

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

Postal Rate and Fee Changes, 2005

Docket No. R2005-1

**DOUGLAS F. CARLSON
ANSWER IN OPPOSITION TO THE POSTAL SERVICE
MOTION FOR PROTECTIVE CONDITIONS FOR MATERIALS
PROVIDED IN RESPONSE TO DFC/USPS-61**

June 28, 2005

On June 14, 2005, I filed a motion to compel the Postal Service to respond to interrogatory DFC/USPS-61.¹ This interrogatory reads:

Please refer to the response to DFC/USPS-25. Please provide documents relating to a Postal Service policy or practice for retail window clerks to encourage or induce customers to use Priority Mail or Express Mail, rather than First-Class Mail or Package Services, to send items that they present to the retail window clerk for mailing. This request specifically encompasses records relating to employee training manuals, policies establishing employee sales goals or quotas, directions to employees relating to communication of service standards to customers, and documents describing sales techniques to encourage or induce customers to use Priority Mail or Express Mail, rather than First-Class Mail or Package Services, to send items that they present to the retail window clerk for mailing.

On June 21, 2005, the Postal Service filed a document styled as an opposition to my motion or, in the alternative, a motion for protective conditions.² The Postal Service's motion is devoid of any justification for protective conditions, yet the

¹ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-61, filed June 14, 2005.

² Opposition of the United States Postal Service to Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to DFC/USPS-61 or, in the Alternative, Motion for Protective Conditions ("Postal Service Motion"), filed June 21, 2005.

Postal Service requests that protective conditions be applied to “any responsive documents.” I oppose the Postal Service’s motion for protective conditions.

A Commission proceeding to review a Postal Service request for an opinion and recommended decision to raise postage rates is a public proceeding. Except under extraordinary circumstances, the public has full access to the evidence on which the Commission bases its decision. The presiding officer should impose protective conditions only when a plausible, clearly identified risk of harm exists and when this risk of harm outweighs the benefit of public disclosure of the information. The presiding officer does not, and should not, apply the Postal Service’s own, internal standard for determining whether to disclose information — i.e., if the information is commercial in nature, would it be disclosed under “good business practice”?³ The Postal Service’s standard fails to consider the public interest in disclosure and the general policy favoring public disclosure. Moreover, the Postal Service’s standard is overly restrictive, as modern business practice generally disfavors public disclosure, even when public disclosure would not necessarily cause competitive harm.

The Postal Service’s request for protective conditions must fail because it is overly broad. The Postal Service wants protective conditions for all responsive documents. In the Postal Service’s view, the mere *existence* of a policy or practice to encourage or induce customers to purchase higher-priced products should be withheld from the same public that the Postal Service was established to serve. If the Postal Service instructs retail window clerks — who are now

³ See, e.g., Postal Service Motion at 2.

called “sales associates” — to provide the service standards for Express Mail and Priority Mail but not for First-Class Mail, the lower-priced alternative, the Postal Service would have the presiding officer believe that this policy is none of the public’s business, either. If the Postal Service’s sales force is instructed to sell Express Mail and Priority Mail by mentioning certain value points — such as the extra attention that the document might command upon delivery — the Postal Service would have the presiding officer believe that the public has no right to know the Postal Service’s own assessment of the value of these services, or its attempts to affect public perception of the value of these services, even though the Postal Reorganization Act requires the Commission to consider the value of each service in recommending a rate for these services. If the Postal Service employs certain sales techniques to encourage or induce customers to purchase higher-priced products, the Postal Service would like to withhold this information from its customers. And if the Postal Service’s sales force is subject to sales goals or quotas, the Postal Service would like to withhold this information from the public as well, thus preventing the public from understanding the pressure to which the Postal Service subjects its sales force to meet sales goals or quotas. Knowledge of this information would alert the public that Postal Service retail window clerks (sales associates) are under pressure from their employer to “upsell” customers to higher-priced services.

In the context of a rate-setting proceeding that must consider the value of service, the public has a profound interest in knowing the Postal Service’s own belief in the value of its services and in knowing the Postal Service’s attempts to shape customers’ perception of the value of its services. For this reason alone,

the presiding officer should reject the Postal Service's attempt to hide this information behind protective conditions.

While a request for protective conditions normally should balance the public's right to know against the harm that could result from disclosure of the information, in this case the Postal Service has failed to identify the harm or present any plausible scenario in which disclosure of the information that I have requested would harm the Postal Service. The Postal Service has a monopoly on First-Class Mail. Any documents relating to sales techniques for First-Class Mail could not possibly cause the Postal Service competitive harm because no competitors exist. Priority Mail is a unique product in the marketplace, as it provides fast delivery, but without guaranteed delivery times, for a fairly low price. No other parallel product with these characteristics exists among competitors. Knowledge of sales techniques for this unique product would not benefit Postal Service competitors. Even Express Mail is unique, as it provides delivery in one to four days, with a smaller coverage area for overnight delivery than competitor companies; Saturday, Sunday, and holiday delivery at no extra charge for some destinations; and delivery to PO boxes. Absent a detailed explanation from the Postal Service — which the Postal Service had an opportunity to provide but did not — one can only speculate how materials relating to a Postal Service policy or practice to encourage or induce customers to purchase Express Mail and Priority Mail, rather than First-Class Mail or Package Services, could possibly cause competitive harm if publicly released since the Postal Service's products — particularly First-Class Mail — are fairly unique in the marketplace. And even to the extent that FedEx and the Postal

Service both provide expedited, overnight delivery to a particular city, FedEx hardly could gain a competitive advantage from knowing Postal Service sales techniques to encourage customers to use Express Mail rather than First-Class Mail. The Postal Service has left the competitive harm to readers' imaginations. However, unsupported assertions such as the Postal Service's are insufficient to overcome the presumption in favor of public disclosure.

To the extent that the presiding officer believes that some of the materials that the Postal Service would disclose in response to DFC/USPS-61 should be subject to protective conditions, despite the Postal Service's failure to identify those documents or to justify protective conditions, the presiding officer should conduct an in camera review to ensure that documents that should not be subject to protective conditions are not swept into the wide net that the Postal Service has cast to try to shield sales techniques from the very public that the agency exists to serve.

For the reasons described herein, I oppose the Postal Service's blanket request for protective conditions of documents provided in response to DFC/USPS-61.

Respectfully submitted,

Dated: June 28, 2005

DOUGLAS F. CARLSON