

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 GRANTING, IN PART,  
DOUGLAS F. CARLSON MOTION FOR RECONSIDERATION

(Issued July 19, 2010)

On July 7, 2010, Douglas F. Carlson (Carlson) filed a motion for reconsideration of P.O Ruling N2010-1/4, issued May 19, 2010.<sup>1</sup> The Postal Service filed in opposition to Carlson's Motion on July 8, 2010.<sup>2</sup>

*Background.* Underlying Carlson's Motion is his interrogatory directed to Postal Service witness Neri, DFC/USPS-T4-14.<sup>3</sup> The interrogatory requests that the Postal Service "identify the cost savings from each existing Saturday area mail processing plan." *Id.* at 2. Postal Service witness Neri answered this interrogatory.<sup>4</sup> Witness Neri responded that there is no headquarters sponsored plan for Saturday mail processing consolidation. *Id.* at 5. Rather, witness Neri states, individual district managers assess

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<sup>1</sup> Douglas F. Carlson Motion for Reconsideration of Presiding Officer's Ruling N2010-1/4, July 7, 2010 (Motion).

<sup>2</sup> Opposition of the United States Postal Service to Carlson Motion for Reconsideration of Presiding Officer's Ruling N2010-1/4, July 8, 2010 (Opposition).

<sup>3</sup> 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.

<sup>4</sup> Responses of United States Postal Service Witness Neri to Interrogatories of Douglas Carlson (DFC/USPS-T4-10 through 14, 16), May 4, 2010.

opportunities for consolidation, and where economically feasible while maintaining service, consolidate operations. *Id.*

Carlson, not satisfied with the Postal Service witness's response, filed a motion to compel the Postal Service to respond to DFC/USPS-T4-14.<sup>5</sup> Carlson stated that witness Neri's answer focused on the existence of a headquarters sponsored plan regarding cost savings, whereas Carlson requested cost savings estimates from existing consolidations. *Id.* at 2.

The Postal Service opposed Carlson's motion to compel.<sup>6</sup> The Postal Service stated that the information responsive to the request does not exist. *Id.* at 1. If such data did exist at the local level, the data would be informal, not necessarily reliable, not created in any comparable format, and difficult to access. *Id.* at 3. The Postal Service noted that local area managers are given flexibility to determine when to consolidate operations, and are not required to complete such cost savings estimates that Carlson requests. *Id.* at 2.

Carlson's motion to compel was denied in P.O. Ruling N2010-1/4. The ruling noted that information responsive to DFC/USPS-T4-14 does not exist, consistent with the Postal Service's explanation. *Id.* at 2. The ruling also noted the difficulty the Postal Service would have in accessing such information, if it even exists. *Id.* The ruling finds that discovery requests necessarily entail discovery of documents and information that exist, but not the creation of documents and information. *Id.*

*Present request.* In his Motion, Carlson asks the Presiding Officer to reconsider P.O. Ruling N2010-1/4 based on Carlson's discovery of Saturday mail processing consolidation cost savings estimates that he obtained through a Freedom of Information Act (FOIA) request. Motion at 3-4. The cost savings estimates Carlson obtained are for a consolidation of San Jose and Oakland, California Saturday mail processing. *Id.* This

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<sup>5</sup> Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-T4-14, May 10, 2010.

<sup>6</sup> Opposition of the United States Postal Service to Carlson Motion to Compel Response to DFC/USPS-T4-14, May 17, 2010.

demonstrates that the information exists, and that the Postal Service should be required to provide it. *Id.* Carlson claims that comparability is not an issue, as he only wishes to review “an order of magnitude” of the savings. Motion at 3.

The Postal Service opposes Carlson’s motion, stating that the anecdotal evidence Carlson garnered from his FOIA request is informal, local data that is not responsive to DFC/USPS-T4-14. Opposition at 1-2. The Postal Service also states that other data that may exist would be informal and not comparable across districts. *Id.* at 2. For many consolidations, the Postal Service notes, any cost savings estimates would have to be recreated (*i.e.*, they do not currently exist). *Id.* at 2.

It appears that during the pleading process there has been clarification of some misunderstanding of the underlying interrogatory. The Postal Service focuses on the fact that neither a national plan for Saturday mail processing consolidations nor a system for calculating consolidation savings exist. Further, the Postal Service notes that past estimates may no longer exist because they were not required to be created or maintained in the first place. Even if they did exist, the Postal Service asserts that they would not be comparable or credible.

Carlson’s response indicates local estimates suit his needs. However, the request will be likely to lead to the discovery of admissible evidence only to the extent it uncovers reasonably contemporaneous information. There is no indication that the Postal Service attempted to locate such estimates. The Postal Service will not be required to create documents or recreate documents that do not exist. In response to DFC/USPS-T4-14, the Postal Service shall attempt to locate, and then provide cost savings estimates for Saturday mail processing consolidations that have been implemented within the 12 months prior to Carlson propounding DFC/USPS-T4-14.

The limit to the scope of Carlson’s interrogatory is a consistent reading of the discovery request, and limits the scope and burden of the inquiry for the Postal Service.

RULING

The Douglas F. Carlson Motion for Reconsideration of Presiding Officer's Ruling N2010-1/4, filed July 7, 2010, is granted in part, as described in the body of this Ruling.

Ruth Y. Goldway  
Presiding Officer