

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes, 2006

Docket No. R2006-1

DOUGLAS F. CARLSON
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORY DFC/USPS-35

July 11, 2006

On June 19, 2006, I filed interrogatory DFC/USPS-35.¹ This interrogatory reads:

Please provide the following information, in a PC-readable format such as a text file or Microsoft Excel file, from the Collection Point Management System database for every collection box in the database: location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

The Postal Service filed an objection on June 29, 2006.² The Postal Service objects on three grounds: relevance, materiality, and burden.

I. RELEVANCE AND MATERIALITY

In this docket, the Postal Service proposes changes to the rate structure for First-Class Mail that will fundamentally alter how Aunt Minnie and almost every other postal customer interact with the Postal Service for basic postal services. If the Commission recommends the Postal Service's proposal,

¹ Douglas F. Carlson Interrogatory to the United States Postal Service (DFC/USPS-35), filed June 19, 2006.

² Objection of the United States Postal Service to Interrogatory of Douglas Carlson (DFC/USPS-35) ("Objection"), filed June 29, 2006.

customers will be required to understand complex definitions of letters, flats, and parcels, learn the rates for each, and to understand that an item that meets the definition of, for example, a letter but that is nonmachinable will pay the rate for a flat — a counterintuitive complexity on top of other complexity.

The Postal Reorganization Act requires the Commission to consider the value of the mail service when recommending the rate for each postal service. 39 U.S.C. § 3622(b)(2). The fundamental shift in the pricing structure proposed in this docket warrants a close examination not only of the complexity of the rate structure but also of the value that customers truly receive from First-Class Mail service. A proposed rate increase, for example, for a two-ounce flat from 63 cents to 82 cents and for a one-ounce parcel, such as a roll of photographic film, from 52 cents to \$1.00 surely warrants an inquiry into the convenience and value of First-Class Mail service.

The collection system is a key element of the convenience and value of First-Class Mail service. In fact, the Act requires the Commission to consider “the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the *collection*, mode of transportation, and priority of delivery” [emphasis added]. *Id.* Thus, the starting point for evaluating the relevance of an interrogatory that seeks information about locations and collection times of collection boxes is that the data are relevant to the value of First-Class Mail service.

In my assessment, convenience and value are directly proportional to the number of boxes in service (assuming each box in service receives more than zero pieces of mail). Moreover, convenience and value are directly related to the number of hours in the day during which customers can deposit mail for same-day collection. Thus, 5 PM collections are more valuable to customers than 3 PM collections.³ Late collections at the post office also are an element of

³ The Postal Service may argue that 3 PM collections might be more valuable than 5 PM collections if 3 PM collections would lead to increases in EXFC scores. While the Postal Service

convenience and value. Even if most collections in a city are at 5 PM, customers are likely to value a final collection at the post office at 7 PM higher than they will value a final collection at the post office at 5:30 PM. Customers do not expect street collection boxes to provide the latest collections in town, so they appreciate when the post office has a late collection when urgent mailing needs arise. From customers' point of view, the later the final collection time at the post office, the better. When the final collection time at the post office is changed from 6 PM to 5 PM, convenience and value of service decrease.

In POR R2005-1/15, the presiding officer ruled that “the data contained in the Collection Box Management System” — the predecessor database to the Collection Point Management System (CPMS)⁴ — potentially bear on the value of services that rely on collection boxes for acceptance.”⁵ In my assessment, the data in the CPMS relate to value even for services for which a collection system is *available*; reliance on collection boxes is not a prerequisite, since no postal service relies exclusively on collection boxes.

With CPMS data, participants can perform two types of analyses that will independently and collectively inform the Commission about the value of First-Class Mail service. First, participants can examine current CPMS data and advance arguments about the value of First-Class Mail service inferred therefrom. One useful reference point is the Postal Service's own, and increasingly disregarded, national service standards for collections that are documented in Chapter 3 of the *Postal Operations Manual* and reinforced by memoranda from headquarters officials to field officials. For example, the national service standards require weekday collections at 5 PM or later for most collection boxes located at postal facilities, as well as most boxes that receive an

is free to make this argument at an appropriate stage in this proceeding, the Postal Service has never provided any data to support the notion that customers would sacrifice several hours of their collection window in exchange for marginal increases in service performance. In any event, the potential that the Postal Service might advance this argument should not impede my ability to obtain data to support my argument.

⁴ 2005 *Comprehensive Statement on Postal Operations* at Chapter 2, Section F.

average weekday volume of 100 pieces of mail or more. Businesses often spend the day preparing mail and then close at 5 PM, so 5 PM collections have an intuitive value to customers. Collections at 5 PM or later in business areas arguably are necessary to ensure adequate collection services within the meaning of 39 U.S.C. § 403(a) and 39 U.S.C. § 3661(a). To the extent that the Postal Service no longer is providing 5 PM collections, perhaps a downward adjustment in the value of First-Class Mail service is necessary, particularly given the large rate increases proposed for some single-piece First-Class Mail. Current collection practices deserve a close look in this rate case, and CPMS data will facilitate this analysis.

The second type of analysis that will inform the Commission on the value of First-Class Mail service is a comparative analysis. That is, how have collection services changed over time? In my assessment, if collection services have deteriorated over time, the value of First-Class Mail service will have fallen. With CPMS data, I will be able to provide this comparative analysis because I obtained data from the Collection Box Management System (CBMS) database in 2005 pursuant to a federal court order in a Freedom of Information Act (FOIA) lawsuit.⁶ I filed these data on June 29, 2006, in library reference DFC-LR-1, along with a request that the Postal Service admit that the data are genuine.⁷ I understand that the data in DFC-LR-1 existed in the database as of January 2005. While an analysis over a longer period of time certainly would have been very insightful, an analysis of changes in collection services over the past 17 months will be informative as well. CPMS data are necessary to allow me to conduct this comparative analysis over time.

⁵ Docket No. R2005-1, POR R2005-1/15 at 3, filed May 26, 2005.

⁶ *Douglas F. Carlson v. United States Postal Service*, Northern District of California, Civil Action, File No. 02-05471 RMW, March 31, 2005 (2005 WL 756573).

⁷ Douglas F. Carlson Request for Admission from the United States Postal Service (DFC/USPS-RA-1), filed June 29, 2006. The Postal Service filed an objection on July 10, 2006, on the basis of relevance and burden. To address the burden issue, I will file a new interrogatory, DFC/USPS-49, requesting the Postal Service to produce the files that the Postal Service provided to me under court order in my FOIA lawsuit (and that I filed in DFC-LR-1).

Collections hardly are a trivial aspect of postal services in the view of the Act. Specific references to collection systems appear in 39 U.S.C. § 101(e) (the Postal Service shall “give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail”) and 39 U.S.C. § 403(b)(1) (the Postal Service must “maintain an efficient system of collection, sorting, and delivery of the mail nationwide”). The Act also requires the Postal Service to “provide types of mail service to meet the needs of different categories of mail and mail users[.]” 39 U.S.C. § 403(b)(2). This section requires collection times that meet the needs of mail users, such as businesses.

In sum, when Congress enacted the Postal Reorganization Act, Congress was concerned about collections as much as any other Postal Service activity. Congress specifically required the Commission to consider the value of mail services when recommending rates, and Congress specified that collection services are an element of the value of mail services. The CPMS data that I requested are relevant and material to the issues in this proceeding.

The Postal Service’s grounds for objection are weak. First, the Postal Service acknowledges that a national-level analysis “might be considered a relevant factor in pricing[.]” Objection at 1. I agree, and I intend to conduct this analysis. The Postal Service then criticizes my interrogatory for seeking “detailed information on every individual collection box in the country[.]” *Id.* The Postal Service apparently would like me to conduct my nationwide analysis without any data to support or facilitate this analysis.

The Postal Service fails to appreciate that good studies require analysis, manipulation, categorization, and summation of individual data elements. I will explain how each data element that I requested is necessary for me to conduct my analysis and how each element will lead to the discovery of admissible evidence.

The location ID number, box address, and description of address are necessary for my comparative analysis over time. To count a change in a collection time from year 1 to year 2, I need to ensure that I am examining the same box. A box conceivably could be moved but keep its same location ID number, so the box address and description of address will provide additional clues; relying solely on the location ID number would not be prudent. The location ID number is necessary as a starting point, however, because the location ID number apparently is the key in the database record system, and sorting by this number is simpler than sorting by box address or the description of address, both of which are free-text fields. The location ID number also contains the ZIP Code of the box. The ZIP Code is important for determining whether the box is located in the jurisdiction of a city-delivery office. Certain service standards in Chapter 3 of the POM apply only to city-delivery offices, thus elevating the importance of knowing whether a box is located in the jurisdiction of a city-delivery office.

A mere comparison over time of the total number of collection boxes in service with final collection times during a particular interval — e.g., 3:01 PM to 4 PM — potentially would mix two concepts that I wish to analyze separately. This total could change if a box with a 3:30 PM collection was removed from service *or* if a box with a 3:30 PM collection was changed to an 11 AM collection.

The box address and description of address also are necessary to inform an analysis of the adequacy, convenience, and value of the current collection system. For example, two boxes located at the same address almost always indicate that the location meets the 100-piece threshold for a 5 PM collection for a city-delivery office. While I envision a nationwide analysis, I also envision the possibility of enhancing the analysis by focusing on a few cities to analyze the collection services provided there. This focus would be similar to a Postal Service decision to collect cost data for special services by visiting a relatively small sample of postal facilities and observing window transactions.

The box address, description of address, and area of box provide important information for identifying collection times at postal facilities. As I explained earlier, the final collection time at the post office is distinctly important. I need these data fields readily to identify boxes located at post offices. Due to coding errors and inconsistencies in how data are entered into the system by field offices nationwide, reliance on any one of these three data elements to identify boxes located at post offices would not be prudent; however, in my experience, these three data fields viewed together provide reliable information.

The type of box is important because the type sometimes indicates volume (e.g., “jumbo box”). A jumbo box always meets the 100-piece threshold for a 5 PM collection.

The service class indicates, *inter alia*, whether the box is a local-only box or an Express Mail box. I will not want to include local-only boxes or Express Mail boxes in an analysis of collection times for First-Class Mail. Yet I may wish to examine Express Mail collection services as an element of the value of Express Mail service, so these boxes should not be excluded from the data provided in response to DFC/USPS-35.

The final three data elements I requested are the collection times themselves, which are relevant for the reasons described herein.

The federal court ruled that *all* these data elements must be disclosed under FOIA.⁸

In sum, any comprehensive, nationwide analysis of the value of postal services that use collection boxes requires all fields of data requested in DFC/USPS-35 for every collection box.

The Postal Service’s understanding of relevance is flawed because it suggests that raw data can be irrelevant even if analyses that rely on the raw

⁸ See fn. 6, *supra*.

data are relevant. To see the fallacy, consider the Postal Service's direct case. It includes many analyses and data summations that are derived from millions of individual transactions, tallies, and data points. Participants analyzing the issues in the Postal Service's direct case usually do not need the raw data, but participants should be entitled to the raw data if needed to ensure effective cross-examination.⁹ If the Postal Service wished to introduce the raw data into evidence in its direct case, no participant could sustain a relevance objection on the grounds that the raw data included too much detail. In this instance, I plan to use raw data on collection boxes to analyze collection services. My analyses will be relevant to issues in this case. The Postal Service cannot argue that the raw data inputs to my analyses would be irrelevant because they contained too much detail. And the Postal Service certainly cannot deny me access to the raw data and *prevent* me from conducting my analysis — which is exactly the Postal Service's strategy underlying its objection.

One final note: In the context of a dispute over provision of information relating to collections, the Postal Service has rarely missed an opportunity to insinuate that my longtime concern about collection services somehow undermines the legitimacy of my arguments for production of the information requested in a particular proceeding. For example, in Docket No. N2006-1, the Postal Service stated that “[t]he requester has a very-intense, well-documented interest in postal collection boxes.”¹⁰ In Docket No. R2001-1, the Postal Service stated that my interrogatory requesting information similar to the information that I am requesting in DFC/USPS-35 “marks the latest in Mr. Carlson’s attempts to gain access to information in the Collection Box Management System (CBMS) database.”¹¹ These statements were unnecessary for resolution of the issues at hand, so one can safely assume that the Postal Service included these

⁹ For example, if a participant questions the results of a study, the participant may need to examine the raw data.

¹⁰ Docket No. N2006-1, Objections of the United States Postal Service to Carlson Interrogatories DFC/USPS-6 and 8 through 10, filed May 8, 2006.

¹¹ Docket No. C2001-1, Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-19–21, filed June 4, 2001.

statements for the purpose of communicating a message. I believe that the Postal Service's goal was to cast in a negative light a postal customer and American citizen who is concerned about postal services, who sometimes files complaints about postal services pursuant to 39 U.S.C. § 3662, and who has provided analysis of service issues, including problems with collections, numerous times for prominent articles in major newspapers. Or, even worse, perhaps these statements were designed to suggest that my stated reasons for obtaining the information did not reflect my true motivation. To the extent that the Postal Service engages in similar tactics in this dispute, I reject any suggestion that the arguments in this motion reflect anything other than a true and complete statement of my intentions and my positions on the factual and legal issues. Moreover, I readily admit that I focus my attention in rate cases on issues in which I have a particular expertise and interest because I believe that I can maximize my contribution to the record in this manner. Since I receive no compensation for my participation in rate cases, no one could reasonably expect me to focus on issues in which I have no interest or expertise.

II. BURDEN

The Postal Service next argues that providing the data would impose an undue burden on the Postal Service. The Postal Service alleges that providing the data would require a “complicated extraction process” costing approximately \$7,600. Objection at 2–3.

The presiding officer should disregard the Postal Service's cost estimate as inflated and excessive. Moreover, even if extracting the data truly would cost \$7,600, the burden would not be unreasonable given the probative value of the information and my inability to conduct the analysis in another way.

A. Cost Estimate

I am very familiar with the \$7,600 cost estimate. I believe that significant background information is necessary to allow the Commission to evaluate this

cost estimate fairly and objectively, as the Postal Service has a history of using cost arguments as a weapon to prevent disclosure of information about collection boxes whenever the law has not supported the Postal Service's desperate desire to withhold the information.

On March 31, 2005, a federal court in *Douglas F. Carlson v. United States Postal Service* ordered the Postal Service to provide the CBMS data that I requested on August 10, 2002.¹² On May 31, 2005, on the last day to do so, the Postal Service filed a notice of appeal. On August 26, 2005, the Postal Service moved to dismiss its appeal — apparently because the Department of Justice declined to pursue an appeal. On September 16, 2005, a Postal Service attorney provided the CBMS data to me. However, the data were extracted from the CBMS database in February 2005. The Postal Service attorney provided no explanation for why the Postal Service was providing old data. Moreover, he ignored my telephone call and letter requesting an explanation. After I threatened to ask the court for relief, the assistant United States attorney handling the case informed me in October 2005 that the Postal Service believed that the court order applied only to CBMS data; the fact that the Postal Service had copied CBMS records to the CPMS allowed, in the Postal Service's opinion, the current CPMS data to escape the reach of the court's order.

I determined that the preferable course was simply to file a new FOIA request, this time for data from the CPMS. The Postal Service received my FOIA request on October 31, 2005. Remarkably, the Postal Service ignored it, despite a legal obligation to respond within 20 working days. After I filed an administrative appeal, the Postal Service eventually responded on February 3, 2006. The Postal Service estimated fees of \$7,579.88. Despite a court injunction¹³ requiring the Postal Service to grant me two free hours of search time for every FOIA request, the Postal Service denied me two free hours of search

¹² See fn. 6, *supra*.

¹³ See fn. 6, *supra*.

time. On appeal, the Postal Service upheld this fee estimate on February 24, 2006, although the Postal Service relented and agreed to grant me two free hours of search time, as FOIA requires. The Postal Service revealed that the fee estimate included more than 60 hours of personnel time, plus one hour of mainframe usage. On April 12, 2006, the Postal Service denied my request for a public-interest fee waiver. On appeal, the Postal Service upheld the denial, claiming that disclosure of the information, even with my analysis, would not contribute significantly to the general public's understanding of postal operations. The Postal Service also alleged that my request was based on my "strong personal interest in the Postal Service and its operations" and that my personal interest in the matter was grounds for denying my request for a fee waiver.

I filed a new lawsuit on February 28, 2006, which I amended on May 19, 2006.¹⁴ The new lawsuit alleges that the Postal Service violated the original court order by providing me old data, that the Postal Service's fee estimate is unreasonable and unlawful, and that the Postal Service illegally denied me a public-interest fee waiver.

The discussion herein reflects a legal struggle with which the presiding officer does not need to be concerned in resolving the current discovery dispute. However, I provided this background information because the Commission should view the Postal Service's cost estimate with deep suspicion because it was developed in the context of the agency's clear continuing desire to prevent the public from obtaining up-to-date information with which to evaluate its collection services.

The current fee estimate is not the first time that the Postal Service has tried to rebuff a request for collection-box data by inflating the cost estimate. In Docket No. C2001-1, I requested a similar set of nationwide collection-box data from the CBMS. In its objection, the Postal Service tried to launch an undue-burden claim as follows:

Lastly, Mr. Carlson has requested that the information from the database be provided to him in a format such as Excel. The information he has requested exists on a mainframe computer. Not only would it be unduly burdensome to convert the information from its current format to the format he has requested, but it would be unduly burdensome even to undertake the effort of attempting to determine the exact magnitude of the burden. The analysis would require the development of a process by which the necessary steps in a feasible conversion procedure could be identified and quantified. The Postal Service has no resources available for such an effort.¹⁵

When an agency controls all the information, such a response can be devastating to an individual's lawful attempt to obtain information. Thankfully, I happened to have a letter in my possession from the Postal Service that not only explained the process for extracting the data for a particular city but also revealed that the data could be extracted in a very short amount of time. The letter read:

In order to make this information available; [sic] a computer programmer created a file on the mainframe system. The information was then downloaded to a personal computer via the file transfer protocol (FTP) process and converted to a text file.

The computer programmer followed these steps to create the file sent to you on December 16, 1999. These steps were later modified and followed as we sent you additional information in the report dated July 27, 2000. These efforts took approximately two hours of search time.¹⁶

Confronted with facts, the Postal Service quickly backpedalled, stumbling to justify — but never apologizing for — providing such terribly misleading information to the Commission and me.¹⁷ Ultimately, the Commission ordered the Postal Service to provide the CBMS data,¹⁸ but the Postal Service defied the

¹⁴ Northern District of California, Civil Action, File No. 06-01578 JSW.

¹⁵ Docket No. R2001-1, Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-19-21 at 3-4, filed June 4, 2001.

¹⁶ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21 at Exhibit 1, page 3, filed June 26, 2001.

¹⁷ See Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-19-21, filed July 9, 2001.

¹⁸ Docket No. C2001-1, Order No. 1331, filed November 27, 2001.

Commission's order and refused to provide the data.¹⁹ Fortunately, a federal court ruled that collection-box data must be disclosed under FOIA, so the law is now settled in favor of full public disclosure. The Commission can remedy any similar defiance of a lawful order in this case by invoking 39 U.S.C. § 3624(c)(2).

In the FOIA litigation that ended in 2005 in a court order requiring the Postal Service to provide data to me on collection boxes, my request for a fee waiver also was at issue, as the Postal Service had threatened to charge me fees for extracting CBMS data. However, when the judge asked the Postal Service at oral argument on the parties' cross-motions for summary judgment, the Postal Service informed the court that "on the order of a couple of hours" would be required to respond to my FOIA request.²⁰

Although the CPMS is not the CBMS, it is simply implausible that the time required to extract data from a database — presumably a newer, better database — would mushroom from approximately two hours to more than 60 hours.

The CBMS operated on a mainframe computer. The Postal Service states in its objection that the CPMS does as well. Objection at 2. The Postal Service states that the CPMS is maintained by contractors. In our joint case management conference statement in the current FOIA lawsuit, the Postal Service states that the CBMS was maintained by a third-party contractor, too.²¹ Mainframe or not, and contractors or not, databases are databases. Moreover, new databases presumably enjoy a better design than old databases. The

¹⁹ See Docket No. C2001-1, POR C2001-1/16, filed December 19, 2001.

²⁰ The following dialogue occurred:

The Court: What would be involved in providing this information?

[Assistant U.S. Attorney] Ms. Daw: I don't know. [Postal Service Attorney] Mr. Norfleet might be able to address that.

Mr. Norfleet: I believe it's a matter of running an extract from a computer database. I believe it's on the order of a couple of hours, but it is — it's computer operator time rather than a couple of hours of clerk time.

Transcript of Proceedings Before the Honorable Ronald M. Whyte, United States District Judge, at 16, August 20, 2004.

²¹ Northern District of California, Civil Action, File No. 06-01578 JSW, Joint Case Management Conference Statement and [Proposed] Case Management Order.

information that I am requesting exists in database tables. Standard query tools allow any competent and properly trained person to query the database and extract information. These queries are simple when the goal is to extract all information, without differentiation. For example, a query to extract all information for boxes with 'area of box' = 'B' and 'weekday collection time' = '1700' would be slightly more complicated than a query to extract all data without differentiation. It is hard to imagine that extracting the CPMS data would require more than two hours of work by an individual with the appropriate level of competence. And it is even harder to imagine Postal Service employees or contractors toiling away for more than 60 hours — one and a half workweeks — doing nothing but extracting data from the CPMS.

The presiding officer also should consider that some, if not most, of the Postal Service's cost estimate includes attributed costs. That is, the employees performing the work will be receiving a flat paycheck, and whichever work was displaced by this project would be done later. The likelihood is low that the employees would work more than their normal number of hours per week. More importantly, it is even less likely that these employees, if they did work extra hours, would be in "non-exempt" titles that would require the Postal Service to pay them overtime pursuant to the Fair Labor Standards Act. Similarly, to the extent that costs attributable to mainframe processing time are related to costs incurred on a Postal Service mainframe, these costs likely include maintenance, equipment, depreciation, space, and other support costs that the Postal Service will incur whether the mainframe is processing this job or another one. In short, while these costs may be appropriately attributable to mainframe time for FOIA cost-recovery purposes, the Postal Service's out-of-pocket expense for responding to this interrogatory would be considerably less than whichever cost estimate is derived based on attributable costs.

One other episode raises further concerns about the accuracy of the \$7,600 cost estimate. In early 2005, I was forced to elevate a service complaint

all the way to the area vice president of the Southwest Area before the Postal Service agreed to change the collection time from 3:30 PM to 5 PM at the Bywater Station in New Orleans and from 4 PM to 5 PM at the Air Mail Center, a branch of the New Orleans post office. Postal regulations require 5 PM collections at stations and branches. After securing changes in the collection schedules at these stations to 5 PM, I sought (before Hurricane Katrina) to evaluate the collection times at other stations in New Orleans. The New Orleans postmaster refused to provide the information. I then submitted a FOIA request in which I requested the final collection times at the stations and branches of the New Orleans post office — a modest request, as New Orleans has approximately 13 stations and branches. The New Orleans postmaster asserted that the information was exempt from disclosure under FOIA, even though a federal court had ruled to the contrary. The Postal Service overturned this decision on appeal, but then the Postal Service provided me with a staggering cost estimate of \$6,290 to provide collection times for stations and branches in New Orleans. On December 12, 2005, the Postal Service upheld this decision on appeal. However, perhaps the Postal Service saw the perils of suggesting to the public or a court that looking up the collection times at 13 stations and branches of the New Orleans post office would require 64 hours of work. A competent clerk could look up the box locations in the CPMS one by one, write down the information or print out screen shots, and be done in an hour. While not wavering from its formal decision, the Postal Service nonetheless provided the New Orleans data to me for free on December 23, 2005. The cost estimate of \$7,600 for information on all collection boxes followed two months later.

I believe that the \$7,600 estimate is inflated and is designed to impede my access to this information. Somehow the time required to perform this straightforward database extraction has blossomed from two hours to 60 or more hours as the database presumably has moved to a newer and better platform. The Commission should view the \$7,600 cost estimate with suspicion given the context in which the cost estimate was generated and the fact that the Postal

Service estimated \$6,290 to provide data for collection boxes at just 13 stations and branches — in the context of a dispute over the level of service being provided at those stations and branches and the clear desire of the New Orleans postmaster to prevent me from obtaining this information.

B. Any Burden That Exists is Not Undue

The purpose of the preceding discussion was to inform the presiding officer of the cost of providing data in response to DFC/USPS-35 — or, more specifically, to inform the presiding officer that the cost is not \$7,600. Fortunately, the presiding officer does not need to decide whether the Postal Service's cost estimate is reasonable. First-Class Mail is a fundamental postal service. First-Class Mail and Express Mail have an extensive collection system. The Act recognizes the importance of the collection system. The convenience of the collection system is directly relevant to the value of First-Class Mail and Express Mail services. The convenience of the collection system has been deteriorating in the last decade as the Postal Service has deviated from its own national service standards. Managers have shifted collection times to earlier hours to increase EXFC scores. Promotion opportunities and manager compensation have been tied to EXFC scores. Moreover, the Postal Service now proposes major changes in the pricing of single-piece First-Class Mail — changes that will further affect the convenience of the service and the complexity of the rate schedule. The present case is an appropriate time for an analysis of the value of service that the collection system provides.

In the context of the Postal Service's costs in litigating a rate case, an expenditure of 60 hours of time, to which the Postal Service has attached a price tag of \$7,600, may be a burden in the Postal Service's eyes, but it most certainly is not an unreasonable burden within the meaning of Rule 26. Whenever the Postal Service files a request for an opinion and recommended decision to raise postage rates, the Act requires a hearing on the record to allow users of the mail to conduct discovery and submit testimony. 39 U.S.C. § 3624. In establishing a

10-month process, Congress clearly envisioned that the process would be costly. The cost estimate for responding to DFC/USPS-35 pales in comparison to the costs associated with litigating a rate case. Indeed, if the Postal Service attributed costs of attorney, analyst, and contractor time to responding to every discovery request, a possible cost of \$7,600 to respond to this interrogatory hardly would top the list.

Indeed, precedent suggests that the Postal Service does not truly believe that the burden involved in responding to DFC/USPS-35 would be undue. In Docket No. R2005-1, the Postal Service objected to interrogatories DBP/USPS-1 and 3 on the grounds of relevance,²² yet the Postal Service answered the interrogatories anyway, apparently spending “approximately five full days of staff time at Headquarters [40 hours], a commensurate amount of staff time at the computing center in San Mateo [40 hours], and a significant amount of supervisory time and attention to direct these efforts.”²³ If the Postal Service would spend more than 80 hours responding to interrogatories for which it filed an objection on the grounds of relevance — an expenditure of time that exceeds the time necessary to respond to DFC/USPS-35 by more than one third — the presiding officer must seriously question the Postal Service’s claim that preparing a response to DFC/USPS-35 would constitute an undue burden.²⁴ Moreover, this comparison of effort demonstrates that my approach to discovery — requesting raw data and undertaking analysis myself — will minimize the burden on the Postal Service. Analyses of data almost always require more effort than mere extractions of data.

²² Objections of the United States Postal Service to Interrogatories of David Popkin (DBP/USPS-1, 3, 5, 7, 9, 10, 12, 17–20, 23), filed April 18, 2005.

²³ Objections of the United States Postal Service to Interrogatories of Douglas F. Carlson (DFC/USPS-20–21), filed May 2, 2005.

²⁴ The Postal Service may have responded to DBP/USPS-1 and 3 and conducted extensive data analysis to deflect a request for raw data similar to DFC/USPS-35. However, participants are entitled to view and analyze raw data, and they are not required to rely on the analyses of the data conducted by a party-opponent who controls the raw data. To require otherwise would deny participants their due-process right to conduct cross-examination.

III. CONCLUSION

The relevance of the information that I requested in DFC/USPS-35 is beyond dispute. The Postal Reorganization Act requires the Commission to consider collection services as a component of the value of First-Class Mail and Express Mail service. I have proposed a reasonable and potentially informative plan for using the CPMS data to develop evidence relevant to issues in this proceeding.

In ruling on this motion, the presiding officer will not need to decide any issues that are currently in dispute in my federal court litigation. I provided the extensive background information simply to inform the presiding officer of relevant history, to deflect anticipated Postal Service suggestions that I am seeking the data for purposes other than to resolve issues in this proceeding, and to urge the presiding officer not to rely on the Postal Service's cost estimate.

Ultimately, the presiding officer should determine that the burden in responding to DFC/USPS-35, even if it totals \$7,600, is not undue in the context of rate-case litigation, the Postal Service's past practice in responding to interrogatories that it considered irrelevant, and the value of the information in the CPMS to issues in this case.

For the reasons described herein, I move to compel the Postal Service to respond to DFC/USPS-35.

Respectfully submitted,

Dated: July 11, 2006

DOUGLAS F. CARLSON