

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 MOTION TO COMPEL A RESPONSE TO DFC/USPS-77  
(September 22, 2006)

The United States Postal Service hereby responds in opposition to the Douglas Carlson motion to compel a response to DFC/USPS-77. The interrogatory was filed on August 22, the Postal Service's objection was filed on September 1, and the motion to compel was filed on September 15, 2006. The question reads:

**DFC/USPS 77.** Please refer to the responses to DBP/USPS-91, DFC/USPS-35, and DFC/USPS-75.

- a. Please confirm that the final weekday collection times listed below for collection boxes at the following stations of the post office in New York, New York, are not consistent with POM sections 321 to 326 and, in particular, section 322. If you do not confirm, please provide the POM sections that may justify an exception and the reasons in support thereof:

Location ID	Station	Street Address	Time
1000200016	Pitt	185 Clinton Street	Noon
1000200081	Knickerbocker	128 E Broadway	Noon
1000900005	Peter Stuyvesant	432 E 14th St	1 PM
1000300036	Cooper	93 4th Ave	1 PM

- b. Please confirm that the final weekday collection times prior to 5:00 PM at all stations of the post office in Bronx, New York, except the Co-op Station at 3300 Conner Street are not consistent with POM sections 321 to 326 and, in particular, section 322. If you do not confirm, please provide the POM sections that may justify an exception and the reasons in support thereof.

With Mr. Carlson's motion to compel regarding DFC/USPS-77, we now seem to have come full circle on the matter of collection boxes, the POM, postal policy, and actual level of service. As Mr. Carlson acknowledges (Motion at 1-2), the genesis of this whole line of questions was DBP/USPS-91, which inquired about the interrelationship between various provisions of the POM regarding collection box policy. The primary basis for the Postal Service's objection to this line of inquiry was that, while actual levels of service provided to customers may be relevant, the internal mechanisms (e.g., various POM provisions) by which those actual levels of service came to be are not relevant in a ratemaking proceeding.<sup>1</sup> In other words, it is not collection policy that might matter, it is actual collection service. In P.O. Ruling No. R2006-1/19 (July 20, 2006), however, the Presiding Officer took the view that indications (such as the POM) of actual collection policy might be relevant to the level of collection service, and directed the Postal Service to respond to portions of DBP/USPS-91. The Postal Service complied, and as Mr. Carlson concedes (Motion at 2), indicated that the POM (with some obvious and irrelevant exceptions) still represents current Postal Service policy.

Mr. Carlson, however, no longer finds this approach satisfactory. He argues that "while this [POM] policy may be interesting and inspire nostalgia for the days of better mail service, it does not describe the level of service that the Postal Service provides in Chicago." Motion at 2-3. In other words, Mr. Carlson is back essentially where the Postal Service was in objecting to DBP/USPS-91, taking the view that it is actual service experienced externally by customers that matters, not the policy stated in the internal

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<sup>1</sup> See, for example, Reply in Opposition of the United States Postal Service to the Motion to Compel of David B. Popkin (DBP/USPS-91, 94) (July 10, 2006) at page 2.

manual.<sup>2</sup> The irony, of course, is that, in Mr. Carlson's view, collection times are the determinants of the actual level of service, and yet there is no apparent dispute about the actual posted collection times applicable to the collection boxes in New York City which are the intended subject of DFC/USPS-77. Through the materials received in response to DFC/USPS-35, Mr. Carlson knows the actual posted collection time of every collection box in the country. There is no longer any point to conducting the discussion at the "policy" level, when Mr. Carlson now has all means necessary to conduct a discussion of actual collection box service – service which, from a customer perspective, is unaffected by whether or not a given collection time comports with the provisions of the POM. Perhaps more to the point, consideration of the ultimate ratemaking issue -- recommendation of appropriate rates for each subclass and service -- is not advanced regardless of whether pickup times on individual collection boxes in New York City do or do not comply with the POM. The questions posed in DFC/USPS-77 are fundamentally irrelevant and immaterial to the ratemaking process.

Mr. Carlson tries to buttress his motion to compel a response to DFC/USPS-77

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<sup>2</sup> More accurately stated, of course, the Postal Service's view is that it is the *value* of service to customers that matters, and Mr. Carlson has not even attempted, much less succeeded, to demonstrate that the value ascribed by customers on a nationwide basis to the Postal Service's collection network has been materially affected by the alleged collection box trends he claims to have observed. Discussions of the "level" of collection service within this pleading, for purposes of responding to the instant motion, should not be confused with consideration of the relevant statutory factor, value of service. In particular, it seems especially futile to attempt to draw conclusions about value of service in urban areas such as New York City or Chicago, based on alleged deficiencies regarding individual collection boxes. Mailers in such cities have so many mailing options that it seems counterintuitive in such a setting to suggest the possibility of meaningful evaluation of the impact that pickup times on one collection box, or even a number of collection boxes, might have customers' perception of value of the entire collection network. If you want to know how customers value the collection network, you have to ask customers – you cannot just look at collection boxes.

by mischaracterizing one of his previous questions, DFC/USPS-75. On pages 3 and 4 of the Motion, Mr. Carlson repeatedly insists that Question 75 simply sought “examples” of circumstances (other than the example given in response to DBP/USPS-91) that might justify exceptions to the POM collection box guidelines, rather than a comprehensive list of such circumstances. Examination of DFC/USPS-75, however, reveals that the word “examples,” which Mr. Carlson manages to use half a dozen times in reference to that question in his instant Motion, does not appear within the question at all. The Postal Service did not attempt to evade the question by “pretending” that it sought a comprehensive list of circumstances. That was, rather, a fair reading of the question, particularly in the context of the whole series of questions from Mr. Carlson and Mr. Popkin (DBP/USPS-91, DFC/USPS-75, and DBP/USPS-449) with the obvious intent of trying to elicit from the Postal Service responses establishing “mandatory” standards against which any observed deviations could subsequently be used in a “gotcha” follow-up. DFC/USPS-77 is simply the next step in the progression. Mr. Carlson and Mr. Popkin may be unhappy that the POM guidelines are not as one dimensional as they would prefer, but that provides no excuse to accuse the Postal Service of giving anything other than an accurate and responsive answer to the question posed.

Finally, on the matter of burden, two points merit response. First, Mr. Carlson erroneously claims that the Postal Service’s objection “asserts that it is not possible to determine the number of boxes in Bronx to which the question relates.” Motion at 6. In fact, what the objection actually stated was that it was not possible to make that determination “[f]rom the question itself.” These are two quite different statements. The

Postal Service was merely trying to point out that, with respect to the boxes in the Bronx (as opposed to the four boxes in Manhattan specified in the first part of the question), it was not possible to tell from the question whether the set of boxes for which investigation would be needed numbers one dozen, a few dozen, or possibly even hundreds of boxes. Moreover, while it may be easy for Mr. Carlson to work backward to identify the boxes he knows he intended to be within the scope of the question, the description in the question is not nearly as unambiguous as that in his motion to compel. If the Postal Service were to attempt to identify a set of boxes based merely on the question, but found some of them with collection times which did not match Mr. Carlson's claims, it conceivably might take some time and effort to resolve whether the source of that discrepancy was looking at a different set of boxes from the set he intended, or something else.

Second, Mr. Carlson expresses great indignation (Motion at 6-7) at the Postal Service's statement in the objection that tracking down "someone willing to respond" to a "why" inquiry is notoriously more difficult than finding someone able to state an objective "what." Mr. Carlson opines that this is a purely internal "personnel" problem that does not merit consideration in the evaluation of an undue burden. Use of the phrase "willing to respond" seems to have created an unintended impression. A more felicitous choice of words to express the intended thought may have been "someone capable of responding." The thought in mind was that, if you call a post office, whoever answers can likely tell you something along the lines of what the pickup time might be on the box outside the building, but the only person who actually knows how and why that time was established may be in a meeting, or on vacation, or no longer working at

the unit, or unavailable for any number of reasons. Such factors do add to the potential burden involved in responding to what amount to “why” questions, such as those posed in DFC/USPS-77, and are therefore properly raised in a burden objection.

The motion to compel a response to DFC/USPS-77 should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Eric P. Koetting

### **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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Eric P. Koetting

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