

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

Six-Day to Five-Day Street Delivery
and Related Service Changes

Docket No. N2010-1

PRESIDING OFFICER'S RULING
DENYING DOUGLAS F. CARLSON MOTION TO COMPEL
THE UNITED STATES POSTAL SERVICE TO RESPOND TO DFC/USPS-T4-14

(Issued May 19, 2010)

On April 20, 2010, Douglas F. Carlson (Carlson) filed seven interrogatories seeking discovery from Postal Service witness Frank Neri (USPS-T-4).¹ On May 4, 2010, Postal Service witness Neri answered DFC/USPS-T4-14, which sought information on “cost savings from each existing Saturday area mail processing plan.”² Postal Service witness Neri answered that “[t]here is no headquarter-sponsored Saturday consolidation program,” but that district managers may assess and implement consolidation on a local level when feasible. *Id.*

Carlson filed a motion to compel the Postal Service to respond to interrogatory DFC/USPS-T4-14 on May 10, 2010.³ Carlson claims that the Postal Service did not identify cost savings from existing programs, as requested by the interrogatory. *Id.* at 2. Carlson claims that evidence of savings from existing consolidations is necessary for

¹ Douglas F. Carlson Interrogatories and Requests for Production of Documents to United States Postal Service Witness Frank Neri (DFC/USPS-T4-10-16), April 20, 2010.

² Response of United States Postal Service Witness Neri to Interrogatories of Douglas Carlson (DFC/USPS-T4-10 through 14, 16), May 4, 2010 at 6.

³ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-T4-14, May 10, 2010 (Motion to Compel).

participants to develop alternatives to the Postal Service's proposal. *Id.* at 3. Carlson states that he believes it is likely that an analysis of net cost savings from Saturday consolidations exists, but if it does not exist, it could easily be developed. *Id.* at 4.

The Postal Service filed in opposition to the Motion to Compel on May 17, 2010.⁴ The Postal Service affirms that the information Carlson seeks in DFC/USPS-T4-14 does not exist. *Id.* at 1. The Postal Service explains that consolidation of Saturday processing is decided and implemented at a local level based on the district and plant managers' local expertise. *Id.* at 2. Such consolidation decisions are not required to follow a standardized review process, as is used for many other consolidations. *Id.* Any cost savings analysis developed by local managers might be difficult to access, and might not be comparable to analysis developed by managers in another area. *Id.* at 3.

A motion to compel a response to an interrogatory is initially evaluated against a standard of whether or not an interrogatory "appears reasonably calculated to lead to the discovery of admissible evidence" relevant to the subject matter of the proceeding. 39 CFR 3001.26(a). Carlson presents an argument that the estimated cost savings from Saturday consolidations are relevant to the proceeding. Such information could be material evidence as to the impact of the Postal Service's plans or less invasive alternatives.

However, discovery in a judicial or quasi-judicial proceeding is just that, discovery of documents and information that currently exist. Parties generally are not expected to expend resources creating records or information that do not currently exist. See, e.g., *Ritchie v. United States*, 343 Fed.Appx. 238, 239 (9th Cir. 2009) (holding that the district court did not abuse its discretion in denying a motion to compel discovery for documents that did not exist); *Williams v. Diaz*, 338 Fed.Appx. 725, 727 (9th Cir. 2009) (same); *Tindal v. Goord*, 340 Fed.Appx. 12, 14 (2d Cir. 2009) (same); *Lumbermens Mutual Casualty v. United States*, 70 Fed.Cl. 94, 97 (Ct. Cl. 2006) ("ordering the

⁴ Opposition of the United States Postal Service to Carlson Motion to Compel Response to DFC/USPS-T4-14, May 17, 2010.

Government to produce documents that it has represented either no longer exist, or are impossible to locate, would be a futile act.").⁵

On these facts, the Postal Service clearly states that the information Carlson seeks does not exist. The Postal Service has explained how such consolidations take place and are evaluated. Even though the Postal Service may, because of its status as a government entity operating a monopoly, have a greater obligation to develop information about its operations than a private firm, Carlson only speculates that the requested information might be usable to develop an alternative cost reduction proposal.

RULING

The Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-T4-14, filed May 10, 2010, is denied.

Ruth Y. Goldway
Presiding Officer

⁵ Commission rule 3001.26(a) requires a party to "furnish such information as is available to the participant" when it is requested by way of an interrogatory. Information that does not exist is not available to furnish in accordance with this rule.