

DOCKET SECTION

BEFORE THE

POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0004

RECEIVED
OCT 20 12 18 PM '97

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

DOUGLAS F. CARLSON
MOTION TO ADMIT
DFC/USPS-T40-XE-1-9 AND LR-DFC-1
INTO EVIDENCE

October 17, 1997

INTRODUCTION

I, Douglas F. Carlson, move to admit into evidence cross-examination exhibit DFC/USPS-T40-XE-1-9, which I presented to witness Plunkett during oral cross-examination on October 7, 1997.¹ This exhibit contained letters from Postal Service employees describing the procedures that the Postal Service uses to deliver mail that customers have sent via certified mail, return receipt requested, to various Internal Revenue Service Centers and state tax-collection agencies. The exhibit also contained letters from two IRS Service Centers describing these procedures. At the request of the presiding officer,² I have placed on file as library reference LR-DFC-1 the original letters that intervenor David B. Popkin and I sent to ask for information on the processing of return-receipt mail. I move that the letters contained in library reference LR-DFC-1 be admitted into evidence as well.

¹ I did not provide copies of these letters to the Postal Service in advance. However, since these letters were not "complex numerical hypotheticals," and since I did not question the witness using "intricate or extensive cross-references," § 4(B) of the *Special Rules of Practice* did not require me to provide the Postal Service with a copy of this exhibit in advance. Moreover, since I asked only one question of witness Plunkett after he reviewed the letters contained in the exhibit, the accuracy of the testimony received subsequent to my introduction of the letters is not a concern. See Tr. 3/1022-23.

² Tr. 3/1025.

DISCUSSION

According to section 31(a) of the *Rules of Practice*, “In any public hearing before the Commission, or a presiding officer, relevant and material evidence which is not unduly repetitious or cumulative shall be admissible.” As I explain below, the documents contained in this exhibit and library reference are highly relevant to the Postal Service’s request for a fee increase for return receipt. Moreover, sponsorship of these letters is unnecessary, and the hearsay rule is not a concern. Therefore, these documents should be admitted into evidence.

Relevance

In its request for a fee increase for return receipt, the Postal Service claims that an increased cost coverage for return-receipt service from 125 percent to 147 percent would “better reflect[] the high value for return receipt service.”³ In support of this high value of service, witness Plunkett cited the following characteristics of return-receipt service as contributing to the value of the service:

- By acting as a disinterested third party in confirming the date on which a piece of mail was delivered, the Postal Service removes an opportunity for a recipient to benefit from providing false information about the date of delivery⁴;
- The Postal Service retains possession of the mail piece until the recipient signs the return receipt⁵; and
- *Postal Operations Manual* § 822.112 requires the Postal Service to mail the return receipt back to the sender within one work day after delivery.⁶

In brief, all the letters in the exhibit revealed that the Postal Service, to varying degrees, annually turns hundreds of thousands⁷ — and probably *millions* — of pieces of certified mail over to the IRS and state tax-collection agencies and allows the recipients to sign and date the return receipts under conditions that prevent the Postal Service from ensuring that the true date of receipt is applied to each return receipt.

³ USPS-T40 at 14-15.

⁴ DFC/USPS-T40-1(b) and (c).

⁵ DFC/USPS-T40-15(b).

⁶ DFC/USPS-T40-19(b).

⁷ See DFC/USPS-T40-XE-9(b) at ¶ 3.

The Postal Service also fails to follow its own regulation and mail back the return receipts within one day.⁸ In short, the Postal Service is failing to deliver the essence of the service that customers believe that they are purchasing.

The evidence in DFC/USPS-T40-XE-1–9 casts serious doubt on the Postal Service's claim that it provides a high value of service to customers of return receipt. Therefore, this evidence is highly relevant to this case and should be admitted.

Sponsorship of the Letters

At the hearing, the Postal Service opposed my oral motion to place these letters into evidence because no witness was sponsoring the letters.⁹ Indeed, in this docket the issue of Postal Service witnesses relying on unsponsored library references has been the subject of much debate. For example, in proposing a 16-cent surcharge for nonstandard, one-ounce First-Class Mail, witness Fronk relied on an unsponsored library reference, thus frustrating intervenors' attempts to examine the methodology of the study on which he based his proposed fee.

My letters, in contrast, present none of the problems associated with unsponsored library references that the Commission has encountered elsewhere in this docket. The letters from the Postal Service and IRS, as well as the letters that Mr. Popkin and I mailed originally to request this information, speak for themselves. In fact, if I sponsored the letters as a witness, I could add nothing more to them. Moreover, the Postal Service could more accurately vouch for the authenticity of the letters from Postal Service employees than I could. No additional reliability or other insight could be gained if I were required to sponsor these letters in my own testimony. Therefore, these letters may appropriately be admitted into evidence at this time.

Hearsay

The letters from the Postal Service are not hearsay because they are admissions by a party-opponent.¹⁰ The letters from the IRS, as well as the letters that Mr. Popkin and I mailed to the Postal Service and the IRS requesting the information,

⁸ POM § 822.112; see, e.g., DFC/USPS-T40-XE-1 at ¶¶ 2-4 and DFC/USPS-T40-XE-4 at ¶ 5.

⁹ Tr. 3/1023-24.

¹⁰ Fed. R. Evid. 801(d)(2).

are hearsay, but the Commission is permitted by law to admit and evaluate "relevant, material, and unrepetitious" hearsay evidence and to "weigh it according to its 'truthfulness, reasonableness, and credibility.'"¹¹ These letters should not, therefore, be excluded from evidence on the grounds of hearsay.

CONCLUSION

Rule 31(a) is clear and dispositive on the admissibility of this evidence. The letters contained in DFC/USPS-T40-XE-1-9 and LR-DFC-1 are highly relevant to the issues in this case. Since no additional insight or reliability would be gained from requiring a witness to sponsor the letters, and since hearsay poses no obstacle, I move to admit these letters into evidence.

Respectfully submitted,



Dated: October 17, 1997

DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required participants of record in accordance with section 12 of the *Rules of Practice* and section 3(B) of the *Special Rules of Practice*.



DOUGLAS F. CARLSON

October 17, 1997
Emeryville, California

¹¹ *Veg-Mix, Inc. v. U.S. Department of Agriculture*, 832 F.2d 601 (D.C. Cir. 1987) (citing *Johnson v. United States*, 628 F.2d 187, 190-91 (D.C. Cir. 1980)).