

DOCKET SECTION

PRESIDING OFFICER'S
RULING NO. R97-1/70

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

Postal Rate and Fee Changes

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POSTAL RATE COMMISSION
OFFICE OF THE PRESIDING OFFICER
DOCKET NO. R97-1

PRESIDING OFFICER'S RULING DENYING MOTION OF DOUGLAS F. CARLSON
TO ADMIT DFC/USPS-T40-XE-1-9 AND LR-DFC-1 INTO EVIDENCE

(November 25, 1997)

On October 17, 1997, intervenor Douglas F. Carlson (Carlson) submitted a motion to admit cross-examination exhibits DFC/USPS-T40-XE-1-9 (DFC Exhibits 1-9) and library reference LR-DFC-1 into evidence. Douglas F. Carlson Motion to Admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 into Evidence (Motion). DFC Exhibits 1-9 were presented to Postal Service witness Plunkett during his cross-examination by Carlson on certified mail, return receipt requested, on October 7. Carlson Motion at 1. They include letters from Postal Service employees describing Service procedures for the delivery of letters sent via certified mail to several Internal Revenue Service (IRS) centers and state tax collection agencies. The Exhibits also contain letters from two IRS Service Centers describing these procedures. *Id.* LR-DFC consists of copies of the letters which Carlson and fellow intervenor David B. Popkin (Popkin) sent to the Service and the IRS to request information on the processing of return receipt mail. LR-DFC-1 at 1-13.

On October 30, 1997, the Postal Service filed an opposition to the Motion, stating that the materials at issue should be introduced, "if at all," through Popkin and Carlson direct testimony during their respective direct cases, which may include rebuttal evidence. Opposition of United States Postal Service to Douglas F. Carlson Motion to

Admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 into Evidence (Opposition) at 1.

Moreover, the Postal Service contends that Carlson circumvented discovery procedures by writing directly to Postal Service personnel, rather than through Postal counsel, especially where some of the letters were sent after commencement of R97-1. *Id.* at 5-6.

BACKGROUND AND DISCUSSION

In his motion, Carlson argues that the letters are relevant to the proceedings, as they rebut the Postal Service's rationale for raising prices on return receipt service: that certain constant "characteristics" of return receipt service contribute to its high value.¹ Carlson Motion at 2. He further alleges that the letters prove that the Postal Service has failed to comply with certain return receipt procedures² and is, therefore, not giving customers the valued service that they think they are purchasing. *Id.* at 2-3.

¹ Carlson cites Postal Service witness Plunkett's testimony on the value of return receipt procedures, as follows:

- (1) By acting as a disinterested 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 delivery;
- (2) The Postal Service retains possession of the mail piece until the recipient signs the return receipt; and
- (3) *Postal Operations Manual* § 822.112 requires the Postal Service to mail the return receipt back to the sender within one work day after delivery.

Carlson Motion at 2 (citing DFC/USPS-T40-1(b) and (c); DFC/USPS-T40-15(b); and DFC/USPS-T40-19(b)).

The Postal Service counters that Plunkett's comments on the Service as a disinterested party is taken out of context. Postal Service Opposition at 4. According to the Postal Service, Plunkett's comments did not refer to mail sent to the IRS through return receipt service, but rather to a hypothetical posed by Carlson involving the use of self-addressed stamped post cards. *Id.*

² Specifically, Carlson states that the letters reveal that IRS and other outside agency personnel, rather than Postal Service employees, frequently sign and date return receipts under conditions which preclude the Service from ensuring that the true date of receipt is applied to each return receipt. Moreover, the Postal Service fails to mail back the return receipts within the required one-day timeframe. Carlson Motion at 2-3.

The Carlson Motion additionally addresses the issues of sponsorship of the letters and the hearsay exclusion for evidence admissibility. *Id.* at 3-4. Specifically, Carlson maintains the letters are self-sponsoring, in light of their sources (the Postal Service and the IRS), who could best authenticate them. *Id.* at 3. Also, Carlson characterizes the replies from the *Postal Service* as admissions by a party-opponent, a recognized hearsay exception. *Id.* Carlson concedes that the IRS letters are hearsay, but he argues that they are allowed by law for Commission review as relevant, material and unrepetitious hearsay evidence, to be weighed according to their "truthfulness, reasonableness, and credibility." *Id.* at 4, citing *Veg-Mix, Inc. v. U.S. Department of Agriculture*, 832 F.2d 601, 606 (D.C. Cir. 1987) (quoting *Johnson v. United States*, 628 F.2d 187, 190-91 (D.C. Cir. 1980)).

The Postal Service maintains that the letters should be introduced by Carlson or Popkin during their respective direct cases/rebuttal testimony. Postal Service Opposition at 1, 4. In this manner, the letters would be subject to written and oral cross-examination, and an evidentiary basis for admittance would be established.³ *Id.* The Service argues that Carlson's limited efforts to authenticate some, but not all, of the disputed letters during his cross-examination of witness Plunkett were insufficient for establishment of their status. *Id.* at 2. The completeness of Carlson's correspondence record also is questioned.⁴ *Id.* at 3.

Further objections by the Postal Service include what it apparently perceives as Carlson's unorthodox approach in both his solicitation and attempted verification (through witness Plunkett's cross-examination) of the letters. *Id.* at 2-3, 5-6. As previously noted, the Service believes Carlson's direct correspondence with Postal employees, rather than through the Service's counsel, was inappropriate. It also

³ The Postal Service emphasizes that by requiring the documents to be introduced through Carlson or Popkin's testimony, "the letters' admissibility as evidence could be evaluated in the context of how they are used by a witness, 'which [is] essential to the inquiry' of whether they are admissible." Postal Service Opposition at 1, quoting P.O. Ruling R90-1/65 (September 6, 1990) at 7.

⁴ The Service refers to Carlson's apparently omitted initial correspondence preceding the August 28, 1997 letters to Mr. W.L. Bonds and Mr. Dennis P. Walsh. See Postal Service Opposition at 3.

objects to Carlson's failure to provide the letters for review in advance of his cross-examination. *Id.*

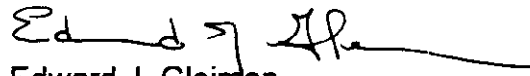
Upon review of the disputed materials and the relevant hearing testimony, I am persuaded that the appropriate point for introduction of the letters is during Carlson's (or Popkin's) direct case/rebuttal testimony. Due process mandates that all parties have a reasonable opportunity to consider the purported evidence, as well as an opportunity to conduct cross-examine on the same. I do not believe that the limited interplay between Carlson and witness Plunkett provides a sufficient evidentiary basis for the letters' subsequent admittance by motion. Further, given the nature of the proffered evidence, it is possible that other intervenors may wish to question certain aspects. Thus considerations of judicial convenience also support this outcome.

With regard to the issue of the method by which Carlson obtained his information, I am mindful, as should be the Postal Service, that as a United States citizen, Carlson is always free to pose questions concerning his *own personal* mail. In this respect, it is entirely appropriate for Carlson to direct such inquiries to his local postal official, regardless of the status of this rate case or other corresponding actions. And certainly, Carlson's letters to the *IRS* do not come under the purview of the current litigation. To this end, I find Carlson's actions relating to this correspondence in conformity with legal standards.

However, a distinction may be made with those letters which address distant postal centers about general mail delivery procedures. Such correspondence is in the nature of discovery and consequently should adhere to the formal rules of discovery applicable to these proceedings. I nonetheless make no ruling now as to the admissibility of any of these documents as evidence. Rather, as stated earlier and for the reasons contained herein, the letters at issue should be introduced by Carlson (or Popkin) during his direct case.

RULING

The Douglas F. Carlson Motion to Admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 into Evidence, filed October 17, 1997, is denied.

A handwritten signature in black ink, appearing to read 'Edward J. Gleiman', with a long horizontal flourish extending to the right.

Edward J. Gleiman
Presiding Officer