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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. C2001-3/14

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

Complaint on First-Class Mail Standards

Docket No. C2001-3

PRESIDING OFFICER'S
INTERIM RULING ON DFC/USPS-9

(Issued December 19, 2001)

At issue is whether — and to what extent — protective conditions should be applied to the Postal Service's response to DFC/USPS-9. This question seeks detailed comparative "point to point" data generated by the Service's Origin-Destination Information System (ODIS) and certain related delivery service performance results from the External First-Class measurement system (EXFC). The request covers every 3-digit ZIP Code pair where at least one of the paired codes is located in any one of a number of specified states and where the First-Class Mail service standard was increased from two days to three days in 2000 or 2001.¹

Discussion. Participants in Commission proceedings are generally encouraged to informally resolve numerous discovery-related matters, including access to data and information the Service considers commercially sensitive and privileged. For reasons both the Postal Service and Mr. Carlson consider valid, it is clear that an impasse has been reached over DFC/USPS-9. Arguments both parties have raised in support of their respective positions are not repeated here, but have been fully considered.²

¹ The states are Washington, Oregon, California, Idaho, Nevada, Utah, Arizona, New Mexico, Colorado, Montana, Wyoming, or Texas.

² See, for example, Objection of the United States Postal Service to Interrogatory of Douglas Carlson, November 6, 2001; Douglas F. Carlson Motion for an Extension of Time to Respond to Postal Service Objection to DFC/USPS-9, November 19, 2001; Douglas F. Carlson Revised Motion for an Extension of Time to Respond to Postal Service Objection to DFC/USPS-9 — Erratum, November 20, 2001; Reply of the United States Postal Service to Revised Motion of Douglas Carlson for an Extension of Time to Respond to Postal Service Objection, November 26, 2001; Douglas F. Carlson Answer in Opposition to Postal Service Motion to Impose Protective Conditions on Disclosure of Data in Response

Indeed, they have led to the conclusion that prior to issuing a dispositive ruling that will end this impasse, several observations and a request for additional explanation from the Service are in order.

First, clarification of the extent of the data in issue is needed. It appears, at least with respect to the requested EXFC data, that the contested material relates to the percentage of “days to delivery” by service standard for each performance cluster. Other EXFC data Mr. Carlson has requested — performance cluster destinating scores by service standard and a measure of average days to deliver by service standard — are publicly available, and the Service has said they are not subject to the same claims of commercial sensitivity and privilege it asserts with respect to the other material. Accordingly, if the uncontested material has not yet been provided in a form accessible by Mr. Carlson, the Service should do so promptly.

Second, notwithstanding the fact that some of the EXFC data appears to be “off the table” in terms of this dispute, it is my understanding that the Service maintains that it does not consider this data statistically reliable, given that it is generated by test mailings of seeded mail pieces. Also, it is acknowledged that, even though this aspect of the question apparently is not in contention, the question remains quite broad.

Third, on the merits of protective conditions, the Postal Service repeatedly acknowledges, in the course of numerous pleadings related to this dispute, that responsive point-to-point ODIS data can be generated. It also consistently objects to providing it — in the absence of protective conditions — on the basis of a longstanding policy against public disclosure of such data. However, until its most recent pleading in this series, this claim has suffered from two serious drawbacks: it has been conclusory and quite generalized.

I find that in the circumstances posed here, the “longstanding policy” the Service relies on — and some of the reasons cited in support of it — require much closer

to DFC/USPS-9, December 3, 2001; Reply of the United States Postal Service to Douglas Carlson Answer in Opposition to the Application of Protective Conditions to the Response to DFC/USPS-9, December 10, 2001 (and related Declarations).

examination. At a minimum, some documentation of the applicability of the commercial sensitivity claim to First-Class mail is necessary. In this regard, I note that the December 13, 2001 Declaration of Greg Whiteman addresses certain competition issues that appear to lie at the heart of the commercial sensitivity claim. In fact, Mr. Whiteman states that his responsibilities "include the assessment of competition as it affects postal services, including First-Class Mail." Whiteman Declaration at 1 (paragraph 1). It would be especially useful if the studies and reports Mr. Whiteman reviews to determine competitive effects and to make his "assessment of competition as it affects . . . First-Class Mail" were made available. If this material contains information considered by the Postal Service to be commercially sensitive such portions may be provided under seal for *in camera* review. Accordingly, the Service is directed to provide such material (or an explanation if none is available) to assist in resolution of the instant discovery dispute.

RULING

The Postal Service is directed to provide the documentation referred to in the body of this ruling no later than January 4, 2002.



Ruth Y. Goldway
Presiding Officer