

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON DC 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY  
Docket No. C2001-3

Complaint on First-Class Mail  
Service Standards

REPLY OF DAVID B. POPKIN TO DOUGLAS F. CARLSON RESPONSE TO ORDER  
NO. 1320 AND POTENTIAL MOTION FOR LATE ACCEPTANCE

September 28, 2001

On September 24, 2001, Douglas F. Carlson submitted his response to PRC Order No. 1320. My Reply is being mailed on September 28, 2001, and should arrive at the Commission on October 1, 2001, under current USPS standards. In the event that it does not arrive by the deadline, I move for late acceptance.

Respectfully submitted,

September 28, 2001      David B. Popkin, PO Box 528, Englewood, NJ 07631-0528

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I support the Douglas F. Carlson Response to Order No. 1320 ["Carlson Response"] filed on September 24, 2001.<sup>1</sup> Mr. Carlson is the one who has filed the Complaint and should be aware of the needs to pursue his complaint. The burden is on him to proceed and he should be given a full opportunity to do so. I also have noted the Reply of the United States Postal Service to Douglas F. Carlson Response to Order No. 1320 ["USPS Reply"] filed on September 26, 2001.

The Commission Order stated that interested persons shall intervene no later October 1, 2001, and that the Order should be published in the *Federal Register*. The obvious purpose of publication in the *Federal Register* is to provide notification to the public of this Complaint and their ability to intervene and participate. This notice has yet to appear in the *Federal Register* and if the Commission was to follow the suggestion of the Postal Service that discovery be allowed five weeks from September 12, 2001, the

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<sup>1</sup> I note that this pleading was mailed on September 15, 2001. The three-day service standard between Mr. Carlson and the Commission and the two-day service standard between myself and the Commission does add to the time required.

date the Commission Order was released<sup>2</sup>, discovery would only run until October 17, 2001. An individual intervening on October 1, 2001, and filing interrogatories on the following day, would not have their responses due back until October 16, 2001. This would require that any items which did not fully qualify as follow-up interrogatories but which were suggested by the responses received on the 16<sup>th</sup> would have to reach the Commission by the following day.

Furthermore, there appears to be a difference of opinion between Mr. Carlson who requests a total of ten weeks after the close of discovery for participants to submit testimony and the Postal Service.<sup>3</sup> The Postal Service suggests only two to four weeks after the completion of discovery.<sup>4</sup> The final responses to interrogatories submitted at the completion of discovery deadline would not have to be filed until two weeks have passed. The lower limit of the Postal Service's request would require the participant to obtain the response to interrogatories filed on the final date on the Commission's website, analyze it, and incorporate it into the testimony, and get the pleading to the Commission by 4:30 PM that day.<sup>5</sup> Furthermore, two of the individual participants in this case are also participants in R2001-1 and C2001-1. The longer period considers the competing demands on the time of these participants as well as others.<sup>6</sup>

The Postal Service characterizes this complaint as resolving very narrow legal issues.<sup>7</sup> The characterization as very narrow is quite subjective. Apparently the Postal Service wishes to consider it as very narrow. There appear to me to be two basic issues in this complaint. First, should the Postal Service have been required to present its First-Class Mail service standards to the Commission for an opinion prior to implementation, and second, what should the service standards be to meet all of the statutory and public policy requirements. That second part will certainly require considerable discovery and

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<sup>2</sup> USPS Reply at 3.

<sup>3</sup> Carlson Response at 3 - Eight weeks after 14 days after the close of discovery or a total of ten weeks.

<sup>4</sup> USPS Reply at 4.

<sup>5</sup> This would be impossible if one considers that the apparent normal practice of the Postal Service is to file their pleadings at the Commission close to the 4:30 PM deadline.

<sup>6</sup> It also should be noted that the 10-week period in Docket No. C2001-1 was not long enough because of the Postal Service's repeated filings to avoid compliance with the Presiding Officer's rulings.

<sup>7</sup> USPS Reply at 2.

evaluation prior to submission of testimony. I hope that Mr. Carlson and other participants will be able to do so in the time Mr. Carlson has requested.

I feel that it is important to resolve the question as to whether interrogatories may be submitted directly to Mr. Gannon as well as institutionally to the Postal Service. Mr. Carlson has provided the reasons why participants should have the ability to require responses from Mr. Gannon directly.<sup>8</sup> The Postal Service believes that it has the right to redirect interrogatories.<sup>9</sup> Resolving this question prior to the discovery will eliminate the obvious motion practice that would result if it was not.

The Postal Service states that much information has already been made available to the Mr. Carlson under FOIA.<sup>10</sup> There are other participants in this proceeding and potentially will be additional ones who do not have the referenced material.

The time requested by Mr. Carlson should be provided for the reasons noted above as well as in the Carlson Response. The need for discovery to obtain and analyze the data will take a few rounds including the usual objections to interrogatories and motion practice that appear to be normal in Commission cases.<sup>11</sup> A few rounds of discovery are needed to allow for additional interrogatories that are suggested in Postal Service responses to early round interrogatories and which may not completely qualify as follow-up.

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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 Rule 12.

September 28, 2001

David B. Popkin

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<sup>8</sup> Carlson Response at 1

<sup>9</sup> USPS Reply at 3.

<sup>10</sup> USPS Reply at 1.

<sup>11</sup> I note the "threat" made in footnote 1 of the USPS Reply.