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POSTAL RATE COMMISSION
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PRESIDING OFFICER'S
RULING NO. C2001-3/28

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 ON MOTION FOR CLARIFICATION
OF P.O. RULING NO. C2001-3/23

(Issued July 29, 2002)

Complainant Douglas F. Carlson has reviewed and found non-responsive a library reference the Postal Service has submitted following issuance of P.O. Ruling No. C2001-3/23.¹ That ruling addressed a dispute over public disclosure of comparative point-to-point (ZIP Code-to-ZIP Code) service performance data requested in DFC/USPS-9.² Douglas F. Carlson Motion for Clarification of Presiding Officer's Ruling No. C2001-3/23 (Carlson Motion), July 5, 2002. Throughout that dispute — and a similar one concerning volume data — the Service has maintained that disaggregated volume and service performance data are entitled to protection against public disclosure based primarily on their confidentiality and commercial sensitivity.

Mr. Carlson asserts that a fair reading of P.O. Ruling No. C2001-3/23 suggests that the presiding officer determined that public disclosure of point-to-point ODIS and EXFC performance was warranted, but limited the scope of production by allowing

¹ USPS-LR-9.

² DFC-/USPS-9 sought comparative ODIS and EXFC data for every three-digit ZIP Code pair in which at least one of the two three-digit ZIP Codes in the pair is located in the state of Washington, Oregon, California, Idaho, Nevada, Utah, Arizona, New Mexico, Colorado, Montana, Wyoming or Texas, and whose First-Class Mail service standard changed from two days to three days in 2000 or 2001. The data request covered on-time delivery percentage, average days to delivery, and proportion of mail delivered in each number of days. The comparative periods were the most recent period for which data are available and comparable periods in each of the two years prior to implementation of the service standard change.

individual ZIP Codes to be combined at respective District levels. Carlson Motion at 2. To illustrate the distinction between the scope of DFC/USPS-9 as filed and the ruling, he notes that the former would have required production of one set of delivery-performance data for mail originating in San Francisco and destined to SCF Tacoma Washington, another set for mail originating in North Bay and destined to SCF Tacoma and a third set for mail originating in Eureka and destined to SCF Tacoma. *Id.* at 3. By contrast, Carlson contends that the Service could be in full compliance with the ruling by filing delivery performance data from the San Francisco District (thereby reflecting combined data for the ZIP Codes for San Francisco, North Bay and Eureka) to the Seattle District.

However, Mr. Carlson claims that instead of filing data corresponding to the ruling's authorization of an aggregated approach, the Service simply has provided sets of nationwide origination delivery-performance data for each District, and separate sets of nationwide destination delivery performance data for each District. Thus there is data on the national performance of the San Francisco District's outgoing mail, and data on the performance of all mail addressed for delivery to the Seattle District. Carlson claims these data shed no light on whether delivery times between cities or Districts that experienced a downgrade in service standard from two days to three days are more consistent than before, which is precisely the question the interrogatory sought to answer. *Id.* at 3.

The Service's position. The Postal Service challenges Mr. Carlson's interpretation of the ruling, asserting there is no basis for his contention that the ruling requires production of point-to-point data. Reply of the United States Postal Service to Motion for Clarification of Presiding Officer's Ruling No. C2001-3/23 (Postal Service Reply), July 12, 2002, at 1. In fact, the Service claims the ruling "unambiguously denied" such access, and instead directed the Service to provide the data supplied in USPS-LR-9. Postal Service Reply at 1. Moreover, it says it has responded to the ruling in a manner that it not only regards as consistent with the Presiding Officer's intent, but that also reflects the full extent to which it considers that disaggregated EXFC and ODIS data can be publicly disclosed without any jeopardy to its competitive and commercial

interests. *Id.* at 2-3. It further asserts that, combined with other information already provided in this proceeding, the data currently in the library reference provide the parties with an adequate basis for making assertions relevant to whether the service standard changes in question, on a nationwide or substantially nationwide basis, result in service that complies with the policies of the Postal Reorganization Act. *Id.* at 3. The Service argues that the motion for clarification should be denied, or should be clarified by confirming its plain meaning. *Ibid.*

Discussion. The discovery stage of this proceeding has been extended to accommodate consideration of the important issue of access to point-to-point data. Arguments for and against public disclosure have been set forth in previous pleadings in this case, and are not repeated here. However, it does bear restating that I generally have found the Service's claims regarding the data's confidentiality and commercial sensitivity singularly unpersuasive in terms of the facts and issues in this complaint and insufficient to support endorsement of the Service's self-asserted institutional policy barring public disclosure. The Service appears to acknowledge as much by conceding that the ruling "reflects the Presiding Officer's views of the application of protective conditions to the data at issue," but the Service then contends that the ruling does not go so far as to require the public disclosure of the aggregated data sets for which it found protective conditions unnecessary. Postal Service Reply at 2.

Simply stated, the ruling's intent was to require disclosure of the requested service performance data along the lines understood by Mr. Carlson. The example he provides is precisely on target: the Service can aggregate data for the San Francisco District (thereby combining North Bay, San Francisco proper, and Eureka) to the Seattle District (which includes Tacoma). Given aggregation of the data at the District level and the distance between many affected pairings, together with the Postal Service's lack of showing regarding adverse competitive effects, claims of confidentiality and commercial sensitivity were not considered to be well-founded, and thus the ruling made no provision for protective conditions.

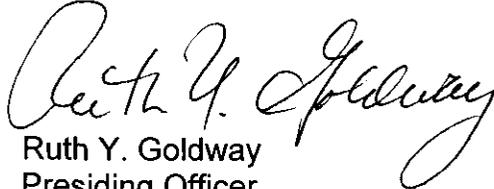
Review of USPS-LR-9, as filed and supplemented, indicates that — as Mr. Carlson contends — it provides far more extensively aggregated data, with no means of making the comparisons that were the objective of the underlying interrogatory.

The Service's conclusion regarding the consistency of USPS-LR-9 with the ruling's intent relies, in part, on isolating a few phrases and sentences in a rather lengthy document. For example, the Service contends that the ruling states that "it is not necessary to review city-specific data in order to perform the evaluations contemplated by the complainant." *Id.* at 2, citing P.O. Ruling No. C2001-3/23 at 10. Reliance on this statement, however, ignores that the heart of the interrogatory went to comparisons, and that the ruling's frame of reference was District-level aggregations. To the extent certain places, such as North Bay, may be "areas" rather than "cities," the ruling could have been more explicit by referring to "ZIP Code-specific data" instead of "city-specific data." I will accept the possibility that this could have contributed to a misunderstanding, and hereby clarify that statement.

Notwithstanding the Service's quibbles with minor discrete elements of the ruling, the insistence that USPS-LR-9 comports with its terms appears to be grounded primarily in the Service's position that the data presented therein reflect "the full extent to which it considers that disaggregated EXFC and ODIS data can be publicly disclosed without any jeopardy to its competitive and commercial interests." *Id.* at 2-3. This is a position I continue to find without support on this record. The ruling is clarified, as noted above, with respect to the reference to "cities" and is reaffirmed as to its conclusions regarding disclosure of the requested comparative data at the District level. The Service is hereby directed to produce a fully responsive library reference.

RULING

Douglas F. Carlson's Motion for Clarification of Presiding Officer's Ruling No. C2001-3/23, filed July 5, 2002, is granted. The ruling is clarified as described in the body of this ruling and the Postal Service is directed to file a more responsive library reference.



Ruth Y. Goldway
Presiding Officer