

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint on Sunday  
and Holiday Collections

Docket No. C2001-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE  
TO PRESIDING OFFICER'S RULING NO. C2001-1/13  
(October 9, 2001)

Presiding Officer's Ruling No. C2001/1-13 was issued on September 19, 2001. Along with Commission Order No. 1321, issued the same day, the Ruling proposes a reexamination of protective conditions of the type established earlier in this proceeding by Presiding Officer's Ruling No. 6 (July 23, 2001). Ruling 13 set a date for response of Monday, October 1, but that was extended to today by Presiding Officer's Ruling No. 14 (September 26, 2001). The Postal Service hereby responds.

The subject of this dispute is DFC/USPS-19, which is a request for access to an electronic version of the entire Collection Box Management System (CBMS) inventory database, containing location, collection schedules, and similar information for the hundreds of thousands of collection boxes across the country. After Mr. Carlson's bare request for the database in DFC/USPS-19, the Postal Service's objection, and Mr. Carlson's motion to compel (in which for the first time he explained his views on the relationship of the database to the instant complaint proceeding), two points of

contention became clear.<sup>1</sup> The first point is the relevance and materiality of information regarding the location and pickup schedules of hundreds of thousands of individual collection boxes in a proceeding intended to address nationwide issues of service on and around holidays. The second point is the suitability of the database for public disclosure, in light of concerns regarding mail security and employee safety.

Focusing on the second point, it is the prerogative of postal management to decide, given identified concerns about mail security and employee safety, whether public access to electronic databases of its commercial and operational information is appropriate. Members of the public who request but are denied such access and wish to challenge that result may do so in federal court under the procedures of the FOIA. The federal courts provide the appropriate forum to review the determinations of postal management in this regard. That forum, moreover, exists not just as a theoretical abstract, but as one in which Mr. Carlson is currently litigating his desire for access to CBMS material.

The Postal Rate Commission, on the other hand, has only limited powers, even when conducting complaint proceedings under section 3662. As long as participants in Commission proceedings have access to the information they need for purposes of use in those proceedings, there should be no occasion for the Commission to seek to resolve broader issues of general public disclosure. Applying these principles to the request for access to the CBMS database in this proceeding, the

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<sup>1</sup> For a more complete discussion of the procedural and substantive background of all aspects of this dispute, please see the Postal Service's August 28 Motion for Certification of an Appeal of Presiding Officer's Ruling No. 10.

Postal Service offered to provide access to relevant CBMS data under standard Commission protective conditions. This solution would have met the Postal Service's concerns regarding mail security and employee safety, would have protected the Postal Service's position in the pending FOIA litigation, and would have allowed parties access to information for use in this proceeding.

Presiding Officer's Ruling No. 6 adopted the Postal Service's proposal to allow the material to be furnished under standard protective conditions. The Ruling noted that the Postal Service's position on protective conditions "paved the way to narrow the issues considered in this ruling, and to simplify its resolution." Ruling No. 6 at 3. It also stated that "[p]roviding the answer under protective conditions eliminates the question of whether the answer to this interrogatory should be publically disclosed ... [and] also gives deference to the federal courts to resolve the FOIA issue." *Id.* at 4. Similarly, Presiding Officer's Ruling No. 10 at page 6 states that the first priority of Ruling No. 6 was to provide access to the information to argue the instant Complaint in this proceeding, and that the earlier ruling accomplished that goal. Page 6 of Ruling No. 10 also confirms that the federal court is available to resolve issues of access to the information for purposes other than for use in this proceeding. Explaining the approach of Ruling No. 6 to be consistent with the Commission's general philosophy regarding discovery, page 6 of Ruling No. 10 continues with the statement that "protective conditions allowed release of all of the information that the Complainant argued was necessary to proceed with his Complaint." Accordingly, these earlier Rulings confirm the fundamental validity of the Postal Service's offer to submit materials under protective conditions (which was, in fact, adopted by the Presiding Officer in Ruling No.

6) as a means to avoid entanglement in the public disclosure issues, and to defer appropriately to the federal court addressing the FOIA suit to resolve such matters.

In Presiding Officer's Ruling No. C2001-1/13 and Commission Order No. 1321, however, the Commission appears headed down a path on which it would become fully entangled in the public disclosure issues, and would no longer be deferring to the federal courts to resolve such matters. The apparent genesis of this reorientation is that limiting access to the database under standard protective conditions is not "a method acceptable" to Mr. Carlson. See Ruling No. 13 at 7. Unfortunately, access to the database under standard protective conditions is the *only* method acceptable to the Postal Service. Therefore, there appears to be an impasse on the matter of protective conditions, and the Postal Service perceives no utility to be gained by further pursuit of resolution of this matter along the lines of protective conditions.<sup>2</sup> Under these circumstances, furthermore, there appears to be no useful opportunity to address the

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<sup>2</sup> Since Mr. Carlson is not willing to accept access under the standard protective conditions, the Postal Service would have to question the purpose of undertaking the effort to nonetheless file material under such protective conditions. Indeed, the very fact that he is unwilling to restrict his use of the database to the purpose for which he claims it was requested is at the heart of the issue that has troubled the Postal Service from the beginning, namely, the actual purpose for which it was requested. In this respect, it remains the Postal Service's view that, however broad the scope of the Commission's authority may be in a section 3662 service complaint proceeding (which may or may not result in a public report), it does not extend to serving as a vehicle for the production of information or data that cannot be obtained by individuals through other means.

supplementary information and arguments contemplated on pages 6-8 of Ruling No. 13.<sup>3</sup>

As noted earlier, review of the Postal Service's institutional determinations that weigh the opportunity for public disclosure of operational and commercial information against concerns of mail security and public safety is vested in the federal courts. Mr. Carlson is himself currently seeking such judicial review in the context of the very same CBMS database sought in DFC/USPS-19. The outline of the further analysis which emerges from the question posed by Ruling No. 13 and Commission Order No. 1321 shows that pursuing such an analysis would cause the Commission to review the same issues of public disclosure that are the province of the courts. The possibility of inconsistent resolution on public disclosure matters between the courts and the Commission would put the Postal Service in an untenable position. The result, consequently, is expiration of the feasibility of the offer regarding protective conditions initially advanced by the Postal Service.

From the perspective of the Postal Service, this impasse poses no significant hindrance to the completion of this proceeding, as the Postal Service remains unconvinced, given the information already available in LR-4, of the relevance and materiality of the types of analyses Mr. Carlson has identified as those for which he

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<sup>3</sup> The exception here is the request for information on the status of the pending FOIA proceedings. The information provided by the Assistant United States Attorney handling the litigation is that a case management meeting previously scheduled for October 10 is likely to be rescheduled at the request of Mr. Carlson, due to a conflict with his schedule. Whenever that meeting takes place, the purpose will be to set a schedule for the filing of cross-motions for summary judgment. In other words, the status appears to be essentially the same as reported by Mr. Carlson on page 22 of his June 26 motion to compel.

needs the CBMS database. The Postal Service's views on this aspect of the dispute have been presented repeatedly in its pleadings to date, and there exists no need to repeat them here, except perhaps to state that they are unchanged. The Postal Service notes, however, the following passage from page 4 of Ruling No. 6:

In a previous ruling, POR C2001-1/5, a motion to compel was denied based on relevance. The Commission's policy of examining issues on a national or substantially national basis as opposed to an individual, localized, or temporary basis influenced this decision. Also influencing *this decision was the existence of alternative data at the facility-specific level* that would allow the Complainant to prepare evidence to develop his argument even if the motion were to be denied. In the instant Motion, interrogatory DFC/USPS-19 requests data that is even further removed from arguments at the national level. This fact argues in favor of denying this Motion. However, an alternative method to aggregate this data (at a substantially nationwide level) into a meaningful form has not been provided, and it is not apparent how this might be accomplished. Furthermore, *the quantitative information now on the record is limited.* Without quantitative data, the participants may be limited in the arguments that they will be able to make.

In an effort to address the concerns identified by that portion of Ruling No. 6, the Postal Service is providing today a response to DFC/USPS-19. That response will provide information at the district-specific level that is then aggregated to the national level. Specifically, for each holiday eve identified by Mr. Carlson's motion to compel, the Postal Service has itself performed the calculations necessary to quantify what Mr. Carlson believes to be a measure of "harm" to customers from the advanced collections on those dates. Secondly, the response to DFC/USPS-19 will provide the 3-digit service areas in which the one percent of boxes which display a holiday collection time are located, in order to allow Mr. Carlson to develop his evidence on the accuracy of the information provided, as described in his June 26 motion to compel at page 6. While the Postal Service views this additional information as no material improvement over

the quantitative information already provided in LR-4, there can be no question but that the amount of quantitative information available has been substantially increased, in a means which will allow Mr. Carlson to make the arguments described in his motion to compel.

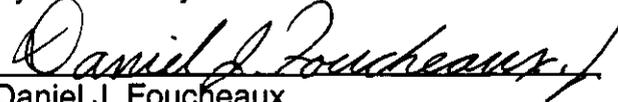
In reaching its decision to expend the considerable time and resources necessary to develop and provide this alternative method to aggregate data at the nationwide level, the Postal Service was guided by several factors. First, this discovery dispute has already dragged on for months, and has assumed much more importance than could possibly be warranted by the tangential nature of the relationship between this information and the core issues to be addressed in this proceeding. Mr. Carlson has already provided his testimony on other aspects of this case, and it appears counterproductive to allow this matter to delay progress on a case which otherwise appears close to (if not already) ready for briefing. Second, and closely related to the first factor, the Postal Service has recently filed a general rate case, and it is reasonable to believe that the time and attention of both the Postal Service's staff and the Commission are more efficiently devoted to that undertaking, rather than a complaint case which has garnered the participation of exactly two individuals. Third, and perhaps most importantly, review of Part 1 of Mr. Carlson's testimony makes increasingly clear that no further amount of quantification emanating from Postal Service data is going to aid in resolution of the ultimate issue in this proceeding – how to evaluate, in terms of *policy*, the significance of the observed trends in postal practices on and around holidays, concerning which there appear to be no material factual disputes. Having reached the conclusion that the time has come to put this

controversy to rest, and in light of the above-noted impasse regarding protective conditions, the Postal Service has chosen to employ an alternate method to provide quantitative information from the CBMS database.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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### CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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