

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE AND FEE CHANGES
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OBJECTION OF UNITED STATES POSTAL SERVICE TO INTERROGATORIES OF DOUGLAS F. CARLSON DIRECTED TO THE UNITED STATES POSTAL SERVICE (DFC/USPS-24-28, AND 35) (December 12, 1997)

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service hereby objects to interrogatories DFC/USPS-24 to 28, directed to the Postal Service and filed by Douglas F. Carlson on December 3, 1997, and DFC/USPS-35, directed to the Postal Service and filed by Douglas F. Carlson on December 10, 1997, for the reasons discussed below.¹

Interrogatories DFC/USPS-24-27 concern details about the delivery of return receipt mail to the Franchise Tax Board, in Sacramento, and the Internal Revenue Service (IRS) centers in Austin, Memphis, and Philadelphia. These interrogatories apparently seek confirmation of information obtained in letters Mr. Carlson received

¹ To the extent that the date that Mr. Carlson mailed these interrogatories to the Postal Service determines the deadline for objecting, the Postal Service moves for acceptance of the objections to interrogatories DFC/USPS-24-28 four days late, since these interrogatories were mailed on November 28, 1997. The Postal Service did not receive these interrogatories until December 3, or perhaps December 2. This pleading moreover is being sent to Mr. Carlson today by electronic mail.

from the Postal Service and the IRS in response to his own inquiries.² The interrogatories are untimely, and do not qualify under Special Rule 2E.³

All of these interrogatories are limited to issues that were the subject of testimony by witness Plunkett, concerning delivery of return receipt mail. In general, discovery on the Postal Service's direct case ended on September 17, 1997. These requests moreover are not proper as Special Rule 2E discovery because they concern issues that are addressed by the Postal Service's direct case.⁴ In fact, handling of return receipt mail in conjunction with delivery to the recipient was addressed by witness Plunkett at length in written and oral cross-examination, conducted in part by Mr. Carlson.⁵ These interrogatories thus are "an attempt to

² Presiding Officer's Ruling No. R97-1/70 determined that these letters would not be admitted into the record, at least prior to their presentation as part of Mr. Carlson's direct case. The ruling did not suggest that discovery filed concerning the letters by Mr. Carlson would be appropriate. Instead, the ruling stated that cross-examination concerning the letters should be conducted upon Mr. Carlson, should he introduce the letters in his direct case. Presiding Officer's Ruling No. R97-1/70, at 4.

³ The Postal Service maintains its belief, shared by the Presiding Officer, that discovery, rather than direct contact with Postal Service officials other than rate case counsel, is the proper means for intervenors to obtain information about general mail delivery procedures, when such procedures are implicated by a rate proceeding. See Presiding Officer's Ruling No. R97-1/70, at 4. However, discovery is limited to questions concerning relevant, material information, as well as to certain time periods, and must not be unduly burdensome. The Postal Service likely would have responded to Mr. Carlson's interrogatories had they been asked during the period for discovery on the Postal Service's direct case. However, even during the discovery period, lines still need to be drawn, given the vast extent of Field information that intervenors may wish to get Postal Service counsel to obtain. In this regard, please see David B. Popkin's interrogatories DBP/USPS-103-343, filed December 1, 1997.

⁴ See Presiding Officer's Ruling No. R87-1/138, at 4 (rule 2E allows parties additional time to identify and request data "where such data is uniquely accessible to the Postal Service, and is not addressed by the Postal Service's case....").

⁵ Tr. 3/865-69, 915-24, 987-93, 1018-27, 1031-32.

a second-crack” at parts of the Postal Service’s direct case “past the deadline for doing so,” a practice rejected in Presiding Officer’s Ruling No. R87–1/138, at 5. Special Rule 2E is not available for intervenors to try new cross-examination strategies at this late date in the proceedings.

These interrogatories are not permitted under Special Rule 2E for additional reasons. Presiding Officer’s Ruling No. MC96–3/36 at 2, concluded that Special Rule 2E “is limited to when a participant needs data available only from the Postal Service in order to prepare testimony to rebut participants other than the Postal Service.”⁶ It is not clear how Mr. Carlson intends to utilize the responses to these interrogatories in his own testimony, especially in order to rebut the testimony of intervenors yet to be filed. Moreover, the questions do not request readily available “data” or “operating procedures”. Instead, the questions request the Postal Service to develop new information based on inquiries to the Field.

Interrogatory DFC/USPS-28 asks about a hypothetical situation concerning a postal employee acting inconsistently with postal regulations, and being asked about these actions by his superiors or postal headquarters employees. The interrogatory asks whether the employee will provide misleading information in response to such an inquiry, the extent of independent investigations in such circumstances, and why information “that a postal employee provides to another inquiring postal employee

⁶ That ruling, at page 2, also stated that:

Special Rule 2.E. applies for the limited purpose of allowing parties to develop evidence for submission as rebuttal to the direct cases of participants other than the Postal Service. Discovery for the purpose of developing evidence for submission as rebuttal to the direct case of the Postal Service is generally to be completed before oral cross-examination of Postal Service witnesses.

would necessarily be inherently more reliable than ... information that the postal employee provided to [a] customer in response to the customer's [similar] inquiry."

This interrogatory is not timely. It does not qualify under Special Rule 2E because it does not request "data" or "operating procedures". Instead, it asks hypothetical questions, and, in part, asks for judgments about the reliability of information. Moreover, it is not clear how Mr. Carlson would use a response to this interrogatory in his own testimony, especially in order to rebut the testimony of intervenors yet to be filed.⁷

Interrogatory DFC/USPS-35 asks about the status of a policy, mentioned by witness Larson in a Docket No. R90-1 response, to deliver accountable mail to federal agencies with the return receipt attached, with the agency completing the return receipt and returning it to the customer. This interrogatory does not qualify as valid follow-up under Special Rule 2D, or as a proper request under Special Rule 2E. Moreover, it is cumulative, in that witness Plunkett has already provided responsive information.

The interrogatory purports to follow-up on witness Plunkett's response to interrogatory DBP/USPS-33(g-j). That response concerned the red validating stamp, and referred to a response by witness Larson to interrogatory 5 from David B. Popkin in Docket No. R87-1. But, contrary to Mr. Carlson's claim, that response did not confirm the existence of any policy with respect to delivery of return receipt mail to federal agencies. Instead, that policy was confirmed in a Docket No. R90-1 response by witness Larson, which was not cited in response to interrogatory DBP/USPS-33(g-

⁷ See Presiding Officer's Ruling No. MC96-3/36, at 2.

j).⁸ Thus, Mr. Carlson's questions are not proper follow-up, because they do not arise from the Postal Service's response to interrogatory DBP/USPS-33(g-j), concerning the *red validating stamp*. Moreover, the response to interrogatory DBP/USPS-33(g-j) was filed on November 10, 1997, and the library reference pages were mailed to Mr. Carlson on November 18, 1997. Interrogatory DFC/USPS-35, sent by Mr. Carlson by electronic mail to the Postal Service on December 5, 1997, and filed on December 10, 1997, would therefore not appear to meet the seven-day deadline for follow-up discovery in Special Rule 2D.

The interrogatory is not permitted under Special Rule 2E either, since it concerns *an issue that was part of the Postal Service's direct case, and the subject of written and oral cross-examination of witness Plunkett*.⁹ In particular, in response to interrogatory DBP/USPS-31(c), Mr. Plunkett confirmed that the Sandra Curran letter indicates that any long standing, unofficial arrangements that promote or provide for exceptions to the stated procedures for "convenience" should be voided if they exist. Thus, to the extent that Mr. Carlson's interrogatory inquires about the termination of an old policy concerning the delivery of return receipt mail to government agencies,

⁸ The undersigned counsel takes responsibility for some of the confusion concerning what was cited in response to interrogatory DBP/USPS-33(g-j). After that response was filed, Mr. Carlson asked me for a copy of LR-SSR-137, which includes, at pages 4 to 7, the responses cited in Mr. Plunkett's response. I told Mr. Carlson that LR-SSR-137 includes over 60 pages, and that I could send him the entire library reference for his review, or send him a copy of pages 3-7 of the library reference, which I stated, for simplicity, "provide responsive material to DBP/USPS-33(g-j)." In fact, only pages 4-7 provide responsive material to DBP/USPS-33(g-j). I included page 3 for completeness, because pages 4 and 5 stated that they were attachments to page 3, and I did not want to be perceived as withholding any material from LR-SSR-137 that might be of interest to Mr. Carlson. At Mr. Carlson's request, therefore, I mailed him pages 3 to 7 of LR-SSR-137.

⁹ Tr. 3/920, 1020-21, 1031-32.

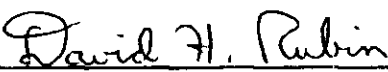
the interrogatory is cumulative.¹⁰ Finally, it is not clear how Mr. Carlson would use a response to this interrogatory in his own testimony, especially in order to rebut the testimony of intervenors yet to be filed.¹¹

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

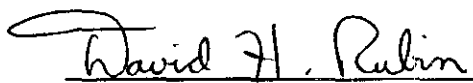
Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



David H. Rubin

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



David H. Rubin

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2986; Fax -5402
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¹⁰ The related issue raised by interrogatory DFC/USPS-35, concerning how the Postal Service has determined that its old policy has been discontinued, does not concern "data" or "operating procedures" subject to Special Rule 2E.

¹¹ See Presiding Officer's Ruling No. MC96-3/36, at 2.