

**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
ANSWER IN REPLY TO POSTAL SERVICE RESPONSE
TO PRESIDING OFFICER'S RULING NO. C2001-1/13 AND ORDER NO. 1321**

October 15, 2001

Presiding Officer's Ruling No. C2001-1/13 directed the Postal Service to respond to five questions in support of its appeal of POR No. C2001-1/10.¹ Order No. 1321, which accepted certification of the appeal, also directed the Postal Service to respond to these questions.² On October 9, 2001, the Postal Service defied the Commission's order and declined to respond to four of the five questions.³ The Postal Service then further sought to stifle my due-process right to discover information necessary for me to prove my case by filing a partial, incomplete response to DFC/USPS-19.⁴

The Postal Service's strategy in this proceeding, beginning after the Commission issued Order No. 1307 to commence this proceeding, has been to bury the opposition with redundant pleadings. In the instance of DFC/USPS-19, not only has the Postal Service tied up discovery of CBMS information for more than four months, but the Postal Service also has repeatedly levelled unsubstantiated accusations about my alleged ulterior motive in requesting information from the CBMS database.

¹ POR C2001-1/13, filed September 19, 2001.

² Order No. 1321, filed September 19, 2001.

³ Response of the United States Postal Service to Presiding Officer's Ruling No. C2001-1/13, filed October 9, 2001 ("Postal Service Response").

⁴ Response of the United States Postal Service to Carlson Interrogatory DFC/USPS-19, filed October 9, 2001.

In response to the Postal Service's motion to certify an appeal to the Commission, POR C2001-1/13 sought to sort out these issues and put the controversy to rest. The presiding officer directed the Postal Service to substantiate its suggestions that I may have ulterior motives in requesting CBMS data and that I might be abusing the discovery process. Of particular interest, the presiding officer directed the Postal Service to "provide any specific evidence that indicates Carlson seeks the requested information for purposes unrelated to this Complaint, and a description of what those purposes are." POR C2001-1/13 at 7. The presiding officer also directed the Postal Service to explain why a member of the public should be prevented from using public material for any purpose that the person desires. *Id.* Defying the Commission's order, the Postal Service declined to substantiate the baseless allegation that it has been asserting against me. In fact, the Postal Service used its response as an opportunity to repeat the allegation. Postal Service Response at 4, fn. 2.

In response to the Postal Service's representations to the Commission that it has security concerns in releasing CBMS data, the presiding officer directed the Postal Service to address the security concerns that the compromise solution of POR C2001-1/10 might raise. POR C2001-1/13 at 7–8. POR C2001-1/10 had directed the Postal Service to provide nationwide CBMS data excluding the box address, a compromise that, by all reasonable assessments, extinguishes any security concern, plausible or otherwise. The presiding officer also directed the Postal Service to provide documentation from the Postal Inspection Service concerning security concerns relating to the complete CBMS database. POR C2001-1/13 at 8. Once again, the Postal Service defied the Commission's order and declined to provide a shred of evidence substantiating the often-asserted, but vague, concerns about security. The inescapable conclusion is that assertions of security concerns are a front for preventing me from obtaining CBMS data because the Postal Service knows that the data will reveal widespread noncompliance with the national service standards for weekday and Saturday collection schedules that Chapter 3 of the *Postal Operations Manual* specifies. It is particularly noteworthy that the Postal Service continues to suggest a security concern in CBMS data that do not include the box address, Postal Service Response at

2, even though the Postal Service has never offered even a sentence explaining why CBMS data that exclude the box address could ever pose a security risk.

Finally, the presiding officer directed the Postal Service to explain why the compromise solution “could be detrimental to the interests of the Postal Service, or otherwise be contrary to the public interest.” POR C2001-1/13 at 8. Once again, the Postal Service has defied the Commission’s order by declining to substantiate this assertion. Yet the Postal Service continues to suggest that disclosure of this information would run contrary to its interests. See Postal Service Response at 2.

The only question that the Postal Service answered is to provide an update on the status of the FOIA litigation. Postal Service Response at 5, fn. 3. The case-management conference with the judge has been postponed three times, first because the court was unavailable, then because defendant’s counsel was unavailable, and finally because I was unavailable. The new date is November 7, 2001.

On the topic of FOIA, the Postal Service misleads the Commission when it argues that “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.” *Id.* at 4; see also *Id.* at 5. This statement is simply not true. The FOIA litigation concerns CBMS data that includes the box address. The presiding officer’s compromise ruling does not. The issues are as different as night and day.

While the issue of the Postal Service’s defiance of a Commission order should never be dismissed lightly, the significance of the defiance perhaps would have been lessened if the Postal Service’s partial response to DFC/USPS-19 had provided me the information that I needed to present my case. In reality, the data are deficient in at least three important respects.

First, I sought the CBMS data to examine the locations of the collection boxes that show holiday collections. The Postal Service provided a listing of three-digit ZIP Codes, and the Postal Service showed the number of boxes within each three-digit ZIP Code that have holiday collections. Response to DFC/USPS-19, sheet 3. For example,

in the 940 ZIP Code area in the San Francisco Bay Area, 199 boxes show holiday collections. I cannot determine from this information whether, for example, one offending city is responsible for these 199 boxes, or whether every post office in the 940 area shows a holiday collection. The consequences of each situation would be quite different. At one extreme, these 199 boxes could be leading the residents of one city of, say, 100,000 people to believe that holiday collections exist. At the other extreme, the boxes could be leading the residents of every city in the 940 ZIP Code area — hundreds of thousands of people — to believe that they can deposit mail at their post office on every holiday. The summary presentation obscures large amounts of information because the information does not reveal the number of cities affected.

Second, as I explained in a previous pleading, I intend to conduct a case study in New York of the use of Saturday collection schedules on the weekday eve of a holiday.⁵ Many collection boxes in Manhattan have a final collection time on Saturdays that is earlier than the minimum hour prescribed in Chapter 3 of the POM. See Response to DFC/USPS-71. Saturday collection schedules are earlier than the time that the POM arguably deems to be adequate. Therefore, using Saturday collection schedules on a weekday is likely to provide inadequate service as well. By withholding a listing of collection boxes in Manhattan, the Postal Service is attempting to deny me the ability to quantify the scope of the problem in New York.

Third, for districts that curtailed collection schedules on the eves of holidays in recent years, the Postal Service provided information on the average number of hours prior to the posted collection time that each district decided to perform collections. Response to DFC/USPS-19, sheets 1 and 2. However, the presiding officer already has ruled that the “complete database is relevant to this proceeding[.]” POR C2001-1/10 at 4–5. As the Commission is aware, averages alone may obscure informative or relevant observations about data. The Postal Service has denied me the ability to analyze these potential issues.

⁵ Douglas F. Carlson Cross-Motion for Reconsideration and Answer to the Postal Service Motion for Reconsideration of Presiding Officer's Ruling C2001-1/6 at 12, filed August 3, 2001.

The Postal Service's defiance of a Commission order is a serious matter. If the Postal Service loses this appeal, the Postal Service appears to be threatening to defy an order to provide the CBMS database. The Commission should not allow the Postal Service to bully participants or the Commission. The Postal Service has had more than its share of due process on this issue for more than four months — to my detriment. *The Commission has no choice but to deny the Postal Service's appeal because the Postal Service failed to justify the various accusations and representations that it has made in legal argument concerning disclosure of CBMS data and leading up to this appeal.*

Finally, the Postal Service suggests that the Commission's time would be better spent on the omnibus rate case that the Postal Service filed, rather than on "a complaint case which has garnered the participation of exactly two individuals." Postal Service Response at 7. The Postal Service overlooks the fact that I have just as strong a right to file a complaint and be heard under section 3662 as the Postal Service has to file a rate case and be heard under section 3622. Even rate cases typically attract the participation of only two individuals, so the meaning of this comparison is not clear except to suggest that, perhaps, this complaint case is as important as a rate case. The absence of institutional participants is not surprising, as most large participants do not use collection boxes to deposit First-Class Mail; indeed, many focus their limited resources on litigating other classes of mail that are not even at issue in this proceeding.

The Postal Service's belated provision of a partial response to DFC/USPS-19 — information that the Postal Service could have provided in June if it had truly been willing to compromise — does not render the appeal or my motion to compel moot because the Postal Service has not provided the information that DFC/USPS-19 requests. Moreover, the Commission must be cautious about issuing any decision that rewards the Postal Service for its delay tactics.

In sum, in ensuring that I have an appropriate opportunity to prove my case, the Commission has no choice but to deny the Postal Service's appeal on the grounds that the Postal Service failed to provide the information that the Commission requested that

might have substantiated the Postal Service's appeal. Consistent with the compromise solution announced in POR C2001-1/10, the Commission should order the Postal Service to provide complete national CBMS data, excluding the box address.

Respectfully submitted,



Dated: October 15, 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

October 15, 2001
Santa Cruz, California