

DOCKET SECTION

PRESIDING OFFICER'S  
RULING NO. R97-1/89

JAN 27 3 30 PM '98

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

Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING GRANTING IN PART MOTION OF  
DOUGLAS F. CARLSON TO COMPEL RESPONSES TO INTERROGATORIES

(January 27, 1998)

On January 9, 1998, Douglas F. Carlson submitted a motion to compel responses to several interrogatories: DFC/USPS-19(a)-(c), 19(e)-(r), 24-27 and 30-32. Douglas F. Carlson Motion to Compel United States Postal Service to Answer Interrogatories DFC/USPS 19(a)-(c) and (e)-(r), 24-27 and 30-32 (Motion). The Postal Service responded on January 16, 1998. Opposition of the United States Postal Service to Douglas F. Carlson Motion to Compel (Opposition).

Interrogatories 19(a)-(c), and (e)-(r) concern a new Postal Service system that monitors the delivery of mail to post office boxes in order to ensure that facilities are meeting their cutoff times. The Postal Service revealed the existence of the system in an interrogatory response filed November 6, 1997. See Response of the United States Postal Service to Interrogatory of Douglas F. Carlson (DFC/USPS-9), filed November 6, 1997. Mr. Carlson seeks detailed information about this system to support his contention that boxholders do not receive the high value of service that witness Needham describes in her testimony. Motion at 5. The Postal Service objects that detailed information about this system is beyond the scope of this omnibus rate proceeding; the interrogatories concern the process by which delivery times are

Douglas F. Carlson Directed to the United States Postal Service, filed December 12, 1997, at 2-3 (citing Presiding Officer's Ruling MC96-3/36).

These interrogatories stem from a recent dispute over Mr. Carlson's attempts to gather evidence demonstrating that the Postal Service is improperly handling return receipt mail. Mr. Carlson previously moved to introduce into evidence letters from postal employees and postmasters describing improper handling of return receipt mail sent to the IRS. See Presiding Officer's Ruling R97-1/70 at 4. Now Mr. Carlson states that he has decided not to offer the letters as part of his direct case as was suggested in this earlier ruling. *Id.*; Motion at 8 n.15. Mr. Carlson instead opted to serve interrogatories on the Postal Service in order to avoid the cost of making a trip to Washington to cross-examine possible Postal Service rebuttal witnesses and the copying and service expenses involved in litigating with the Postal Service over the admissibility of the letters. Motion at 8 n.15.

The Postal Rate Commission has to make reasonable accommodations to enable individual intervenors to participate in the ratemaking process. These intervenors do not have the means or incentives to invest as much money and time as the large mailers who have substantial sums of money at stake. Nonetheless, the Postal Service must be permitted to contest the admissibility of evidence, so there is little that can be done in this regard to ease the burden of litigation on individual intervenors.

Moreover, the case must move forward with deliberate speed as we are operating on a compressed schedule. Therefore, discovery cutoff dates must be respected and Special Rule 2.E. will continue serve the limited purpose of enabling intervenors to obtain certain information from the Postal Service for the purpose of rebutting other intervenors' cases. See Presiding Officer's Ruling R97-1/85 at 3-4; Presiding Officer's Ruling MC96-3/36 at 2. Indeed, Mr. Carlson should be aware of the limits of Special Rule 2.E. as it was his interrogatories that were deemed to be outside the exception in Rule 2.E. in Presiding Officer's Ruling MC96-3/36.

Mr. Carlson argues that these interrogatories are for his direct case and do not pertain to the Postal Service's direct case. Motion at 1-2. Mr. Carlson offers direct testimony on problems with return receipt and argues that the Commission should maintain the current fee. "According to Witness Plunkett, a fee increase is appropriate because return receipts provide a 'high' value of service. In reality, return receipt service is plagued with problems and the Commission should deny the Postal Service any increase in cost coverage until service is improved . . ." DFC-T-1 at 17.

However, Mr. Carlson acknowledges that interrogatories 24-27 derive from the line of questioning he began on September 14, 1997 and continued at the hearing when Mr. Carlson cross-examined Mr. Plunkett on this same issue. *Id.* at 7. So despite being incorporated in Mr. Carlson's testimony, this area of inquiry is rebuttal of the Postal Service's direct case. Consequently these interrogatories do not qualify under Rule 2.E. as an exception to the discovery cutoff date.


Interrogatories DFC/USPS-30-32 follow-up on responses of the Postal Service that provided data on complaints filed with the Postal Service via consumer service cards. Mr. Carlson asks about the accuracy of the data, the degree of postal employee adherence to written procedures and the Postal Service's auditing of compliance with these procedures. The Postal Service objects that this area of inquiry is simply too attenuated to the issues in this rate case, and moreover, that these interrogatories would impose the burden of "hundreds of hours of work time." Objection of the United States Postal Service to Interrogatories of Douglas F. Carlson Directed to the United States Postal Service, filed December 12, 1997, at 2. The Postal Service also observes that these interrogatories were filed one day too late to qualify under Rule 2.D. as follow-up interrogatories. Opposition at 13.

The Postal Service essentially claims these interrogatories are irrelevant, but the reliability or accuracy of relevant data is nearly always relevant. As for its claim that it cannot respond to these interrogatories without performing an investigation, Opposition at 13, Mr. Carlson's interpretation of his discovery requests is that they do not demand

that the Postal Service conduct an extensive investigation. He would accept an answer that the Postal Service "does not know." Motion at 12. Consequently, these interrogatories impose no substantial burden on the Postal Service unless the Postal Service chooses, of its own accord, to undertake an extensive investigation, and they should be answered.

**RULING**

The Douglas F. Carlson Motion to Compel, filed January 9, 1998, is granted with respect to interrogatories 19(a)-(c), 19(e)-(h) and 30-32. It is denied with respect to interrogatories 19(i)-(r) and 24-27.

  
Edward J. Gleiman  
Presiding Officer