

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

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING
GRANTING MOTIONS TO COMPEL RESPONSES
TO INTERROGATORIES DFC/USPS-35 AND 49,
AND DFC/USPS-RA-1

(Issued August 9, 2006)

Douglas F. Carlson has filed motions to compel responses to three related discovery requests concerning the Collection Box Management System and Collection Point Management System databases.¹

DFC/USPS-35 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.

DFC/USPS-RA-1 [Request for Admission]

- a. DFC-LR-1 contains a genuine copy of data that the Postal Service provided to me on September 16, 2005, in response to a court order in *Carlson v. U.S. Postal Service* (U.S. District Court, Northern District of California, Civil Action, File No. 02-05471).

¹ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-35, July 11, 2006; Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-49, July 25, 2006; and Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Request for Admission DFC/USPS-RA-1, July 25, 2006. The questions were originally posed in: Douglas F. Carlson Interrogatory to the United States Postal Service (DFC/USPS-35), June 19, 2006; Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-49-50), July 11, 2006; and Douglas F. Carlson Request for Admission from the United States Postal Service (DFC/USPS-RA-1), June 29, 2006.

- b. The data in Attachment reflect data that existed in the Collection Box Management System database on January 13, 2005.

DFC/USPS-49 Please provide the electronic files of Collection Box Management System data that the Postal Service provided to me on September 16, 2005, in response to a court order in *Douglas F. Carlson v. United States Postal Service*. The files subject to this interrogatory contain, for every collection box in the database, the 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.

Postal Service objections to the discovery requests. The Postal Service bases its objection to providing a response to DFC/USPS-35 on the grounds of relevance, and materiality.² It argues that:

This question does not focus on the rates proposed for any particular class or service. Moreover, even to the limited extent that collection service might be considered a relevant factor in pricing, it is only relevant at a national level. Mr. Carlson is seeking a plethora of detailed information on every individual collection box in the country. Information at this level of *operational* detail is patently irrelevant and immaterial to the issues presented in an omnibus *rate* proceeding. (Emphasis in original.)

The Postal Service also objects on the ground of burden. The Postal Service states that the information exists on a mainframe that is maintained by contractors, and is not in the format requested by Mr. Carlson. The Postal Service estimates it will take in excess of 60 hours, and cost approximately \$7,600, to perform the conversion.

The Postal Service incorporates its relevance and materiality arguments presented in its objection to DFC/USPS-35 into its objection to providing an admission to DFC/USPS-RA-1.³ It also contends that it would be burdensome to verify Mr. Carlson's data. First, the Postal Service states that the only operations' staff knowledgeable about the material has been out of the office and thus has been

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

³ Objection of the United States Postal Service to Request for Admission of Douglas Carlson (DFC/USPS-RA-1), July 10, 2006, at 2.

unavailable to verify whether the format of the data is the same as that in which the earlier data were provided. Second, the Postal Service comments on the burden of resolving any discrepancies, assuming that a method can be developed to compare Mr. Carlson's data against the Postal Service's data. The Postal Service contends that unless the data comparison is approached with some care, the Postal Service may lose its ability to later question any individual data element after it makes this admission.

The Postal Service incorporates its relevance and materiality arguments presented in its objection to DFC/USPS-35 into its objection to providing a response to DFC/USPS-49.⁴ It notes that this interrogatory is closely related to other collection box specific interrogatories proffered by Mr. Carlson.

Mr. Carlson's motions. In Mr. Carlson's motion to compel a response to DFC/USPS-35, he discusses the changes proposed for First-Class Mail that could fundamentally alter how customers interact with the Postal Service for basic postal services. He contends that the proposed fundamental shift in the pricing structure warrants a close examination not only of the rate structure, but also of the value that customers truly receive from First-Class Mail service, citing 39 USC § 3622(b)(2). He contends that the collection system is a key element of the convenience and value of First-Class Mail service, citing the locations and collection times of collection boxes as relevant factors.

Mr. Carlson describes two lines of analyses that can be pursued using the Collection Point Management System database. First, the value of the existing service can be examined. Second, a comparative analysis can be performed to analyze how collection box service has changed over time. Mr. Carlson describes in detail examples of how various data elements contained within the database may be put to use.

Mr. Carlson also addresses the Postal Service's burden objections by disputing at length the Postal Service's costs estimates.

⁴ Objection of the United States Postal Service to Douglas F. Carlson Requests for Production (DFC/USPS-49-59), July 21, 2006, at 1.

Mr. Carlson filed two virtually identical motions to compel responses to DFC/USPS-49 and DFC/USPS-RA-1, which in effect seek a response to DFC/USPS-49, or alternatively to DFC/USPS-RA-1. Both motions incorporate by reference the relevance and materiality arguments presented in the motion to compel a response to DFC/USPS-35. Mr. Carlson states that the DFC/USPS-49 (or DFC/USPS-RA-1) database information dating from 2005 will allow him to compare collection services over time.

Mr. Carlson argues that the Postal Service is not entitled to deny access to data that will allow him to conduct analyses just because the Postal Service would analyze collection services in a different way. Furthermore, he disputes the Postal Service's contention that § 3622(b)(2) implies only a limited consideration of collection services in establishing rates. He contends that the statute includes consideration of the service actually provided.

Postal Service responses to Mr. Carlson's motions. On July 18, 2006, the Postal Service filed a response to Mr. Carlson's motion to compel a response to DFC/USPS-35.⁵ The Postal Service contends that the relevance of collection service in the pricing process with respect to the value of service considerations of § 3622(b)(2) is limited in that the statute only requires a binary consideration of whether or not a class of mail receives collection service. With this narrow purpose in mind, and because it is common knowledge that First-Class Mail is deposited in collection boxes, the Postal Service argues that there is no relevance to the operational details regarding each and every collection box in the country.

The Postal Service also contends that Mr. Carlson's approach is flawed because Mr. Carlson has failed to demonstrate how box-specific information can be translated into a meaningful measure of the value of the collection network. The Postal Service asserts that customers do not assess value based on an individual collection box, but rather on the entire collection network. It asserts that if Mr. Carlson wants to show how

⁵ Response of the United States Postal Service in Opposition to Douglas Carlson Motion to Compel a Response to DFC/USPS-35, July 18, 2006 (Response to Motion to Compel DFC/USPS-35).

customers value the collection network, he should direct his efforts at asking the customer, and present his results in a statistically representative fashion. Thus, without customer input, the Postal Service contends that the collection box database does not provide the necessary information to analyze the value of the collection network.

The Postal Service further asserts that the ultimate burden of responding to this interrogatory includes the obligation to examine Mr. Carlson's research, identify any flaws, and if necessary, provide corrected information. There also is the prospect of incurring a burden in responding to follow-up interrogatories from Mr. Carlson and other intervenors.

On August 1, 2006, the Postal Service filed a combined response to Mr. Carlson's motions to compel a response to DFC/USPS-49 and DFC/USPS-RA-1.⁶ The Postal Service does not dispute that Mr. Carlson previously received a copy of the database that is the subject of DFC/USPS-49 and DFC/USPS-RA-1. The Postal Service argues that Mr. Carlson has not been denied the information that he seeks, and can analyze the data for presentation of this analysis in testimony. Therefore, the Postal Service contends that there is no analytic value to the request for admission exercise.

The Postal Service further elaborates on what it has previously identified as faults with Mr. Carlson's approach, including not taking into account how customers value the collection network, how the database does not describe all parts of the collection network such as leaving outgoing mail in personal delivery mailboxes or cluster box slots, and the limited consideration that collection service plays in establishing rates.

Discussion. The Postal Service submits that in considering the "value of the mail service actually provided each class or type of mail service" factor of the Act in regard to collection, § 3622(b)(2), the Commission should only consider whether a class or type

⁶ Response of the United States Postal Service in Opposition to Douglas Carlson Motions to Compel a Response to DFC/USPS-49, or, in the Alternative, a Response to DFC/USPS-RA-1, August 1, 2006.

of mail does or does not include a collection service. It should not be concerned with the parameters or mechanics of the collection service. Because the databases that are the subject of this discovery dispute only provide information on the parameters or mechanics of the collection service, the Postal Service argues that they are not relevant to the rate setting process in this omnibus rate case. Furthermore, the databases are limited in only providing information on the collection “box” aspect of the collection service. They do not account for the other modes of collection service, or consider input from customers on how they view collection service.

The Commission’s consideration of the collection aspect of value of service in an omnibus rate case is not restricted to the black-and-white analysis of whether or not a class or type of mail service includes a collection service. The Postal Service’s suggestion that the Commission only consider whether or not a class of mail includes an amorphous collection service would be meaningless. While the Commission is not concerned with the fate of any one collection box, the parameters that describe each and every collection box, when aggregated, are what describe the nation’s collection box system.

The Postal Service faults Mr. Carlson’s analytical approach because the Postal Service contends it will not be comprehensive; it does not include input from customers and it does not include all modes of collection. As with all other participants in the rate case, Mr. Carlson is free to decide the analytical approach that he will take in developing his positions, just as the Postal Service is free to choose its approach to rebutting other participant’s positions.

Both parties cite Presiding Officer’s Ruling R2005-1/42, July 7, 2005, in support of their positions. Presiding Officer’s Ruling R2005-1/42 denied a motion to compel the Postal Service to provide the total number of collection boxes, disaggregated into those used for Express Mail and non-Express Mail collections. The Presiding Officer stated “that, in the setting of an omnibus rate proceeding, the relevance of the number of collection boxes deployed during various periods of time is likely to be attenuated.” He acknowledged that “[w]hile a pattern of change in the receptacles and other resources

available to the public for depositing mail could well shed light on how value of service may have changed over time, raw counts of the number of mailboxes are likely to be indirect and incomplete indicia, at best.” The Presiding Officer did not foreclose the possibility that the number of collection boxes might be relevant in some circumstances: “It is possible, even in a general rate case, that a particular factual controversy might justify the effort of producing the additional information sought in Mr. Carlson’s interrogatory.” At the time of the ruling, the Postal Service had provided responses to related interrogatories for the record, which compiled information from other aspects of the Collection Box Management System database.⁷

Docket No. R2005-1 was filed for the limited purpose of funding liabilities created by Public Law 108-18. No significant First-Class Mail issues were presented or considered. At the time of the ruling, some collection box information was available for the record. There was the imminent possibility that most parties would agree to a settlement of the entire case. In this context, Presiding Officer’s Ruling R2005-1/42 denied a motion to compel a response to an interrogatory requesting limited information that would add little to the record.

Docket No. R2006-1 is in the true sense an omnibus rate case. There are significant First-Class Mail rates and classification issues to be considered. Mr. Carlson’s interrogatories are significantly broader than the simple request to provide a compilation of the number of collection boxes. The responses that Mr. Carlson seeks will be used as inputs to much broader analysis. In addition to describing the current status of the collection box system, Mr. Carlson intends an analysis of collection box service over time. The discovery completed thus far in this docket on the collection box system does not appear near the level completed in Docket No. R2005-1, and is insufficient to provide much analysis. The value of service analysis will play a larger role in this rate case because the Commission will focus on evaluating individual rates, as opposed to focusing on whether or not an across-the-board increase violated any

⁷ See, Responses of the United States Postal Service to Interrogatories of David Popkin (DBP/USPS-1, 3), April 25, 2005.

provision of the Act. This is an instance of where “a particular factual controversy might justify the effort of producing the additional information sought in Mr. Carlson’s interrogatory[,]” as referenced in Presiding Officer’s Ruling R2005-1/42 at 4.

The Postal Service asserts that customers do not assess value based on an individual collection box, but rather on the entire collection network. If the Postal Service chooses to rebut any analysis presented by Mr. Carlson, the record will benefit from studies that the Postal Service has on how customers view the collection system as a whole, or how customers view collection boxes alone. The Postal Service is encouraged to provide any such studies for the record.

In anticipation of Mr. Carlson’s success in pursuing his motions to compel, OCA withdrew its interrogatory OCA/USPS-66, filed on July 12, 2006.⁸ OCA/USPS-66 requested a summary of end-of-day collection box times.⁹ OCA contends that “[t]he raw data is preferable to summary data as it would allow a wide range of analyses to be performed without repeated requests to the Postal Service.” OCA’s statements are a further indication of the relevance that participants place on the databases sought by Mr. Carlson in analyzing and developing their positions in this rate case.

The Postal Service contends that a request for admission serves no purpose because it already admits that it has provided the information in question in the past, and it can later challenge the information if it discovers the information has been changed. Mr. Carlson’s request is nothing more than a logical step in building a foundation for his case. The request for admission will establish that the information that he is using is what it is purported to be. Mr. Carlson’s request is no different from the OCA’s request for confirmation of letters that Ms. Gibbons, the Postal Service’s General Counsel, sent to the Postal Service. The Postal Service responded to the OCA’s request in Institutional Response of the United States Postal Service to

⁸ Office of the Consumer Advocate Withdrawal of Interrogatory OCA/USPS-66, July 13, 2006.

⁹ The Postal Service states that it stands willing to provide such information in this case. Response to Motion to Compel DFC/USPS-35 at 15.

Interrogatory of the Office of the Consumer Advocate (OCA/USPS-1), filed on June 30, 2006.

The Postal Service contends that the burden of complying with the discovery requests is undue. They assert that responses may trigger additional interrogatories, or that they may have to analyze Mr. Carlson's positions and formulate responses. However, these are normal aspects of litigation that are to be expected in an omnibus rate case.

Mr. Carlson has provided an alternative to providing an admission that may be less burdensome for the Postal Service. If the Postal Service chooses to file an original response to DFC/USPS-49, they may do so. The Postal Service and Mr. Carlson do not agree on the cost of complying with DFC/USPS-35. The Postal Service's estimate is not insignificant, but it also is not an unreasonable cost for producing the requested information that appears relevant to the evaluation of the collection box system in the context of this rate case.

Mr. Carlson's three motions to compel are granted. The Postal Service shall provide responses by August 16, 2006 to either DFC/USPS-49 or DFC/USPS-RA-1. Mr. Carlson notes that "[a]s long as the Postal Service can provide a response to DFC/USPS-49, a response to DFC/USPS-RA-1 will be unnecessary." Therefore, after providing a response to DFC/USPS-49, the Postal Service may respond to DFC/USPS-RA-1 by simply stating that the required information may be found in the response to DFC/USPS-49. In the alternative, after providing an admission to DFC/USPS-RA-1, the Postal Service may respond to DFC/USPS-49 by simply stating that the required information may be found in the response to DFC/USPS-RA-1.

RULING

1. The Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-35, filed July 11, 2006, is granted. The Postal Service shall provide a response by August 16, 2006.

2. The Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-49, filed July 25, 2006, is granted. The Postal Service shall provide a response by August 16, 2006.

3. The Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Request for Admission DFC/USPS-RA-1, filed July 25, 2006, is granted. The Postal Service shall provide a response by August 16, 2006.

George Omas
Presiding Officer