

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

**Complaint on First-Class Mail  
Service Standards**

**Docket No. C2001-3**

**DOUGLAS F. CARLSON  
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE  
TO RESPOND TO INTERROGATORY DFC/USPS-1**

**November 7, 2001**

On October 17, 2001, my interrogatory DFC/USPS-1 was filed.<sup>1</sup> This interrogatory read as follows:

For each originating three-digit ZIP Code in the states of Washington, Oregon, California, Idaho, Nevada, Utah, Arizona, New Mexico, Colorado, Montana, Wyoming, and New Jersey, please provide the typical daily volume of outgoing First-Class Mail that is destined to every three-digit ZIP Code in the country. In the response, please identify the time period during which the data were collected, and please explain why this time period is representative of typical mail volume. Originating three-digit ZIP Code volume may be reported at whichever level it is routinely aggregated (for example, 940, 941, 943, and 944 may be reported as originating San Francisco P&DC volume). If destination volume is not reported to the level of three-digit ZIP Codes, please provide the data at the highest level of detail for which data are reported (for example, SCF, AADC, or ADC). If the data are available in a PC-readable format, please provide the data in this format.

The Postal Service filed an objection on October 24, 2001.<sup>2</sup> The Postal Service does not question the relevance of this interrogatory. Rather, with no

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<sup>1</sup> Douglas F. Carlson Interrogatory to United States Postal Service (DFC/USPS-1), filed October 17, 2001.

<sup>2</sup> Objection of the United States Postal Service to Interrogatory of Douglas Carlson, filed October 24, 2001 ("Objection").

supporting explanation, the Postal Service asserts that point-to-point Origin-Destination Information System (ODIS) volume data are commercially sensitive and privileged. Therefore, the Postal Service wishes to apply protective conditions. I oppose protective conditions and move to compel public disclosure of the data.

### **Public Interest in Disclosure**

In 2000 and 2001, the Postal Service changed the service standard from two days to three days for a significant portion of First-Class Mail originating in and destined to several western states. These changes in service standards resulted from a fundamental change in the definition of two-day First-Class Mail in the years since the Commission reviewed First-Class Mail service standards in Docket No. N89-1. Under the new definition that Mr. Charles M. Gannon described in his declaration,<sup>3</sup> the Postal Service has virtually abandoned the use of commercial passenger airlines to transport two-day First-Class Mail, choosing instead to slow mail delivery by one day and to transport it by truck. This new definition of First-Class Mail, implemented nationwide in 2000 and 2001, has raised serious questions about the adequacy of First-Class Mail service. The issue of the adequacy of First-Class Mail service is specifically included in the scope of issues under review in this proceeding. See Order No. 1320 at 8 and 10.

The changes in service standards, which the Postal Service initially attempted to implement secretly, became the subject of more than a dozen newspaper articles in July and August.<sup>4</sup> I counted 10 front-page newspaper articles in newspapers as large as the *San Francisco Chronicle* and the *Denver Post*.<sup>5</sup> After the *San Francisco Chronicle* broke the news to the Bay Area,

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<sup>3</sup> Declaration of Charles M. Gannon, filed July 30, 2001.

<sup>4</sup> See Douglas F. Carlson Answer in Opposition to Postal Service Motion to Dismiss at 40, fn. 23 and 24, filed August 14, 2001 ("Opposition"). The *San Francisco Chronicle* article subsequently appeared in at least two other newspapers, the *Santa Cruz Sentinel* and the *Ventura County Star*.

<sup>5</sup> See Opposition at 40, fn. 23. After I filed my opposition to the motion to dismiss, a front-page article appeared in *Tulsa World* on August 26, 2001.

several major radio and television stations reported the changes later in the day. The Associated Press then wrote a story, which the *San Jose Mercury News*, *Los Angeles Times*, and *San Diego Union-Tribune* published in whole or in part. After running stories on the changes, the *San Diego Union-Tribune* and the six newspapers owned by the Alameda Newspaper Group, including the *Oakland Tribune*, published separate editorials criticizing these changes and calling on the Postal Service to reverse the changes.<sup>6</sup> I expect that other articles appeared elsewhere as well.

Most newspaper articles discussed my complaint and emphasized the Postal Service's failure to inform the public. Without any question, the widespread, prominent publicity that news of the changes in service standards and my complaint received confirms that a strong public interest exists in a public hearing on these changes in First-Class Mail service standards.

This complaint has attracted the attention of Congress as well. On October 4, 2001, the Honorable Dan Burton, chairman of the House Committee on Government Reform, sent a letter to the postmaster general asking him to justify the new service standards and explain whether the Postal Service followed the necessary procedural requirements in adopting the new service standards.

Rarely does a change in postal services generate such intense public interest. Fortunately, in this instance review of this change in postal services rests with the Commission in a proceeding under section 3662. The Commission must ensure maximum public access to the information to enable me and other interested parties to communicate the information to the public and members of Congress.

In this instance, the point-to-point volume data may provide the best and most-compelling evidence to resolve the question of whether the Postal Service

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<sup>6</sup> The *San Diego Union-Tribune* editorial appeared on August 14, 2001. It is no longer available on the newspaper's Web site. The *Oakland Tribune* editorial appears in Opposition at Exhibit 1.

is providing adequate mail service, as 39 U.S.C. § 3661(a) requires. Indeed, the relevance of point-to-point volume data is implicit in the decisions of newspaper editors to place these articles on the front page. For example, the editors of the *San Francisco Chronicle* would not have wasted space on the front page, above the fold, if they did not believe that a substantial volume of First-Class Mail originating in San Francisco is destined to San Diego, Seattle, Portland, Las Vegas, and Phoenix — destinations for which the Postal Service had attempted secretly to change the service standard from two days to three days. It would be ironic, if not tragic, for the Commission now to allow the Postal Service to shroud the Commission's review of these changes in service standards in a veil of secrecy called protective conditions. The secrecy of the decision-making was one reason why the Postal Service's violation of section 3661 was so serious. The remedy for the harm that the secrecy caused is sunshine, not more secrecy.

The public has a strong interest in persuading the Postal Service to reverse these changes. While this proceeding likely will conclude with a public report from the Commission, ultimately public and political pressure, based on the Commission's influential public report, will be necessary to convince the Postal Service to restore two-day delivery standards. The task of mounting this pressure will be considerably more difficult for members of the public, who are the victims of the changes in service standards, if they do not have access to the data necessary to press their case.

### **Legal Standards**

The Postal Service's own commercial interests must be balanced against the strong public interest in disclosure of the ODIS data. Therefore, examination of the Postal Service's bases for objection is warranted — but not, of course, dispositive. Unfortunately, the Postal Service's objection falls short of providing the information that Rule 26(c) requires for an objection.

Rule 26(c) requires the Postal Service to state bases for objection "clearly and fully." The Postal Service merely states that point-to-point volume data are

“commercially-sensitive and privileged.” Objection at 1. By failing to explain fully *why* point-to-point ODIS data are commercially sensitive, the Postal Service’s objection is deficient under Rule 26(c).

Rule 26(c) also requires that a “participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability.” The objection asserts a privilege but does not identify the privilege or state the reasons for its applicability. This requirement exists, of course, to ensure that a participant moving to compel a response to an interrogatory is able to respond to the claim of privilege. I am unable to respond to the claim of privilege because it is incomplete. To prevent prejudice to me, the presiding officer should bar the Postal Service from continuing to assert a privilege.

The only other hint of any grounds for objection appears in one sentence: “It is the long-standing policy of the Postal Service to not disclose such ‘point-to-point’ ODIS data publicly” (footnote omitted). Objection at 1. This policy is irrelevant. I initiated this proceeding under section 3662. Commission rules govern disclosure of information, not Postal Service policies, long-standing or otherwise.

In a public proceeding before the Commission, public disclosure is the default. The burden of establishing that protective conditions are warranted rests squarely on the shoulders of the Postal Service. See POR C2001-1/5 at 6–7.<sup>7</sup> The Postal Service’s burden is “relatively high.” *Id.* Therefore, even if the Postal Service constructs a plausible scenario under which release of this information could cause competitive harm, the Commission nevertheless must weigh the Postal Service’s commercial interests against the strong interest in public disclosure.

### **No Identified Competitive Harm**

The Postal Service should not be permitted to withhold commercial information in Commission proceedings unless releasing the commercial

information would pose a substantial and identifiable risk of competitive harm and unless this harm would outweigh the benefits of public disclosure. Unfortunately, the Postal Service's objection provides no clue as to the competitive harm. Left only to imagine possible Postal Service concerns, I am unable to identify any risks of competitive harm that would result from disclosure of point-to-point *First-Class Mail volume data*.

Fundamentally, First-Class Mail is a monopoly product. Virtually by definition, competition is minimal. In POR C2001-1/5, the presiding officer ruled that disclosing facility-specific holiday-cancellation volumes would not cause competitive harm because First-Class Mail is a monopoly product. POR C2001-1/5 at 5. While the data at issue here are different, this ruling provides an important lesson: In asserting a claim of competitive harm resulting from disclosure of First-Class Mail volume data, the Postal Service must overcome a strong presumption that no issue of competitive harm exists.

Over the years, some people have argued that fax machines, electronic mail, and electronic bill presentation and payment have siphoned off First-Class Mail volume. These services might be viewed, in some sense, as competitors to First-Class Mail. More accurately, however, fax machines and electronic mail already have established themselves and consumed most of the First-Class Mail volume that they are going to claim. Even if fax machines and electronic mail still were in active, direct competition with First-Class Mail, one hardly could imagine marketers of these services poring over point-to-point First-Class Mail volume data to mount some sort of advertising campaign. It is virtually inconceivable that they would — or could — use First-Class Mail volume data for competitive purposes. As for electronic bill presentation and payment, these services still threaten First-Class Mail volume, but again it is hard to imagine why a promoter of these services would use point-to-point First-Class Mail volume data as a marketing tool. Presumably, population data from the United States Census would tell a promoter where to concentrate the marketing efforts. In

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<sup>7</sup> POR C2001-1/5, filed July 18, 2001.

short, electronic competitors to First-Class Mail do not seem to have any use for point-to-point First-Class Mail volume data, let alone a use that would cause competitive harm to the Postal Service.

The only other conceivable competitors to First-Class Mail are the private companies that provide expedited delivery services. Two obvious examples are FedEx and United Parcel Service. Whether the expedited-delivery market is a market similar to First-Class Mail is questionable because the price differential between First-Class Mail rates and the private companies' rates is enormous. Even if market overlap does exist, one must conclude that these companies already have established their markets and know their markets. These companies know the volume patterns of the expedited packages that they handle every day. Knowing point-to-point First-Class Mail volume data would not provide these companies with any information that they might possibly want or need to enhance their business. This information might have been valuable 20 years ago as they established their businesses; however, over the years they have created their own market and do not need First-Class Mail volume data. If these competitor companies wanted to concentrate their marketing in a particular region, surely they would consult their own extensive knowledge of regional markets for expedited delivery before making decisions based on volume data of First-Class Mail, a different market.

Perhaps a new company considering entry into the expedited-package market would want to use point-to-point First-Class Mail volume data to determine which markets to enter. In reality, given the nationwide coverage of FedEx and UPS, it is unlikely that a competitor could launch a successful business by serving only certain city pairs. Even if a startup nationwide company wanted to target its marketing toward particular regions, the point-to-point First-Class Mail volume data probably would not reveal any information that is not already obvious: our nation's major metropolitan areas send and receive the largest volumes of mail. However, even if this fact were not obvious, a startup company seemingly would want to know the point-to-point volume data for the

expedited-package market, not First-Class Mail. Most likely, the volume patterns for these markets differ, with expedited packages destined to major cities more heavily than First-Class Mail.

### **Conclusion**

In sum, I am unable to identify any substantial risk of competitive harm to the Postal Service resulting from public disclosure of point-to-point First-Class Mail volume data. Despite its obligation under Rule 26(c), the Postal Service has not identified any competitive harm, either. Meanwhile, a strong public interest exists, particularly in the western states, for public disclosure of point-to-point First-Class Mail volume data. Therefore, I move to compel public disclosure of the volume data that I requested in DFC/USPS-1.

Respectfully submitted,

Dated: November 7, 2001

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DOUGLAS F. CARLSON

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### **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*.

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DOUGLAS F. CARLSON



November 7, 2001  
Santa Cruz, California