

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001**

**Postal Rate and Fee Changes, 2006**

**Docket No. R2006-1**

**DOUGLAS F. CARLSON  
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE  
TO RESPOND TO INTERROGATORIES DFC/USPS-80(c) AND 81**

**November 22, 2006**

The “Forever Stamp,” which the Postal Service proposes in this proceeding, is a novel concept that will affect nearly every American postal customer. Implemented correctly, the “Forever Stamp” may increase customer convenience. Implemented incorrectly, the “Forever Stamp” could be a disaster. The proposal deserves a full vetting in this proceeding to ensure fairness to customers and to avoid unintended consequences.

Unfortunately, the details of the Postal Service’s proposal are a moving target. To this day, less than one month before initial briefs are due, the scope and intent of the proposal are unclear. Now the Postal Service is obstructing discovery designed to clarify these issues. For the reasons explained below, I move to compel the Postal Service to respond to DFC/USPS-80(c) and 81.

The Postal Service initially inhibited public review of the “Forever Stamp” proposal by filing the proposal late. The Postal Service filed the proposal on July 14, 2006, leaving insufficient time for discovery and follow-up before testimony was due on September 6, 2006.

When the Postal Service filed its “Forever Stamp” testimony, the Postal Service’s testimony was vague on two related questions. First, to which extent would customers be permitted to use “Forever Stamps” on mail other than

single-piece First-Class letters (or mail other than *one-ounce* single piece First-Class letters)? Second, if customers would be permitted to use “Forever Stamps” on mail other than single-piece First-Class letters (or mail other than *one-ounce* single-piece First-Class letters), which postage value would “Forever Stamps” contribute to payment of postage for the article of mail to which they were affixed? As I discussed in my testimony in DFC-T-1 at 20–21, the Postal Service’s proposed DMCS language was vague, but it seemed to suggest that the stamps were valid for postage on First-Class letters only (and maybe letters weighing more than one ounce).

Eventually one answer emerged in the original response to DBP/USPS-340 and 341. In this response, filed on August 7, 2006, the Postal Service confirmed that the intended use of the stamp is on single-piece one-ounce First-Class letters. However, if customers used the stamps on other mail, the Postal Service was “considering” granting customers postage value equal to the *original purchase price* of the stamp, not the current single-piece one-ounce rate for First-Class letters. Thus, in a hypothetical future rate cycle, a “Forever Stamp” might be worth 45 cents postage on a single-piece one-ounce First-Class letter but only 42 cents on a First-Class flat.

I relied on the response to DBP/USPS-340 and 341 and spent considerable time and effort writing testimony and drafting proposed DMCS language that would implement the “Forever Stamp” in a manner that, I believed, would be preferable to the Postal Service’s approach and, unlike the Postal Service’s approach, would be consistent with the Postal Reorganization Act.

On October 10, 2006, the Postal Service filed a revised response to DBP/USPS-340 and 341. According to this response, the Postal Service was “considering”<sup>1</sup> “tolerating” uses of the stamp other than on single-piece one-ounce First-Class letters — e.g., First-Class flats and parcels. For these uses,

---

<sup>1</sup> The status “considering” changed to “intends” as late as November 21, 2006, in response to DBP/USPS-700. Nonetheless, as I describe *infra*, the Postal Service’s intent could change at any time in the future, without public input or Commission review, if the DMCS language permits the Postal Service to implement the “Forever Stamp” differently.

the postage value of the stamp would equal the “forever” rate — the current single-piece one-ounce rate for First-Class letters. While I have learned not to expect the Postal Service to admit the value of an opposing party’s contribution to the record, I believe that my testimony describing the impracticality and unfairness associated with the Postal Service’s original proposal prompted this welcome change.

The Postal Service’s true intentions, however, remain unclear. On September 27, 2006, the Postal Service proposed new DMM section 604.1.10 to implement the “Forever Stamp.”<sup>2</sup> The proposed section reads:

Forever stamps are sold for the price of the current First-Class Mail single-piece 1-ounce letter rate in 133.1.5. The postage value of each forever stamp is the current First-Class Mail single piece 1-ounce letter rate.

Both the revised response to DBP/USPS-340 and 341 and the proposed DMM section suggest that the Postal Service plans to grant “Forever Stamps” postage value equal to the “forever” value regardless of the shape or class of mail piece to which they are attached. Litigants must remain vigilant, however, for two reasons. First, no change in the proposed DMCS language has accompanied this new implementation plan. Second, the Postal Service can change the DMM at any time, with or without soliciting or considering public input. DMM changes do not require Commission review or the public input that Commission proceedings provide. Under the DMCS language that the Postal Service continues to propose, the Postal Service, to silence criticism just long enough to win approval of the “Forever Stamp,” could enact DMM section 604.1.10 for the upcoming rate cycle, when the original purchase price of a “Forever Stamp” will be equal to the “forever” value of the stamp. For the next rate cycle, when the issue becomes significant, the Postal Service could amend the DMM, and the public might have little recourse because the DMCS appears to allow a considerably more restrictive use of the “Forever Stamp” than the new DMM language provides. I am unwilling to allow myself to be placed in an

---

<sup>2</sup> 71 Fed. Reg. 56,587 (September 27, 2006).

untenable legal position in the future, and therefore I seek to litigate the proper design of the “Forever Stamp” classification now.

The Postal Service’s change of direction — the longevity of which remains unclear — occurred after my only opportunity to file testimony passed, thus raising immediate due-process concerns. An optimist would believe that the Postal Service’s proposed long term implementation is consistent with my proposed DMCS language. A pessimist would believe that the Postal Service may be holding on to its own DMCS language so that it can change its implementation of the “Forever Stamp” in the future without Commission review. When the Postal Service refuses to answer questions about its DMCS language or to explain why my proposed DMCS language would not be consistent with its planned implementation, red flags spring up.

Interrogatory DFC/USPS-80(c) probes the Postal Service’s DMCS language. The full interrogatory states:

Please refer to the response to DFC/USPS-78(c), the sentence “Once purchased, the Stamp may be used for first-ounce letter postage at any time in the future, regardless of the prevailing rate at the time of use” that witness Taufique proposed for DMCS section 241, and proposed DMM section 604.1.10, which appears in the notice published at 71 Fed. Reg. 56,587 on September 27, 2006.

- a. Please confirm that the Postal Service interprets the sentence quoted in the opening paragraph of this interrogatory as providing that the postage value of each “Forever Stamp” is the current First-Class Mail single-piece one-ounce letter rate. If you do not confirm, please explain.
- b. Please confirm that proposed DMCS section 241 could reasonably and properly be interpreted to permit customers to use a “Forever Stamp” on First-Class letters only, to the exclusion of other classes or shapes of mail. If you do not confirm, please explain.
- c. Please discuss the extent to which the Postal Service believes that proposed DMCS section 241 does or does not permit the Postal Service to restrict the use of the “Forever Stamp” to First-Class letters.

In a response to DFC/USPS-80(c),<sup>3</sup> which the Postal Service filed four days late and with no explanation or proper procedural regard for Commission rules and participants' due-process rights, the Postal Service stated:

An interrogatory seeking discussion of the extent to which proposed DMCS language "restricts" or "prohibits" or "permits" postal action calls for the statement of a legal conclusion, as opposed to a statement of fact. Accordingly, the Postal Service does not consider that it is obliged to respond to such a question in discovery. No doubt, this issue will be the subject of legal briefs in this docket.

This interrogatory goes to the heart of the Postal Service's proposed DMCS language. This interrogatory attempts to discover the customer use that the DMCS language would or would not permit. The Postal Service proposed the DMCS language, so asking the Postal Service to interpret its own language is not unreasonable. The Postal Service has the burden to show that its language is justified and is consistent with the Postal Reorganization Act. This interrogatory does not call for the Postal Service to interpret some statute or regulation tucked in a corner of the law library to satisfy a participant's curiosity; rather, it asks the Postal Service to explain what it means by the very language that it proposes to add to the DMCS. Similarly, this interrogatory does not probe a hypothetical concern; instead, the Postal Service appeared, for a time, to be proposing an implementation that would do exactly what the interrogatory supposes. The probative value of this interrogatory could not be more clear.

The *Rules of Practice* provide no support for the Postal Service's position. According to Rule 26(c), "An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact[.]" An interrogatory asking the Postal Service to explain whether its proposed DMCS language would permit the Postal Service to restrict the use of "Forever Stamps" to First-Class letters is entirely proper. Since it is proper, it is not objectionable simply because it may call for a legal opinion.

---

<sup>3</sup> Responses of the United States Postal Service to Interrogatories of Douglas Carlson

The Postal Service's refusal to answer this question validates my concern about the Postal Service's intentions. The Postal Service may very well be trying to enact DMCS language that will allow it to change course later without further Commission review. The proposed DMM language for the upcoming rate cycle, when the issue about future postage value of the "Forever Stamp" will be all but moot, may represent an attempt to divert litigants' attention while the all - important DMCS language is up for Commission review. Since the future use of the stamp is an issue critical to my support for the proposal, and for the DMCS language associated with the proposal,<sup>4</sup> I am entitled to obtain an answer to this question, not merely to argue about it on brief, as the Postal Service invites. The Commission should support my robust review of this proposal since David Popkin and I are the only participants asking these critical questions.

For the reasons explained herein, I move to compel the Postal Service to provide a responsive answer to DFC/USPS-80(c).

A useful way to understand the Postal Service's true intentions for the "Forever Stamp" proposal — a permissible line of inquiry — is to probe how the Postal Service's proposed implementation differs from the clear DMCS language that I proposed. Interrogatory DFC/USPS-81 states:

Please refer to the response to DFC/USPS-79(b).

- a. Please confirm that the DMCS language proposed in DFC-T-1 is fully consistent with the *actual use* of the "Forever Stamp" that the Postal Service proposes to allow or "tolerate." For purposes of this interrogatory, the term "actual use" is distinct from "intended use" and does not encompass issues related to intended use.
- b. Please confirm that the only difference, for purposes of resolving the issues in this proceeding, between the responses to DBP/USPS-340 and 341 and the DMCS language proposed in DFC-T-1 is that DFC-T-1 proposes that the intended purpose

---

(DFC/USPS-80 and 81), filed November 21, 2006.

<sup>4</sup> See, e.g., DFC-T-1 at 23, where I testified, "My support or opposition to the 'Forever Stamp' proposal could hinge on the postage credit, if any, that the Postal Service will give to 'Forever Stamps' that customers use on mail pieces that are not letters. Evaluating the Postal Service's proposal while such important elements of it remain undecided is highly problematic."

of the Forever Stamp be for use on all mail classes, while in contrast the Postal Service's interrogatory responses emphasize that the intended use of the "Forever Stamp" is on one-ounce single-piece First-Class Mail letter-shaped pieces and that other uses will be tolerated but not encouraged. If you do not confirm, please explain the other differences between the responses to DBP/USPS-340 and 341 and the DMCS language proposed in DFC-T-1.

In response,<sup>5</sup> the Postal Service states:

- a. The Postal Service lacks sufficient insight into the thought processes that resulted in the development of the DMCS language proposed in DFC-T-1 to be able to declare what the intent of that language might be. Such declarations are best left to the author of DFC-T-1.
- b. The Postal Service can confirm that the intended use of the Forever Stamp that it has proposed is on one-ounce single-piece First-Class Mail letter-shaped pieces, and that other uses will be tolerated but not encouraged. The Postal Service lacks sufficient insight into the thought processes that resulted in the development of the DMCS language proposed in DFC-T-1 to be able to declare what the intent of that language might be or whether it results in one or more deviations from what is stated in response to DBP/USPS-340 and 341.

The Postal Service's response is clearly evasive. The interrogatory asks an objective question and does not require the Postal Service or anybody else to have any insight into my thought processes. The interrogatory also does not ask about the intent of my DMCS language. The interrogatory is objective. The Postal Service is free to state its interpretation of my DMCS language, or to identify perceived ambiguities in the language, and then to answer the question, but the Postal Service is not permitted to pretend that the interrogatory asks for something that it does not request and then to use these fabricated deficiencies in the question to avoid answering it. I move to compel the Postal Service to respond to this interrogatory as written without regard to any of my thought processes when I wrote the DMCS language.

In conclusion, Commission rules of practice and legal principles of due process require the Postal Service to answer questions about new DMCS

---

<sup>5</sup> See fn. 3, *supra*.

language that it proposes. Interrogatories designed to explore the Postal Service's intent concerning the application and reach of its proposed DMCS language are reasonably calculated to lead to the discovery of admissible evidence and, therefore, constitute proper discovery. The Postal Service clearly is trying to amend the DMCS — perhaps in a way designed to maximize its autonomy and flexibility in the future — while denying participants the right to understand how the agency may interpret its own DMCS language. The presiding officer should not allow the Postal Service to evade this important line of inquiry.

For the reasons explained herein, I move to compel the Postal Service to respond to DFC/USPS-80(c) and DFC/USPS-81.

Respectfully submitted,

Dated: November 22, 2006

DOUGLAS F. CARLSON