

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

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE IN OPPOSITION TO
DOUGLAS CARLSON MOTIONS TO COMPEL A RESPONSE TO DFC/USPS-49, OR,
IN THE ALTERNATIVE, A RESPONSE TO DFC/USPS-RA-1
(August 1, 2006)

On July 24, 2006, Douglas Carlson filed what are styled as two separate motions to compel, one regarding DFC/USPS-49, and the other regarding the related request for admission, DFC/USPS-RA-1. Examination of the two documents suggests, however, that they are identical except for the title. Moreover, the requests for relief (pages 2 and 11) in both documents are identical, seeking to compel a response to DFC/USPS-49, or in the alternative, a response to DFC/USPS-RA-1. Therefore, a unified response to the two motions seems appropriate, and the Postal Service hereby provides its response in opposition.

Not only are DFC/USPS-49 and DFC/USPS-RA-1 closely related, but each is likewise closely related to DFC/USPS-35, for which another motion to compel is pending. All three discovery requests relate to databases of nationwide information on individual collection boxes, created and maintained by the Postal Service for operational purposes. The subject of the instant motions (DFC 49 and the RA-1) relates to collection box information from 2005, the base year employed in this proceeding, while DFC 35 relates to Mr. Carlson's request for current (i.e., 2006) collection box information. There is no dispute that, pursuant to a previous FOIA request, Mr. Carlson

has already received a copy of the nationwide collection box database in 2005.¹ It is that version of the 2005 database that is the particular subject of DFC-49 and DFC-RA-1.

Putting aside just for the moment the central issue of relevance, there is an undeniable awkwardness in the posture of the two instant discovery requests. The request filed first, the request for admission, sought an *abstract* confirmation of the accuracy of a proffered copy of the elements of the FOIA 2005 database. Normally, when an intervenor intends to use a body of data obtained from the Postal Service for analysis, the intervenor does not reproduce what purports to be a copy of the data and abstractly request the Postal Service to admit that nothing has changed. Instead, the intervenor's witnesses simply develop their analysis using their input data base and present their analysis as testimony. If something has changed in the database between the version provided by the Postal Service and the version input into the intervenor analysis, attempts by the Postal Service to replicate the analysis using its own original data should ultimately lead to the detection of those changes. Moreover, if the purpose of the request for admission is to seek confirmation that nothing has changed in the copy provided for authentication, that proves nothing with respect to the data base input to any subsequent analysis, as changes could be made between the request-for-admission copy, and the input data base. Fundamentally, therefore, there is no analytic value to the request for admission exercise. Moreover, given the fact that the database in question contains millions of individual data elements, there is an obvious burden to

¹ Not only is that a simple historical fact recited by Mr. Carlson within DFC 49 (see *infra*), but the Postal Service essentially admitted as much on the record before the Commission in its response to DFC/USPS-RA-1 in Docket No. N2006-1 (April 24, 2006).

the exercise. The combination of no value and tangible burden compels the rather straightforward conclusion that the request for admission avenue leads nowhere and should be abandoned.

Apparently coming to the same realization himself, Mr. Carlson subsequently embarked down a slightly different path in DFC-49. In that request for production of materials, he asks for the same 2005 database he got under FOIA:

DFC/USPS-49. Please provide the electronic files of Collection Box Management System data that the Postal Service provided to me on September 16, 2005, in response to a court order in *Douglas F. Carlson v. United States Postal Service*. The files subject to this interrogatory contain, for every collection box in the database, the location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

The difficulty with this request, of course, is that Mr. Carlson is simply asking the Postal Service to provide him another copy of something his very own request confirms the Postal Service has provided him already. While that is an unavoidable feature of DFC 49, its implications seem to have eluded Mr. Carlson entirely. Throughout his motion, but particularly on page 3, Mr. Carlson suggests that his motion to compel must be granted in order to prevent the Postal Service from denying him “access to the data.” With respect to the 2005 data, however, which is the exclusive subject of the instant motions to compel, it is impossible for the Postal Service to deny him access to data that he has already been provided.

Thus, with respect to 2005, Mr. Carlson already has the data he claims are necessary to do whatever analyses he wants. Nobody is denying him access to those data. Moreover, he can compare his 2005 results with results that have already been provided by the Postal Service for previous years. In Docket No. R2005-1, the Postal

Service provided information from FY 01, 02, 03, and 04, in response to discovery requests from Mr. Popkin. Tr. 8C/3945-49 (Docket No. R2005-1). Similar information was provided in Docket No. R2001-1 in response to OCA requests for Fiscal Years 1999, 2000, and 2001. Tr. 10-C/3455-57, 3545 (Docket No. R2001-1). And since 2005 is the Base Year in this proceeding, the information Mr. Carlson already has should allow him to conduct his analysis with data that are from the same fiscal year as all the other data being relied upon by the postal witnesses in this proceeding.

Overall, therefore, it is difficult to discern exactly why there is *any* discovery dispute about the materials which are the subject of the instant motions to compel. Mr. Carlson has the 2005 data. There is nothing to stop him from doing whatever he wants with those data. Either form of relief he seeks (through DFC 49 or DFC RA-1) will not get him any more information than what he has already. Granting the instant motions could not possibly do anything to advance analysis of relevant *or irrelevant* materials in this proceeding, because Mr. Carlson already has the 2005 data which are the sole subject of the two discovery requests underlying the instant motions. On that basis alone, without even reaching the matter of relevance, his motions to compel regarding DFC 49 and DFC RA-1 should be denied.

Of course, the matter of relevance is central to the dispute regarding the more current (2006) data requested in DFC 35. Mr. Carlson makes no attempt to hide the fact that his instant motions specifically respond to issues addressed in the Postal Service's July 18 reply in opposition to his earlier motion to compel regarding DFC 35. He states that quite explicitly on page 3. Rather than seek leave to file an otherwise unauthorized response to the Postal Service's prior opposition, he has simply loaded his

response into the instant motions to compel. In many respects, however, the most interesting aspects of his new arguments are not the points he addresses, but the points about which he has nothing to say.

Mr. Carlson has nothing to say in response to the fact that the material he requests, and the mode of analysis he has outlined in his pleadings, does not and cannot take account of how customers (individually or in the aggregate) value the collection network. As explained in detail in the Postal Service's July 18 Opposition, his mode of analysis examines the wrong units. Customers do not value a collection box, they value the collection network. To assess the overall value of the collection network, you could perhaps start with individual customers and aggregate up to the sum of all customers, but you cannot start with individual collection boxes, ignore customers, and create any meaningful aggregate based merely on the sum of collection boxes. When you leave customers out of the equation, as Mr. Carlson proposes to do, any results that you generate are not probative of the value to customers, and therefore are neither relevant nor material to an omnibus rate proceeding.² Apparently Mr. Carlson has no response to this fatal defect in his proposed mode of analysis, because he fails to address it in his most recent pleadings.

Mr. Carlson also has nothing to say regarding the fact that the database he is pursuing does not encompass the entirety of the collection network. As explained in the

² By virtue of the attempt to shift the focus from customer value to sheer operational details, the present discovery dispute is reminiscent of the story of the man who insists that everyone help him look for his car keys under the lamppost where the light is better, despite the fact that the keys were dropped somewhere else. No matter how bright of a lamp Mr. Carlson wishes to shine on raw data regarding individual collection boxes, it will not materially assist the Commission in determining how *customers* value the overall collection network.

Postal Services July 18 Opposition at pages 4-5, 7-8, customers have other resources available to them to tender their outgoing mail besides blue collection boxes. The most ubiquitous example is customers leaving outgoing mail in their personal delivery mail box. But there are resources as well, such as those cluster box delivery units that have specific slots for outgoing mail. Changes in the number of such cluster boxes, however, would not be reflected in the CPMS database.³ Once again, therefore, an analysis limited to CPMS data could not be probative of the value of the entire collection network. Not only does Mr. Carlson wish to ignore the portion of the Postal Service's Opposition making this point, but he wishes to write corresponding language out of the Presiding Officer's Ruling in the last case which denied his request for more collection box information. As quoted in the Opposition at page 9, the Ruling stated:

I agree with the Postal Service that, in the setting of an omnibus rate proceeding, the relevance of the number of collection boxes deployed during various periods of time is likely to be attenuated. While a pattern of change in the receptacles *and other resources available to the public for depositing mail* could well shed light on how value of service may have changed over time, raw counts of the number of mailboxes are likely to be indirect and incomplete indicia, at best.

Presiding Officer's Ruling No. R2005-1/42 (July 7, 2005) at 4 (emphasis added).

Despite the clear indications in the Postal Service's Opposition (pages 7-8) of the importance of the emphasized language, Mr. Carlson nonetheless claims that "I am proposing exactly this analysis." Motions to Compel at 4. In fact, however, he is not, if for no other reason than because the analysis he has proposed is limited to collection

³ Other examples of developments which have likely enhanced customers' value of the collection network, but which would not be reflected in any analysis of raw collection box data, are relatively new features such as the ability to print postage online (Click-N-Ship®), and the ability to use the internet to notify the carrier of outgoing items (Carrier Pickup™). Mr. Carlson's approach would exclude consideration of the effect on customers of such developments.

boxes, and makes no allowance for “other resources available to the public for depositing mail.”

Mr. Carlson’s new claim (Motions to Compel at 5) that Presiding Officer’s Ruling No. R2005-1/42 appears to “settle” the issues presented in this case in his favor does not withstand scrutiny. First, that Ruling *denied* Mr. Carlson’s attempt to compel more collection box information in the last case. Any comments made regarding other circumstances are, therefore, at most *dicta*. Second, if Mr. Carlson truly were of the opinion that Ruling No. 42 from the last case settled the issues raised by his efforts to secure more collection box information in this case, one must wonder why he did not even cite it, much less rely upon it, in his 18-page Motion to Compel regarding DFC 35.

What Presiding Officer’s Ruling No. R2005-1/42 really undermines is Mr. Carlson’s ultimate argument that relevance should not matter in discovery disputes. At pages 3-4 of his Motions to Compel, Mr. Carlson essentially argues that he is entitled to data if he expresses an intent to rely on such data in making his case, regardless of whether such data are determined to be probative regarding any material issue or not. Mr. Carlson’s view is that he should be given the data so he can file his testimony, and only later does anyone need to bother to address whether the contemplated mode of analysis is actually probative on any material issue. The ramifications of this argument are rather stark. Currently, Rules 26 and 27 limit discovery to inquiries which are “relevant to the subject matter” of the proceeding. If the lack of relevance only becomes a problem after the data are required to be produced and are converted into testimony (or, worse yet, are never transformed into testimony), the limitation of relevance as a prerequisite to discovery would in practical terms be eliminated from Commission

practice. While Mr. Carlson may feel otherwise, the Postal Service believes such a prospect to be quite disturbing, and believes that the Commission should as well. Fortunately, Presiding Officer's Ruling No. 2005-1/42 indicates full recognition by the Presiding Officer that consideration of the potential probative value of requested data is warranted prior to compelling production of such data. That Ruling held:

The requested information from the field would likely make a very limited incremental contribution to the record on the value of service issue; for that reason, I find that imposing the additional effort to produce it would not be justified.

Id. at 4. The Postal Service has demonstrated why, despite the façade of complexity sketched out by Mr. Carlson regarding each CPMS collection box data element, his mode of analysis is, in the words of Ruling No. 42, still likely to be “indirect and incomplete,” at best. Particularly in view of the amount of information already available covering the time periods through the Base Year, there is little “incremental contribution” to be expected from any additional collection box data.

Moreover, the Postal Service does not retreat from the view, expressed in detail in its July 18 Opposition (pages 1-3) regarding DFC 35, that Mr. Carlson is distorting the limited role that collection service is intended to play in the determination of appropriate institutional cost shares for each subclass and service. The role within a ratemaking proceeding is actually quite limited – the collection factor is included merely to distinguish classes of mail that receive collection service from classes that do not. Mr. Carlson challenges this view by calling the Postal Service “off base when its cites the Kappel Report for guidance on how to interpret 39 U.S.C. § 3622(b)(2).” Motions to Compel at 5-6. If the Postal Service is off base, however, it is there with good company.

As the Commission is no doubt aware, the seminal Supreme Court decision on postal ratemaking, *National Association of Greeting Card Publishers v US Postal Service*, 462 US 810 (1983) places great reliance on the Kappel Report to aid in the interpretation of section 3622. In its 23-page opinion, the Kappel Report is cited on at least 9 separate pages. Mr. Carlson is simply in error to attempt to denigrate the significance of the Kappel Report in seeking to understand the intent of the statutory provisions, such as section 3622(b)(2), which originated within the work of the Kappel Commission.

Moreover, Mr. Carlson's efforts (Motions to Compel at 5-6) to resort to the plain language of the statute avail him nothing. The statute refers to "the value of the mail service actually provided ... to both the sender and the recipient." Mr. Carlson is seeking data which do not allow him to measure "value" of the collection network, because the data encompass no element of feedback from the customers (.i.e., "the sender and the recipient") who ultimately are the only ones who can determine value. Instead of focusing on customers, Mr. Carlson wishes to focus on individual collection boxes, but the statute says nothing of individual collection boxes, and the Kappel Report explains why examination of individual collection boxes has nothing to do with the relevant assessment of value within the ratemaking process. Mr. Carlson's approach would drag postal ratemaking down a burdensome path into the minutia of operational detail, with untold collateral consequences as further inquiries about individual collection boxes clutter the record and tie up the limited resources available to respond to relevant discovery requests on material issues.

Given this view regarding the need to avoid getting dragged into substantive issues that will not aid resolution of the appropriate rates to recommend, it would be

ironic for the Postal Service to allow itself to be dragged into collateral procedural matters that will not aid the Presiding Officer in resolving the instant discovery dispute. Mr. Carlson's Motions to Compel devote numerous pages (pgs. 6-11) to presenting his side of previous disputes he has had with the Postal Service. There are, however, two sides to every story, and if it were likely to be useful to the Presiding Officer, the Postal Service would have a great deal to say with respect to the many collateral matters he raises. The Postal Service, though, views that possibility as too remote to justify a point-by-point response, and will therefore limit this pleading to substantive arguments on the instant controversy.

In conclusion, therefore, to the extent that Mr. Carlson is seeking a response to DFC 49, or in the alternative, a response to DFC RA-1, the Postal Service submits that his requests should be denied, as neither remedy would materially alter the status or the utility of the 2005 collection box information already in his possession. To the extent that Mr. Carlson is arguing that data within a nationwide data base limited to information on individual collection boxes is probative on the issue of the appropriate relative share of institutional costs to be borne by each subclass, he misconceives the intended limited role of the collection element within the value of service factor. Moreover, even moving beyond that limited intended role, purported measurements of value are insufficient without consideration of customer perceptions about the collection network as an integrated entity, and the extent to which it does or does not meet their needs. Neither the 2005 nor the 2005 collection data address the needs of customers. Lastly, as explained above, in conjunction with information on the record in previous cases, Mr. Carlson already has sufficient information from the Base Year, 2005, to conduct the

analysis he describes. The “incremental” value of more recent data from 2006 would not justify the associated burden. If the Presiding Officer is so inclined, however, as noted in its July 18 Opposition regarding DFC 35, the Postal Service is willing to undertake the analysis requested by the OCA in an interrogatory (OCA/USPS-66) that was later withdrawn, perhaps under the assumption that the motion to compel DFC 35 would be granted. In any event, the instant motions to compel a response to DFC 49, or in the alternative, DFC RA-1, should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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