[t]he most important elements of those [protective] conditions, which are standard, are that the

[3] Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-19–21, filed June 4, 2001 ("Objection"), and Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-19–21, filed July 9, 2001 ("Opposition").

material be used 'only for purposes of analyzing matters at issue in [this proceeding],' and that all copies of any version of the material be returned or destroyed at the end of the proceeding." Opposition at 13. Presumably the Postal Service was already aware of existing criminal statutes in the United States Code that prohibit criminal conduct; these criminal statutes already operate as a prohibition against using CBMS data to engage in criminal activity. Therefore, this "most important" requirement to use the CBMS data only for analyzing matters at issue in this proceeding is *unrelated* to preserving the security of the mail. In its excitement about the prospect of preventing me from using these data to identify problems with posted collection times and writing service-complaint letters to postal officials, the Postal Service lost sight of the absence of a relation between this provision and the security of the mail. The protective condition that serves the Postal Service's perceived security threat is the confidentiality requirement, not the requirement to use the information only for purposes of analyzing issues related to this proceeding.

Similarly, if the confidentiality of the data were the primary concern, the return or destruction of the material at the end of the proceeding would not be one of the two "most important" elements of the standard protective conditions; the duty not to disclose the information would protect the information during and after the proceeding. The confidentiality of the data, the disclosure of which supposedly would create a security risk, is not even one of the Postal Service's two most important elements of protective conditions. Again, the Postal Service's primary fear is that I will use the data to identify problems with posted collection times on collection boxes. The Postal Service invented the security concern after realizing that disclosing the information to me under FOIA would lead to service complaints.

I note, as well, that the Postal Service's security justification ignores the fact that no section of FOIA allows the Postal Service to withhold information just because it can concoct a security concern. As I explained in my motion to compel, the Postal Service relies on 39 U.S.C. § 410(c)(2) in attempting to justify withholding this information. This section allows the Postal Service to refuse to disclose "information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed."

My motion explains why, logically, the Postal Service cannot use section 410(c)(2) to withhold information that already is publicly available. *See* Motion at 16. Therefore, regardless of the plausibility of the security concerns that the Postal Service has advanced, they are irrelevant to the analysis because the Postal Service has no exemption under which to justify withholding this information under FOIA.

One obvious solution is for the presiding officer to require the Postal Service to disclose the CBMS data publicly. Another solution would be for the Commission to release the files provided in the response to DFC/USPS-19 only to participants in this proceeding with no protective conditions. This solution would provide the data to Commission staff, OCA staff, Mr. David B. Popkin, and me. Once again, existing criminal statutes would seem to provide an effective deterrent against criminal conduct; arguably, these statutes provide a greater deterrent than protective conditions, anyway. The Postal Service would need to trust this small group of people to handle the data in a careful manner that gave due consideration to the Postal Service's security concerns. The alternative is untenable. Protective conditions would chill First Amendment rights, and I will not sign these protective conditions; therefore, as of now, I cannot analyze data relevant to resolving issues in my complaint.

Before concluding, I must address and attempt to preempt a line of argument that otherwise will resurface in the Postal Service's response to this motion. I acknowledge that I have obtained CBMS data in the past for the purpose of studying posted collection times, identifying problems, and attempting to resolve these problems to improve service to postal customers. I seek to obtain CBMS data in the future under FOIA for the same purpose. If CBMS data are provided without a restriction to use the data solely for the purpose of analyzing issues in this proceeding, I readily admit that I will, in some instances, review the CBMS data to identify problems with posted collection times. This purpose would be outside the scope of this proceeding. However, no requirement exists in any Commission proceeding, except when protective conditions are applied, to use information solely for the purposes of the proceeding. Sometimes, as in this instance, data that are relevant to the proceeding may be interesting for other personal or scholarly purposes. The Postal Service's fear that I would use CBMS data to identify problems with posted collection times and use this information to write

service-complaint letters to the Postal Service is simply not a legitimate justification for imposing, at the other extreme, an overly broad restriction that would chill my First Amendment right to discuss posted collection times in the future.

My acknowledgement of additional uses of CBMS data is far different from suggesting that I sought these data for purposes other than analyzing the issues in this proceeding. In its response to my motion to compel, the Postal Service argued that "Mr. Carlson's failure to tailor his motion to the types of data he has asserted he would use, or even to acknowledge that he is seeking far more information than he has asserted that he would use, would be less troubling if it were not already clear that Mr. Carlson has long sought these data in other contexts, for other purposes." Opposition at 8. This statement suggests that I misrepresented my intentions in my motion to compel. Of course, the presiding officer found my explanation of the need for these data to be justified and granted my motion to compel. Nonetheless, a brief response to this allegation is warranted to attempt to preempt this sort of attack in future Postal Service pleadings.

On May 18, 2001, the presiding officer issued a ruling establishing a procedural schedule and authorizing discovery to commence. I immediately prepared a set of interrogatories, which I filed on May 21, 2001.[4] These initial interrogatories, DFC/USPS-1–18, were comprehensive in scope and designed to obtain the initial, basic, essential information related to the issues in my complaint and map out further discovery. On May 25, 2001, I filed DFC/USPS-19.[5] On May 29, 2001, I filed DFC/USPS-20–21.[6] Interrogatories DFC/USPS-1–18 were largely successful in producing considerable relevant information.

In its first set of interrogatory responses, filed on June 12, 2001, the Postal Service provided specific information on early collections on eves of holidays for some districts. *See* Response to DFC/USPS-14. If the Postal Service had refrained from

[4] Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-1–18), filed May 21, 2001.

[5] Douglas F. Carlson Interrogatory to the United States Postal Service (DFC/USPS-19), filed May 25, 2001.

[6] Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-20–21), filed May 29, 2001.

objecting to DFC/USPS-19–21, I would have been able to use CBMS data to begin my analysis on June 12, 2001. Instead, the month of July has nearly ended, and I still have not been able even to begin this analysis. I requested nationwide CBMS data early in this proceeding to enable me to begin my analyses immediately as soon as the Postal Service filed interrogatory responses revealing early collections in particular districts and to analyze data nationally, as described *infra*. If I had waited until I knew which districts were affected, I would have created a delay of approximately three weeks after the Postal Service filed each interrogatory response. Moreover, I suspected that any interrogatories requesting data analyses or data sortation would meet with objections of burden, as would multiple requests for CBMS data for specific districts; indeed, the presiding officer suspected as much: "there appears to be little difference in effort required by the Postal Service to provide all the information requested, versus sorting through the data to determine what is exactly on point." POR C2001-1/6 at 5.

Thus, I sought CBMS data on May 25, 2001, for the same reason for which I still need it today: to develop quantitative information concerning collection practices on holidays and eves of holidays and the potential effects of these practices on customers. I filed my interrogatories for this purpose and this purpose only. The presiding officer has ruled that CBMS data, including all data elements that I requested, are likely to lead to the production of admissible evidence. *Id.* This point is now settled. The fact that I have sought CBMS data for other purposes as well is irrelevant. The potential for me to use CBMS data for purposes that are outside the scope of this proceeding, but nevertheless legal, does not counsel in favor of imposing restrictions on the purpose for which I can use CBMS data. Notwithstanding this discussion, I emphasize that my present objection to signing the protective conditions issued in POR C2001-1/6 is based much less on principle and much more on practical concerns for legal liability that these conditions would impose in the future.

III. RESPONSE TO POSTAL SERVICE MOTION FOR RECONSIDERATION

The presiding officer should reject the Postal Service's motion for reconsideration. The underlying premise of this motion is that POR C2001-1/6 requires

the Postal Service to provide more information than I need for analyzing issues relevant to this proceeding. *See, e.g.,* Motion for Reconsideration at 2.

When the Postal Service filed USPS-LR-4 on July 5, 2001, the Postal Service at that time, if not before, was aware of all the districts that had curtailed collection services on eves of holidays. Indeed, in the motion for reconsideration, the Postal Service relies on the information provided in USPS-LR-4 as the basis for identifying the districts to which production of CBMS data should be limited. Motion for Reconsideration at 5–8.

On July 9, 2001, the Postal Service filed its opposition to my motion to compel production of the CBMS data. The current motion for reconsideration contains not one word of explanation for why the entire discussion contained in the motion for reconsideration did not appear in the opposition filed on July 9, 2001. All the information that forms the basis for the motion for reconsideration was available to the Postal Service not later than July 5, 2001. The line of argument advanced in the motion for reconsideration certainly was available on July 9, 2001, and it would have been responsive to the original motion to compel. The Postal Service had even received an extension of time to file the opposition to my motion. POR C2001-1/3. Yet the Postal Service made a choice and elected to devote many pages in the opposition to explaining why the CBMS data are not relevant and why disclosure of the information would raise security concerns. Then the Postal Service even reluctantly offered protective conditions as a solution that would "substantially satisfy the Postal Service's concerns regarding the potential harm of disclosure of the CBMS material at issue in the instant motion to compel." Opposition at 13. The "CBMS material at issue" was data for the entire country.

Now the protective conditions are not good enough. This dispute truly is a moving target. The previous representation to the Commission that protective conditions would "substantially satisfy the Postal Service's concerns" apparently was not correct. Perhaps the Postal Service made a strategic blunder by omitting from the opposition the discussion that appears in the motion for reconsideration. But whatever the reason, the Postal Service has offered no justification whatsoever for not raising the

issues contained in the motion for reconsideration at the appropriate time — in its opposition to the motion to compel filed on July 9, 2001.

As a general principle, I believe that proceedings should be decided on their merits, not on procedural technicalities. However, procedural rules, including deadlines, exist to preserve due process for parties, as delay typically benefits one party at the expense of the other. In this proceeding, delay benefits the Postal Service. I am not aware of any procedural rules or legal doctrines that allow a party to raise issues in support of reconsideration of a previous decision if the party simply forgot to mention those issues, or elected not to address those issues, during its previous opportunity.[7] By raising issues in a motion for reconsideration that belonged in a pleading filed 18 days earlier, the Postal Service is injecting further delay into the resolution of this complaint. To ensure that Commission procedures continue to preserve the rights of all parties, the presiding officer should reject the Postal Service's untimely motion for reconsideration.

If the presiding officer does consider the motion for reconsideration, the presiding officer nevertheless should deny the Postal Service's motion. As a general matter, the Postal Service asserts that only CBMS data that are strictly relevant to analyzing instances of curtailed collections on eves of holidays *in prior years* should be provided. The focus of this proceeding is not merely on evaluating past practices. Rather, the Commission is evaluating ongoing service problems.[8] Early collections on eves of holidays are not simply mistakes of the past that the Postal Service will never commit again. Rather, early collections are an active component of national Postal Service policy. As recently as 2000, the postal official who is now postmaster general authorized, and even seemed to encourage, performance clusters to "roll back collections to a Saturday schedule" on Monday, July 3, 2000. USPS-LR-1, June 23, 2000, Memo from John E. Potter: "Operations Policy for the Independence Day Holiday

[7] My motion for reconsideration of the protective conditions differs sharply from the Postal Service's motion. Protective conditions were not on the table for discussion when I filed my motion to compel, and to date I have had no opportunity to comment on them. Notably, the Postal Service did not mention protective conditions in its original objection.

[8] Current and ongoing problems are well within the scope of the statute. Section 3662 provides that "[i]nterested parties who believe * * * that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission[.]"

— July 4, 2000." The Postal Service apparently still sees nothing wrong with this policy; indeed, the Postal Service still views the early collections on eves of holidays as "essentially a non-issue." Opposition at 6. No reason exists to believe that the Postal Service will not invoke this national policy with even greater frequency in the future.

This proceeding should consider whether this national policy impedes the Postal Service's ability to provide adequate service. The Commission's public report should focus on past effects of this policy as well as the potential effects of this policy if increasing numbers of field managers accept this offer to cut collection services on the eves of some holidays. Indeed, as pressures on local managers to cut costs increase, I expect to see more, rather than fewer, instances of early collections on eves of holidays in upcoming years. The presiding officer should provide me with sufficient latitude to analyze the nationwide effects of policies permitting early collections on eves of holidays. Nationwide CBMS data are necessary to conduct this analysis. This analysis might run several models to simulate a variety of policies that could be implemented for particular years: use of Saturday collection schedules on a weekday holiday eve, use of a 1 PM collection time on a weekday holiday eve, use of a noon collection time on a weekday holiday eve, and so on.

If the presiding officer decides to allow the Postal Service to produce data only for the districts that curtailed collections in prior years, the presiding officer should reject the Postal Service's determination of the necessary data elements to be provided. First, the Postal Service sees no need to provide the box address or description of address. Motion for Reconsideration at 6–7. If this information is not provided, I will be unable to conduct case studies in cities. For example, in a recent motion,[9] I explained that the collection boxes located in the Wall Street area of Manhattan have a final Saturday collection at 8:30 AM. The New York District used this collection schedule on Monday, July 3, 2000, even though the New York Stock Exchange was open until 1:00 PM, thus generating considerable business activity in the Wall Street area. If the Postal Service were permitted to withhold box address and description of address, I would be unable to conduct meaningful case studies such as this one.

[9] Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-71(a) and (b), dated July 28, 2001.

The Postal Service also wants to withhold location ID numbers. The first five digits of location ID numbers indicate the five-digit ZIP Code of the post office responsible for the collection box, while the last five digits indicate the box number. The Postal Service asserts that district-wide collection curtailments to a specific hour render location information irrelevant. *Id.* I have no need for the last five digits of the location ID numbers. However, I need the first five digits to evaluate the effects of curtailed collections in particular cities. District-wide data might obscure the fact that some cities in the district normally have 5:00 PM final collections, while other cities typically have 2:00 PM final collections. Since many postal customers do most of their mailing in their own city, the effect of a district-wide holiday-eve curtailment to, say, 1:00 PM, might be very significant in the first city while slightly less significant in the second city. I need to know the city in which each collection box is located. The city also is necessary for conducting case studies, as described in the previous paragraph.

Finally, the Postal Service proposes that it be permitted to provide only the *final* collection time for each collection box, not all collection times. *See, e.g., Id.* at 6. One goal of the Commission's public report will be to provide postal management with suggestions for ways to achieve legitimate goals while maintaining adequate service. The goal of reducing collection activities when mail volume is expected to be light, thus reducing costs, is not unreasonable per se. However, in some instances, post offices could reduce collection activities by eliminating *earlier* collection runs while maintaining the final collection run for each collection box. No customers would be harmed, and in many cases the Postal Service would reduce the costs of conducting collections. I plan to evaluate the extent to which opportunities exist for districts to reduce expenses by eliminating some of the early collection runs while preserving the *final* collection for each collection box. To conduct this analysis, I need all posted collection times, not only the final collection times. POR C2001-1/6 required the Postal Service to provide all the collection times.

IV. CONCLUSION

For the reasons discussed herein, the presiding officer should deny the Postal Service's motion for reconsideration. The motion is untimely, and it requests an unjustified restriction in the scope of data to be provided.

Moreover, the presiding officer should remove the protective conditions. I have been unable to identify a set of protective conditions governing disclosure of publicly available information that would adequately protect me against charges that I violated the protective conditions. While I recognize the need to make a realistic assessment of my legal exposure, the Postal Service has demonstrated in my FOIA litigation that it possesses sufficient financial and legal resources to participate in protracted litigation on issues concerning the CBMS database. The Postal Service has devoted countless hours to my FOIA case in more than one year of litigation. Despite an apparent budget crisis, the Postal Service even flew two people from Washington, DC, to San Francisco for a settlement conference with a magistrate judge in January 2001. I cannot exclude the possibility that the Postal Service will use these protective conditions as a legal weapon to discourage further legitimate communications from me concerning posted collection times on collection boxes.

The presiding officer should remove the protective conditions from the response to DFC/USPS-19 to allow me to access information that is relevant to this complaint. As a compromise, the presiding officer may consider removing the protective conditions but allowing only participants in this proceeding, OCA staff, and Commission staff to obtain the files provided in the response to DFC/USPS-19.

Respectfully submitted,

Dated: July 30, 2001

DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice.*

DOUGLAS F. CARLSON

July 30, 2001
Santa Cruz, California

EXHIBIT 1

Mail buff insists process follows policy to the letter

■ A UC-Berkeley worker makes the Postal Service his hobby and makes sure the system keeps its appointed rounds at collection boxes

By Andy Jokelson
TIMES STAFF WRITER

BERKELEY — Doug Carlson wants the mail to go swiftly, but he also wants letter writers to have as much time as possible to get their letters and bills in the mail.

So he keeps an eye on public mailbox collection times wherever he travels and has persistently pursued changes around the country, mostly through letters to the Postal Service.

The slender, soft-spoken UC-Berkeley employee has posted successes in Walnut Creek, Lafayette, Berkeley, Richmond and elsewhere. He estimates that he's been instrumental in getting final collection times changed for at least 150 mail drops since his efforts began last year.

"It's satisfying to know that people are receiving better service as a result and the Postal Service is making itself more competitive in the communications delivery business," he said.

This year, the Postal Service restored 5 p.m. as the last weekday collection time for dozens of Walnut Creek and Lafayette public mailboxes following a study it acknowledged had resulted from Carlson's letter-writing.

Carlson, 31, considers himself an admirer of the Postal Service but also a watchdog who wants it to abide by its Postal Operations Manual.

The manual specifies that all mailboxes with an average daily volume of at least 100 letters have a final weekday pickup of 5 p.m. or later. It also, among other things, says Saturday schedules "should include as many collections as necessary, with the last collection from each box scheduled as late as possible in the day, but in no case earlier than 1 p.m."

"It wasn't until last year that I discovered that there were specific rules

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Landfill

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didn't have a clue what we were getting into, and we got more and more amazed," said Amy St. George, a painter and co-chairwoman of the Albany Arts Committee, referring to the first time she saw the landfill art. "I thought it was really wonderful."

But the fate of the art is uncertain.

The Arts Committee, a group of residents that advises the city on art matters, has just begun talking about what, if anything, can or should be done to preserve it. Closed in 1984, the landfill is slated to become part of the Eastshore State Park, skirting the Bay from Oakland to Richmond. It will be managed by the East Bay Regional Park District.

But first the city must clean up the site to make it safe by removing hazards and debris.

The city is in the early stages of launching its closure plan, the details of which are still in flux. On Sept. 25, city officials will meet with the Bay Area Water Quality Board, the official watchdog of Bay water, which must approve such landfill closure plans.

The issue of the landfill art hasn't been formally addressed. But in the local arts community, a movement is stirring to keep it part of the scenery.

"I think it's legitimate and important art," said Kay Coffee, another city arts committee member. "If it could stay there, that's the best. That's where it reflects where it was built and who built it.

"It's something that looks like it fits. If it's made of beams that washed up, or concrete that was dumped there, or rebar that sticks out of trash, then all the better."

The city is open to the idea, said Daren Fields, city manager. He said preserving the art would be a way "to recognize and honor the visiting artists and the art that highlights the unique landscape."

Most of the art is in one area — along the remote northwest shoreline of the Bulb, the round tip of the landfill owned by the city.

And most are paintings, signed either "Picasso" or "SNIFF," an artists group many believe is making creative forays to the landfill.

A cluster of Picasso's works, painted stones and wood, abstract Pablo Picasso-like women, images of crosses, snakes, an angel, an eerie skull sit on an embankment near what was probably once his camp, now a pile of discarded junk.

SNIFF's works feature mostly murals with curvy, colorful, fantasy-like images.

There's also a castle turret built of concrete blocks on a cliff directly across from the Golden Gate Bridge. Large enough to sleep in, the turret was built by a man named Mark during his last days living at the landfill.

Not all of the art is spectacular. Some is amateurish, more like doodling than a serious creative endeavor.

But there's a considerable body of impressive work. Maybe it's because of the setting, St. George said.

"You have the whole panoramic view of San Francisco, and it's very inspiring . . ."

"It's the last place to get inspired without having to get stuck in a studio with four walls and rent to pay. You look out and you have the most beautiful view in the world."

Reach reporter Kate Rauch at 510-262-2749 or krauch@ccntimes.com.

Mail

FROM PAGE A29

governing collections, so I didn't know that there was something that I could do about it," recalled Carlson, an executive assistant in UC-Berkeley's College of Letters and Science.

In spring 1998, he noticed that final weekday collection times listed on numerous downtown Berkeley mailboxes had changed from 5 p.m. to earlier. At his urging, the Postal Service restored the final pickup time to 5 p.m. for an estimated 50 mailboxes in downtown and south Berkeley.

In August 1998, Carlson wrote to the Postal Service's Oakland district manager to complain about elimination of 5 p.m. pickups from numerous Walnut Creek and Lafayette mailboxes, which the Postal Service said was an effort to expedite mail processing for overnight delivery.

Carlson, who is also a lawyer, wrote that the change inconvenienced customers who had to drive to the Walnut Creek post office "for a collection after 3 p.m., further increasing traffic in an already-congested city."

Post office officials adjusted collection times, but they aren't exactly cheering Carlson's diligence.

"I don't know that he accomplished anything other than to make it more expensive to give good service out there," said Postal Service spokesman Dan De Miglio.

Carlson was technically correct about the manual's requirement that mailboxes with an average daily volume of at least 100 letters have a final weekday pickup of 5 p.m. or later, said De Miglio.

So the Postal Service examined boxes that Carlson called into question, found some should have both 3 p.m. and 5 p.m. pickup times, and reinstated 5 p.m. collections while leaving 3 p.m. collections intact to expedite processing.

"All's well that ends well," De Miglio said. "The service in Walnut Creek remains improved, and the technicality that Mr. Carlson called to our attention remains addressed. End of story."

Carlson's travels have also led him to seek collection time changes in Richmond, El Cerrito, Antioch, Oakland, San Francisco, Fremont, Daly City, Burlingame, Capitola and Half Moon Bay.

He's also gotten involved in Ventura; Los Angeles; Chicago; Kansas City, Mo.; Flushing, N.Y.; Atlanta; Aspen, Colo.; Denver; nine Florida cities; and Portland, Corvallis and Salem, Ore.

"If I'm walking, I'll always turn and glance (at mailbox labels)," even when he's on vacation trips, he said.

He had gone to Corvallis last October for UC-Berkeley's football game against Oregon State and "noticed on the walk to the football stadium that some collection boxes didn't have any Saturday collections," he recalled.

So he sent several letters, he said, and the postmaster eventually agreed to post Saturday collections, between 3 p.m. and 5:30 p.m., beginning in June.

He's going to Chicago soon on vacation and intends to follow up on collection issues he's noticed there, including an absence of Saturday pickups later than 1 p.m. from many boxes.

"My belief is that the customer should not have to go farther than his local station to find a late-afternoon collection on a Saturday. And certainly the customer shouldn't have to go all the way to the processing plant to find a collection later than 1 p.m. in a city as big as Chicago," Carlson said.

He traces his interest in the Postal Service to his boyhood. He recalled that, when he was 4, he asked his letter carrier where a postage meter imprint came from. As he got older, he became curious about how mail gets from one place to another.

"To me, it's fascinating how such a large volume of mail so efficiently is processed and sorted and delivered on time," Carlson said. "And I enjoy learning how that system works. It's been a hobby of mine for most of my life."

He enjoys sending test mail to himself to see and collect postmarks, see how fast the letters arrive and what machines process them, he said.

Since 1996, he has advocated for and against rate and fee changes the Postal Service proposed. He and others successfully fought a proposed $36 annual surcharge for customers who rented post office boxes in cities other than where they live.

"I'm a defender and promoter of the Postal Service as much as I am a watchdog," he said, "because, if I encourage people in the field to do things right, then the Postal Service is better off."