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PRESIDING OFFICER'S
RULING NO. C2001-3/9

DEC 4 3 27 PM '01

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Complaint on First-Class Mail Standards

Docket No. C2001-3

PRESIDING OFFICER'S RULING
AFFIRMING P.O. RULING NO. C2001-3/4

(Issued December 4, 2001)

This ruling addresses Douglas F. Carlson's motion for reconsideration of P.O. Ruling C2001-3/4 or for alternative relief. Mr. Carlson indicates that his "concern appears to be limited to documenting that no permanent changes in fact exist." Carlson Motion for Reconsideration at 5.

The ruling in issue recognized the Service's objection, on grounds of lack of relevance, to answering whether commercial passenger airlines were "currently" transporting First-Class flats and First-Class single parcels and rolls (SPRs) and, if not, for a description of post-September 11, 2001 transportation arrangements for these mail shapes.¹ If reconsideration is granted, Mr. Carlson asks that the Postal Service be required to respond in terms of *permanent* changes in the availability of air transportation on commercial passenger airlines. In the alternative, he asks for leave to file a late interrogatory requesting confirmation regarding permanent changes or for leave to admit into evidence in this case the Service's response to DFC/USPS-18 in the pending omnibus rate case (Docket No. R2001-1). In that response, the Service states

¹ Douglas F. Carlson Motion for Reconsideration of POR C2001-3/4 or, in the Alternative, for Leave to File a Late Interrogatory or, in the Alternative, to Admit a Document into Evidence, November 20, 2001 (Carlson Motion for Reconsideration). Related filings include Reply of the United States Postal Service to Motion of Douglas Carlson for Reconsideration of Presiding Officer's Ruling No. C2001-3/4 and Other Relief, November 27, 2001 (Postal Service Reply); Objection of the United States Postal Service to Interrogatory of Douglas Carlson, filed November 1, 2001; Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-GAN-31, November 2, 2001; and Opposition of the United States Postal Service to Douglas F. Carlson Motion to Compel a Response to DFC/USPS-GAN-31, November 9, 2001.

that there have been no permanent changes in air transportation for First-Class letters, flats, SPRs, and Priority Mail as a result of September 11, 2001 events.

Mr. Carlson acknowledges that the phrasing of DFC/USPS-GAN-31 may have led to the assumption that his concern was only with temporary changes in the reliability of commercial airlines for transporting First-Class Mail. However, he contends that he is also interested in permanent changes, and argues that a fair reading of the interrogatory supports an inquiry into permanent changes. Carlson Motion for Reconsideration at 1-2. Mr. Carlson asserts that permanent changes are relevant, as he contends ongoing policy violations are at issue in this complaint, and expresses concern about unfair surprise if the Service later reveals that commercial passenger airlines are no longer available to transport First-Class Mail on the same basis as before September 11, 2001. *Id.* at 2-4.

Postal Service's position. The Service contends that Ruling No. C2001-3/4 should be affirmed. Postal Service Reply at 4. It reiterates its position that it regards any recent air transportation-related restrictions as temporary. It also indicates that if this assessment changes, it is aware of its Rule 26(f) obligation to amend its response to DFC/USPS-18. *Id.* at 1-2. With respect to Mr. Carlson's concern about the potential for surprise at a later stage of this proceeding, the Service indicates that, in keeping with its longstanding policy, it will enact measures consistent with national security whenever it is appropriate to do so. *Id.* at 3. It also takes issue with Mr. Carlson's "unilateral" expansion of the scope of this case "to search for violations of the Postal Reorganization Act." *Id.* at 4.

Ruling. Having reviewed the wording of the interrogatory, the assumption that Mr. Carlson was interested in temporary air transportation changes appears valid. However, even if the question's applicability to permanent changes were accepted, information the Service already has provided on this record and in the pending omnibus rate case clearly indicates there is simply no realistic way of obtaining a definitive answer on the question of "permanence" at this time. Accordingly, further pursuit of this

line of inquiry offers little opportunity to develop a sound record in this case. I also note that P.O. Ruling No. C2001-3/4 stated:

In general, the issues in this case and related management decisions substantially predate the events of September 11, 2001, and this — or other — discovery directed at post-attack developments would be expected to elicit information with little, if any, relevance to the key determinations the Commission must make in this case.

P.O. Ruling No. C2001-3/4 at 2. This statement continues to hold true.

As for resolution of the immediate motion, Mr. Carlson indicates that his concern is limited to documenting that no permanent changes in air transportation exist for purposes of this record. To the extent he seeks to establish that point, Commission rules provide a mechanism for designating an interrogatory response in Docket No. R2001-1 into the record of this proceeding. See Rule 31(e). For this reason, Mr. Carlson's motion is not granted.

RULING

The Douglas F. Carlson Motion for Reconsideration of POR C2001-3/4 or, in the Alternative, for Leave to File a Late Interrogatory or, in the Alternative, to Admit a Document into Evidence, filed November 20, 2001, is not granted.

A handwritten signature in cursive script, reading "Ruth Y. Goldway".

Ruth Y. Goldway
Presiding Officer