

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

Postal Rate and Fee Changes, 2006

Docket No. R2006-1

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REPLY BRIEF

January 4, 2007

In my reply brief, I will respond to issues raised in other parties' initial briefs concerning the "Forever Stamp" proposal. I have already addressed other issues in my initial brief.

"Forever Stamp" DMCS Language

While the Postal Service and I appear to agree on the permissive uses of the "Forever Stamp" as this proceeding concludes, we continue to disagree on the DMCS language.

The Postal Service stands by the DMCS language that witness Taufique proposed in testimony filed on July 14, 2006. When the Postal Service filed this testimony, the Postal Service intended to do exactly what its DMCS language arguably said. Customers would receive postage equal to the "forever" value — the rate for single-piece one-ounce First-Class letters at the time of use — only when they used the "Forever Stamp" on one-ounce First-Class letters. This intent is clear in the Postal Service's original responses to DBP/USPS-340 and 341 (filed August 7, 2006).

As critical interrogatories and testimony from participants demonstrated the pitfalls associated with the Postal Service's plan, the Postal Service relented and agreed that customers should enjoy the "forever" value when they use a "Forever Stamp" on any piece of mail — e.g., a flat or a two-ounce letter. But the Postal Service clings to its original DMCS language, which permitted a markedly different implementation of the "Forever Stamp" proposal than the Postal Service proposes now.

Ultimately, the Postal Service and I seem to be stuck on a philosophical issue concerning the accuracy of DMCS language. In my assessment, DMCS language should clearly explain a mail classification to the public to enable the public to understand the parameters of the classification and, if necessary, to evaluate the legality of Postal Service implementing regulations. In my opinion, DMCS language should not be sufficiently confusing, let alone wrong, that the

public would be unable to understand the true meaning without delving into a lengthy administrative record to extract the true intent. It would be a terrible disservice to the public to recommend DMCS language that, from day one, does not mean what it says. The Postal Service, on the other hand, apparently wants DMCS language to reflect the original intent of the proposal and not to specify the actual parameters of the classification that developed once the Postal Service realized that the proposal could not be implemented as originally envisioned.

Stated differently, the DMCS language that I proposed in DFC-T-1 at 28 completely and accurately describes the “Forever Stamp” classification. Even the Postal Service had to admit, after losing a motion to compel, that my DMCS language would be “consistent with the intent of the Postal Service’s proposed DMCS § 241 and proposed DMM 604.1.10.” DFC/USPS-81. The Postal Service, on the other hand, believes that the DMCS should continue to suggest that customers would be permitted to use “Forever Stamps” only on one-ounce First-Class letters, since this use was the original impetus for the proposal. The Commission should not recommend misleading DMCS language.

The Postal Service’s proposed DMCS language reflects how the Postal Service wishes the proposal could have been implemented, not how it actually will be implemented. The DMCS is a live, working document, not a repository for postal nostalgia.

As the Commission unravels the web that the Postal Service has woven, I urge the Commission to note that the Postal Service fails to identify any reason why the Commission should not adopt the DMCS language that I proposed. The Postal Service comes close to launching one argument when it suggests that my proposed DMCS language would expand the “purpose” of the “Forever Stamp”:

Thus, it appears that he prefers that the Postal Service implement “Forever Postage” intended for use on every stamped mail class or rate category. But, if that were the Postal Service’s objective, there

would be no reason not to also apply “forever” value to each and every postage stamp designed primarily for a specific classification or rate category denomination, from the First-Class Mail postcard stamp to the Express Mail flat rate envelope stamp. The Postal Service agrees.

Postal Service Brief at 238. I am not sure how to respond to this speculative, and downright bizarre, paragraph except to reiterate that my DMCS language will accurately state the permissible uses — no more, no less — of the “Forever Stamp” as the Postal Service proposes to implement it. I am not proposing a “Forever Stamp” classification any broader than the Postal Service says it will allow for the proposed “Forever Stamp” — a point that the Postal Service conceded. DFC/USPS-81.

The Postal Service also criticizes me for perceived inflexibility for testifying that “the proposal needs to be implemented once, with one consistent message to the public. The public’s use of the stamp will depend on the rules announced for it, so it makes no sense to observe the public’s use of the stamp and then write rules.” See DFC-T-1 at 29 and Postal Service Brief at 239–40. I wrote my testimony in the context of the Postal Service’s refusal to answer questions about the postage value of a “Forever Stamp” when used on mail other than one-ounce First-Class letters. The Postal Service instead asserted that it would make the decision on postage value in future rate cycles after observing customers’ use of the stamp. See DFC/USPS-T48-25 and DBP/USPS-510(b). I testified quite correctly that the Postal Service should tell the public up front how the stamp should be used, rather than allowing customers to use the stamp in a vacuum and then writing rules later. Generalizations about my flexibility were unwarranted.

The Postal Service practically mocks me for expressing a concern in my motion to compel the Postal Service to respond to interrogatories that the Postal Service intentionally was seeking DMCS language that would allow it to change

course later without seeking Commission review. Postal Service Brief at 241. The Postal Service's statement is ironic because I was forced to file the motion to compel to obtain straight answers from the Postal Service about its "Forever Stamp" proposal. In this context, the Postal Service cannot seriously believe that I should have assumed only good intentions from a party opponent who was obstructing my discovery while I was trying to understand the Postal Service's proposal, once and for all, before briefs were due.

I was not alone in my concern. The OCA, the Postal Service's *partner* in the "Forever Stamp" proposal, foresaw the same danger as I did. OCA Brief at 155. The so-called "jaundiced" view of the Postal Service that the Postal Service ascribes to me¹ may be a result of the Postal Service's litigation tactics, which too often attempt to suppress the truth and always reflect an "our way is the only way" attitude, even when, as in this instance, the Postal Service clearly is wrong.

The Postal Service's assurance in its brief that it will seek Commission review for any future classification change to broaden or limit the "intended purpose" of the "Forever Stamp" proposal is comforting. *Id.* However, even this statement reveals the flaw in the Postal Service's desire to enact misleading DMCS language. Suppose the Commission adopts the Postal Service's proposed DMCS language. Suppose, further, that the Postal Service proposes in the future to limit the use of "Forever Stamps" to First-Class letters. Which new DMCS language would the Postal Service propose given that the existing language would permit this restriction? It would be an understatement to say that it would be poor public policy to recommend DMCS language that does not accurately state how the Postal Service actually plans to implement the "Forever Stamp" proposal.

In sum, the Commission should adopt the DMCS language that I proposed to ensure that the DMCS accurately communicates the planned implementation

¹ Postal Service Brief at 241.

of this proposal to the public. The Postal Service has offered no basis for proceeding otherwise.

Timing of Implementation of “Forever Stamp” Proposal

In its initial brief, the Postal Service misrepresents my testimony in a desperate attempt to criticize my concerns about the implementation date of the “Forever Stamp.” The Postal Service argues that I testified that “the Postal Service is not legally authorized to offer a stamp for sale that could ultimately be used as the Forever Stamp at any rate other than 39 cents, before the implementation date for the Docket No. R2006-1 Forever Stamp rate and classification.” Postal Service Brief at 236. I stated no such position. As the following quote from my testimony reveals, the Postal Service completely distorted my testimony:

The Postal Service could produce another nondenominated stamp, as it has done in the past. The Postal Service would sell this stamp for 42 cents in advance of the rate increase, as it does for all rate increases. A few months after the rate change, the Postal Service could announce to the public that this stamp actually was a “Forever Stamp.”

DFC-T-1 at 30.

In its initial brief, the Postal Service reveals, for the first time, a new implementation plan that is an acceptable variation on the plan that I suggested. The Postal Service proposes to sell a nondenominated stamp for 42 cents and to inform the public *before* the implementation date for the new rates and fees that the stamp will “convert to Forever Stamp status” on the implementation date. Postal Service Brief at 243. As long as the Postal Service does not suggest that the “Forever Stamp” is a “Forever Stamp” before the implementation date, this plan will be perfectly legal and reasonable.

My original concern about the planned implementation schedule was not unfounded. Witness Taufique testified that the Postal Service would sell “Forever Stamps” for 42 cents before the implementation date. USPS-T-48 at 19, fn. 12. “Forever Stamps” will not exist until the new classification is implemented. Therefore, witness Taufique’s plan was not legal. The Postal Service’s new proposal,² announced in its brief, to sell a nondenominated stamp *and to announce that the stamp will convert to “Forever Stamp” status on the implementation date* is a subtle but important difference that eliminates my concern about the legality of the Postal Service’s plans. The Postal Service could have saved participants and the Commission considerable effort by providing a timely and candid explanation of the implementation plan before filing its brief.

² The Greeting Card Association’s struggle to explain the legality of the Postal Service’s implementation plan confirms that the GCA was not aware of the Postal Service’s latest implementation plan, either. GCA Brief at 10.